

Court No. - 20

Case :- WRIT - A No. - 9002 of 2023

Petitioner :- Ajay Goel

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Housing And Urban Planning Lucknow And Another

Counsel for Petitioner :- Rakesh Chandra Tewari

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard learned counsel for petitioner and learned State Counsel for opposite parties.

2. On 21.11.2023, the following order had been passed:-

"Supplementary affidavit filed today on behalf of petitioner is taken on record.

Heard learned counsel for petitioner and learned State Counsel appearing on behalf of opposite parties.

Petition has been filed challenging order dated 8th October, 2023 whereby the disciplinary authority has disagreed with inquiry report dated 16th June, 2023 and has directed re-inquiry in terms of Rule 9 of U.P. Government Servants (Discipline and Appeal) Rules 1999.

It has been submitted that a perusal of impugned order will make it evident that disciplinary authority has not indicated any reason whatsoever for disagreeing with the inquiry report, which is a mandate required to be followed in terms of Rule 9 of aforesaid Rules.

Learned State Counsel however has drawn attention to paragraph 2 of the impugned order to submit that the impugned order is merely a communication whereas decision has already been taken by State Government and separate orders therefore have been passed.

Considering aforesaid, learned State Counsel is granted 10 days time to bring on record the order directing re-inquiry.

List this case on 1st December, 2023 as fresh. "

3. Thereafter on 14.12.2023, the following order had been passed: -

"Short counter affidavit filed on behalf of opposite parties today in Court is taken on record which however does not disclose as to whether petitioner was issued any show cause notice or communicated any reasons by the disciplinary authority for disagreeing with the inquiry report and subsequently directing fresh inquiry to be held by any other inquiry officer.

On the aforesaid aspect, learned State Counsel is granted three days' time to file a supplementary short counter affidavit bringing on record the aforesaid factor.

List this case on 20.12.2023, as fresh."

4. In pursuance thereof, a supplementary short counter affidavit has been filed today on behalf of State which is taken on record. In paragraphs 5 and 6 of the supplementary short

counter affidavit, it has been stated that the disciplinary authority examined the enquiry report but since he was not in agreement with the findings, as such in pursuance of impugned order took a decision to change the enquiry officer. In paragraph 6 thereof, it has been admitted that prior to passing of impugned order, no show cause notice of any kind was issued to petitioner.

5. The aforesaid aspect that disciplinary authority in case of disagreement with the enquiry report is required to issue show cause to a delinquent employee indicating his reasons for disagreeing with enquiry report has already been considered by Hon'ble the Supreme Court in **K.R. Deb v. The Collector of Central Excise, Shillong** reported in AIR 1971 SC 1447.

6. The aforesaid judgment is squarely applicable in the present facts and circumstances of the case particularly in view of admission by opposite parties regarding its violations.

7. Learned counsel for petitioner has however submitted that with regard to same incident, disciplinary proceedings were drawn against eight employees including petitioner with regard to same charges while in the case of all other seven persons, enquiry report has been accepted exonerating the aforesaid persons, and it is only the petitioner in whose case such an order has been passed thereby discriminating against him.

8. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, this Court thus comes to an inescapable conclusion that the law as enunciated by Hon'ble the Supreme Court in **K.R. Deb**(supra) has not been followed in the present case.

9. The impugned order dated 08.10.2023 regarding change of enquiry officer and continuation of enquiry proceedings against petitioner is therefore clearly against the dictum of such

judgment and is hereby quashed by issuance of a writ in the nature of Certiorari granting liberty to opposite parties to pass fresh orders strictly complying with the aforesaid judgment and keeping in view the doctrine of equality and parity within a period of eight weeks from the date a certified copy of this order is produced before the authority concerned.

10. Consequently, the petition succeeds and is **allowed**. There shall be no order as to costs.

Order Date :- 20.12.2023

kvg/-