

Court No. - 6

Case :- WRIT - A No. - 3587 of 2024

Petitioner :- Prakash Chandra Agrawal

Respondent :- State Of U.P. Thru. Its Addl. Chief Secy. Prin. Secy. Administration Deptt. Lko. And Another

Counsel for Petitioner :- Gaurav Mehrotra, Akber Ahmad

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin, J.

1. Heard learned counsel for the petitioner as well as Shri V.K. Vajpayee, learned Standing counsel appearing for the State-respondent(s).

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

3. There is a consensus at Bar that the facts of the case have already been set forth in detail by this Court in the order dated 08.05.2024.

4. For the sake of convenience, the order dated 08.05.2024 is reproduced below:

"Heard.

Under challenge is the punishment order dated 15.02.2024, a copy of which is annexure 1 to the writ petition whereby the petitioner has been imposed with a major penalty of withholding of two increments permanently and reverting him to lower post of Section Officer.

The contention of learned counsel for the petitioner is that earlier the petitioner after due inquiry had been imposed with the punishment order dated 11.04.2022, a copy of which is annexure 8 to the writ petition whereby the petitioner had been given a censure entry and had been reverted to the post of Section Officer from the post of Under Secretary.

Raising a challenge to the said order of punishment, the petitioner Writ-A No. 2555 of 2022 In re; Prakash Chandra Agarwal Vs. State of U.P and Ors., the writ Court vide judgment and order dated 07.05.2022, a copy of which is annexure 10 to the writ petition, had quashed the said order and specifically recorded that the proceedings as prescribed under Rule 7 of the Uttar Pradesh Government Servants (Discipline & Appeal) Rules,

1999 (hereinafter referred to as "Rules, 1999") had not been followed in conducting the inquiry and no date, time & place in the inquiry was fixed for evidence. The writ Court had also referred to the Government order dated 22.04.2015 whereby it was explained at length the manner in which an inquiry with regard to minor punishment or major punishment to be conducted. Accordingly, the punishment order was quashed and the matter was remitted to the respondent no. 2 for conducting fresh inquiry after following proper procedure as prescribed under Rule 7 of the Rules, 1999. The writ Court also required the training programme of the inquiry officers and disciplinary authorities to be held by the Director, J.T.R.I.

Upon a challenge being raised by the State to the said order by filing Special Appeal No. 351 of 2022 Inre; State of U.P and Ors Vs. Prakash Chandra Agarwal, the Division Bench of this Court vide order dated 05.09.2022, a copy of which is annexure 13 to the writ petition stayed the directions of the writ Court to the extent that "punishing authority shall go through the required training before passing any punishment order and also refer to the session/certificate". The remaining part of the order of the writ Court i.e quashing of the punishment order remanding the matter to the respondent no. 2 to pass a fresh order was not stayed. It is further submitted that the said special appeal is still pending for consideration.

Subsequent thereto, after conducting a fresh inquiry, the respondents have passed the order impugned dated 15.02.2024 whereby two punishments orders, as indicated above, have been passed.

The argument of learned counsel for the petitioner is that in the entire order, the disciplinary authority has simply indicated the charges as levelled against the petitioner, the evidence that was led in support of the said charges, the reply submitted by the petitioner, the proceedings of the personal hearing, the findings of the inquiry officer, the representations submitted by the petitioner against the said inquiry report and the written submission of the petitioner during the inquiry before the disciplinary authority and thereafter concludes that after examination of the entire records, the proposed penalty had been sent to the Commission and after approval of the Commission, two major penalties have been imposed.

Placing reliance on the provisions of Sub Rule (4) of Rule 9 of the Rules, 1999, the argument of the learned counsel for the petitioner is that the disciplinary authority having regard to all the relevant records relating to the inquiry and representation of the charged Government servant, has to pass a reasoned order imposing one or more penalties mentioned in Rule 3 of the Rules, 1999.

The argument is that a perusal of the order impugned would indicate that although the disciplinary authority has indicated all the facts, as already indicated above, but has failed to pass a reasoned and speaking order after discussing the entire case and has simply concluded that the petitioner is guilty and imposed the said penalty.

The further argument is that once in the earlier round of litigation, the writ Court specifically required the respondents to comply with Rule 7 of the Rules, 1999 and thereafter a fresh order had to be passed consequently, the respondents were required to comply both with the provisions of Rule, 7 of the Rules, 1999 as well as Rule 11 (4) of the Rules, 1999 which does not emerge from a perusal of the order impugned.

In this regard, reliance has also been placed on the Division Bench Judgment of this Court passed in Special Appeal No. 247 of 2023 Inre; Sanjay Vs. State of U.P and Ors decided on 22.05.2023 to contend that the Division Bench of this Court has specifically held that the disciplinary authority is required to consider and evaluate the material and evidence available on the inquiry and record.

On the other hand, learned Standing counsel states that the only instructions that he has received from the department is to file a counter affidavit and he prays for some time to file a counter affidavit.

The Court is of the view that prima facie the impugned order of punishment is contrary to the provision of Sub Rule (4) of Rule 9 of the Rules, 1999 consequently, the order merits to be set aside on this ground alone. As such, as a short question of law is involved, learned Standing counsel is granted a week's time to seek instructions in the matter as to whether the provisions of Sub Rule (4) of Rule 9 of the Rules, 1999 have been followed by the disciplinary authority while passing of the order impugned and if so, the method in which the said inquiry has been conducted.

List thereafter as fresh."

5. From a perusal of the aforesaid order, it emerges that the Disciplinary Authority while passing the order impugned has failed to consider the reply filed by the petitioner to the show cause notice that had been issued by the Disciplinary Authority.

6. Shri V.K. Vajpayee, learned Standing counsel, on the basis of instructions sent by the Special Secretary, Secretariat Administration Department, Lucknow dated 27.05.2024, states that as the petitioner had already submitted a detailed reply during the inquiry proceedings which was the same reply which had been submitted before the Disciplinary Authority also, as such, the Disciplinary Authority did not deem it fit to even consider the reply of the petitioner and as such, he has passed the order impugned.

7. The aforesaid argument of the learned Standing counsel on the basis of instructions is found patently fallacious inasmuch as, once the petitioner had submitted his reply in pursuance to the show cause notice, consequently, it was the duty of the Disciplinary Authority to have considered the said reply, more

particularly, when the Disciplinary Authority has himself indicated that after considering the reply of the petitioner, he is imposing the punishment. The said consideration of the respondent should have formed part of the order which has been passed by the Disciplinary Authority, which incidentally is lacking in the order impugned.

8. Considering the aforesaid discussion, the writ petition is **allowed**. The order impugned dated 15.02.2024, a copy of which is annexure 1 to the petition, is **quashed**. The matter is remitted to the Disciplinary Authority to pass a fresh order after considering the reply of the petitioner. Let a decision in this regard be taken within a period of three months from the date of receipt of the certified copy of this order.

Order Date :- 29.5.2024
S. Shivhare