

Court No. - 6

Case :- WRIT - A No. - 23010 of 2019

Petitioner :- Rajendra Prasad Gupta

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

Counsel for Petitioner :- Rakesh Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin,J.

1. Heard.

2. Under challenge is the punishment order dated 06.02.2017, a copy of which is annexure 1 to the writ petition whereby minor penalty has been imposed against the petitioner. Also under challenge is the appellate order dated 22.06.2017, a copy of which is annexure 2 to the writ petition whereby the appeal filed by the petitioner against the said punishment order has been rejected.

3. Bereft of unnecessary details, the facts set forth by the learned counsel for the petitioner is that initially the petitioner while working on the post of Junior Assistant, had been dismissed from service on 18.06.2012. The appeal filed against the said dismissal order was also rejected vide order dated 28.03.2013. Being aggrieved, the petitioner had filed a claim petition before the Uttar Pradesh Public Service Tribunal, Lucknow (hereinafter referred to as "Tribunal") vide Claim Petition No. 1087 of 2013 Inre; Rajendra Prasad Gupta Vs. State of U.P and Ors. The learned Tribunal vide judgment and order dated 06.10.2015, a copy of which is annexure 3 to the writ petition quashed the dismissal and the appellate order. The respondents were required to proceed from the stage of issuance of fresh show cause notice to the petitioner and to pass order after giving an opportunity of hearing to the petitioner.

4. In pursuance thereof, a Show Cause Notice dated 28.11.2016, a copy of which is annexure RA 1 to the rejoinder affidavit was issued to the petitioner. The petitioner claims to have submitted a detailed reply dated 13.12.2016 which is part of annexure RA 2 to the rejoinder affidavit whereby he denied the three charges as had been levelled against him.

5. The disciplinary authority vide order impugned dated 06.02.2017, a copy of which is annexure 1 to the writ petition without considering the reply of the petitioner was of the view that as the petitioner has admitted the said charges consequently, has imposed a minor penalty against the petitioner. The appeal filed against the said punishment order has also been rejected vide order dated 22.06.2017, a copy of which is annexure 2 to the writ petition and hence the petition.

6. The contention of learned counsel for the petitioner is that after the dismissal and appellate orders had been quashed by the learned Tribunal, the matter had been remitted to the department from the stage of issuance of a Show Cause Notice. The petitioner after issuance of show cause notice to him dated 28.11.2016 had vehemently denied the charges levelled against him as would be apparent from a perusal of the reply dated 13.12.2016 yet the disciplinary authority has proceeded on the ground as if the petitioner has admitted the charges against him. He submits that a perusal of the order impugned would indicate that none of the grounds as have been raised by the petitioner in his reply dated 13.12.2016 have been discussed whereby he had denied the charges levelled against him and as such, the short cut method as adopted by the disciplinary authority is clearly not countenanced in the eyes of law and thus merits to be set aside on this ground alone. He further states that although it was always open for the disciplinary authority to have passed an order after considering the reply of the petitioner but there cannot be any occasion for the disciplinary authority to have referred to the said reply but not discussed it rather has indicated that as if the petitioner has admitted the said charges as levelled against him and thus it is apparent that the order impugned dated 06.02.2017 reflects patent non application of mind on the part of disciplinary authority and this aspect of the matter has also not been considered by the appellate authority while rejecting the appeal of the petitioner vide order dated 22.06.2017 and thus it is prayed that both the orders be set aside with all consequential benefits.

7. On the other hand, learned Standing counsel on the basis of averments contained in the counter affidavit has justified the order of punishment dated

06.02.2017 and the appellate order dated 22.06.2017. He argues that a perusal of the reply of the petitioner dated 13.12.2016 would indicate that invariably the petitioner has admitted the charges as levelled against him and consequently, no error has been committed by the disciplinary authority while considering the reply of the petitioner and finding that as the petitioner has admitted the charges as levelled against him consequently, he is to be visited with the minor penalty and thus there is no illegality or infirmity with the orders impugned.

8. Heard the learned counsel appearing on behalf of the contesting parties and perused the records.

9. From the arguments as raised by the learned counsel appearing on behalf of the contesting parties and perusal of records it emerges that initially the petitioner had been dismissed from service on 18.06.2012. The appeal filed against the said order had also been rejected vide order dated 28.03.2013. Both the orders were challenged by the petitioner by filing a claim petition before the learned Tribunal. The learned Tribunal vide judgment and order dated 06.10.2015 set aside the said orders and remitted the matter to the department to proceed from the stage of issuance of a show cause notice to the petitioner and to pass orders thereafter. In pursuance thereof, a show cause notice was issued to the petitioner on 28.11.2016. The petitioner submitted a detailed reply dated 13.12.2016 whereby he denied the charges as levelled against him. The disciplinary authority vide order dated 06.02.2017 although referring to the reply of the petitioner but without discussing it was of the view that as invariably the petitioner has admitted the charges levelled against him consequently, a minor penalty has been imposed against the petitioner which has been upheld by the appellate authority while rejecting the appeal vide order dated 22.06.2017.

10. Perusal of the show cause notice dated 28.11.2016 would indicate that the authority had sent the inquiry report dated 14.10.2016 to the petitioner and had required the petitioner to submit his reply against the same. The petitioner had submitted a detailed reply dated 13.12.2016, a copy of which is annexure RA 1 to the rejoinder affidavit per which he had denied the charges as levelled against him. The disciplinary authority vide order impugned dated 06.02.2017 after

referring to the reply of the petitioner but without discussing it was of the view that as the petitioner has invariably admitted the charges as levelled against him as such, the petitioner should be visited with a minor penalty. The said order has been upheld with the dismissal of the appeal.

11. A perusal of the impugned order dated 06.02.2017 would indicate that despite the petitioner having denied the charges as levelled against him, the disciplinary authority has proceeded as if the petitioner has invariably admitted the charges. Perusal of the said order would indicate that there is no consideration of the reply submitted by the petitioner dated 13.12.2016 and thus it is apparent that the order impugned reflects patent non application of mind on the part of the disciplinary authority to the reply submitted by the petitioner. This aspect of the matter has also not been considered by the disciplinary authority while rejecting the appeal of the petitioner vide order dated 22.06.2017.

12. Keeping in view the aforesaid discussion, the writ petition is allowed. The orders impugned dated 06.02.2017 & 22.06.2017, copies of which are annexures 1 & 2 to the writ petition are quashed. The matter is remitted to the disciplinary authority to consider the reply of the petitioner dated 13.12.2016 and to pass a fresh order in accordance with law and the relevant rules.

13. Let such an order be passed within a period of eight weeks from the date of receipt of a certified copy of this order.

Order Date :- 16.4.2024
Pachhere/-