

Court No. - 4

Case :- WRIT - A No. - 4291 of 2024

Petitioner :- Vinod Kumar Mishra

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Prin. Secy. Deptt. Irrigation Water Resour. Lko. 2 Others

Counsel for Petitioner :- Maria Fatima, Gaurav Mehrotra

Counsel for Respondent :- C.S.C.

Hon'ble Rajesh Singh Chauhan, J.

1. Heard.

2. This Court has passed the order dated 29.5.2024 which reads as under:

"Heard.

The contention of learned counsel for the petitioner is that by means of the order impugned dated 23.04.2024, a copy of which is annexure 1 to the writ petition, the petitioner has been awarded a punishment order which imposes two penalties against the petitioner - a major penalty of withholding of one increment cumulatively and censure.

Placing reliance on the judgment of the Apex Court in the case of Union of India and Ors Vs. S.C. Parashar reported in 2006 (3) SCC 2167, the contention is that the Apex Court has categorically held that a punishment order cannot be an amalgam of a major & minor penalty and as such, the impugned punishment order merits to be quashed on this ground alone.

The further contention is that after due inquiry, the inquiry officer has submitted his report dated 11.07.2022, a copy of which is annexure 8 to the writ petition whereby the petitioner had been exonerated of all the charges levelled against him. Despite Sub Rule (2) of Rule 9 of the Uttar Pradesh Government Servants (Discipline and Appeal) Rules, 1999 (hereinafter referred to as "Rules, 1999") providing that in case the disciplinary authority disagrees with the findings of the inquiry officer on any charge he should record its own finding thereon. However, the disciplinary authority has simply issued a Show Cause Notice dated 01.09.2023, a copy of which is annexure 7 to the writ petition whereby he only indicated that he intended to disagree with the findings of the inquiry officer without recording his own findings and the reasons as to why he was not in agreement with the report of the inquiry officer.

The contention is that despite the aforesaid ambiguity having been pointed out by the petitioner while submitting his reply dated 27.10.2023, a copy of which is

annexure 9 to the writ petition, the disciplinary authority has failed to consider this aspect of the matter and has imposed the punishment order.

It is contended that on both the grounds as aforesaid, the impugned punishment order merits to be quashed.

Learned Standing counsel prays for and is granted a week's time to seek instructions in the matter.

List this case in the first week of July, 2024, as fresh."

3. Shri Sandeep Sharma, learned Standing Counsel has produced a copy of the detailed instructions provided by Joint Secretary of the Department enclosing therewith various judgements and orders etc., the same are taken on record.

4. Since in the present case, the question of law is involved and no counter affidavit was called by the Court, therefore, this matter is being decided finally on the basis of the arguments so advanced by the learned counsel for the parties and the instructions so provided by the learned Standing Counsel.

5. This Court in the aforesaid order dated 29.5.2024 has sought instructions on the two points: firstly, as to how the punishment order can be an amalgam of minor and major penalty in the teeth of the dictum of the Apex Court in re: **Union of India and Ors vs. S.C. Parashar** reported in **2006 (3) SCC 2167**; secondly, as to whether the disciplinary authority may award any punishment after being disagreed from the findings of the inquiry officer without giving any show cause notice on the point of disagreement in derogation of Rule 9(2) of the Rules, 1999 (supra).

6. In the present case, on the basis of the instructions, it has been indicated that the disciplinary authority has given a notice under Rule 9(4) of the Rules, 1999 but no notice under Rule 9(2) of the Rules, 1999 has been given. The law is trite that in case of disagreement of the findings of the inquiry report, the disciplinary authority shall record its own findings thereon for

the reasons to be recorded as per Rule 9(2) and thereafter, if he wishes to impose any penalty under Rule 3, he shall give a copy of inquiry report and his own findings recorded under Rule 9(2) to the charged employee to seek explanation under Rule 9(4). Notably, in this case, the findings under Rule 9(2) have not been recorded, so impugned exercise is violative of Rule 9(2). The aforesaid position has been settled by the Apex Court in re: **Punjab National Bank and others vs. Kunj Behari Misra, AIR 1998 SC 2713** and following the aforesaid judgement of the Apex Court, this court in re: **Shiv Mangal Verma vs. State of U.P. and others, vide order dated 20.1.2020 passed in Service Bench No. 1489 of 2009** has observed in para nos. 8, 12, 13, 14, 15, 20 & 21 as under:

"8. Upon perusal of material available on record and submission advanced by learned counsel for parties, it is clear that the charge-sheet issued to petitioner indicated two charges levelled against him. It is also apparent that the inquiry report dated 9th June 2008 has clearly exonerated the petitioner of charges levelled against him. Although in the show cause notice dated 11th September 2008, reasons for disagreeing with the inquiry report have been given by the disciplinary authority but the impugned order does not indicate any consideration of either the findings recorded in the inquiry report nor the reply submitted by petitioner. In fact the impugned order has clearly recorded an incorrect fact that petitioner was found guilty in the inquiry proceedings although as indicated hereinabove, petitioner was actually exonerated from the charges levelled against him. Thus, it is clear from the aforesaid facts that the impugned order has been passed against the material available before the disciplinary authority. A perusal of the impugned order also indicates that no reasoning whatsoever has been recorded by disciplinary authority with regard to reply submitted by petitioner against the show cause notice and as such, the impugned order is clearly non-speaking in nature.

12. Hon'ble the Supreme Court in the Case of Punjab National Bank(supra) has held as follows:-

"17. These observations are clearly in tune with the observations in Bimal Kumar Pandit's case (AIR 1963 SC 1612) (supra) quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the inquiry officer had given an adverse finding, as per Karunakar's case (1994 AIR SCR1050) (supra) the first stage required an opportunity to be given to the employee to represent to the

disciplinary authority, even when an earlier opportunity had been granted to them by the inquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be over-turned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the inquiring officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the findings of the disciplinary authority.

18. Under Regulation - 6 the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in *Karunakar's case* (1994 AIR SCW 1050)(supra).

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct

to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

13. Although, the aforesaid judgment was rendered in the terms of Punjab National Bank Officer Employees (Discipline and Appeal) Regulation 1977, but Rule 6, 7 and 8 of the said Rules are *pari materia* with Rule 9 of the Rules of 1999. It is clear that Hon'ble the Supreme Court has held that in case the disciplinary authority disagrees with the inquiry officer on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for disagreement and has to provide the delinquent officer an opportunity to represent before it records its findings. It has further been held that report of inquiry officer will have to be conveyed to the delinquent officer who will then have to be given an opportunity of hearing to persuade the disciplinary authority to accept the favourable conclusion of inquiry officer. It has also been held that after giving such an opportunity of hearing to the officer concerned, the disciplinary authority has to record its findings on the charges framed against officer. The said judgment has been followed with approval in case of *Yoginath D. Bagde (supra)* with the same proposition of law being followed.

14. The proposition of law laid down by Hon'ble the Supreme Court in the aforesaid judgments regarding procedure to be followed by the disciplinary authority in case of disagreement with the inquiry report is clearly applicable in the present case.

15. Upon applicability of aforesaid judgments in the present case, it is clear that after issuing a show cause notice to the petitioner disagreeing with the inquiry report, the reply submitted by petitioner has been completely ignored by the disciplinary authority. In fact reading of the impugned order clearly indicates that it is a completely non-speaking order and has been passed against the material on record and without application of mind.

20. In view of aforesaid, it is held that the impugned order being contrary not only to the Rules of 1999 but also being contrary to the judgments of Hon'ble Supreme Court and in this Court is vitiated.

21. Consequently, a writ in the nature of *Certiorari* is issued quashing the order dated 03rd September 2009 with all consequential benefits to the petitioner. Order dated 14th January 2010 is also quashed by issuance of writ in the nature of *Certiorari* and further writ in the nature of *Mandamus* is issued directing the opposite parties to make payment of salary for the period of suspension of services of petitioner. Necessary orders with regard to same shall be passed by the competent authority within a period of four months from the date a copy of this order is received by the said authority."

7. Since on the aforesaid questions, no specific explanation has been given which may be treated as satisfactory explanation, therefore, this Court has no option except to quash the

impugned order. Therefore, the impugned order dated 23.4.2024 (annexure-1) is hereby set aside/quashed. The consequential orders may be passed.

8. Since the aforesaid impugned order has been set aside/quashed on the aforesaid technical point, therefore, the issue is remanded back to the competent authority to pass a fresh order, if it is so required but strictly in accordance with law and by affording ample opportunity of hearing to the petitioner.

9. In view of the aforesaid terms, the writ petition is **allowed**.

10. No order as to costs.

Order Date :- 11.9.2024

Shravan

[Rajesh Singh Chauhan,J.]