

Court No. - 1

Case :- WRIT - A No. - 9094 of 2023

Petitioner :- Satendra Kumar

Respondent :- U.P. Public Service Tribunal Lko. And Others

Counsel for Petitioner :- Sushil Kumar Pathak

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

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

(1) Feeling aggrieved and dissatisfied with the impugned judgment and order dated 26.07.2023 passed by State Public Service Tribunal, Indira Bhawan, Lucknow (hereinafter referred to as "the Tribunal") in Claim Petition No. 885 of 2020 : Satendra Kumar Vs. State of U.P. and others, by which the Tribunal has dismissed the said claim petition and has confirmed the order of punishment of censure entry dated 05.08.2019 and appellate order dated 13.02.2020 as well as revisional order dated 18.04.2020, the claimant/appellant has preferred the instant writ petition under Article 226 of the Constitution of India.

(2) Heard Shri Sushil Kumar Pathak, learned Counsel for the petitioner, Shri Manish Mishra, learned Counsel for the respondent no.1/Tribunal, Shri Amitabh Rai, learned Additional Chief Standing Counsel for the State/respondents no. 2 to 5 and perused the impugned judgment passed by the Tribunal as well as material brought on record.

(3) A preliminary inquiry was initiated against the claimant/petitioner, who was a Constable in Civil Police, for having committed carelessness in duty, indiscipline, insensitivity and arbitrariness as if he performed the duty with alertness, then, incident of murder of Brijeshwar Tyagi by the side of Deepak alias Virendra Tyagi due to old enmity could be stopped. In the said preliminary enquiry, the petitioner was found guilty. A

show cause notice dated 04.01.2018 was issued to the petitioner under Rule 4 (1) (b) (iv) of the Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 (hereinafter referred to as "Rules, 1991"), requiring the petitioner to submit his explanation as to why he would not be punished for censure entry as per Rule 4 (1) (b) (iv) of the Rules, 1991. In response, the petitioner submitted his reply on 22.01.2018, denying the allegations so levelled against him. By order dated 05.08.2019, punishment of censure entry was passed against the petitioner. The petitioner filed appeal challenging the aforesaid punishment order dated 05.08.2019, which was rejected by means of the order dated 13.02.2020. Feeling aggrieved, the petitioner filed revision before the State Government, which too was rejected by means of the order dated 18.04.2020. The order of punishment dated 05.08.2019, appellate order dated 13.02.2020 and revisional order dated 18.04.2020 was the subject matter of Claim Petition No.885 of 2020 before the Tribunal. By the judgment and order dated 26.07.2023, the Tribunal dismissed the aforesaid claim petition, which is the subject matter of the instant writ petition before this Court.

(4) Assailing the impugned judgment passed by the Tribunal, learned Counsel for the petitioner has contended that though the petitioner had submitted a detailed reply to the show cause notice, denying each of the allegations so levelled against him in the show cause notice, but even then the punishing authority, without considering the explanation so tendered in his reply to the show cause notice, has passed the order of punishment of censure entry dated 05.08.2019. His submission is that perusal of the order of punishment itself shows that reply to the show cause notice submitted by the petitioner has not been considered by the disciplinary authority while passing the order

of punishment, however, neither the Tribunal nor the appellate authority nor the revisional authority has considered the aforesaid plea of the petitioner in right perspective and erred in dismissing the claim petition, appeal and revision, respectively.

(5) Per contra, learned Additional Chief Standing Counsel has contended that in the facts and circumstances of the case, neither the Tribunal nor the Appellate Authority nor the Revisional Authority have committed any error in dismissing the case of the petitioner. He contended that the order of punishment has been passed after considering the reply of the petitioner, therefore, there is no flaw in passing the order of punishment. Hence, the instant writ petition is liable to be dismissed.

(6) We have examined the submissions advanced by the learned Counsel for the parties and gone through the impugned judgment as well as material brought on record.

(7) It is not in dispute that the petitioner is working on the post of Constable in Civil Police. His services are governed by the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991. A preliminary enquiry was initiated against the petitioner under Rules, 1991 for the charges that on 30.03.2017, when he was roaming at PCR Chowki Mandaula police station Tronica City, he was also directed to maintain law and order in the reserved area of picketing and if he had done his duty with alertness, heinous incident of murder of Vijeshwar Tyagi by the party of Deepak alias Virendra Tyagi due to old enmity could not have been occurred but as no patrolling was done in the area during his presence on PCR in the said case, therefore, his act reflects gross negligence, indiscipline, arrogance and arbitrariness towards his duties, which is condemned.

(8) After preliminary inquiry, inquiry officer submitted its

report, holding the petitioner guilty of the aforesaid charges.

(9) After receipt of the inquiry report, the disciplinary authority has served a copy of the inquiry report and also issued a show cause notice dated 04.01.2018, requiring the petitioner to submit his explanation within fifteen days as to why he should not be punished of censure entry in terms of sub-rule (b) (iv) of Rule 4 (1) of the Rules, 1991. Pursuant to the aforesaid show cause notice dated 04.01.2018, the petitioner submitted his explanation vide reply dated 22.01.2018. The Disciplinary Authority has passed the order of punishment of censure entry by the order dated 05.08.2019 by only saying that the facts mentioned in the explanation sent by the petitioner are not valid and further by saying that no such important point has been mentioned by petitioner in his explanation, which can prove to be helpful in his defence.

(10) At this juncture, it would be apt to reproduce sub-rule (2) of Rule 5 of Rules, 1991 as well as sub-rule (2) of Rule 14 of Rules, 1991, which are relevant for proper adjudication of the case. The same are reproduced as under :-

"5. Procedure for award of punishment.- (1)

(2) The cases in which minor punishments enumerated in Clause (b) of sub-rule (1) of Rule 4 may be awarded, shall be dealt with in accordance with the procedure laid down in sub-rule (2) of Rule 14."

***"14. Procedure for conducting departmental proceedings.
(1).....***

(2) Notwithstanding anything contained in sub-rule (1) punishments in cases referred to in sub-rule (2) of Rule 5 may be imposed after informing the Police Officer in writing of the action proposed to be taken against him and of the imputations of act or omission on which it is proposed to be taken and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal."

(11) From the aforesaid provisions, it is crystal clear that before imposing minor punishment, the police officer shall be

informed in writing about the action proposed to be taken against him and also of the imputations of act or omissions on which it is proposed to be taken and reasonable opportunity shall be given to him of making representation/explanation, if he wishes to make against the proposal. After making proper consideration on the representation/explanation, the Disciplinary Authority shall pass order.

(12) In the instant case, it transpires from the punishment order dated 05.08.2019 that the Disciplinary Authority, while imposing punishment, though has gone through the explanation so submitted by the petitioner but denied to accept his explanation only by saying that the facts mentioned in the explanation sent by the petitioner are not valid and further by saying that no such important point has been mentioned by petitioner in his explanation, which can prove to be helpful in his defence. It transpires that the Disciplinary Authority, while passing the punishment order dated 05.08.2019, has not recorded any reasons for not accepting the explanation tendered by the petitioner against the show cause notice and by mere saying that the facts mentioned in the explanation sent by the petitioner are not valid, has denied to accept the explanation so tendered by the petitioner.

(13) It is well settled law that as order passed by an authority should be a reasoned one and the objection taken by a person should be dealt with because reasons are like a live wire which connects the mind of the decision making authority and the decision given by him. If this wire link is broken i.e. no reasons are given in the order, then, it will not be possible to know as what was going on in the mind of the decision making authority on the basis of which he has come to the conclusion and passed the order.

(14) The Apex Court in **Union of India Vs. Mohan Lal**

Kapoor : (1973) 2 SCC 836 has explained the difference of 'reason' and 'conclusion' and has held that reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached.

(15) Perusal of the order of punishment dated 05.08.2019 reflects that the Disciplinary Authority, after noting the statements of the show cause notice and findings of the inquiry officer, has denied to accept the explanation so tendered by the petitioner against the show cause notice. The Disciplinary Authority has not recorded any reasons as to why the explanation so tendered by the petitioner vide his reply dated 22.01.2018 against the show cause notice dated 04.01.2018 would not be acceptable. It transpires that the Tribunal, Appellate Authority and Revisional Authority have not considered the aforesaid facts while passing the orders dated 26.07.2023, 13.02.2020 and 18.04.2020, respectively.

(16) For the reasons aforesaid, the instant writ petition is **allowed**. The impugned order of punishment dated 05.08.2019, appellate order dated 13.02.2020, revisional order dated 18.04.2020 and the impugned judgment dated 26.07.2023 passed by the Tribunal in Claim Petition No. 885 of 2020 are hereby quashed. The matter is remitted to the disciplinary authority to pass a fresh speaking and reasoned order after proper consideration of the explanation tendered by the petitioner vide his reply dated 22.01.2018 against the show cause notice within six weeks from the date of receipt of a certified copy of this order.

Order Date :- 24.11.2023

Sanjay