

Court No. - 2

Case :- WRIT - A No. - 3196 of 2024

Petitioner :- State Of U.P. Thru. Prin. Secy. Excise Civil Sectr. Lko. And Another

Respondent :- U.P State Public Services Tribunal Indira Bhawan Lko. And Another

Counsel for Petitioner :- C.S.C.

Counsel for Respondent :- Manish Mishra, Prashant Chaurasia

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

1. Heard.
2. By means of this petition, the State of U.P. has challenged the judgment and order dated 08.08.2023 passed in Claim Petition No. 392 of 2023, Avdresh Ram Vs. State of U.P. & Others.
3. The facts of the case in brief are that the opposite party herein while being posted as District Excise Officer, Mau was subjected to disciplinary proceedings on account of charges related to dereliction of his duties. Charge sheet was issued to him on 12.05.2015 containing two charges. After holding an inquiry, an inquiry report dated 04.07.2015 was submitted with which the opposite party was confronted and he submitted his reply. Thereafter, the Disciplinary Authority took a decision in terms of Rule 9 (1) of the U.P. Government Servant (Discipline & Appeal) Rules, 1999 (hereinafter referred to as the "Rules, 1999") to remit the case for re-inquiry by another Inquiry Officer. Thereafter, for some reason, the charge sheet which had already

been issued on 12.05.2015 was again issued to opposite party under the signatures of the new Inquiry Officer dated 27.12.2017 but containing an endorsement by the same Principal Secretary regarding which the Counsel for the opposite party says that the said Principal Secretary was not even posted as such on the said date. However, that is not of much relevance, as, it appears that no fresh charge sheet was issued, rather the same charges were again served under the signatures of the new Inquiry Officer. The entire inquiry was held again and an inquiry report dated 27.09.2018 was submitted wherein charge no. 1 was not found to be proved whereas charge no. 2 was found to be only partly proved. Again, the Disciplinary Authority which happened to be the Governor of U.P., did not accept the said report and remitted the matter for re-inquiry for the third time by another Inquiry Officer. This time opportunity of personal hearing was given to the opposite party and the Inquiry Officer submitted his report dated 18.11.2021 wherein he found both the charges to be proved. The said inquiry report was furnished to the opposite party who submitted a response to the same and thereafter, the Governor of U.P. has imposed the punishment of reduction to the lower stage in the pay-scale and censure. This order was passed on 06.01.2013 which was put to challenge by the opposite party by means of the aforementioned claim petition before the U.P. Services Tribunal which had allowed the claim petition.

4. The contention of the appellant's Counsel is that the only ground on which the claim petition has been allowed by the Tribunal is that as per its understanding of Rule 9 of the Rules, 1999, once inquiry had been held in respect to the same charges, twice, then the Disciplinary Authority could not have remitted the matter back for re-inquiry and this is the ground on which the Tribunal has passed the impugned judgment. While doing so, it has also recorded a finding that there appears to be a pre-determination on the part of the Disciplinary Authority i.e. the Governor of U.P., to punish the opposite party herein. The contention is that Rule 9(1) does not lend itself to the meaning which has been assigned to it by the Tribunal, therefore, the judgment is liable to be set aside.
5. Submission of the opposite party Counsel is that the Tribunal has rightly interpreted the Rule 9 of the Rules, 1999. He attempted to argue on the merits of the matter to submit that the findings recorded by the Inquiry Officer and the Disciplinary Authority were perverse, however, we do not wish to go into the merits of the findings, as the Tribunal has not considered the same. We will confine ourselves only to the reasoning given by the Tribunal and assess its validity. Rule 9 of the Rules, 1999 reads as under:-

"9. Action on Inquiry Report. - (1.) The disciplinary authority may, for reasons to be recorded in writing, remit the case for re-inquiry to the same or any other Inquiry Officer under intimation to the charged Government servant. The Inquiry Officer shall thereupon proceed to hold the inquiry from

such stage as directed by the disciplinary authority, according to the provisions of Rule 7.

"(2.) The disciplinary authority shall, if it disagrees with the findings of the Inquiry Officer on any charge, record its own findings thereon for reasons to be recorded.

(3.) In case the charges are not proved, the charged Government servant shall be exonerated by the disciplinary authority of the charges and inform him accordingly;

(4.) If the disciplinary authority having regard to its findings on all or any of charges is of the opinion that any penalty specified in Rule 3 should be imposed on the charged Government servant, he shall give a copy of the inquiry report and his findings recorded under sub-rule (2) to the charged Government servant and require him to submit his representation if he so desires, within a reasonable specified time. The disciplinary authority shall, having regard to all the relevant records relating to the inquiry and representation of the charged Government servant, if any, and subject to the provisions of Rule 16 of these rules, pass a reasoned order imposing one or more penalties mentioned in Rule 3 of these rules and communicate the same to the charged Government servant."

6. Sub-rule (1) of Rule 9 permits the Disciplinary Authority to remit a case for re-inquiry to the same or any other Inquiry Officer after recording reasons in writing in this regard. Sub-rule (2) of Rule 9 applies where the Disciplinary Authority disagrees with the findings of the Inquiry Officer and record its own finding, which is not the case herein. Sub-rule (3) of Rule 9 deals with a situation where the Disciplinary Authority after considering the inquiry report, is satisfied that the charges are not proved, in that eventuality, the Government Servant

shall be exonerated, therefore, this also does not apply to the facts of this case at hand. Sub-rule (4) of Rule 9 applies where the Disciplinary Authority having regard to findings of the inquiry report on all or any of the charges opines that any penalty prescribed in Rule 3 is imposable, this is also not the case herein. The case is covered by Sub-rule (1) of Rule 9, as such, there is nothing in the said rule to show that the Disciplinary Authority could not have remitted the matter back for re-inquiry on a consideration of the second inquiry report, if it was not satisfied with it. The only requirement is that there should be reasons to be recorded in writing.

7. However, we find that the Tribunal has given another reason i.e. there was no justification or reason given for repeated re-inquiry. We have perused the first order of the Disciplinary Authority dated 29.11.2017 which says that re-inquiry was being ordered on account of factual errors in the report of the Inquiry Officer on all points but it is not mentioned, as to what was the factual error, therefore, the Tribunal was justified in saying that there was no reason in the eyes of law. The provision in Sub-rule (1) of Rule 9 is that there should be reasons recorded in writing. This recording of reasons is not to be an empty formality. The order of remission which has to be intimated to the Government Servant should contain those reasons, howsoever brief. Merely saying that the inquiry report was factually erroneous on various points without mentioning even briefly as to what were the points on which the error was there and what was the error, such orders

cannot be sustained. Moreover, even after this remission, when the second inquiry was held, the first charge was not found proved and the second charge was found only partly proved, even that report was not accepted and a second remission order for a third inquiry was passed on 09.11.2020. This remission order which the petitioner claims to be referable to Sub-rule (1) of Rule 9 does not mention any reason, except to say that rejecting the inquiry report submitted it has been decided after proper consideration to get a re-inquiry done. This, apparently, is not in terms of the letter and spirit of Sub-rule 1 of Rule 9, therefore, the finding of the Tribunal that there appears to be a concerted effort to get a inquiry report holding the opposite party guilty and till this happens, not to accept the inquiry report exonerating him. Consequently, it has quashed the impugned order.

8. Moreover, during course of hearing, we asked the learned Counsel for the petitioner as to what action has been taken against sub-ordinate officers, such as the Excise Inspector or those working under him, as afterall, the opposite party a District Excise Officer was a district level officer exercising supervisory role.
9. For all these reasons, although, we do not accept the interpretation given by the Tribunal to Sub-rule (1) of Rule 9, taking into consideration the other reasons recorded by the Tribunal and for the other reasons recorded hereinabove, we are of the view that this is not a fit case for interference with the judgment of the Tribunal, subject

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however to our clarification on the position of law with regard to Rule 9 (1), therefore, while the writ petition succeeds on law, it fails on facts.

10. The writ petition accordingly is **dismissed** in the aforesaid terms.

Order Date :- 10.9.2024

Lokesh Kumar

[Om Prakash Shukla, J.]

[Rajan Roy, J.]