

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:47889

Court No. - 4**Case :-** WRIT - A No. - 4891 of 2024**Petitioner :-** Uma Shanker Prasad**Respondent :-** State Of U.P. Thru. Prin. Secy. Revenue U.P. Lko. And
2 Others**Counsel for Petitioner :-** Arun Kumar Pandey, I.M. Pandey Ist**Counsel for Respondent :-** C.S.C.**Hon'ble Rajesh Singh Chauhan, J.**

1. Heard.

2. This Court has passed the order dated 2.7.2024 which reads as
under:-*"1. Heard Shri I.M. Pandey, learned counsel for the petitioner and Ms. Deepshikha, learned Chief Standing Counsel-II.**2. By means of this petition, the petitioner has assailed the impugned punishment order dated 07.03.2024 passed by Settlement Officer, Consolidation, Barabanki withholding two increments of salary of the petitioner permanently and censure entry. The main ground to assail the aforesaid impugned order of punishment is that the Inquiry Officer has not conducted the oral inquiry by fixing date, time and place; the disciplinary authority issued a show cause notice without providing the copy of the inquiry report and despite the specific demand made by the petitioner to supply the copy of inquiry report and to direct the Inquiry Officer to make oral inquiry, the punishment order have been passed.**3. Attention has been drawn towards Annexure No.11, which is a show cause notice being issued by the disciplinary authority, wherein there is no indication of supply of the copy of the inquiry report, therefore, prima*

facie, it convinces the Court that the show cause notice have been issued to the petitioner without providing the inquiry report.

4. The aforesaid ground may be liable to quash the impugned order of punishment but on the request of learned Chief Standing Counsel-II, the case is listed on 08.07.2024. Therefore, list/ put up this matter on 08.07.2024 as fresh in the additional cause list.

5. This matter shall be taken up immediately after fresh.

6. By the next date of listing, learned Chief Standing Counsel-II may seek complete written instructions in this matter."

3. In compliance of the aforesaid order, learned Standing Counsel has produced a copy of the detailed instructions/letter dated 4.7.2024 along with some documents, the same is taken on record.

4. The precise query of this Court was that as to whether the disciplinary authority has provided a copy of the inquiry report to the delinquent employee seeking explanation on the basis of the inquiry report inasmuch as there was no recital to this effect in the explanation being sought by the disciplinary authority. The aforesaid instructions categorically reveals that the copy of the inquiry report was not provided to the delinquent employee seeking explanation on the basis of inquiry report before passing the impugned order of punishment dated 7.3.2024. However, as per aforesaid instructions, the copy of the inquiry report has been provided to the petitioner on 30.5.2024. Besides, no specific instructions have been provided on the other query regarding fixing date, time and place for conducting oral inquiry by the Inquiry Officer.

5. Notably, a proper and complete mechanism has been given in Rule 7 of the U.P. Government Servants (Discipline and Appeal) Rules, 1999

(hereinafter referred as 'Rules, 1999') for imposing major penalties. Rule 9 provides 'Action on Inquiry Report'. Rule 7 (i, ii, iv, v, vii, viii and ix) and Rule 9 (4) read as under:

"7-Procedure for imposing major penalties- *Before imposing any major penalty on a Government Servant, an inquiry shall be held in the following manner:*

(i) The Disciplinary Authority may himself inquiry into the charges or appoint an Authority Subordinate to him as Inquiry Officer to inquire into the charges.

(ii) The Facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge-sheet. The charge-sheet shall be approved by the Disciplinary Authority. Provided that where the Appointing Authority is Governor, the charge-sheet may be approved by the Principal Secretary or the Secretary, as the case may be, of the concerned department.

...

(iv) The charge Government Servant shall be required to put in a written statement of his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge-sheet and to state whether he desires to cross-examine any witness mentioned in the charge-sheet and whether desires to give or produce evidence in his defence He shall also be informed that in case he does not appear or file written statement on the specified date, it will be presumed that he has none to furnish and inquiry officer shall proceed to complete the inquiry ex-parte.

(v) The charge-sheet, along with the copy of the documentary evidences mentioned therein and list of witnesses and their statements, if any shall be served on the charged Government Servant personally or by registered post at the address mentioned in the official records in case the charge-sheet could not be served in aforesaid manner, the charge-sheet shall be served by publication in a daily newspaper having wide circulation:

Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge-sheet, the charge Government servant shall be permitted to inspect the same before the Inquiry Officer.

...

(vii) Where the charged Government Servant denies the charge the Inquiry Officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charge 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.

(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.

(ix) The Inquiry Officer may ask any question he pleases, at any time of any witness or from person charged with a view to discover the truth or to obtain proper proof of facts relevant to charges.

9(4). *If the Disciplinary Authority, having regard to its finding on all or any of charges is of the opinion that any penalty specified in Rule 3 should be imposed on the charge Government Servant, he shall give a copy of the inquiry report and his finding recorded under sub-rule (2) to the charged Government Servant and require him to submit his representation if he so desires, within a reasonable specified time. The Disciplinary Authority shall having regard to all the relevant records relating to the inquiry and representation of the charge Government Servant, if any, and subject to the provisions of Rule 16 of these rules, pass a reasoned order imposing one or more penalties mentioned in Rule 3 of these and communicate the same to the charged Government Servant."*

6. This is a settled law that for conducting the departmental inquiry, the Inquiry Officer shall fix date, time and place for conducting oral enquiry and after the conclusion of the inquiry by the Inquiry Officer, the copy thereof shall be furnished/submitted before the disciplinary

authority, thereafter, the disciplinary authority shall provide the copy of the inquiry report to the delinquent employee seeking explanation thereon. The aforesaid exercise has been indicated in the Rules, 1999 and the same is in conformity with the principles of natural justice. Without providing the copy of the inquiry report, the delinquent employee may not submit his explanation. Even if he is called for personal hearing, that would not suffice the purpose inasmuch as unless and until the delinquent employee receives the copy of the inquiry report, he would not be able to defend himself properly.

7. The aforesaid position of law is a trite position of the law and the Hon'ble Apex Court in a catena of cases has held that the disciplinary authority shall furnish/supply the copy of inquiry report to the delinquent employee seeking explanation but in the present case, this settled position of law is not known to the disciplinary authority, i.e., Settlement Officer Consolidation, Barabanki and in the absence of supply of inquiry report, the impugned punishment order dated 7.3.2024 has been passed. However, after passing the aforesaid impugned punishment order, the copy of the inquiry report has been supplied to the petitioner on 30.5.2024, as has been indicated in the instructions/letter which was of no avail.

8. The Apex Court in re: **State of U.P. vs. Saroj Kumar Sinha** reported in **(2010) 2 SCC 772** has held as under:

30. 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.

...

37. We are of the considered opinion that the aforesaid observations are fully applicable in the facts and circumstances of this case. Non-disclosure of documents having a potential to cause prejudice to a government servant in the enquiry proceedings would clearly be denial of a reasonable opportunity to submit a plausible and effective rebuttal to the charges being enquired into against the government servant.

...

39. The proposition of law that a government employee facing a departmental enquiry is entitled to all the relevant statements, documents and other materials to enable him to have a reasonable opportunity to defend himself in the departmental enquiry against the charges is too well established to need any further reiteration. Nevertheless given the facts of this case we may re-emphasise the law as stated by this Court in State of Punjab v. Bhagat Ram [(1975) 1 SCC 155 : 1975 SCC (L&S) 18] : (SCC p. 156, paras 6-8)

“6. The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

7. The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government

servant he will not be able to have an effective and useful cross-examination.

8. It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken."

9. This is really a sorry state of affairs that the Settlement Officer Consolidation has punished the petitioner by means of the impugned order dated 7.3.2024 (Annexure-1) without supplying the copy of the inquiry report and the copy thereof has been supplied to the petitioner on 30.5.2024, therefore, the aforesaid fact makes it crystal clear that the disciplinary authority i.e., Settlement Officer Consolidation, Barabanki is not aware about the settled position of law. Even the disciplinary authority did not verify the relevant aspect of the departmental inquiry as to whether the Inquiry Officer had fixed date, time and place for conducting the oral inquiry inasmuch as it is neither clear from the inquiry report nor from the instructions letter so produced today, therefore, the impugned punishment order vitiates on both the courts, i.e., at the stage of inquiry and at the time of seeking explanation from the petitioner by the disciplinary authority on the basis of inquiry report which has admittedly been not supplied to the petitioner before imposing major punishment.

10. Looking into the manner of administrative officers of the State of U.P. who are made inquiry officer to conduct the departmental inquiry against the employees and noticing the fact that the departmental inquiry is conducted in a violation of Rule 7 of Rules, 1999, this

Court has expressed its concern and anguish, vide judgement and order dated 7.2.2023, in a bunch of writ petitions, leading writ petition bearing **Writ-A No. 26819 of 2019 : Eklavya Kumar vs. State of U.P. and others**, the relevant extract thereof reads as under:

"...The seriousness of the situation resulted in repeated orders passed by the Supreme Court, by this Court as well as Government Orders issued. Relevant amongst these read as follows:-

This Court in the case of Prakash Chandra Agrawal vs. State of U.P. and another (Writ-A No.2555 of 2022, decided on 7.5.2022, passed the following order:

"1. Present writ petition is filed by the petitioner challenging his punishment order dated 11.04.2022 passed by Additional Chief Secretary/Principal Secretary, Secretariat Administration Department, Lucknow (respondent no.2).

2. By the impugned order, petitioner is given a punishment of censure entry and reversion to the post of Section Officer from the post of Under-Secretary.

3. At the very outset, learned counsel for petitioner submits that the inquiry was conducted by the Special Secretary, Medical Education Services, U.P., who submitted her report on 25.08.2021. He submits that in the present case, the inquiry officer was never provided the documents to which she had relied upon in the inquiry. The said documents were summoned by the inquiry officer during the conduct of the inquiry and were also perused by her. However, neither copy of the said documents were provided to the petitioner nor the same were permitted to be perused by the petitioner. Learned counsel for petitioner further submits that a bare perusal of the report shows that the inquiry was conducted in violation of Rule-7 of the U.P. Government Servants (Discipline and Appeal) Rules, 1999 (hereinafter referred to as 'Rules of 1999'), as no date, time and place was fixed in the inquiry.

4. I have perused the inquiry report as well as the impugned punishment order. A bare perusal of the same shows that the inquiry officer has, in fact, not merely failed to follow the procedure provided by Rule-7 of Rules of 1999 but has also placed burden upon the delinquent employee to prove that he is not guilty. In the first line of discussion, the inquiry officer states, that, delinquent employee through his reply to the charge-sheet/statements could not submit any evidence which would prove that the delinquent employee is wrongly charged.

5. In the present case, the Additional Chief Secretary was summoned along with the record. Today he is present in Court along with the record and with his assistance as well as assistance of the counsels for parties, record is perused. Learned Standing Counsel also could not show from the record of the case that the procedure as prescribed under Rule-7 of Rules of 1999 is followed in conducting the inquiry and any date, time and place was fixed for evidence or evidence relied upon/summoned was provided to the petitioner.

6. Though the matter is simple as it is to be remanded back, but, in large number of cases filed before this Court, it is found that the inquiry with regard to major penalty is conducted in violation of Rule-7 of Rules of 1999. The present case is a glaring example of the same. Inquiry officer is a Special Secretary and the punishing authority is a Principal Secretary. Still a glaring error is committed in conduct of the inquiry by the inquiry officer and in failure to check the same by the punishing authority before punishment order was issued. It is not merely the duty of the inquiry officer to comply with the Rule-7 but also the duty of the punishing authority, while passing order of punishment, to ensure that the inquiry is conducted as per the procedure prescribed.

7. Such mistakes in large numbers are occurring for quite some time now in the State. The State Government as far back as on 22.04.2015 issued a detailed government order explaining at length the manner in which inquiry with regard to minor punishment or major punishment should be conducted. The government order explains at length what is already prescribed in Rule-7. When the inquiries were still not being conducted in proper manner, again under order of this Court dated 13.01.2021 passed in Writ-A No.12110 of 2020; 'State of U.P. & Others Vs. Vijay Anand Tiwari', a Government Order dated 10.02.2021 was issued by the State Government for compliance of Rule-7. Despite two aforesaid government orders, the inquiries are still not conducted in a proper manner. It is sad to note that the both the aforesaid government orders are also not being complied with by the officials. It is also noted that in large number of cases, after remand when the inquiry is re-conducted, the same procedural error is again made and again the inquiry report is submitted without following the due procedure as per Rule-7. This is also putting burden of unnecessary litigation upon this Court. It is the duty of the inquiry officer as well as the punishing authority to ensure compliance of Rule-7.

8. Since these incidences are abundant in number, therefore, this Court finds it necessary now to ensure that every inquiry officer, who at present is conducting an inquiry or appointed to conduct any inquiry in future, is provided proper training with regard to the manner and procedure for conducting the inquiry.

Similarly the disciplinary authorities are also required to go through a training with regard to the manner in which the inquiries are to be conducted and, thereafter, punishment orders are to be passed. It goes without saying that the power exercised by the inquiry officers are quasi judicial in nature and for the same a judicially trained mind is required. The State Government is already having a Judicial Training and Research Institute (J.T.R.I.) which trains/educates the officers of the State Government on the legal compliances/procedures.

9. Therefore, Director, J.T.R.I., Lucknow is directed to forthwith prepare an appropriate program for training of the inquiry officers as well as for training of the disciplinary authorities so that such mistakes are not repeated. The J.T.R.I shall also issue an appropriate identifiable certificate to every officer after he/she completes the training session. The relevant details of the said training session/certificates shall be referred by the officer concerned in every inquiry report submitted by him/her or punishment order passed. All the officers who are conducting any inquiry at present in the State shall attend the training without any delay and such inquiry officers shall conclude their inquiries only after their training is completed. Similarly the punishing authority shall also go through the required training before passing any punishment order and also refer to their session/certificate. It is further directed that no inquiry officer in future shall be appointed for departmental inquiry who has not received the training from the J.T.R.I. The State government shall bear the cost of the aforesaid training at J.T.R.I. at its own cost.

10. Senior Registrar of this Court shall forthwith send a copy of this order to the Chief Secretary of the State of U.P. as well as Director, J.T.R.I., Lucknow for its compliance.

11. Since, in the present case, admittedly, there is violation of Rule-7 as the documents relied upon by the inquiry officer were never provided to the petitioner nor the inquiry is conducted following the procedure prescribed under Rule-7, i.e., by summoning the witnesses of the department, giving chance of cross examination, providing opportunity to the delinquent employee/petitioner to call his witnesses, therefore, impugned order dated 11.04.2022 cannot stand and is set aside.

12. The matter is remanded back to respondent no.2 for conducting fresh inquiry after following proper procedure as prescribed under Rule-7.

13. With the aforesaid, the writ petition is allowed."

Supreme Court in the case of State of U.P. and others vs. Vijaya Nand Tiwari: Special Leave to Appeal No.10331 of 2022, has passed following comments on 13.7.2022 with regard to working of the State Government:

"As the inquiry was found to be in breach of Rule 7 (vii) of the U.P. Government Servant (Discipline and Appeal), Rules, 1999 (for short of 1999)", as such the learned Tribunal rightly set aside the order of punishment. In fact, the learned Tribunal allowed the back wages to the extent of 50% only. The same is rightly confirmed by the High Court. Therefore, there is no merit in the Special Leave Petition and the same deserves to be dismissed and is accordingly dismissed.

At this stage, it is required to be noted that while passing the impugned order, the High Court has shown its displeasure and observed and issued directions to the Chief Secretary, State of U.P. to look into the matter and appropriately direct the Secretaries of concerned departments to ensure that inquiry is conducted after observing Rule 7 of the Rules of 1999 in strict terms and more specially to lead oral evidence to prove the charges. The High Court has passed the following order -

"Before parting with the judgment, it is necessary to indicate that time and again Tribunal is causing interference in the order of punishment finding violation of Rule 7(vii) of the Rules of 1999.

Rule 7(vii) of the Rules of 1999 provides for oral evidence and invariably not followed in the enquiry despite catena of judgments of this Court causing interference the order of punishment. The violation of the Rule 7(vii) of the Rules of 1999 results not only interference of order of punishment but financial burden on the Government in shape of back wages.

The Chief Secretary, State of U.P. is directed to look into the matter and appropriately direct the Secretaries of concerned departments to ensure that enquiry is conducted after observing Rule 7 of the Rules of 1999 in strict terms and more specially to lead oral evidence to prove the charges.

Necessary direction in compliance of this order would be issued by office of Chief Secretary, State of U.P. with an information to this Court in reference to the present order.

The registry is directed to send the copy of this order to Chief Secretary, State of U.P. for compliance within a period of one month from the date of its receipt."

Nothing is on the record to show any further steps taken by the Chief Secretary, State of U.P. in furtherance of the aforesaid directions issued by the High Court. Only for that purpose, the Registry is directed to notify the matter before this

Bench on 18.07.2022 so as to enable the learned counsel for the petitioners. to place on record what steps are taken by the Chief Secretary, State of U.P. in compliance with the directions issued by this Court, as above.

Pending applications shall stand disposed of."

*Further, the Supreme Court in the aforesaid case of **Vijaya Nand Tiwari (supra)** passed the following order on 18.7.2022.*

"Pursuant to our earlier Order dated 13.07.2022, an Affidavit is filed on behalf of the State of U.P. The affidavit is filed by one Chintan, posted as Prabhagiya Nirdeshak, Van Vibagh, Mau, U.P. which ought to have been filed either by the Chief Secretary or from the office of the Chief Secretary. In the affidavit, it is pointed out that, pursuant to the impugned judgment and order passed by the High Court, the Chief Secretary has issued the Circular dated 10.02.2021, directing that in all the departmental enquiry proceedings in the State, Rule 7(vii) of the U.P. Government Servant (Discipline and Appeal) Rules, 1999 shall have to be followed.

When a pointed question was asked to the learned Senior Counsel appearing on behalf of the State that whether the Circular dated 10.02.2021 has been scrupulously thereafter followed or not. in the subsequent departmental enquires, he has stated that he has no further instructions in the matter and he cannot make any statement on that. Mere issuance of a Circular by the Chief Secretary to follow the rules is not sufficient. When the Chief Secretary has issued the Circular, it is his duty to see that his own Circular is followed.

Therefore, we direct the Chief Secretary to see that his own Circular dated 10.02.2021 to follow Rule 7 (vii) of the U.P. Government Servant (Discipline and Appeal) Rules, 1999 shall be followed by all concerned Officers in the departmental enquiries so that the order of punishment on conclusion of the departmental enquiry is not set aside on the technical ground of not following the procedure as required under Rule 7 (vii) of the Rules, 1999. The Chief Secretary, State of Uttar Pradesh is directed to act accordingly. He must also ensure that if his own Circular is not followed, in that case, a further departmental enquiry be initiated against the erring officers, which may be including the insubordination and not following the Circular issued by the Chief Secretary.

With this, we close the present proceedings."

*The **Government Order dated 10.8.2022 issued by the State Government** reads as under:*

सर्वोच्च प्राथमिकता

संख्या-10/2022/738रिट/का-1-2022/13(9)1998

प्रेषक,

दुर्गा शंकर मिश्र,

मुख्य सचिव

उत्तर प्रदेश शासन।

सेवा में,

समस्त अपर मुख्य सचिव/प्रमुख सचिव/सचिव,

उत्तर प्रदेश शासन।

कार्मिक अनुभाग-1 लखनऊ: दिनांक 10 अगस्त, 2022

विषय- विभागीय कार्यवाहियों (Departmental enquiries) में सम्बन्धित अधिकारियों द्वारा उत्तर प्रदेश सरकारी सेवक (अनुशासन एवं अपील) नियमावली, 1999 के नियम-7, अपपद्ध का अनुपालन न किये जाने के संबंध में।

महोदय,

मा0 उच्चतम न्यायालय के समक्ष दायर एस0एल0पी0 (सिविल) संख्या-10331/2022 उत्तर प्रदेश राज्य व अन्य बनाम विजयानन्द तिवारी में मा0 उच्चतम न्यायालय द्वारा पारित आदेश दिनांक 13.07.2022 सपठित आदेश दिनांक 18.07.2022 के मुख्य क्रियात्मक अंश निम्नवत् है-

"..... Mere issuance of a circular by the Chief Secretary to follow the rules is not sufficient. When the Chief Secretary has issued the circular, it is his duty to see that his own Circular is followed.

Therefore, we direct the Chief Secretary to see that his own circular dated 10.02.2021 to follow rule 7(vii) of the U.P. Government Servant (Discipline and Appeal) Rules, 1999 shall be followed by all concerned officers in the departmental enquiries so that the order of punishment on conclusion of the departmental enquiry is not set aside on the technical ground of not following the procedure as required under Rule 7 (vii) of the Rules, 1999. The Chief Secretary, State of Uttar Pradesh is directed to act accordingly. He must also ensure that if his own Circular is not followed, in that case, a further departmental enquiry be initiated against the erring officers, which may be including the insubordination and not following the circular issued by the Chief Secretary.

With this, we close the present proceedings."

2- मा0 उच्चतम न्यायालय के उपर्युक्त आदेशों के समादर में आपका ध्यान शासनादेश संख्या-01/2021/13(9)1998-20रिट/का-1-2021 दिनांक-10.02.2021 की ओर आकृष्ट करते हुए मुझे आपसे यह कहने का निदेश हुआ है कि प्रत्येक विभागीय जांच के प्रकरण में उ0प्र0 सरकारी सेवक (अनुशासन एवं अपील) नियमावली, 1999 के नियम-7 (vii) का अनिवार्य रूप से अनुपालन सुनिश्चित कराया जाय, यदि उक्त का अनुपालन सुनिश्चित नहीं किया जाता है तो दोषी (erring) अधिकारियों के विरुद्ध विभागीय जांच संस्थित करने की कार्यवाही भी की जाये।

The State Government issued Government Order dated 16.8.2022, which reads as under:

“संख्या-11/2022/सैतालिस-का-1/2022/13(3)/2022

प्रेषक,

दुर्गा शंकर मिश्र,

मुख्य सचिव,

उत्तर प्रदेश शासन।

सेवा में,

समस्त अपर मुख्य सचिव/प्रमुख सचिव/सचिव,

उत्तर प्रदेश शासन।

कार्मिक अनुभाग-1 लखनऊ : दिनांक 16 अगस्त, 2022

विषय: उत्तर प्रदेश सरकारी सेवक के अन्तर्गत विभागीय कार्यवाहियों का नियमानुसार निस्तारण के संबंध में जाँच अधिकारियों को प्रशिक्षण दिए जाने के संबंध में।

कृपया रिट याचिका संख्या-2555/2022 रिट-ए प्रकाश चन्द्र अग्रवाल बनाम उत्तर प्रदेश राज्य व अन्य में मा10 उच्च न्यायालय द्वारा पारित आदेश दिनांक 07 मई 2022 के विरुद्ध राज्य सरकार द्वारा योजित विशेष अपील संख्या-97/2022 में मा10 उच्च न्यायालय द्वारा दिनांक-22.07.2022 को पारित किये गए आदेश का सन्दर्भ ग्रहण करने का कष्ट करें, जिसका कार्यकारी अंश निम्नवत् है:

".....At this stage, we are only examining the issue regarding training part of Enquiry Officers in the State. Learned Single Judge vide order dated May 7, 2022 issued direction that no Enquiry Officer in future shall be appointed for departmental inquiry, who has not received training from the Judicial Training & Research Institute (hereinafter referred to as "JTRI"). We find 2 Special Appeal Defective No.97 of 2022 that this sweeping direction will withhold number of inquires, which are pending in the different departments in the State keeping in view the infrastructure available in the JTRI. For conducting such inquiries, the importance of training to the officers, who have to hold the departmental inquiry, may not be lost sight of keeping in view the repeated violation of principles of natural justice and the rules governing such inquiries.

5. In the affidavit filed today, certain communications have been annexed and figures have been provided regarding training programs conducted after passing of the aforesaid order and from April 1, 2022 onwards. It is claimed that departmental inquiry is one of the subject in the training programme of the Officers but what we find prima facie is that the training being imparted is not yielding the results as required, as still the rules and principles of natural justice are found to be violated. The training programme for such Officers has to be more robust and specialised, for which the State is directed to place before the Court a comprehensive plan.

6. As the sweeping directions issued by the learned Single Judge will withhold all the departmental inquiries, we stay those directions to the extent - "that no Officer in future shall be appointed for departmental inquiry unless he has received training from JTRI". However, we expect that in the pending inquiries, the Officers holding such inquiries shall be sensitised without any delay and further the training programs of the Officers shall be regular exercise."

2. मा10 उच्च न्यायालय के आदेश दिनांक-22.07.2022 के क्रम में अवगत कराना है कि उत्तर प्रदेश राज्य के सरकारी सेवकों के विरुद्ध अनुशासनिक कार्यवाहियाँ किए जाने के संबंध में उत्तर प्रदेश सरकारी सेवक (अनुशासन एवं अपील) नियमावली, 1999 प्रथम संशोधन नियमावली, 2014, शासनादेश क्रमशः दिनांक 22.04.2015, दिनांक- 11.08.2015, दिनांक 10.02.2021 और दिनांक 19.07.2022 मुख्य रूप से निर्गत किए गए हैं।

3. उत्तर प्रदेश सरकारी सेवक (अनुशासन एवं अपील) नियमावली, 1999 के नियम-7 के अधीन संस्थित अनुशासनिक जाँच के प्रकरण में नियुक्त जाँच अधिकारियों के मार्गदर्शन हेतु मुख्य रूप से निम्नांकित दिशा निर्देश शासनादेश दिनांक 19.07.2022 के माध्यम से निर्गत किए गए हैं:

(अ)—जिसका अनुपालन आवश्यक है (Do's)-

(I) अपचारी कार्मिक द्वारा यदि अभिलेखों के निरीक्षण की अपेक्षा की जाती हो तो उसे निरीक्षण का अवसर अवश्य प्रदान किया जाये।

(II) अपचारी कार्मिक से अपना लिखित स्पष्टीकरण 15 दिन से 01 माह के अन्दर प्रस्तुत करने को कहा जाये।

(III) यदि जाँच, पूर्व नियुक्ति के स्थान से संबंधित है तो अपचारी सरकारी सेवक को उस स्थान पर जाने की अनुमति दे दी जाये, जहाँ उसे अभिलेख आदि देखने हैं।

(IV) जाँच अधिकारी द्वारा अपचारी कार्मिक को साक्ष्य के अन्तर्गत दिये गये अभिलेखों की स्वीकार्यता के संबंध में आपत्ति प्रकट करने का अवसर भी दिया जाये।

(V) आरोपित सरकारी सेवक को अपना पक्ष प्रस्तुत करने का युक्तियुक्त अवसर दिया जाना चाहिए। यदि आरोपित सरकारी सेवक आरोपों से इन्कार करता है, वहाँ जाँच अधिकारी आरोप पत्र में प्रस्तावित साक्षियों (Witnesses) को प्रतिपरीक्षण (Cross-Examination) हेतु बुला सकता है। जाँच अधिकारी द्वारा उनके मौखिक साक्ष्यों को आरोपित अधिकारी की उपस्थिति में अभिलिखित किया जाये। उपर्युक्त साक्ष्यों को अभिलिखित करने के पश्चात जाँच अधिकारी उस मौखिक साक्ष्य को माँगेंगे और उसे अभिलिखित करेगा जिसे आरोपित सरकारी सेवक ने अपनी प्रतिरक्षा में अपने लिखित कथन में प्रस्तुत करना चाहा था।

प्रतिबन्ध यह है कि जाँच अधिकारी ऐसे कारणों से जो लिखित रूप से अभिलिखित किए जाएंगे, किसी साक्षी को बुलाने से इन्कार कर सकेगा।

(VI) जाँच अधिकारी द्वारा जाँच के दौरान गवाहों के बयान आरोपित सरकारी सेवक के समक्ष तथा विधिवत शपथ दिलवाने के उपरान्त लिया जाये।

(VII) जाँच अधिकारी द्वारा संपूर्ण जाँच की कार्यवाही में कृत कार्यवाहियों का आदेश पत्रक (order sheet) तैयार किये जाये जिस पर यथासमय आरोपित अधिकारी एवं अन्य साक्षियों के हस्ताक्षर कराया जाये। जाँच आख्या प्रस्तुत करते समय जाँच आख्या के साथ उक्त आदेश पत्रक को संलग्नक के रूप में अनुशासनिक प्राधिकारी को प्रेषित किया जाये।

(ब)–निषेधात्मक निर्देश (Don'ts)–

(I) सामान्यतया अपचारी कार्मिक को अपना स्पष्टीकरण दिये जाने हेतु 02 माह से अधिक का समय न दिया जाये। किन्तु अपरिहार्य परिस्थितियों में उक्त समय सीमा में युक्ति-युक्त (Reasonable) वृद्धि की जा सकती है।

(II) जाँच अधिकारी को जाँच आख्या में प्रस्तावित दण्ड के विषय में कोई मतव्य अथवा संस्तुति अंकित नहीं की जाये।

(III) बिना उचित कारण के जाँच कार्यवाही लम्बित नहीं रखी जाये।

(IV) सुनवाई, साक्ष्य अथवा अन्य कार्यवाही हेतु नियत तिथियों को आगे न टाला जाये। यदि ऐसा करना अपरिहार्य हो तो उसे सकारण आदेश पत्रक में उल्लिखित किया जाये।

4. वर्तमान में प्रचलित अनुशासनिक कार्यवाहियों से सम्बन्धित जाँच अधिकारियों को प्रस्तर-3 में उल्लिखित निर्देशों को उपलब्ध, कराते हुए उनसे इस आशय का प्रमाण पत्र प्राप्त कर लिया जाये कि उनके द्वारा उक्त निर्देशों को पढ़कर भली-भाँति समझ लिया गया है। भविष्य में भी जितनी अनुशासनिक कार्यवाहियाँ संस्थित की जाएँ उनके जाँच अधिकारियों को भी उनकी नियुक्ति पत्र के साथ ही इसकी प्रति संलग्न करते हुए इस आशय का प्रमाण-पत्र प्राप्त कर लिया जाये कि उनके द्वारा इन निर्देशों को पढ़कर भली-भाँति समझ लिया गया है।

5. उपर्युक्त के आलोक में अनुरोध है कि अपने विभाग के नियंत्रणाधीन समस्त प्रशिक्षण संस्थाओं को उपर्युक्त प्रस्तर-2 में उल्लिखित नियमावलियों/शासनादेशों की व्यवस्थाओं का संज्ञान लेते हुए आधार भूत प्रशिक्षण (Induction Training) कार्यक्रमों में पांच/छः सत्र (Period) एवं सेवा कालीन प्रशिक्षण (In Service Training) के कार्यक्रमों में एक/दो सत्र (Period) अनुशासनिक जाँच कार्यवाही/प्रक्रिया के संबंध में रखा जाये। इसके साथ ही शीर्ष प्राथमिकता के आधार पर, अधिक से अधिक संख्या में प्रभावी प्रशिक्षण कराये जाने हेतु व्यापक योजना (Comprehensive plan) तथा प्रस्तर-4 में उल्लिखित बिन्दु के सम्बन्ध में की गई कार्यवाही की सूचना कार्मिक विभाग को दिनांक 15.09.2022 तक उपलब्ध कराने का कष्ट करें।

6. उपर्युक्त प्रशिक्षण कार्यक्रमों में उन अधिकारियों को वरीयता प्रदान की जाये जिन्हें संप्रति प्रचलित किसी अनुशासनिक कार्यवाही में जाँच अधिकारी नामित किया गया हो।

A Division Bench of this Court in the case of State of U.P. and another vs. Prakash Chandra Agrawal (Special Appeal Defective No.97 of 2022) passed an order on 22.7.2022, relevant portion of the same reads:

".....4. At this stage, we are only examining the issue regarding training part of Enquiry Officers in the State. Learned Single Judge vide order dated May 7, 2022 issued direction that no Enquiry Officer in future shall be appointed for departmental inquiry, who has not received training from the Judicial Training & Research Institute (hereinafter referred to as "JTRI"). We find that this sweeping direction will withhold number of inquiries, which are pending in the different departments in the State keeping in view the infrastructure available in the JTRI. For conducting such inquiries, the importance of training to the officers, who have to hold the departmental inquiry, may not be lost sight of keeping in view the repeated violation of principles of natural justice and the rules governing such inquiries.

5. In the affidavit filed today, certain communications have been annexed and figures have been provided regarding training programs conducted after passing of the aforesaid order and from April 1, 2022 onwards. It is claimed that departmental inquiry is one of the subject in the training programme of the Officers but what we find *prima facie* is that the training being imparted is not yielding the results as required, as still the rules and principles of natural justice are found to be violated. The training programme for such Officers has to be more robust and specialised, for which the State is directed to place before the Court a comprehensive plan.

6. As the sweeping directions issued by the learned Single Judge will withhold all the departmental inquiries, we stay those directions to the extent - "that no Officer in future shall be appointed for departmental inquiry unless he has received training from JTRI". However, we expect that in the pending inquiries, the Officers holding such inquiries shall be sensitised without any delay and further the training programs of the Officers shall be regular exercise.

7. Adjourned to August 24, 2022."

Thereafter, another **Division Bench of this Court has also passed a detailed order on 5.9.2022 in the case of State of U.P. and another vs. Prakash Chandra Agarwal: Special Appeal No.351 of 2022.** The order dated 5.9.2022 reads as under:

"This Court by means of an order dated 22.07.2022 had directed the State to place before the Court a comprehensive plan for training of officers of the State Government who are entrusted with conducting inquiries in the departmental proceedings and also those who are to take final decision in the matter in their capacity as appointing authorities/disciplinary authorities. On 02.09.2022 the Court again required the State to file the said affidavit.

In compliance of the said orders dated 22.07.2022 and 02.09.2022, an affidavit has been filed by the learned State Counsel sworn in by the Special Secretary, Secretariat Administration Department. The said affidavit is taken on record.

In the affidavit filed today, it has been stated that the Chief Secretary of the State of Uttar Pradesh has issued directions by means of his letter/order dated

16.08.2022 for continuing various training programmes in all the departments. The letter/order has been circulated by the Additional Chief Secretary in the Department of Karmik. According to the said letter/order, the departments have required to prepare a comprehensive plan for effective training of the officers in good numbers on priority basis and necessary information has also been directed to be furnished to the Karmik Department till 15.09.2022.

Learned State Counsel has submitted that the said information is to be received by the Karmik Department by 15.09.2022, as such once the necessary information is received, the affidavit as ordered vide order of the Court, dated 22.07.2022 shall be filed.

For the said purpose, we direct that after collecting the information as mentioned in the order dated 16.08.2022 of the chief Secretary of the State of U.P., an affidavit shall be filed before this Court by the next date of listing giving therein the details of the comprehensive plan for training.

Learned State Counsel has also submitted that as a result of the order passed by the learned Single Judge, which is under appeal herein, the departmental proceedings in the entire State of U.P. have been put to halt though the Court by means of the order dated 22.07.2022 had stayed certain direction issued by the learned Single Judge to the extent, "that no Officer in future shall be appointed for departmental inquiry unless he has received training from JTTRI". However, it has further been stated that after the said stay order dated 22.07.2022 though now enquiry officers are being appointed for conducting the departmental enquiries without receiving the training from JTTRI but so far as the appointing/disciplinary authorities are concerned, they are unable to take final decision in the matters where the enquiries have been taken to final stages.

Accordingly, we provide that the directions issued by the learned Single Judge to the extent "punishing authority shall go through the required training before passing any punishment order and also refer to their session/certificate" shall remain stayed. However, this order whereby a part of the order passed by learned Single Judge has been stayed, does not mean that the appointing/punishing authorities in the State of U.P. shall not undergo the requisite training as directed by learned Single Judge at JTTRI.

We make it clear that directions issued by learned Single Judge are an expression of concerns of the Court relating to various irregularities which are noticed by the Court almost on everyday basis in the matters relating to departmental proceedings where on account of un-acquaintance with the exact procedure for conducting departmental proceedings and thereafter for passing the appropriate punishment orders, the erring officers many times go scot-free."

Since 2.1.2023 till date, more or less all the petitions which have come before this Court as fresh or for hearing, where order imposing major punishment is under challenge, are part of this bunch. The argument in each of these is with regard to violation of both Rule 7 (iii) and (vii) of the Rules of 1999. Thus, these all writ

petitions can be decided on the same ground. However, learned Chief Standing Counsel-III requested the Court to decide each and every case separately.

On request of Sri Ravi Singh Sisodia, learned Chief Standing Counsel-III, this Court has taken up each and every case separately.”

11. Let a copy of this order be provided to the Additional Chief Secretary, Department of Revenue, U.P. to see as to how the subordinate officers are conducting and concluding inquiry against an employee. All those officers are required the proper training so that they could know the procedure for conducting and concluding the departmental inquiry.

12. The copy of this order be also provided to the Consolidation Commissioner, U.P. to take appropriate steps against the Inquiry Officer and disciplinary officer of the present case as per law so that other alike officers could know that if they do not follow the settled proposition of law while conducting the departmental inquiry or providing major punishment, they will have to face the music. In the present case, admittedly, neither the Inquiry Officer knows how to conduct the departmental inquiry nor the disciplinary officer knows how to impose the major punishment.

13. Therefore, in view of the above, the writ petition is **allowed**. Consequently, the impugned punishment order dated 07.03.2024 passed by Settlement Officer Consolidation, Barabanki (Annexure-1) is hereby set aside/quashed.

14. Since the disciplinary inquiry has not been conducted strictly, in accordance with law by the Inquiry Officer, therefore, if the competent authority is willing to conduct any departmental inquiry

against the petitioner, the same may be conducted and concluded strictly, in accordance with law but with expedition. Such inquiry may be conducted, if it is so required, from the stage of issuance of charge-sheet.

15. There will be no order as to costs.

16. The Senior Registrar of this Court shall intimate this order to the Additional Chief Secretary, Revenue, U.P. and Consolidation Commissioner within 3 working days of its compliance.

Order Date :- 15.7.2024

Shravan

[Rajesh Singh Chauhan,J.]