

Neutral Citation No. - 2023:AHC-LKO:74728-DB

Court No. - 1

Case :- WRIT - A No. - 8835 of 2023

Petitioner :- Santosh Kumar Mishra Pno 012761278

Respondent :- State Public Services Tribunal Lko. Thru. Chairman
And Others

Counsel for Petitioner :- Jitendra Kumar Verma

Counsel for Respondent :- Manish Mishra,C.S.C.

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

(1) Heard Shri Jitendra Kumar Verma, learned Counsel representing the petitioner and learned Standing Counsel representing the State authorities/respondents and perused the material brought on record.

(2) The instant writ petition under Article 226 of the Constitution of India has been filed by the petitioner, assailing the correctness of the judgment/order dated 16.11.2022 passed by the State Public Services Tribunal, Lucknow (hereinafter referred to as “**the Tribunal**”), whereby Claim Petition No. 2651 of 2021 filed by the petitioner against the order of punishment/censure dated 08.09.2021 and the appellate order dated 06.12.2021, was dismissed by the learned Tribunal.

The petitioner is also assailing the judgment/order dated 02.08.2023 passed by the learned Tribunal, whereby Review Petition No. 111 of 2022 filed by the petitioner seeking to review the aforesaid judgment/order dated 16.11.2022, was also dismissed.

- (3) Assailing the impugned judgments/orders passed by the learned Tribunal, learned Counsel representing the petitioner has argued that the learned Tribunal has not appropriately considered the issues involved in this matter inasmuch as that the disciplinary authority while passing the impugned order of punishment of censure dated 08.09.2021 has not considered the material available on record of the disciplinary proceedings and further that the said order of punishment is completely a non-speaking order. He also argued that neither Enquiry Officer nor punishing authority had provided any opportunity of hearing to the petitioner as no date, time and place for enquiry has been fixed by the Enquiry Officer. Learned Counsel further submits that report based on the fact finding enquiry conducted against the petitioner was not taken into account by the disciplinary authority while passing the order of censure dated 08.09.2021 and that the re-investigation of the case was given to the Sub-Inspector Raj Kishore Singh, who was never questioned even his statement was nor recorded in preliminary enquiry which was mandatory to fix liability and also the statement of Head Moharrir of the said case was also not taken whose duty was to prepare the list of pending investigation. In this backdrop, learned Counsel submits that the impugned order awarding the punishment of censure as also the appellate order are not sustainable, however, the learned Tribunal did not consider the

aforesaid aspect of the matter and has erroneously dismissed the claim petition filed by the petitioner.

- (4) On the other hand, learned State Counsel representing the State-respondents has submitted that the learned Tribunal has taken into account all the relevant aspects of the matter and has returned a finding that the procedure as prescribed in Uttar Pradesh Police Officers of Subordinate Ranks (Punishment & Appeal) Rules, 1991 (hereinafter referred to as 'Rules 1991') has been followed and as such the petition lacks merit which is liable to be dismissed.
- (5) We have considered the respective submissions made by the learned counsel representing the respective parties and have also perused the documents available before us on this writ petition.
- (6) The petitioner was initially appointed on the post of Sub-Inspector in the year 2001. In the year 2013, he was posted as Station House Officer, Police Station Saadat, district Ghazipur and while posted at the said police station, he was entrusted with investigation of Case Crime No.114 of 2013, under Sections 147, 436, 504, 506 I.P.C. wherein he, after completion of the investigation, submitted a final report dated 28.08.2013, however, the learned Judicial Magistrate, vide order dated 23.11.2023, while declining to accept the said final report dated 28.08.2013, ordered for re-investigation of the aforesaid case.

The allegation against the petitioner is that he had received the order of the learned Judicial Magistrate on the same date i.e. on 23.11.2023 itself, however, he, after receiving the order of the learned Judicial Magistrate dated 23.11.2013, had allegedly handed over the re-investigation of the aforesaid criminal case to Sub-Inspector Shri Raj Kishore Singh and its mention has been made in the Register No.4 but no written order has been passed in this regard and after that Sub-Inspector Raj Kishore Singh was transferred and after his transfer, no effort has been made by the petitioner to investigate the said criminal case in terms of the order of the learned Judicial Magistrate and the said criminal case has been shown in the list of pending criminal case.

- (7) Noticing the aforesaid alleged illegality and misconduct, a fact finding enquiry was conducted against the petitioner by the Circle Officer, who submitted his report on 17.06.2021 to the Superintendent of Police, Ghazipur, wherein he opined that the petitioner being posted as Station Officer, Saadat, did not make any effort to conclude the investigation of the criminal case expeditiously within the stipulated period and as such, the petitioner was guilty and as a matter of fact, other police officers were not found guilty.
- (8) The Superintendent of Police, Ghazipur, after receipt of the enquiry report dated 17.06.2021, issued a show cause notice dated 22.06.2021 under Rule 14 (2) of the Rules 1991 whereby

the petitioner was required to submit his explanation as to why a censure may not be recorded in his character roll in terms of the provisions contained rule 4 (1) (b) read with rule 14 of the Rules 1991. The charge as can be deciphered from the aforesaid show cause notice dated 22.06.2021 related to the alleged dereliction of duty by the petitioner in conducting the investigation of aforementioned criminal case in terms of the order of the learned Judicial Magistrate. In response to the show cause notice, the petitioner had submitted his reply, denying the allegations levelled against him and claimed to be innocence. The Superintendent of Police, Gazipur had gone through the aforesaid reply submitted by the petitioner against the show cause notice and also gone through the material available before him on record and has passed the order dated 08.09.2021 censuring the petitioner and ordered for recording the censure entry in his character roll.

- (9) Against the order of punishment of censure dated 08.09.2021, the petitioner preferred a statutory appeal before the appellate authority which too was dismissed by the Inspector General of Police, Varanasi Zone, Varanasi vide order dated 06.12.2021. It is these two orders, namely, the order of punishment of censure dated 08.09.2021 and the order passed by the appellate authority dated 06.12.2021 which were challenged by the petitioner by instituting the proceedings of Claim Petition No.2651 of 2021 before the Tribunal. The learned Tribunal, by

means of the order under challenge herein before us, has dismissed the said claim petition.

- (10)** The allegation against the petitioner related to alleged laxity and dereliction in duty in conducting the investigation of a criminal case as per the direction of the learned Judicial Magistrate. Specific imputation against the petitioner was that he did not make any effort to conduct the investigation expeditiously within the stipulated period, despite the fact that he himself had received the order passed by the learned Judicial Magistrate for investigation of the criminal case and even that he, without any written order, handed over the investigation to SI Raj Kishore Singh and its mention has been made in the Register No.4. In this backdrop, the learned Tribunal, after examining the record available before it, has returned to a finding that the petitioner was remained posted as Station Officer w.e.f. 11.05.2013 to 28.01.2014 and after mentioning the re-investigation to Shri Raj Kishore Singh on 23.11.2013, he remained posted upto 28.01.2014 and in the meanwhile, if nothing had been done by SI Shri Raj Kishore Singh, the petitioner should have taken care of the order of the Court. The learned Tribunal has also returned to a finding that it has wrongly mentioned that he had handed over the investigation to SI Shri Raj Kishore Singh and no order has been passed by him in this regard and the investigation of the aforesaid criminal case remain pending for long period, hence the petitioner had

committed misconduct and accordingly, the learned Tribunal dismissed the claim petition vide impugned order dated 16.11.2022.

- (11)** In the light of the aforementioned facts, when we examine the order of punishment dated 06.12.2021 passed by the Superintendent of Police, Ghazipur, what we find is that he has discussed as to how and on what basis the allegation against the petitioner has been found to be proved by him. He had also discussed the evidence and material which was available on record of the disciplinary proceedings.
- (12)** It is now well settled that even while passing the administrative order, the authorities are expected to give reasons. The administrative decisions are also to be informed of reasons. The disciplinary proceeding are in the nature of quasi judicial proceedings which require the disciplinary authority to give reasons and consider the relevant record and material available before him while taking final decision in the matter.
- (13)** In the instant case, what we find is that the disciplinary authority, while passing the order of punishment, has recorded specific reason that because of the petitioner, the investigation of the criminal case was pending since long and the petitioner has not obeyed the order of the Court. The appellate authority while considering the appeal preferred by the petitioner against the order of punishment of censure has also addressed the

issues raised by him in the appeal and it appears from a perusal of the said appellate order dated 06.12.2021 that appellate authority has rightly passed the order on appeal.

(14) Having gone through the material available on record and the reasoning recorded by the learned Tribunal, we are not persuaded on the strength of arguments advanced before us that the case at hand is a fit case for “Judicial Review”, so as to invite our inference under Article 226 of the Constitution of India.

(15) The writ petition being bereft of any merit is, accordingly, **dismissed.**

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

Order Date :- 09.11.2023

Shubhankar/Ajit/-