

Court No. - 4

Case :- WRIT - A No. - 7138 of 2020

Petitioner :- Sushil Kumar Shukla

Respondent :- State Of U.P. Thru Prin.Secy. Revenue Lucknow
And Ors.

Counsel for Petitioner :- Alok Kumar Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Sri Upendra Nath Mishra, learned Senior Advocate, assisted by Sri Alok Kumar Tripathi, learned counsel for the petitioner and Sri Prashant Singh Atal, learned Chief Standing Counsel-I for the State-opposite parties.

2. By means of this petition, the petitioner has prayed following reliefs:-

"(i) to issue a writ, order or direction in the nature of Certiorari quashing the impugned orders dated 30.8.2006, 2/6.2.2008 and 28.12.2019 as contained as Annexure Nos. 1, 2 & 3 respectively to this writ petition.

(ii) to issue a writ, order or direction in the nature of Mandamus commanding the respondents to pass appropriate order for restoring the pay scale of petitioner, which would have been applicable to the petitioner in absence of impugned order dated 30.8.2006 and thereafter pay regular salary accordingly.

(iii) to issue a writ, order or direction in the nature of Mandamus directing the respondents to pay arrears of salary after restoring it to the level it would have been in absence of impugned order dated 30.8.2006.

(iv) to pass such other order or direction, which this Hon'ble Court deems it fit and proper under the circumstances of the case.

(vii) to allow the writ petition with costs in favour of the petitioner."

3. By means of the instant writ petition, the petitioner is challenging the validity of the punishment order dated 30.08.2006, passed by the opposite party no.3 i.e. Collector/District Magistrate, Sitapur, whereby major punishment of reversion of the petitioner to the initial/basic pay of his substantive post of Stenographer was passed without following the prescribed procedure contained in statutory Rules, i.e. U.P. Government Servant (Discipline and Appeal) Rules, 1999 (hereinafter referred to as "the Rules, 1999"). The petitioner is also challenging the validity of the order dated

2/6.02.2008, passed by the Appellate Authority i.e. opposite party no.2 as well as the order dated 28.12.2019, passed by opposite party no.2 in the statutory revision filed by the petitioner inasmuch as both the orders were mechanically passed in violation of the Rules, 1999 as well as without application of mind, hence not tenable in law.

4. The petitioner was appointed on the post of Typist in the office of Tehsildar, Biswan, District- Sitapur through direct appointment on 23.06.1987. Meanwhile, another direct recruitment was advertised on the post of Stenographer in which the petitioner qualified the written examination of shorthand and typing and got substantive appointment of Stenographer in the office of Sub Divisional Magistrate, Sidhauri, Sitapur on 18.03.1993 and his services were confirmed as such on 04.02.1998. As per the date of birth, the petitioner retired from service on 30.06.2024.

5. The precise contention of the learned counsel for the petitioner is that the impugned punishment order has been passed on the basis of illegal departmental inquiry whereby the departmental inquiry has been conducted and concluded without fixing date, time and place for oral inquiry and without giving any opportunity to the petitioner to adduce his evidence/witnesses. Attention has been drawn towards Annexure No.12 of the writ petition, which is the findings of the inquiry report, which is undated, however, the same has been served upon the petitioner on 25.07.2006 alongwith show cause notice. The findings of the Inquiry Officer clearly reveals that the charge sheet was served upon the petitioner on 22.05.2006 and the petitioner submitted his defence reply to the show cause notice on 12.06.2006. Thereafter, without fixing any date, time and place for oral inquiry, the petitioner was called for personal hearing on 14.07.2006 and on the basis of aforesaid exercise, the inquiry has been concluded.

6. On being confronted the learned Standing Counsel as to whether oral inquiry has been conducted or not, learned Standing Counsel has fairly submitted that no oral inquiry has been conducted.

7. Learned counsel for the petitioner has also stated that the aforesaid fact has not been disputed in the counter affidavit inasmuch as the recital to this effect has been given in paragraphs no.12, 13 & 14 of the writ petition and those paragraphs have not been denied in the counter affidavit vide paragraphs no.13, 14 & 15. In para-14 of the writ petition, it has been categorically indicated that none of the submissions of defence reply has been considered by the Inquiry Officer and

the aforesaid fact has not been disputed in the counter affidavit properly.

8. Having heard learned counsel for the parties and having perused the material available on record, the precise question for consideration before this Court is that as to whether any inquiry report, which has been prepared without conducting the departmental inquiry strictly in accordance with law, by fixing date, time and place for oral inquiry, would sustain in the eyes of law, particularly in view of the fact that on the basis of aforesaid inquiry report, major punishment has been awarded to the delinquent employee/ petitioner. If the inquiry report would not sustain in the eyes of law, as to whether the punishment order, appellate order and revisional order would sustain in the eyes of law? Undisputedly, the departmental inquiry has been conducted and concluded in violation of Rule 7 (vii) & (viii) of the Rules, 1999, which reads as under:-

"7. (vii) Where the charged Government servant denies the charges the Inquiry Officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charged-Government servant who shall be given opportunity to cross-examine such witnesses. After recording the aforesaid evidences, the Inquiry Officer shall call and record the oral evidence which the charged Government servant desired in his written statement to be produced in his defence:

Provided that the Inquiry Officer may for reasons to be recorded in writing refuse to call a witness.

7. (viii) The Inquiry Officer may summon any witnesses to give evidence or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of witnesses and Production of Documents) Act, 1976."

9. I had occasion to deal the identical issue in re; **Roop Narain Pandey Vs. U.P. Cooperative Institutional Service Board and Others, [2019 (37) LCD 978]** and considering the relevant decisions of the Apex Court, I allowed the aforesaid writ petition; paragraphs no.13 to 25 thereof are being reproduced herein below:-

"13. In the case of Meenglas Tea Estate v. The workmen, AIR 1963 SC 1719, the Hon'ble Supreme Court observed that it is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way to cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted.

14. In State of U.P. v. C. S. Sharma, AIR 1968 SC 158, the Hon'ble Apex Court held that omission to give opportunity to the officer to produce his witnesses and lead evidence in his defence vitiates the proceedings. The Court also held that in the enquiry witnesses have to be examined in support of the allegations, and opportunity has to be given to the delinquent to cross-examine these witnesses and to lead evidence in his defence.

15. In Punjab National Bank v. A.I.P.N.B.E. Federation, AIR 1960 SC 160, (vide para 66), the Hon'ble Apex Court held that in such enquiries evidence must be recorded in the presence of the charge-sheeted employee and he must be given an opportunity to rebut the said evidence. The same view was taken in A.C.C. Ltd. v. Their Workmen, (1963) II LLJ. 396, and in Tata Oil Mills Co. Ltd. v. Their Workmen, (1963) II LLJ. 78 (SC).

16. In S.C. Girotra v. United Commercial Bank, 1995 Supp. (3) SCC 212, the Hon'ble Apex Court set aside a dismissal order which was passed without giving employee an opportunity of cross-examination.

17. This Court in Subhas Chandra Sharma v. Managing Director and another, 2000 (1) UPLBEC 541 has held as under:-

"In our opinion after the petitioner replied to the charge-sheet a date should have been fixed for the enquiry and the petitioner should have been intimated the date, time and place of the enquiry and on that date the oral and documentary evidence against the petitioner should have been led in his presence and he should have been given an opportunity to cross-examine the witnesses against him and also he should have been given an opportunity to produce his own witnesses and evidence. If the petitioner in response to this intimation had failed to appear for the enquiry then an ex parte enquiry should have been held but the petitioner's service should have not been terminated without holding an enquiry. In the present case it appears that no regular enquiry was held at all. All that was done that after receipt of the petitioner's reply to the charge-sheet he was given a show-cause notice and thereafter the dismissal order was passed. In our opinion this was not the correct legal procedure and there was violation of the rules of natural justice. Since no date for enquiry was fixed nor any enquiry held in which evidence was led in our opinion the impugned order is clearly violative of natural justice."

18. In the State of Uttar Pradesh v. Saroj Kumar Sinha, reported in (2010) 2 SCC 772, the Hon'ble Apex Court held that:-

"An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/ disciplinary authority/ Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings

also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service."

19. Similar view was taken by the Hon'ble Apex Court in Roop Singh Negi v. Punjab National Bank, (2009) 2 SCC 570 as under:-

"Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence."

20. In another case in Subhash Chandra Gupta v. State of U.P., 2012 (1) UPLBEC 166, the Division Bench of this Court after survey of law on this issue observed as under:

"It is well settled that when the statute provides to do a thing in a particular manner that thing has to be done in that very manner. We are of the considered opinion that any punishment awarded on the basis of an enquiry not conducted in accordance with the enquiry rules meant for that very purposes is unsustainable in the eye of law. We are further of the view that the procedure prescribed under the inquiry rules for imposing major penalty is mandatory in nature and unless those procedures are followed, any outcome inferred thereon will be of no avail unless the charges are so glaring and unrefutable which does not require any proof. The view taken by us finds support from the judgement of the Apex Court in State of U.P. & another Vs. T.P.Lal Srivastava, 1997 (1) LLJ 831 as well as by a Division Bench of this Court in Subash Chandra Sharma Vs. Managing Director & another, 2000 (1) U.P.L.B.E.C. 541.

21. A Division Bench decision of this Court in the case of Salahuddin Ansari Vs. State of U.P. and others, 2008 (3) ESC 1667 held that non holding of oral inquiry is a serious flaw which can vitiate the order of disciplinary proceeding including the order of punishment has observed as under:-

" 10..... Non holding of oral inquiry in such a case, is a serious matter and goes to the root of the case.

11. A Division Bench of this Court in Subash Chandra Sharma Vs. Managing Director & another, 2000 (1) U.P.L.B.E.C. 541, considering the question as to whether holding of an oral inquiry is necessary or not, held that if no oral inquiry is held, it amounts to denial of principles of natural justice to the delinquent employee. The aforesaid view was reiterated in Subash Chandra Sharma Vs. U.P.Cooperative Spinning Mills & others,

2001 (2) U.P.L.B.E.C. 1475 and Laturi Singh Vs U.P.Public Service Tribunal & others, Writ Petition No. 12939 of 2001, decided on 06.05.2005."

22. Even if the employee refuses to participate in the enquiry the employer cannot straightaway dismiss him, but he must hold an ex-parte enquiry where evidence must be led vide *Imperial Tobacco Co. Ltd. v. Its Workmen*, AIR 1962 SC 1348, *Uma Shankar v. Registrar*, 1992 (65) FLR 674 (All).

23. The Division Bench of this Court in the case of *Mahesh Narain Gupta v. State of U.P. and others*, (2011) 2 ILR 570 has held as under:-

"At this stage, we are to observe that in the disciplinary proceedings against a delinquent, the department is just like a plaintiff and initial burden lies on the department to prove the charges which can certainly be proved only by collecting some oral evidence or documentary evidence, in presence and notice charged employee. Even if the department is to rely its own record/document which are already available, then also the enquiry officer by looking into them and by assigning his own reason after analysis, will have to record a finding that those documents are sufficient enough to prove the charges.

24. In no case, approach of the Enquiry Officer that as no reply has been submitted, the charge will have to be automatically proved can be approved. This will be erroneous. It has been repeatedly said that disciplinary authority has a right to proceed against delinquent employee in ex-parte manner but some evidence will have to be collected and justification to sustain the charges will have to be stated in detail. The approach of the enquiry officer of automatic prove of charges on account of non filing of reply is clearly misconceived and erroneous. This is against the principle of natural justice, fair play, fair hearing and, thus, enquiry officer has to be cautioned in this respect.

25. Recently the entire law on the subject has been reviewed and reiterated in *Chamoli District Co-operative Bank Ltd. Vs. Raghunath Singh Rana and others*, AIR 2016 SC 2510 and the Hon'ble Apex Court has culled out certain principles as under:

"i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

(iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

(iv) *On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any."*

10. In view of what has been considered above and also in view of the settled proposition of law by the Apex Court, I am of the view that the findings of the Inquiry Officer/ inquiry report is liable to be set aside/ quashed inasmuch as the departmental inquiry has been conducted and concluded without fixing date, time and place for oral inquiry and without affording ample opportunity of hearing to the petitioner. Since the very foundation of the impugned order dated 30.08.2006 passed pursuant to the defective inquiry report is not liable to be sustained in the eyes of law, therefore, the impugned punishment order dated 30.08.2006 is liable to be set aside/ quashed. Consequently, the impugned appellate order and revisional order dated 2/6.02.2008 and 28.12.2019 are also liable to be set aside/ quashed on the basis of maxim "*sublato fundamento cadit opus*", which means that if the very foundation of any structure goes, the superstructure erected thereon would also fall.

11. The Hon'ble Apex Court in re; **State of Punjab Vs. Davinder Pal Singh Bhullar and others connected with Sumedh Singh Saini Vs. Davinder Pal Singh Bhullar and others, (2011) 14 SCC 770**, has considered the aforesaid maxim in paras-107 to 111, which are being reproduced here-in-below:-

"107. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact-situation, the legal maxim "sublato fundamento cadit opus" meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case.

108. In Badrinath v. State of Tamil Nadu & others, AIR 2000 SC 3243; and State of Kerala v. Puthenkavu N.S.S. Karayogam & Anr., (2001) 10 SCC 191, this Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to judicial, quasi-judicial and administrative proceedings equally.

109. Similarly in Mangal Prasad Tamoli (dead) by Lrs. v. Narvadeshwar Mishra (dead) by Lrs. & Ors., (2005) 3 SCC 422, this Court held that if an order at the initial stage is bad in law, then all further proceedings, consequent thereto, will be non est and have to be necessarily set aside.

110. In C. Albert Morris v. K. Chandrasekaran & Ors, (2006) 1 SCC 228, this Court held that a right in law exists only and only when it has a lawful origin. (See also: Upen Chandra Gogoi vs. State of Assam & Ors.,

(1998) 3 SCC 381; *Satchidananda Misra v. State of Orissa & Ors.*, (2004) 8 SCC 599; *Regional Manager, SBI v. Rakesh Kumar Tewari*, (2006) 1 SCC 530; and *Ritesh Tewari & Anr. v. State of U.P. & Ors.*, AIR 2010 SC 3823).

111. Thus, in view of the above, we are of the considered opinion that the orders impugned being a nullity, cannot be sustained. As a consequence, subsequent proceedings/ orders/ FIR/ investigation stand automatically vitiated and are liable to be declared non est."

12. In view of the aforesaid dictums of the Apex Court considered above, I am of the considered opinion that since impugned punishment order dated 30.08.2006 passed on the basis of defective inquiry report is nullity in the eyes of law, therefore, it cannot be sustained, so its consequential orders i.e. appellate order and revisional order stand automatically vitiated and are liable to be declared non-est in view of the legal maxim "*sublato fundamento cadit opus*".

13. Accordingly, the impugned orders dated 30.08.2006, 2/6.02.2008 and 28.12.2019 as contained in Annexure Nos.1, 2 & 3 to the writ petition respectively are hereby quashed.

14. Opposite parties are directed to pass consequential orders ignoring the impugned punishment order dated 30.08.2006 as well as the appellate order and the revisional order.

15. Since the punishment orders have been quashed only for the reason that the Inquiry Officer had conducted the defective inquiry violating the relevant provisions of Rule 7 of the Rules, 1999, therefore, liberty is given to the competent authority to conduct *de-novo* proceedings/ inquiry against the petitioner but the petitioner has already retired during the pendency of this writ petition, therefore, such exercise may be undertaken, if it is so desired, by adopting legal recourse of Regulation 351-A of the Civil Service Regulations.

16. Accordingly, the writ petition is **allowed**.

17. No order as to costs.

[Rajesh Singh Chauhan,J.]

Order Date :- 13.8.2024

RBS/-