

Neutral Citation No. - 2023:AHC-LKO:70952-DB

Court No. - 1

Case :- WRIT - A No. - 8395 of 2023

Petitioner :- U.P. Police Avas Nigam Ltd. , Lucknow Thru. Chairman And Managing Director And Another

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Home U.P. Civil Sectr. Lko. And Another

Counsel for Petitioner :- Dileep Singh,Asit Srivastava

Counsel for Respondent :- C.S.C.,Raj Kumar Upadhyaya
(R.K.Upadhyaya)

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

- (1) The challenge in the present writ petition under Article 226 of the Constitution of India is to an order dated 12th June, 2023 passed by the State Public Services Tribunal, Indira Bhawan at Lucknow (hereinafter referred to as '**Tribunal**') in Claim Petition No. 1946 of 2022, whereby the punishment order dated 21.02.2022 and the order on appeal dated 17/25.06.2022 so far as it imposed recovery of amount of Rs.08,05,824/- upon the claimant/respondent no.2 have been quashed and the Tribunal has further directed that if any service benefits to the claimant/respondent no. 2 have been withheld on account of the said punishment order, the respondent no.2 shall be entitled to release of the same. Further, the Tribunal has also directed to refund the recovered amount, if any, in pursuance of the aforesaid punishment order dated 21.02.2022 including refund amount of Rs.3,47,571/- from already deposited amount as per rules to the claimant/respondent no.2.

- (2) Succinctly, the facts of the case are that while working as Junior Engineer (Civil) at Kanpur Unit of U.P. Police Avas Nigam, the respondent No.2/claimant was transferred to Gorakhpur Unit vide order dated 27.06.2016 and by the same transfer order dated 27.06.2016, one Sri J.K. Srivastava, Junior Engineer (Civil), was transferred from Gorakhpur Unit to Kanpur Unit. Pursuant to the aforesaid transfer order dated 27.06.2016, the respondent no.2 joined at Gorakhpur Unit on 28.06.2016 and remained posted upto 28.07.2020. Although, the respondent No.2/claimant officiated at Gorakhpur Unit as Assistant Engineer, however, the said J.K. Srivastava having been transferred to Kanpur Unit and despite several orders issued to him by the Unit Incharge as well as Nigam Headquarter, did not handover his “Gorakhpur Unit” charge to his successors.
- (3) Apparently, during Annual Stock Verification done at Gorakhpur unit of U.P. Police Avas Nigam in the month of March, 2016, shortage of material at the unit Store was found and in this regard, Sri J.K. Srivastava, who was the Store Incharge, was responsible for shortage of stock in his charge and as such, recovery order to the tune of Rs. 34,59,628/- was issued against the said Sri J.K. Srivastava, which was accepted by him and deduction of the said amount from his monthly salary was made, however, all of a sudden, the said Sri J.K. Srivastava was placed under suspension on the charge of not

paying the said amount in one lump sum and a three members Committee headed by Sri U.P. Mihir, who was also one of the signatory of the verification papers made in March, 2016, was constituted to enquire into the matter. The said Committee, after due enquiry, submitted its report on 28.08.2020.

- (4) Based on the aforesaid report dated 28.08.2020, an order dated 28.09.2020 was issued against the respondent no.2, imposing recovery of Rs.11,53,395/- without affording any opportunity of hearing to him and later a charge-sheet dated 08.10.2020 also came to be served upon the respondent no.2, which contained four charges in respect of the period of posting of the respondent no.2 as Assistant Engineer, U.P. Police Avas Nigam, Gorakhpur/Basti. The charges contained in the said charge-sheet dated 08.10.2020 pertain to the posting of respondent no.2 during the period between 28.06.2016 to 28.07.2020. The first charge against the claimant/respondent no.2 as is borne out from a perusal of the charge-sheet dated 08.10.2020 is in respect of the alleged shortage of stock/material in different workplace of U.P. Police Avas Nigam units. Charge no.2 as contained in the said charge-sheet related to the alleged making of payment either by verifying himself as an Assistant Engineer or without the verification of the Assistant Engineer and charge no.3 related to violation of direction of the Nigam Headquarter as to not to make any advance payment to supplier/P.R.W.

wherein contrary to the said direction, advance payment of Rs.827.40 Lakh was made to the supplier/P.R.W. The fourth and the last charge was related to laxity in maintaining storage of construction materials in proper way.

- (5) The respondent no.2 submitted his reply to the charge-sheet on 27.11.2020, whereby he denied the charges and stated that one J.K. Srivastava did not handover him charge after being transferred and the said J.K. Srivastava was not under his control but he was under the direct control of Unit In charge, namely, Shri Vinod Kumar. He has further stated that, as a matter of fact, the Unit In charge had made his own signature in place of Assistant Engineer and as such, respondent no.2 cannot be said to have misconducted in any manner. He also denied the other charges as alleged against him.
- (6) Apparently, from the perusal of the record available before this Court and on the reply submitted by the respondent no.2 to the charge-sheet, it seems the Enquiry Officer proceeded to finalize the enquiry at his end and thus he submitted the enquiry report dated 29.12.2021, holding the claimant/respondent no.2 guilty for the charges so levelled against him.
- (7) Based on the aforesaid enquiry report dated 29.12.2021, the disciplinary authority issued a show cause notice dated 04.01.2022. In response thereto, the respondent no.2 had

submitted his reply dated 20.01.2022. Thereafter, the Disciplinary Authority passed the punishment order dated 21.02.2022, whereby the amount of recovery was reduced from Rs.11,53,395/- to Rs. 08,05,824/-, however, difference of amount was not returned to the respondent no.2. Feeling aggrieved, the respondent no.2 had filed an appeal, which was also rejected vide order dated 17/25.6.2022.

- (8) Challenging the aforesaid two orders, namely, the order of punishment dated 21.02.2022 and the order passed on appeal on 17/25.6.2022, the respondent no.2 preferred a claim petition before the Tribunal, which after giving opportunity to the State/Appellant considered the matter and vide impugned judgment and order dated 12.06.2023, allowed the claim petition while quashing the punishment order dated 21.02.2022 as also the order passed on appeal on 17/25.6.2022.
- (9) The petitioners have, thus, come in this writ petition challenging the aforesaid judgment/order dated 12.06.2023 passed by the Tribunal.
- (10) We have heard Shri Asit Srivastava, learned Counsel representing the petitioners and Shri R.K. Upadhyaya, learned Counsel representing the claimant/respondent no.2 and gone through the impugned judgment/order as well as the record available before this Court in the instant writ petition.

- (11) A perusal of the impugned judgment and order passed by the Tribunal would reveal that the Tribunal, while allowing the claim petition preferred by the respondent no.2, has given adequate and appropriate reasons. When we examine the impugned judgment/order in the light of the submissions made by the learned counsel representing the petitioners and also in the light of the documents available before us in this writ petition, what we notice is that although the allegation of improper maintenance of storage of construction material could not be established in the enquiry insofar as it relates to the claimant/respondent no.2, however, even then the Enquiry Officer has mentioned in its report that respondent no.2, despite having knowledge of shortage of material, kept mum and did not inform the authorities at the headquarter. In this regard, the learned Tribunal has returned a specific finding that, firstly, there was no such charge leveled upon the respondent no.2/claimant to the effect that respondent no.2, despite having knowledge of shortage of material, kept mum and did not inform the authorities at the headquarter and as such, the Enquiry Officer has exceeded his jurisdiction. Secondly, the Enquiry officer had no authority to modify the allegations levelled in the charge-sheet. Significantly, from the records available before this Court, it is revealed that Annexure no.4 to the claim petition is a letter dated 03.11.2016 sent by Unit Incharge Vinod Kumar to the Managing Director (Project Unit),

U.P. Police Avas Nigam Ltd Headquarter, Lucknow, which specifically stated that Shri J.K. Srivastava did not handover his charge despite being transferred. Therefore, the learned Tribunal has rightly returned a finding that the prevailing facts were brought to the knowledge of General Manager and as such it cannot be accepted that the authorities at headquarter level were not aware of anything which was going on in the Gorakhpur Unit. This Court finds that in these circumstances, the learned Tribunal has concluded that the enquiry report dated 29.12.2021 was unreasoned and non-speaking and the enquiry report vitiates to the extent it relates to the claimant/respondent no.2.

- (12) The learned Tribunal has arrived at the aforesaid conclusion, after citing various judgments including the judgments of the Apex Court in **Union of India Vs. Mohan Lal Kapoor** : (1973) 2 SCC 836, **Gurdial Singh Fijji Vs. State of Punjab** : (1979) 2 SCC 368, **Uma Charan Vs. State of Madhya Pradesh** : AIR 1981 SC 1915 and the judgment of this Court in **Ram Pal Singh Vs. Director of Agriculture, U.P. and others** : 2012 (30) LCD 843. This Court also finds that the Tribunal has returned a finding that while passing the punishment order dated 21.02.2022, the Disciplinary Authority has not considered the facts raised by the claimant/respondent no.2 in his explanation/representation and has not assigned any reasons for

not accepting the averments made in the reply dated 20.01.2022, hence the learned Tribunal has concluded that the punishment order dated 21.02.2022 to be non-speaking and unreasoned.

- (13) So far as the order of appellate authority dated 17/25.06.2022, the learned Tribunal noted the facts that a perusal of the appellate order reveals that the appellate order was passed by the Board of Directors, who afforded opportunity of personal hearing to the claimant, however, a perusal of appellate order reveals that the decision of the Board is dated 17.06.2022, signed by the Company Secretary, however, it contains a covering letter of the Deputy Manager (karmik) dated 25.06.2022 which deals with para-wise comments on the appeal of the claimant/respondent no.2 followed by the decision without any reason. The learned Tribunal, in this regard, has returned a finding that the covering letter does not clarify as to how the claimant/respondent no.2 can be held responsible for anything done by Sri J.K. Srivastava and the said Unit In-charge Sri Vinod Kumar. The learned Tribunal, thus, has returned a finding that the appellate order, although has averred that the claimant could not bring anything on record to show that he had informed the authorities about the irregularities, but the same could not be legally sustainable for the reason that first of all there ought to have been a definite charge to the said

extent and secondly the same should have to be proved by the department.

(14) Thus, this Court finds that the learned Tribunal after recording the facts and the various contention of the parties has given a detailed discussion and reasoning, to arrive at a conclusion that the enquiry conducted against the respondent no.2 on the basis of which punishment order was passed was not lawful and as a consequence held that any punishment order based on such unlawful and illegal enquiry could not be permitted to be sustained.

(15) This Court finds that the Tribunal has considered all the aspects of the matter and has given a well-reasoned order and as such the view taken by the Tribunal cannot be faulted with, in the given facts and circumstances of this case.

(16) As a sequel to the aforesaid, we do not find any illegality or irregularity in the order of the Tribunal which would entail any interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

(17) The writ petition is devoid of any merit and is, therefore, **dismissed.**

(Om Prakash Shukla, J.) (Attau Rahman Masoodi, J.)

Order Date : 30.10.2023
Shubhankar/Ajit/-