

Court No. - 7

Case :- WRIT - A No. - 9282 of 2023

Petitioner :- Anurag Chaudhary

Respondent :- State Of U.P. Thru. Addl. Chief Secy. P.W.D. Govt. U.P.
Lucknow And 3 Others

Counsel for Petitioner :- Avinash Tiwari

Counsel for Respondent :- C.S.C., Shishir Jain

Hon'ble Abdul Moin, J.

1. Heard learned counsel for the petitioner, learned Standing Counsel for the respondent no. 1 and Shri Shishir Jain, learned counsel for the respondents no. 2 to 4.
2. With the consent of learned counsel appearing for the contesting parties, the writ petition is being finally decided.
3. Under challenge is the punishment order dated 06.01.2023, a copy of which is annexure 1 to the petition, whereby after disciplinary proceeding initiated against the petitioner as per the chargesheet dated 01.02.2019 the petitioner has been imposed with a penalty of recovery and withholding of two increments permanently. Also under challenge is the appellate order dated 03.10.2023, a copy of which is annexure 2 to the petition.
4. The legal argument of learned counsel for the petitioner is that after issuance of chargesheet the petitioner had demanded certain documents from the respondents of which only few were supplied. Nevertheless the petitioner claims to have submitted his reply on 27.12.2019, a copy of which is annexure 9 to the petition. Thereafter the respondents proceeded ex-parte in the said inquiry and the Inquiry Officer vide the inquiry report served on the petitioner through the order dated 17.06.2020, a copy of which is annexure 10 to the petition, has proved all the charges against the petitioner.
5. Learned counsel for the petitioner contends that a perusal of

the inquiry report would indicate that the Inquiry Officer, instead of proving the charges against the petitioner on the basis of documents available with the respondents, has put the onus of proving his innocence on the shoulders of the petitioner which is against all canons of law and the rules pertaining to disciplinary proceedings in as much as even if the petitioner may not have submitted the reply which was to the satisfaction of the inquiry officer yet the inquiry officer was required to go through the entire gamut of inquiry and to have proved the charges on the basis of evidence which was available with the department itself and shifting the onus of proving innocence on the delinquent employee is clearly not countenanced in the eyes of law.

6. The further argument is that it was always open for the respondents to have proved the charges against the petitioner even on the basis of preponderance of probability but there cannot be any occasion of shifting the onus of proving the innocence on the petitioner.

7. On the other hand, Shri Shishir Jain, learned counsel for the respondents no. 2 to 4 has vehemently argued that as the petitioner failed to submit a satisfactory reply to the chargesheet that had been issued against him consequently the Inquiry Officer had no alternative but to hold that the charges as proved against the petitioner in as much as it was the duty of the petitioner to have proved his innocence and that no satisfactory reply was submitted by the petitioner in this regard.

8. Shri Jain also argues that despite various opportunities having been granted to the petitioner for submitting the reply subsequent to his reply dated 27.12.2019, he failed to submit any reply consequently the inquiry officer had no occasion but to consider the only reply that had been given by the petitioner

and thereafter proceed to submit the inquiry report.

9. Having heard learned counsel for the parties and having perused the record what emerges from a perusal of inquiry report as served on the petitioner through the order dated 17.06.2020 is that the inquiry officer has adopted a shortcut of proving the charges against the petitioner. This would be amply clear from perusal of inquiry report which indicates that as the petitioner has not submitted a satisfactory reply consequently the charges are proved meaning thereby that the onus of proving his innocence has been shifted on the petitioner.

10. The said procedure adopted by the inquiry officer on the basis of which the impugned order of punishment dated 06.01.2023 has been passed would be against settled position of law as laid down by Hon'ble Supreme Court in the case of **Nirmala J. Jhala vs State of Gujarat and another, 2013 (31) LCD 762** wherein it has been held as under:

"29 (iii) The High Court erred in shifting the onus of proving various negative circumstances as referred to hereinabove, upon the appellant who was delinquent in the enquiry.

(iv) The onus lies on the department to prove the charge and it failed to examine any of the employee of the court i.e., Stenographer, Bench Secretary or Peon attached to the office of the appellant for proving the entry of Shri Gajjar, Advocate in her chamber on 17.8.1993."

11. From perusal of aforesaid judgement of Hon'ble Supreme Court it clearly emerges that the onus lies on the department to prove the charges meaning thereby that the onus of proving the innocence cannot be shifted on the shoulders of the delinquent employee.

12. A perusal of the inquiry report would indicate that the inquiry officer has simply shifted the onus on the petitioner by indicating that as the petitioner has failed to submit a satisfactory reply as such the charges are proved.

13. As already indicated above the said procedure adopted by the inquiry officer is against all canons of disciplinary proceedings and also the dictum of law laid down by Hon'ble Supreme Court in the case of **Nirmala J. Jhala (supra)**.

14. Keeping in view the aforesaid discussion, the writ petition is **allowed**. The order impugned dated 06.01.2023, a copy of which is annexure 1 of the petition, is quashed. On the same analogy the appellate order dated 03.10.2023, a copy of which is annexure 2 to the petition, is also quashed.

15. The matter is remitted to the inquiry officer to pass a fresh order in accordance with law after considering reply of the petitioner dated 27.12.2019.

16. Let an order in this regard be passed within a period of three months from the date of receipt of a certified copy of this order.

Order Date :- 16.12.2023
J.K. Dinkar