

Court No. - 4

Case :- WRIT - A No. - 6083 of 2022

Petitioner :- Smt. Nishi Srivastava

Respondent :- State Of U.P. Thru. Secy. Samaj Kalyan, Bapu Bhawan, Civil Secretariat, Lko. And 4 Others

Counsel for Petitioner :- Manish Jauhari, Shruti Sahu, Sonika Dixit

Counsel for Respondent :- C.S.C.

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Sri Manish Jauhari, learned counsel for the petitioner and Sri Pranav Pandey, learned State Counsel.

2. By means of this petition the petitioner has prayed for the following relief:-

"(i) to issue a writ, order, direction or command in nature of certiorari after summoning the records in original, and quashing the order of dismissal dated 29/07/2022 passed by the respondent no. 2 (Annexure No.1)

(ii) to issue a writ, order, direction or command in nature of mandamus directing the respondent no.2 to reinstate the petitioner and pay her regular salary."

3. By means of the instant writ petition, the petitioner is challenging the validity of the dismissal order dated 29.07.2022, passed by the opposite party no.2 i.e. Director, Tribal Welfare, U.P., Lucknow, whereby petitioner was dismissed from service without following the due process of law as prescribed in the statutory Rules, i.e. U.P. Government Servant (Discipline and Appeal) Rules, 1999 (hereinafter referred to as "the Rules, 1999"). The order is mechanically passed in violation of the Rules, 1999 as well as without application of mind, hence not tenable in the eyes of law.

4. The petitioner was appointed on the post of Assistant Teacher (Music) in C.T. Grade on 23.06.1987 in the institution namely Rajkiya Ashram Paddhati Vidyalaya, which is governed by department of social welfare.

5. The precise contention of the learned counsel for the petitioner is that the impugned punishment order has been passed on the basis of illegal departmental inquiry whereby the departmental inquiry has been conducted and concluded

without fixing date, time and place for oral inquiry and without giving any opportunity to the petitioner to adduce his evidence/witnesses.

6. On being confronted the learned State Counsel as to whether oral inquiry has been conducted or not, learned State Counsel has fairly submitted that no oral inquiry has been conducted. The petitioner has stated in para-20 of the writ petition that no date and time has been fixed by the Inquiry Officer for oral inquiry and in the counter affidavit, no specific reply has been given to the contents of para-20 of the writ petition regarding fixing any date or time for conducting inquiry.

7. Having heard learned counsel for the parties and having perused the material available on record, I am of the considered opinion that the departmental enquiry should be conducted and concluded in accordance with law and for conducting oral enquiry the date, time and place must be fixed intimating the incumbent about such date, time and place and proper opportunity should be afforded to an employee. If any departmental enquiry, which is initiated and contemplated for awarding major punishment, is conducted without providing an ample opportunity to the employee fixing date, time and place for conducting oral enquiry, such departmental enquiry vitiates and does not sustain in the eyes of law. Consequently, if any, punishment order is passed following such enquiry report, such punishment shall also be vitiated and shall not be sustainable in the eyes of law. The Apex Court in **Re: State of Uttar Pradesh and others Vs. Saroj Kumar Sinha (2010) 2 Supreme Court Cases 772** has held that if the departmental enquiry is contemplated without adopting the procedure of law and without affording ample opportunity of hearing to the petitioner and without fixing date, time and place, such departmental enquiry shall vitiate. The relevant paragraph no. 39 reads as under:-

"39. The proposition of law that a government employee facing a department enquiry is entitled to all the relevant statement, documents and other materials to enable him to have a reasonable opportunity to defend himself in the department 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 the case of State of Punjab Vs. Bhagat Ram: (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 the 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."

8. This Court in **Re:Roop Narain Pandey Vs. U.P. Co-operative Institutional Service Board and Ors. 2019 (3)ADJ 9** has considered the similar controversy and the relevant paragraph nos. 13 to 25 read as under:-

"13. In the case of **Meenglas Tea Estate v. The workmen., AIR 1963 SC 1719**, the Hon'ble Supreme Court observed that it is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way to cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted.

14. In **State of U.P. v. C. S. Sharma, AIR 1968 SC 158**, the Hon'ble Apex Court held that omission to give opportunity to the officer to produce his witnesses and lead evidence in his defence vitiates the proceedings. The Court also held that in the enquiry witnesses have to be examined in support of the allegations, and opportunity has to be given to the delinquent to cross-examine these witnesses and to lead evidence in his defence.

15. In **Punjab National Bank v. A.I.P.N.B.E. Federation, AIR 1960 SC 160**, (vide para 66), the Hon'ble Apex Court held that in such enquiries evidence must be recorded in the presence of the charge-sheeted employee and he must be given an opportunity to rebut the said evidence. The same view was taken in **A.C.C. Ltd. v. Their Workmen, (1963) II LLJ. 396**, and in **Tata Oil Mills Co. Ltd. v. Their Workmen, (1963) II LLJ. 78 (SC)**.

16. In **S.C. Girotra v. United Commercial Bank, 1995 Supp. (3) SCC 212**, the Hon'ble Apex Court set aside a dismissal order which was passed without giving employee an opportunity of cross-examination.

17. This Court in **Subhas Chandra Sharma v. Managing Director and another, 2000 (1) UPLBEC 541** has held as under:-

"In our opinion after the petitioner replied to the charge-sheet a date should have been fixed for the enquiry and the petitioner should have been intimated the date, time and place of the enquiry and on that date the oral and documentary evidence against the petitioner should have been led in his presence and he should have been given an opportunity to cross-examine the witnesses against him and also he should have been given an opportunity to produce his own witnesses and evidence. If the petitioner in response to this intimation had failed to appear for the enquiry then an ex parte enquiry should have been held but the petitioner's service should have not been terminated without holding an enquiry. In the present case it appears that no regular enquiry was held at all. All that was done that after receipt of the petitioner's reply to the chargesheet he was given a show-cause notice and thereafter the dismissal order was passed. In our opinion this was not the correct legal procedure and there was violation of the rules of natural justice. Since no date for enquiry was fixed nor any enquiry held in which evidence was led in our opinion the impugned order is clearly violative of natural justice."

18. In the State of Uttar Pradesh v. Saroj Kumar Sinha, reported in (2010) 2 SCC 772, the Hon'ble Apex Court held that:-

"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 unrebutted 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."

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."

19. Similar view was taken by the Hon'ble Apex Court in Roop Singh Negi v. Punjab National Bank, (2009) 2 SCC 570 as under:-

"Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled 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."

20. In another case in **Subhash Chandra Gupta v. State of U.P., 2012 (1) UPLBEC 166**, the Division Bench of this Court after survey of law on this issue observed as under:

"It is well settled that when the statute provides to do a thing in a particular manner that thing has to be done in that very manner. We are of the considered opinion that any punishment awarded on the basis of an enquiry not conducted in accordance with the enquiry rules meant for that very purposes is unsustainable in the eye of law. We are further of the view that the procedure prescribed under the inquiry rules for imposing major penalty is mandatory in nature and unless those procedures are followed, any outcome inferred thereon will be of no avail unless the charges are so glaring and unrefutable which does not require any proof. The view taken by us finds support from the judgement of the Apex Court in *State of U.P. & another Vs. T.P.Lal Srivastava*, 1997 (1) LLJ 831 as well as by a Division Bench of this Court in *Subash Chandra Sharma Vs. Managing Director & another*, 2000 (1) U.P.L.B.E.C. 541.

21. A Division Bench decision of this Court in the case of **Salahuddin Ansari Vs. State of U.P. and others, 2008 (3) ESC 1667** held that non holding of oral inquiry is a serious flaw which can vitiate the order of disciplinary proceeding including the order of punishment has observed as under:-

" 10..... Non holding of oral inquiry in such a case, is a serious matter and goes to the root of the case.

11. A Division Bench of this Court in **Subash Chandra Sharma Vs. Managing Director & another, 2000 (1) U.P.L.B.E.C. 541**, considering the question as to whether holding of an oral inquiry is necessary or not, held that if no oral inquiry is held, it amounts to denial of principles of natural justice to the delinquent employee. The aforesaid view was reiterated in **Subash Chandra Sharma Vs. U.P.Cooperative Spinning Mills & others, 2001 (2) U.P.L.B.E.C. 1475** and **Laturi Singh Vs U.P.Public Service Tribunal & others, Writ Petition No. 12939 of 2001, decided on 06.05.2005.**"

22. Even if the employee refuses to participate in the enquiry the employer cannot straightaway dismiss him, but he must hold an ex-parte enquiry where evidence must be led vide *Imperial Tobacco Co. Ltd. v. Its Workmen*, AIR 1962 SC 1348, *Uma Shankar v. Registrar*, 1992 (65) FLR 674 (All).

23. The Division Bench of this Court in the case of **Mahesh Narain Gupta v. State of U.P. and others, (2011) 2 ILR 570** has held as under:-

"At this stage, we are to observe that in the disciplinary proceedings against a delinquent, the department is just like a plaintiff and initial burden lies on the department to prove the charges which can certainly be proved only by collecting some oral evidence or documentary evidence, in presence and notice charged employee. Even if the department is to rely its own record/document which are already available, then also the enquiry officer by looking into them and by assigning his own reason after analysis, will have to record a finding that those documents are sufficient enough to prove the charges.

24. In no case, approach of the Enquiry Officer that as no reply has been submitted, the charge will have to be automatically proved can be approved. This will be erroneous. It has been repeatedly said that disciplinary authority has a right to proceed against delinquent employee in *ex parte* manner but some evidence will have to be collected and justification to sustain the charges will have to be stated in detail. The approach of the enquiry officer of automatic prove of charges on account of non filing of reply is clearly misconceived and erroneous. This is against the principle of natural justice, fair play, fair hearing and, thus, enquiry officer has to be cautioned in this respect.

25. Recently the entire law on the subject has been reviewed and reiterated in **Chamoli District Co-operative Bank Ltd. Vs. Raghunath Singh Rana and others, AIR 2016 SC 2510** and the Hon'ble Apex Court has culled out certain principles as under:

"i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

(iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

(iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any."

9. Considering the submissions of learned counsel for the parties and the material available on the record as well as following the dictums of Apex Court and of this Court rendered in the cases in re: **Saroj Kumar Sinha (supra)** and **Roop Narain Pandey (supra)**, I am of the considered view that the instant writ petition deserves to be allowed and the impugned order is liable to be set aside/ quashed.

10. Accordingly, the writ petition is **allowed**.

11. The impugned order dated 29.07.2022 (Annexure No.1) passed by the opposite party No.2 is hereby set aside/ quashed only for the reason that the impugned punishment order is based on departmental enquiry where the departmental enquiry has not been conducted and concluded strictly in accordance with law without having any date, time and place for oral enquiry.

The consequential order of reinstatement shall be passed by the Competent Authority ignoring the impugned punishment order dated 29.07.2022.

12. However, the matter is remanded back to the Disciplinary Authority to direct the Inquiry Office to conduct the denovo enquiry from the stage of defect. To be more precise, the Inquiry Officer shall conclude the enquiry by fixing date, time and place for oral enquiry and such enquiry shall be concluded expeditiously, preferably, within a period of one month from the date of presentation of a certified copy of this order.

13. It is needless to say that the petitioner shall co-operate in the departmental enquiry properly. After conclusion of the departmental enquiry, the Disciplinary Authority is at liberty to pass a fresh order, strictly in accordance with law, after seeking explanation from the petitioner providing him a copy of the enquiry report.

14. No order as to the costs.

[Rajesh Singh Chauhan,J.]

Order Date :- 18.9.2024

Suresh/