

Court No. - 7

Case :- WRIT - A No. - 7792 of 2023

Petitioner :- Kamlesh Kumar Dixit

Respondent :- State Of U.P. Thru. Addl.Chief Secy. (Energy)
And 3 Others

Counsel for Petitioner :- Sudhanshu Chauhan, Abhineet
Singh, Jai Prakash Mishra

Counsel for Respondent :- C.S.C., Neerav Chitravanshi

Hon'ble Abdul Moin, J.

1. Counter affidavit filed by Shri Neerav Chitravanshi, learned counsel for respondent nos.2 & 3 is taken on record.

2. Heard Shri Sudhanshu Chauhan, learned counsel for the petitioner, learned State counsel for respondent no.1 as well as Shri Neerav Chitravanshi, learned counsel appearing for respondents nos.2 & 3.

3. Shri Sudhanshu Chauhan, learned counsel for the petitioner states that as only short question of law involves, he does not intend to file any rejoinder affidavit and prays that the matter may be heard on the said question of law.

4. The facts of the case have already been set forth in the order dated 10.10.2023 as jointly contended by learned counsel for the parties. For the sake of convenience, the order dated 10.10.2023 is reproduced below:

"Supplementary affidavit filed today is taken on record.

Heard.

The argument of learned counsel for the petitioner is that by means of an order dated 02.01.2021 the petitioner had been imposed with a penalty by the disciplinary authority. He preferred an appeal against the said order and the appellate authority vide the order dated 30.04.2022 had issued a show

cause notice requiring the petitioner to indicate as to why the punishment be not enhanced.

It is submitted that the petitioner submitted his reply but without considering the reply in proper perspective the order impugned dated 23.03.2023, a copy of which is annexure 2 to the petition, the punishment has been enhanced.

Reliance has been placed on the judgement of Hon'ble Supreme Court in the case of Oriental Bank of Commerce and another vs R.K. Uppal, (2011) 8 SCC 695 to contend that Hon'ble Supreme Court has held that where a punishment is sought to be enhanced by the appellate authority after an appeal is filed by the delinquent employee then a personal hearing is must.

It is contended that apart from the fact that in the show cause notice no reasons are contained as to why the punishment was sought to be enhanced non grant of personal hearing to the petitioner prior to punishment would vitiate the appellate order.

Shri Neerav Chitravanshi, learned counsel appearing for the corporation prays for and is granted two weeks' time to seek instructions in the matter.

List thereafter as fresh."

5. At the very outset, Shri Neerav Chitravanshi, learned counsel appearing for respondents states that there can be no dispute to the provision of law laid down by the Hon'ble Supreme Court in the case of **Oriental Bank of Commerce Vs. R.K. Uppal (2011) 8 SCC 695** wherein it has been held that where the punishment is sought to be enhanced, then a personal hearing is must. However Shri Chitravanshi argues on the basis of averment made in paragraph 31 of the counter affidavit that as the rules do not contemplate of giving an opportunity of personal hearing at the appellate stage, consequently no personal hearing was accorded to the petitioner and the order impugned has been passed.

6. This aspect of the matter has been considered by the Apex Court in the case of **R.K. Uppal (supra)** wherein the Apex Court has held as under:

"24. The appeal provision in Regulation 17 of the 1982 Regulations does not expressly provide for personal hearing to the appellant. Is the right of personal hearing to the appellant implicit in the provision? We think not. **In our considered view, in the absence of personal hearing to the appellant, it cannot be said that the very right of appeal is defeated. One situation is, however, different. Where the appellate authority proposes to enhance the penalty, obviously, the appellate authority must issue notice to the delinquent asking him to show cause why penalty that has been awarded to him must not be enhanced and give him personal hearing.** It is so because the appellate authority seeks to inflict such punishment for the first time which was not given by the disciplinary/punishing authority. **Although there are no positive words in Regulation 17, requiring that the appellant shall be heard before the enhancement of the penalty, the fairness and natural justice require him to be heard.**" (emphasis by the Court)

7. From a perusal of the judgment of the Apex Court in the case of **R.K. Uppal (supra)**, it clearly emerges that the Apex Court has held that where the appellate authority proposes to enhance the penalty, obviously, the appellate authority must issue notice to the delinquent asking him to show cause why penalty that has been awarded to him must not be enhanced and give him personal hearing.

8. In the instant case also, the punishment was sought to be enhanced by the appellate authority consequently the principle of law laid down by the **R.K. Uppal (supra)** would be squarely attracted i.e. where the punishment was sought to be enhanced then a personal hearing was a must to the petitioner even if the rules do not provide for the same.

9. Keeping in view of the aforesaid discussion, the writ petition is **allowed**. The order impugned dated 23.03.2023, a copy of which is annexure 2 to the petition, is quashed. The matter is remitted to the appellate authority to pass a fresh order after considering the reply of the petitioner and after giving him an opportunity of personal hearing. Let an order in this regard be

passed within a period of four weeks from the date of receipt of certified copy of this order.

10. In case any order adverse to the petitioner has been passed, it will always be open to the petitioner to agitate his grievance before the competent court in appropriate proceedings.

Order Date :- 31.10.2023

S. Shivhare