

Court No. - 17

Case :- WRIT - A No. - 23033 of 2020

Petitioner :- Pramod Kumar Verma

Respondent :- U.P. State Bridge Corp. Thru. Chairman And Ors.

Counsel for Petitioner :- Ashok Shukla

Counsel for Respondent :- Shishir Jain, Kumar Ayush, Ram Ratan

Hon'ble Manish Mathur, J.

1. Heard learned counsel for petitioner and Mr. Shashwat Chaudhary, learned counsel holding brief on behalf of Mr. Kumar Ayush, learned counsel for parties.

2. Under challenge is the order dated 15.03.2016 whereby punishment of censure and withholding of annual increment for a period of two years has been imposed along with recovery of Rs. 37,126. Also under challenge is the appellate order dated 24.08.2018.

3. Pleadings in the matter have already been exchanged.

4. Learned counsel for petitioner submits that a charge sheet dated 02.04.2014 was issued to the petitioner containing a single charge with regard to certain constructions which were undertaken when petitioner was posted as Deputy Project Manager (Civil) in District Saharanpur. The primary ground of challenge against the aforesaid order is that although minor penalty was imposed against the petitioner but proceedings were initiated after issuance of charge sheet and therefore, the inquiry was required to be conducted in terms of Rule 35 of the Model Discipline and Appeal Rules for public undertakings as applicable in the U.P. State Bridge Corporation. It is further submitted that it would be evident from perusal of inquiry report and the impugned order itself that petitioner was infact exonerated with regard to charge levelled against him in the charge sheet and the Inquiry Officer, on the contrary, has found the charge of negligence established against petitioner although negligence was not indicated as a charge in the charge sheet.

5. It is also submitted that perusal of punishment order will indicate the fact that exoneration of petitioner with regard to charges levelled against him have been ignored while imposing the impugned punishment upon petitioner particularly when there was no question of imposing any recovery against petitioner since again there was no such charge levelled against petitioner or even established against him. It is therefore submitted that, in case, disciplinary authority was disagreeing with the inquiry

report, it was incumbent upon him to issue show cause notice indicating such disagreement in order for petitioner to effectively put forth his case. It is therefore submitted that inquiry proceedings have been held dehors the rules.

6. Learned counsel appearing for the opposite parties has refuted submissions advanced by learned counsel for petitioner with the submission that the charge sheet itself indicates serious charges levelled against petitioner pertaining to lapses having occurred during construction activities which were undertaken under supervision of petitioner.

7. It is further submitted that ample opportunity of hearing and even personal hearing was afforded to the petitioner therefore, it cannot be said that principles of natural justice have been violated. It is submitted that on the contrary, a lenient view has been taken in imposing only a minor penalty against petitioner.

8. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it would be conducive to advert to the procedure required to be followed in the corporation as evident from the Model Discipline and Appeal Rules which admittedly are applicable in the corporation. Rule 35 of the aforesaid Rules is as follows:-

"(1) No order imposing any of the major penalties specified in Clauses (e), (f) and (g) of rule 33 shall be made except after an inquiry is held in accordance with this rule. (2)

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an employee, it may itself enquire into, appoint any public servant (herein after called the inquiring authority) to inquire into the truth there of.

(3) Where it is proposed to hold an inquiry, disciplinary authority shall frame definite charges on the basis of the allegations against the employee. The charges, together with statement of the allegations, on which they are based, a list of document by which and a list of witnesses' by whom, the articles of charge are proposed to be sustained, shall be communicated in writing to the employee, who shall be required to submit within such time as may be specified by the Disciplinary Authority (not exceeding 15 days), a written statement whether he admits or denies any of or all the articles of Charge.

Explanation:- It will not be necessary to show the documents listed with the charge-sheet or any other document xi to the employee at this stage.

(4) On receipt of the written statement of the employee, or

if no such statement is received within the time specified, an enquiry may be held by the Disciplinary Authority itself, or by any other public servant appointed as an Inquiring Authority under sub-clause (2) provided that it may not be necessary to hold an enquiry in respect of the charges admitted by the employee in his written statement. The disciplinary authority shall, however, record its findings on each such charge.

(5) where the disciplinary authority itself inquires or appoints an inquiring authority for holding an inquiry, it may, by an order appoint a public servant to be known as the 'Presenting Officer' to present on its behalf the case in support of the articles of charge.

(6) The employee may take the assistance of any other public servant but may not engage a legal practitioner for the purpose.

(7) On the date fixed by the inquiring authority, the employee shall appear before the Inquiring Authority at the time, place and date specified in the notice. The inquiring authority shall ask the employee whether he pleads guilty to any of the articles of charge the inquiring authority shall record the plea, sign the record and obtain the signature of the employee concerned thereon. The inquiring Authority shall return a finding of guilt in respect of those articles of charge to which the employee concerned pleads guilty.

(8) If the employee does not plead guilty, the inquiring authority shall adjourn the case to a later date not exceeding thirty days after recording an order that the employee may for the purpose of preparing his defence:-

(i) inspect the documents listed with the charge-sheet;

(ii) submit a list of additional documents and witnesses that he wants to examine; and

(iii) be supplied with the copies of the statements of witnesses, if any listed in the charge-sheet.

Note:- Relevancy of the additional documents and the witnesses referred to in sub-clause D(ii) will have to be given by the employee concerned and the documents and the witnesses shall be summoned if the inquiring authority is satisfied about their relevance to the charges, under inquiry.

9) The inquiring authority shall ask the authority in whose custody or possession the documents are kept, for the production of the documents on such date as may be specified.

10) The authority in whose custody possession the requisitioned documents are, shall arrange to produce the

same before the inquiring authority on the date place and time specified in the requisition.

Provided that the authority having the custody or possession of the requisitioned documents may claim privilege if the production of such documents will be against the public interest or the interest of the Corporation/Company. In that event, it shall inform the inquiring authority accordingly.

11) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the employee. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on a new matter, without the leave of the Inquiring Authority. The Inquiring Authority may also put such questions to the witnesses as it thinks fit.

12) Before the close of the prosecution case the inquiring authority may, in its discretion, allow Presenting Officer to produce evidence not included in the charge-sheet or may itself call for new evidence or recall or re-examine any witness. In such case the employee shall be given opportunity to inspect the documentary evidence before it is taken on record; or to cross-examine a witness, who has been so summoned.

13) When the case for the disciplinary, authority is closed, the employee may be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the employee shall be required to sign the record. In either case a copy of the statement of defence shall be given to the presenting Officer, if any, appointed.

14) The evidence on behalf of the employee shall then be produced. The employee may examine himself or take the assistance of another employee as given in rule 32(6) to examine on his behalf if he so prefers. The witnesses produced by the employee shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provision applicable to the witnesses for the disciplinary authority.

15) The Inquiring Authority may, after the employee closes his case, and shall, if the employee has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the employees to explain any circumstances appearing in the evidence against him.

16) After the completion of the production of the evidence, the employees and the Presenting Officer may file written briefs of their respective cases within 15 days of the date of completion of the production of evidence.

17) If the employee does not submit the written statement of defence referred to in sub-rule (3) or before the date specified for the purpose or does not appear in person, or through the assisting officer or otherwise fails or refuses to comply with any of the provisions of those rules, the inquiring authority may hold the enquiry ex parte.

18) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercise, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself.

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine and such witnesses as herein before provided.

19) (1) After the conclusion of the enquiry, report shall be prepared and it shall contain-

(a) a gist of the articles of charge and the statement of the imputations of misconduct or misbehavior;

b) a gist of the defence of the employee in respect of each article of charge;

c) an assessment of the evidence in respect of each article of charge;

c) the findings of each article of charge and the reasons therefore.

Explanation:- If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge;

Provided that the findings on such article of charge shall not be recorded unless the employee has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

11) The enquiring authority, where it shall be forwarded to the disciplinary authority the records of inquiry which shall

include :-

- a) The report of the inquiry prepared by it under sub-clause (1) above;*
- b) the written statement of defence, if any submitted by the employee referred to in sub- rule (13);*
- c) the oral and documentary evidence produced in the course of the inquiry;*
- d) Written briefs referred to in sub- rule (16), if any; and*
- e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.*

9. From a perusal of material, it is evident that only a single charge has been levelled against petitioner with regard to actual dimensions of road which was constructed deviating from the norms. With regard to such charge imputed against petitioner, he filed his reply which was considered whereby inquiry report dated 12.12.2015 was submitted in which the Inquiry Officer has specifically rejected such a charge which was imputed against petitioner and submissions to the contrary by the Presenting Officer on behalf of the corporation have been rejected. The inquiry report also indicates that the Presenting Officer appearing on behalf of the Corporation in effect had admitted the stand on petitioner whereafter the Inquiry Officer concluded that a charge of negligence is nonetheless made out against the petitioner.

10. A perusal of the operative portion of the inquiry report dated 15.12.2015 makes it evident that so far as charge of negligence has been found established, there is neither any charge in that regard against petitioner nor was any material in that regard considered by the Inquiry Officer. It is not understandable as to how petitioner was found negligent in discharge of his duties once sole charge levelled against him was not found established.

11. Similarly, a perusal of punishment order also indicates that it is completely non speaking since there is absolutely no consideration of reply by the petitioner nor the fact that petitioner infact was found exonerated in the inquiry proceedings with regard to charge levelled against him. The order is also completely silent with regard to any material with which the charge levelled against petitioner could be said to have been found established. In such circumstances, the imposition of minor penalties along with recovery is clearly not sustainable.

12. The appellate order also while noticing all the aforesaid facts has however again passed a completely non-speaking order without indicating any reasoning for rejecting petitioner's appeal and merely indicating that nothing new

has been stated by the petitioner in his memorandum of appeal.

13. It is also discernible that the procedure for inquiry as applicable in the corporation is akin to Rule 7 of the U.P. Government Servants (Discipline and Appeal) Rules (1999) on which aspect Hon'ble Supreme Court in the cases of **Roop Singh Negi v. Punjab National bank and others** reported in (2009) 2 SCC 570 and **State of Uttar Pradesh and others v. Saroj Kumar Sinha** reported in (2010) 2 SCC 772 has specifically held that the authority conducting an enquiry against a delinquent employee clearly discharges a quasi-judicial function and is, therefore, required to act in a fair and impartial manner. It is obligatory upon the said authority not only to deal with the reply submitted by the delinquent employee but also a duty is cast upon him to find out the truth of the allegations leveled against the delinquent employee. The purpose of an enquiry is not to establish a delinquent employee guilty of the charges levelled against him.

The relevant portion in **Roop Singh Negi** (supra) is as follows:

"14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled 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."

The relevant portion in **Saroj Kumar Sinha** (surpa) is as follows :

"27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the

Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge."

"28. 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 un rebutted 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."

14. Upon applicability of aforesaid judgments in the facts and circumstances of the present case, it is quite evident that inquiry proceedings have not been conducted in accordance with the rules which were required to be followed by the opposite parties. Even the disciplinary and appellate orders are clearly unsustainable for lack of application of mind.

15. In the case of ***MV Bijlani versus Union of India and others (2006) 5 SCC 1988***, Supreme Court has clearly held that an Inquiry Officer cannot inquire into allegation with which the delinquent officer has not been charged. In the considered opinion of this Court, the aforesaid judgment is clearly applicable in the four corners of this case since petitioner has been held guilty of the charge which was not imputed against him.

16. In the case of ***Lav Nigam versus Chairman and MD ITI Limited and Another (2006)(9) SCC 440***, the Supreme Court has again reiterated the consistent view that in case disciplinary authorities differ from the view taken by the Inquiry Officer, he is bound to give notice, his tentative conclusions and indicating reasons for such disagreement.

17. The aforesaid procedure also as indicated in the said judgment has clearly been violated while passing the disciplinary and the appellate orders in as much as the disciplinary authority has not at all indicated any reasons for disagreeing with the exoneration of petitioner in inquiry report.

18. In view of aforesaid discussion, it is clear that the impugned order dated 15.03.2016 and appellate order dated 24.08.2018 have been passed against petitioner in violation of rules as well as judgments rendered by Hon'ble Supreme Court and are therefore quashed by issuance of

writ in the nature of Certiorari along with consequential benefits to the petitioner.

19. Resultantly, the petition is **allowed**.

20. Parties to bear their own costs.

Order Date :- 8.1.2024

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