

Court No. - 6

Case :- WRIT - A No. - 2838 of 2024

Petitioner :- Dinesh Kumar Verma

Respondent :- State Of U.P. Thru. Its Addl. Chief Secy./ Prin. Secy. State Tax Lko. And 2 Others

Counsel for Petitioner :- Gaurav Mehrotra,Utsav Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin,J.

1. Heard learned counsel for the petitioner and Ms Jyotsna Pal, learned Chief Standing Counsel-IV for the respondents.

2. With the consent of learned counsel appearing for the contesting parties, the writ petition is being finally decided.

3. The instant writ petition has been filed praying for the following main relief(s):

(I) To issue a writ, order or direction in the nature of certiorari quashing the impugned punishment order dated 14.03.2024 issued by the respondent no. 2, copy whereof is contained as Annexure-1 to this writ petition.

(II) To issue a writ, order or direction in the nature of Mandamus commanding respondents to not give effect to the impugned punishment order dated 14.03.2024 issued by the respondent no 2.

(III) To issue a writ, order or direction in the nature of Mandamus commanding respondents to open the sealed cover containing the result of the Departmental Promotion Committee for grant of promotion to the petitioner to the next higher post of Additional Commissioner (Grade II), State Tax with all consequential benefits, including arrear of salary ignoring the disciplinary proceedings initiated on 26.04.2017."

4. There is a consensus at the Bar that this Court has passed a detailed order dated 09.04.2024 wherein the facts of the case and the points in dispute have already been set forth in detail. For the sake of convenience, the order dated 09.04.2024 is reproduced below:

"1. Supplementary affidavit filed today in Court is taken on record.

2. Heard Sri Gaurav Mehrotra, learned counsel for the petitioner, and Sri Saharsh Srivastava, learned Additional Chief Standing Counsel for the respondents.

3. Under challenge is the punishment order dated 14.03.2024, a copy of which is Annexure-1 to the petition.

4. The contention of learned counsel for the petitioner is that in terms of direction issued by a Division Bench of this Court in Writ-A No.20837 of 2020 in re: Dinesh Kumar Verma vs. State of U.P. and others, a copy of which is Annexure-18 to the writ petition, the writ Court while allowing the writ petition, had set-aside the punishment order earlier imposed against the petitioner as well as the judgment passed by the learned Tribunal but had granted liberty to the respondents to proceed with the inquiry from the stage of reply submitted by the petitioner in response to the charge sheet issued to him. The inquiry was also required to concluded within a period of six months.

5. Despite the judgment being dated 24.03.2022, the Inquiry Officer was appointed on 01.08.2022. He required the petitioner to file his additional reply to which the petitioner had submitted reply and had also required certain witnesses to be summoned. The inquiry proceedings thereafter proceeded without summoning the witnesses as had been requisitioned by the petitioner which ultimately resulted in the inquiry report dated 07.11.2022. A show cause notice dated 17.11.2022 along with the inquiry report was sent to the petitioner requiring him to send his reply to the same. The show cause notice was received by the petitioner on 23.11.2022 (Page 341 of the petition). The petitioner claims to have submitted his reply on 16.12.2022, a copy of which is Annexure-26 to the petition and had also sent the same through speed post on 19.12.2022 which has been received on 20.12.2022. The disciplinary authority vide his order impugned dated 14.03.2024 has not considered the reply submitted by the petitioner on the ground that the same has not been sent within the time specified in Clause 4(10) and 4(11) of the Government Order dated 22.04.2015, a copy of which is Annexure-32 to the petition.

6. *The argument of learned counsel for the petitioner is that once the disciplinary authority in his own wisdom has taken almost 15 months time in issuing the impugned punishment order dated 14.03.2024 as such there was no occasion for the disciplinary authority to have not considered the reply of the petitioner which was submitted within a period of almost three weeks from the date the said show cause notice was received i.e. the show cause notice having been received on 23.11.2022 and the reply having been submitted on 16.12.2022 and as such on this ground alone the impugned punishment order merits to be quashed.*

7. *The further argument is that keeping in view the law laid down by a Full Bench of this Court in the case of Abhishek Prabhakar Awasthi vs. New India Assurance Company Limited and others passed in Writ Petition No.7179 (SS) of 2009, once the period of time as provided by the Division Bench of this Court vide judgment and order dated 24.03.2022 of concluding the disciplinary proceedings within six months had already lapsed on 23.09.2022 consequently the impugned punishment order dated 14.03.2024 could not have been passed by the respondents more particularly when they have not sought any extension of time for conclusion of the inquiry from the Division Bench of this Court.*

8. *Let the learned Standing Counsel seek instructions in the matter within two weeks with regard to (a) as to why the reply to the show cause notice submitted by the petitioner was not considered more particularly when the disciplinary authority has taken more than a year to pass the final order, and (b) as to whether any application for extension of time was moved before the Division Bench of this Court and if not as to how the disciplinary could have passed the punishment order dated 14.03.2024 after stipulated period of six months for conclusion of the disciplinary proceedings.*

9. *List thereafter as fresh."*

5. From perusal of order dated 09.04.2024 it emerges that in terms of judgement of a division bench of this Court passed in **Writ A No. 20837 of 2020** in re: **Dinesh Kumar Verma vs State of U.P. and others** liberty had been granted to the

respondents to proceed with the inquiry against the petitioner from the stage of reply submitted by the petitioner in response to the chargesheet issued to him. The inquiry was also required to be concluded within a period of 6 months.

6. Despite the aforesaid judgement, the inquiry officer was appointed on 01.08.2022 who required the petitioner to submit additional reply which was submitted by the petitioner. Thereafter, a show cause notice dated 17.11.2022 alongwith inquiry report was sent to the petitioner requiring him to send his reply to the same. The show cause notice was received by the petitioner on 23.11.2022 and the petitioner claims to have submitted the reply on 16.12.2022 which was received in the office of the respondents on 20.12.2022 yet the disciplinary authority vide order impugned dated 14.03.2024 did not consider the reply submitted by the petitioner on the ground that the same has not been sent within the time specified in clause 4(10) and 4(11) of the government order dated 22.04.2015, a copy of which is annexure 32 to the petition, and the punishment order has been passed.

7. The Court had required learned Standing Counsel to seek instructions as to why the reply submitted by the petitioner to the show cause notice was not considered more particularly when the disciplinary authority has taken more than a year to pass final order and as to whether any application for extension of time was moved before division bench of this Court extending the time granted for conclusion of inquiry.

8. In pursuance thereof Ms Pal, learned Chief Standing Counsel on the basis of instructions sent by Deputy Secretary of the concerned department dated 20.04.2024 states that although the instructions do not contain anywhere as to whether the application for extension of time was moved praying for

extension of time granted by the division bench of this Court but so far as the reply of the petitioner was not considered, it is stated that though the reply of the petitioner was received in the office on 20.12.2022 yet as it had not been submitted within the time specified as per the government order dated 22.04.2015 consequently it was not considered and a tentative order of punishment was passed on 29.12.2022 and had been sent for concurrence / approval to Uttar Pradesh Public Service Commission (hereinafter referred to as the Commission) on 10.01.2023. She further states that approval of Commission was received on 23.02.2024 yet the impugned punishment order has only been passed on 14.03.2024 and as such no error has been committed by the respondents in not considering the reply of the petitioner which has not been filed within the time specified in terms of government order dated 22.04.2015 and in having passed the final order.

9. Responding to that, Shri Gaurav Mehrotra, learned counsel for the petitioner, argues that a perusal of government order dated 22.04.2015 would indicate that although in clause 4(10) of the said government order a reply is to be submitted within a period of two weeks by a delinquent employee yet a duty is cast on appointing authority in terms of the said government order, as indicated in clause 4(11), that where the concurrence of the Commission is not required, a final order is to be passed by the appointing authority within a period of two weeks from the date of submitting of reply by the employee but where the concurrence is required, then the concurrence of the Commission should be obtained within six weeks and a final order would be passed by the competent authority within a period of two weeks from the concurrence being received.

10. Placing reliance on clause 4(11) of the government order

dated 22.04.2015 the argument of learned counsel for the petitioner is that it cannot be the case of the respondents that they profess to follow the time schedule as provided in clause 4(10) of the government order dated 22.04.2015 so far as it pertains to delinquent employee but would not follow the said time schedule as provided in clause 4(11) of the aforesaid government order so far as a duty is cast upon the appointing authority for passing of an order for in case the aforesaid situation is allowed to be perpetuated the same would result into a paradoxical situation arising in as much as one part of the government order is being scrupulously followed by the respondents while the other part of the order is not being followed by them for reasons best known to them. Also it cannot be the case that the respondents follow the aforesaid government order in a piecemeal manner and the same would amount to patent and deliberate non application of mind on the part of the respondents.

11. Having heard learned counsel for the parties and perused the record it emerges that despite the petitioner having been required to submit his reply to the show cause notice within a period of two weeks' and the petitioner having admittedly submitted his reply but the same was beyond the period of two weeks, which in fact has been received in the office of the respondents yet the reply of the petitioner has not been considered by respondents professing to having scrupulously followed clause 4(10) of the government order dated 22.04.2015. At the same time, despite a time schedule being provided in clause 4(11) of the same government order requiring the respondents to pass an order within a period of two weeks from the concurrence being given by the Commission, the said time schedule has not been followed by the respondents in as much as concurrence to the punishment

has been given on 23.02.2024 yet despite clause 4(11) of the government order providing the respondents to pass an order within a period of two weeks the same has been passed beyond a period of two weeks on 14.03.2024.

12. Though the consequence of not following time schedule have not been explicitly set out in the government order dated 22.04.2010⁵ and perhaps in case the respondents would have followed their time schedule as prescribed in terms of clause 4(11) of the government order scrupulously, the Court may not have interfered in the matter but, as already indicated above, so far as following of the time schedule with regard to submission of reply by the delinquent employees is concerned, the same has been followed scrupulously rather the reply submitted by the petitioner has been rejected although admittedly received on 20.12.2022 and a tentative punishment order having been passed on 29.12.2022 which had been sent to the Commission on 10.12.2023 yet once the said time schedule has been followed scrupulously by the respondents so far as it pertained to submitting of reply by the petitioner is concerned consequently the respondents were also required to follow the time schedule scrupulously so far as it pertains to them also.

13. Keeping in view the aforesaid discussion, the writ petition is **partly allowed**. The impugned order of punishment dated 14.03.2024, a copy of which is annexure 1 to the petition, is quashed. The competent authority is required to consider the reply of the petitioner dated 16.12.2022, a copy of which is annexure 26 to the writ petition, and pass a final order upon the same in accordance with law within a period of two months from the date of receipt of a certified copy of this order.

14. So far as the prayer of the petitioner with regard to opening of sealed cover containing the result of departmental promotion

committee for grant of promotion to the petitioner to the next higher post of Additional Commissioner Grade II, which has been kept in sealed cover for more than a year is concerned, the respondents are required to consider the claim of the petitioner for grant of ad-hoc promotion in terms of clause 10 of the government order dated 28.05.1997, a copy of which is annexure 38 to the petition.

15. The aforesaid consideration shall also be done within the aforesaid period of time.

Order Date :- 25.4.2024

J. K. Dinkar