

**Court No. - 20**

**Case :-** WRIT - A No. - 7730 of 2023

**Petitioner :-** Shri Krishna Verma

**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Of Medical And Health Services And 3 Others

**Counsel for Petitioner :-** Ashwani Kumar

**Counsel for Respondent :-** C.S.C.

**Hon'ble Manish Mathur,J.**

1. Heard Mr. Ashwani Kumar learned counsel for petitioner and learned State Counsel appearing on behalf of opposite parties.
2. Petition has been filed challenging order dated 18th April, 2023 imposing punishment of recovery against petitioner. Also under challenge is the consequential order dated 23rd May, 2023. Further relief for direction to opposite parties to grant gratuity and other post retiral benefits with re-fixation of pay scale of petitioner for such purpose has also been sought.
3. It has been submitted that as indicated in the impugned orders, a charge sheet dated 23rd April, 2018 was issued to petitioner but since petitioner did not submit his reply, inquiry proceedings were conducted ex parte whereafter inquiry report dated 17th April, 2020 was submitted and in pursuance of which the impugned punishment order has been passed.
4. It is submitted that petitioner has specifically denied receipt of any charge sheet but such charge sheet prior to initiation of the inquiry proceedings was subsequently supplied to petitioner while issuing show cause with regard to punishment required to be imposed whereafter petitioner has submitted his reply to the same. It is further submitted that a perusal of inquiry report dated 17th April, 2020 will also make it evident that charges levelled against petitioner have been assumed to be correct only on account of the fact that petitioner failed to reply to charge sheet or to participate in the inquiry proceedings. Learned counsel has further drawn attention to impugned order to submit that although the initiation of proceedings were after superannuation of petitioner but after seeking sanction under Article 351-A of Civil Service Regulations but is not in accordance with procedure required to be followed.
5. Learned counsel adverted to judgment of Hon'ble Supreme court in the case of **Roop Singh Negi versus Punjab National bank and others MANU/SC/8456/2008:(2009) 1 SCC (L & S) 398** and **State of Uttar Pradesh and others versus Saroj**

**Kumar Sinha reported in (2010) 2 SCC 772** to submit that even in case petitioner did not participate in the inquiry proceedings, it was incumbent upon the opposite parties to have conducted the inquiry in terms of Rule 7 of the U.P. Government Servant (Discipline and Appeal) Rules 1999, which having not been done vitiates the order.

6. Hon'ble the Supreme Court in the case of **Mohinder Singh Gill & others v. Chief Election Commissioner, New Delhi & others**, reported in AIR 1978 SC 851 has clearly held that order impugned before the Court has to stand on its own footing and cannot be supplemented by affidavits due to which petition is being adjudicated at admission stage itself.

7. Learned State Counsel has refuted submissions advanced by learned counsel for petitioner with submission that a perusal of inquiry report itself makes it evident that petitioner deliberately refused to file reply to the charge sheet which was issued to him in accordance with law and even thereafter failed to participate in the inquiry proceedings leaving the authorities with no option but to proceed on ex parte basis whereafter petitioner was found guilty of charges levelled against him due to which the impugned order of punishment has been passed.

8. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, particularly the inquiry report dated 17th April, 2020, it is evident that the inquiry report is simply a narration of the fact that petitioner did not submit his reply to the charge sheet nor participated in the inquiry proceedings whereafter the inquiry officer has assumed the charges levelled against petitioner to be proved in absence of any such reply. Impugned punishment order dated 18th April, 2023 has also dwelt primarily on the aspect of petitioner's non participation in the inquiry proceedings deliberately and has thereafter passed the punishment order on the basis of inquiry report.

9. The procedure required to be followed in disciplinary proceedings in order to maintain transparency and fairness have also been discussed by Hon'ble Supreme Court in the case of **Roop Singh Negi and Saroj Kumar Sinha (supra)**. The relevant portion of **Roop Singh Negi (supra)** is as follows:

*"Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer*

*must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence.*

The relevant portion of **Saroj Kumar Sinha** (surpa) is as follows :

*"27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge."*

*"28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents."*

10. Upon applicability of aforesaid judgments in the present facts and circumstances of the case, it is quite evident that inquiry report dated 17th April, 2020 has been submitted only on the aspect of non participation of petitioner in the inquiry

proceedings. There is absolutely no discussion with regard to evidence and witnesses required to prove the charges levelled against petitioner. As has been held by Hon'ble Supreme Court that inquiry proceedings are quasi judicial in nature for which the inquiry officer is required to advert to truth in the charges levelled against petitioner and for that purpose he is required to delve into the evidence in support of such charges and thereafter to indicate his mind after recording his subjective satisfaction with regard to such evidence.

11. Such a procedure having not been adopted by the inquiry officer, clearly vitiates the inquiry report as well as the impugned punishment order which is only based only on the inquiry report.

12. Consequently a writ in the nature of Certiorari is issued quashing impugned orders dated 18th April, 2023 and 23rd May, 2023 at the admission stage itself granting liberty to opposite parties to conduct the inquiry proceedings afresh from the stage of filing of reply by the petitioner which shall be done within a period of 15 days from today. The inquiry officer has thereafter is required to conclude the inquiry proceedings within a period of three months thereafter. Final order shall also be passed within a period of two months thereafter.

13. Resultantly the petition succeeds and is allowed. Parties to bear their own cost.

**Order Date :- 10.10.2023**

prabhat