

Neutral Citation No. - 2024:AHC-LKO:67744-DB

High Court of Judicature at Allahabad
Lucknow

Reserved on : 09.08.2024

Delivered on :01.10.2024

Court No. - 2

Case :- WRIT - A No. - 16311 of 2020

Petitioner :- Jang Bahadur

Respondent :- State Of U.P. Thru Prin. Secy. Transport Deptt. Lko.
And Ors.

Counsel for Petitioner :- Ram Raj,Rishabh Raj

Counsel for Respondent :- C.S.C.,Ratnesh Chandra

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

(Per : Om Prakash Shukla, J.)

- (1) Heard.
- (2) Being aggrieved by the judgment and order dated 12.02.2019 passed in Claim Petition No. 386 of 2016 and the judgment and order dated 04.02.2020 passed in Review Petition No. 31 of 2019 by the State Public Services Tribunal, Lucknow (hereinafter to be referred as “**the Tribunal**”), the petitioner has instituted the present writ petition.
- (3) The facts of the case, in brief, is that the petitioner was appointed on the post of Cleaner and was subsequently promoted to the post of Fitter in the Uttar Pradesh State Road Transport Corporation (hereinafter referred to as ‘**Corporation**’). During his posting as a Fitter at Sohrabgate Workshop Depot, a complaint dated 27.06.2008 came to be filed by one Mr. Bani Singh, Watchman, alleging that the petitioner had attempted to steal 2 bottles of mobile oil, half bottle of break oil and 2.5 feet long hydraulic system etc. in the intervening night of 26/27.06.2008. On the basis of the said

complaint, a charge-sheet dated 05.07.2008 came to be served on the petitioner, mentioning that Shri Bani Singh, the Watchman, had searched the petitioner and found these stolen articles in a bag hanging on the bicycle, in the presence of Mr. Bijendra Singh, Clerk, Mr. Khalid Hussain, Driver, Mr. Umesh Gupta, Conductor and Mr. Jagat Ram, Driver.

- (4) Although, the petitioner filed a reply dated 08.07.2008 and denied the said charges claiming to be devoid of any merits, however, disciplinary proceedings came to be initiated against him for alleged theft and causing damage to the reputation and for acting against the rules and regulations of the Corporation. In the inquiry proceedings, statements of witnesses were recorded and subsequently, the Inquiry Officer, after due inquiry, submitted his inquiry report dated 20.04.2009. A show cause notice dated 25.06.2010 was issued to the petitioner. Records reveal that although, the petitioner gave a reply/explanation dated 22.07.2010 to the show cause notice, however, the Disciplinary Authority found that the reply of the petitioner was not satisfactory and as such, the petitioner was terminated from his service vide punishment order dated 10.08.2010 (*“First order of disciplinary authority”*) and even his remaining salary for the period of suspension was forfeited.
- (5) Against the aforesaid punishment order dated 10.08.2010, the petitioner filed a statutory appeal on 23.08.2010, which also met with the same fate as it came to be dismissed vide order dated 18.04.2011 and even the revision preferred before the Chairman of the Corporation by the petitioner came to be rejected on 13.10.2012.
- (6) All these orders, including the punishment order dated 10.08.2010 were put to challenge in Claim Petition No. 302 of 2013 by the petitioner before the Tribunal.

- (7) The said claim petition filed by the petitioner came to be allowed on 21.05.2015, wherein the Tribunal set-aside the punishment order as also the appellate and revisional orders on the ground that punishment order has been passed without giving copies of documentary evidence relied upon in the charge-sheet to the petitioner and also the punishment of dismissal according to the Tribunal was too harsh and disproportionate. A specific finding was also recorded with regard to procedural and legal lapses in conducting department proceedings and awarding punishment to the petitioner. Accordingly, all the three orders impugned before it was quashed. However, while directing the opposite parties to reinstate the petitioner in service forthwith, the learned Tribunal also directed them to initiate departmental proceedings from the stage of submission of reply to the charge-sheet by the petitioner and afford full opportunity to the petitioner to defend his case and provide all related documents and calling for reply to the show cause notice issued against him. The entire inquiry/disciplinary proceedings was directed by the Tribunal to be completed in accordance with law within three months from the date of receipt of a certified copy of the order and the disciplinary Authority was directed to pass a reasoned and speaking order in regard to consequential service benefits/back wages based on the recommendation of the inquiry officer.
- (8) In compliance to the order dated 21.05.2015 passed by the Tribunal, the departmental proceedings were initiated from the stage after supply of documents to the petitioner and it has come on record that the petitioner appeared in person in the inquiry on 04.08.2015, on which date, the statement of witnesses (i) Shri Bani Singh, the Watchman, was recorded, who deposed about the search of the petitioner and finding these stolen articles in a bag hanging on the bicycle. He also

deposed that the said incident of smuggling was in the presence of Mr. Bijendra Singh, Clerk, Mr. Khalid Hussain, driver, Mr. Umesh Gupta, Conductor and Mr. Jagat Ram, Driver. Further, on the said date, Mr. Vijay Kumar Sharma, Junior Foreman, deposed that Mr. Bani Singh, Watchman had informed him about the attempted theft, wherein he was asked to submit a written complaint and to obtain signatures of all those people who were present, when the alleged articles were recovered from the petitioner. However, the said witness has deposed that neither a report was submitted nor the custody of these articles were given to him. Similarly, Mr. Bijender Singh, Mohammad Khalid have disputed their signatures in the complaint filed by Bani Singh, Watchman.

- (9) Based on the statements of the aforesaid witnesses and also other material available on record, the Inquiry Officer submitted an inquiry report dated 07.08.2015, whereinafter a show cause notice dated 07.08.2015 was issued to the petitioner by the Disciplinary Authority and the same was served along with a copy of the inquiry report to the petitioner on 11.08.2015. The petitioner submitted his reply dated 25.08.2015 to the show cause notice, however, the same did not find favour with the disciplinary authority and as such, an order of punishment dated 27.08.2015 was passed, thereby imposing a lesser punishment of withholding one annual increment for three years with further stipulation that the petitioner shall not be entitled to any salary/emoluments for the period he remained out of service consequent to the earlier order of dismissal which was quashed by the Tribunal (*“Second order of disciplinary Authority”*)
- (10) The aforesaid order dated 27.08.2015 was put to challenge by the petitioner in appeal, which was dismissed vide order dated

15.12.2015. Both these orders were put to challenge by the petitioner in Claim Petition No.386 of 2016 before the learned Tribunal, which has been dismissed by the judgment and order dated 12.02.2019 and even the review petition preferred by the petitioner against the order dated 12.02.2019, was dismissed vide order dated 04.02.2020 by the Tribunal. Both these orders have been sought to be assailed in the present writ petition.

- (11) Learned counsel for the petitioner submits that the inquiry Officer has acted in a post-haste manner. He questioned the manner in which the inquiry officer recorded the oral evidence and prepared the detailed inquiry report and in tandem with the said report, even the show cause notice was issued on the same day i.e 07.05.2015. Thus, it has been submitted that since everything had been done on the same day and in a post-haste manner, neither the inquiry officer nor the disciplinary authority has applied its mind and as such *mala fide* is to be presumed. In this regard, he has placed reliance on judgments of the Hon'ble Supreme Court in **S.P. Kapoor Vs State of H.P.** : (1981) 4 SCC 716, **Bahadursinh Lakhubai Gohil Vs Jagdishbhai M. Kamalaia & Others**: (2004) 2 SCC 65.
- (12) It has been submitted by the learned Counsel for the petitioner that the inquiry was conducted as a mere formality and even the reply of the petitioner was not considered. It has been also argued that the present case was a case of “no evidence”, both oral or documentary, as there is neither any incriminating oral evidence against the petitioner nor there is any material on record to suggest the involvement of petitioner in theft even on preponderance of probability. It has also been submitted that the entire case is based on the testimony of sole witnesses Mr. Bani Singh, the complainant/Watchman, who himself is guilty of forging the signatures of alleged witness named in the

complaint dated 27.06.2008 as none of them have supported his case.

- (13) The learned counsel for the petitioner has further submitted that the impugned punishment order dated 27.08.2015 and appellate order dated 15.12.2015 as well as the claim petition before the learned Tribunal has been decided in a mechanical manner and has been passed by recording findings contrary to material/evidence on record. He also challenged the quantum of punishment inflicted on the petitioner by claiming that the punishment of non-release of dues of the petitioner for the period of suspension does not find mention in the punishment and appeal rules of the Corporation. According to him, the impugned punishment order is a non-speaking order and as such it is liable to be set-aside.
- (14) *Per contra*, learned counsel for the respondent has submitted that the petitioner was provided reasonable opportunity of hearing by the inquiry officer. He was also allowed to cross-examine the witnesses in accordance with law. According to him, the petitioner has failed to rebut the findings against him and the inquiry proceedings were conducted in conformity with the principles of natural justice. The petitioner was found guilty of theft and none of the witnesses denied the said incident. It has been submitted that the allegation of theft comes under the category of serious misconduct and as such the petitioner was rightly punished as per the facts and circumstances of the case. According to him, although the petitioner was rightly found guilty on the basis of evidence and facts on records, however, the Corporation took a sympathetic view as the petitioner was an old employee and as such punishment of stopping the annual increments for three years without any cumulative effect has been awarded to the petitioner.

(15) As to the argument of the petitioner that no FIR was lodged of the said incident, it has been submitted by the learned Counsel for the respondents that non-lodging of FIR with the police does not reduce the seriousness of the allegations raised against the petitioner. The inquiry was conducted within three months, in compliance of the directions dated 21.05.2015 of the learned Tribunal in the first round of litigation, wherein the punishment of termination was quashed by the learned Tribunal and the case was remanded to the disciplinary authority for conducting the proceedings afresh after the filing of reply to the charge-sheet by the petitioner. It has been categorically submitted that the petitioner did not ask any question in cross-examination of Shri Bani Singh, Chowkidar during his deposition, though he cross-examined other witnesses thoroughly, which showed that the petitioner was guilty of theft as the said Mr. Bani Singh was also the complainant of the present case. The learned counsel also took this Court through the punishment order dated 27.08.2015 as well as the impugned judgment passed by the learned Tribunal to show that the Tribunal has considered all the submissions of the petitioner and rightly dismissed the claim petition vide the impugned order dated 12.02.2019 and the review petition vide order dated 04.02.2020. Thus, it has been submitted that both the impugned orders are in accordance with law and the service rules applicable to the petitioner and as such the writ petition being devoid of any merits may be dismissed. He also submitted that stolen articles recovered by the complainant were sent by Assistant Regional Manager to Service Manager vide letter dated 01.07.2008.

(16) The charge against the petitioner was as under :-

“एतद्द्वारा आपके ऊपर निम्नलिखित आरोप लगाये जाते हैं:—

1. दिनांक 27.06.2008 की रात्री को कार्य अवधि में मौबिआयल, ब्रेक आयल व कमानी पट्टा आदि अवैध रूप से चोरी कर ले जाने का प्रयास करने।
2. निगम सम्पत्ति को चोरी कर निगम को आर्थिक हानि पहुंचाने।
3. निगम के नियमों के विरुद्ध कार्य करने।
4. अपने कर्तव्यों एवं दायित्वों का ठीक ढंग से निर्वहन न करने के लिए आप उत्तर प्रदेश राज्य सड़क परिवहन निगम कर्मचारी सेवा नियमावली (अधिकारियों से भिन्न)-1981 की धारा 61 के विपरीत आचरण करने एवं धारा 62 में उल्लिखित अनुच्छेद 1, 5, 9, 21 एवं 22 में वर्णित अवचारों में लिप्त रहने हेतु आरोपित किया जा रहा है।

(17) Having heard learned Counsel for the parties and perused the records, keeping in mind the limits of judicial review in matters of disciplinary proceedings, this Court finds that as far as the contention of the petitioner that the entire departmental proceeding was concluded on one date i.e 07.08.2015 and the present case is one of “no evidence”, this Court has strenuously sifted through the various documents on record, from the records, it is apparent that after the remand order dated 21.05.2015 passed by the learned Tribunal :

- (i) The petitioner was notified for appearing before the inquiry officer on 04.08.2015. Apparently, the petitioner appeared on the said date and the complainant-Mr. Bani Singh, Watchman, was examined on the said date and he reiterated the facts stated in the complaint lodged by him. He also named the stolen articles and also deposed that the same had been deposited with the office of Assistant Regional Manager, Sohragate Depot, though no receipt of the said deposit was issued for the same. Although no F.I.R. was lodged, the Watchman has stated that he had

reported the said incident to his higher officer. He has specifically denied having any rivalry with the petitioner.

- (ii) On the same date i.e 04.08.2015, Shri Vijay Kumar Sharma, Junior Foreman, was examined, who deposed that the incident of attempted theft was narrated to him orally on 27.06.2008, however, Mr. Bani Singh neither got deposited the seized article with him nor the same was showed to him. When asked as to what action did he take after having been informed about the said incident, the said witness Vijay Kumar Sharma, has deposed that he waited for the complainant to file a written complaint till 2:20 AM in the night, however the same was not received and as such he telephonically informed about the said incident to Senior Foreman Mr. Salekh Chand in the night itself.
- (iii) On 04.08.2015 itself, Mr. Bijendra Singh, clerk, Sohragate Depot was examined, who admitted that he was present on the date and time of incident and after hearing commotion at the gate, he came out and asked about the said commotion from the Watchman, whereupon the incident of theft was narrated to him by the said Watchman and thereafter he went back to his work. At the gate, he was informed that the petitioner had already left and the allegedly stolen articles were not shown to him. He also deposed that although his name is mentioned in the complaint filed by the Watchman, however it does not contain his signatures.
- (iv) Further, on the same date, Mohd. Khalid, Driver was also examined, who deposed that on 27.06.2008 his duty was on diesel pump. He has confirmed to have seen the

complaint filed by the Watchman and has also admitted his signatures on the said complaint.

(v) Thereafter record reveals that on 04.08.2015, witness Shri Salakhchand Gupta, Sr. foreman(retired) was not present, although he was requested to be present on that date telephonically on 03.08.2015. Again on 04.08.2015, when he was called he informed that he was not well and would definitely come on 05.08.2015. However, on 05.08.2015, Mr. Gupta did not pick the call and subsequently on 06.08.2015, his brother informed that Mr. Gupta had gone somewhere and he would contact when he comes back at home. Subsequently, Mr. Gupta appeared for his examination on 07.08.2015 and deposed that the complaint was lodged by the watchman; Mr. Bani Singh on 27.06.2008 at about 1:45 in his office relating to the attempted theft by the petitioner. He testified that thereafter he sent the said complaint to the Asst. Regional Manager, Sohragate Depot and also identified the said letter. In his cross-examination, he admitted that the stolen articles were not brought before him and also testified the previous conduct of the petitioner to be good.

(vi) In the intervening period on 06.08.2015, witness- Jagatram, Driver was called for examination, however, he refused to come on the ground of ill-health and instead wrote on the summons itself that he heard about the incident of theft relating to the petitioner, however, he was not present at the time of incident as he had gone outside for food and when he returned back, there was lot of commotion at the gate.

- (18) It is also apparent from the aforesaid narration that the inquiry proceedings were spread over several dates between 04.08.2015 to 07.08.2015 and most importantly, the petitioner was given full opportunity to cross-examine these witnesses in conformity with the principles of natural Justice. Further, it may be reminded that the learned Tribunal has provided three months for completing the inquiry along with the mandatory 15 days' time provided to reply to the show cause notice and as such this Court is unable to subscribe to the contention of the petitioner that the inquiry was conducted in a post haste manner.
- (19) The earlier termination order was quashed by the Tribunal and the matter was remanded to initiate fresh departmental proceedings from the stage of filing of reply to the charge-sheet by the petitioner. Apparently, the petitioner was provided with all the documents and was called to participate in the proceedings. All the witnesses were examined in his presence and he was given full opportunity of cross-examination. He was also given sufficient opportunity to file reply to the show cause notice issued pursuant to the inquiry. In this view, we are unable to find any violation of the principles of natural justice.
- (20) Even, before the Inquiry Officer, almost five witnesses and various documents, including the complaint dated 27.06.2008 were exhibited on behalf of the Authority. The petitioner chose not to produce any witnesses in defence. Considering the evidence on record, the Inquiry Officer in his report held certain charges levelled against the respondent to have been proved in full/part as the factum of the incidence of theft was deposed by all the witnesses. The punishment order was passed agreeing with the conclusions drawn by the inquiry officer, however, a lesser punishment (vis-a-vis the earlier one) was awarded to the petitioner withholding one annual increment for three years

with further stipulation that the petitioner shall not be entitled to any salary/emoluments for the period he remained out of service. This Punishment Order dated 27.08.2015 cannot be said to be based on 'no evidence'. On perusal thereof, we find that the said punishment order is reasoned and has been passed taking various factors into consideration, which cannot be faulted with or held to be perverse. In any case, we find that the disciplinary authority has also considered various supervening circumstances, including longevity of service of the petitioner in the Corporation for awarding a lesser punishment, which does not call for any interference.

- (21) The complainant had no enmity with the petitioner. The charges levelled have been found to be proved on the basis of evidence adduced. The finding cannot be said to be perverse based on preponderance of probabilities.
- (22) Further, as per the own admission of the petitioner, he was served with a show cause notice dated 07.08.2015 along with the inquiry report on 11.08.2015 and was given 15 days to file his reply. Admittedly, the reply was not submitted in time and was filed by the petitioner only on 25.08.2015. The disciplinary authority passed the order of punishment on 27.08.2015, which is a speaking and reasoned order.
- (23) Thus, in the instant case, in view of the evidentiary material and the process by which a fair opportunity was given to the petitioner to present his version, we are dissuaded from interfering with the impugned judgment. This Court does not find any reasons for interfering with the impugned judgment dated 12.02.2019 or the review order dated 04.02.2020 passed by the learned Tribunal.

(24) For all the aforesaid reasons, we do not find any merit in the present writ petition and as such the same is accordingly **dismissed**. There shall be no order as to cost.

(Om Prakash Shukla, J.) (Rajan Roy, J.)

Order Date : 1st October, 2024
Ajit