

Court No. - 17

Case :- WRIT - A No. - 12575 of 2021

Petitioner :- Pramod Kumar Verma

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

Counsel for Petitioner :- Ashok Shukla

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

Hon'ble Manish Mathur, J.

1. Heard Mr. Ashok Shukla, learned counsel for petitioner and Mr. Pritish Kumar, learned counsel appearing for opposite parties.
2. Petition has been filed challenging order dated 02.06.2021 whereby major penalty of reversion to the post of Assistant Engineer (Civil) from the post of Deputy Project Manager (Civil) was imposed upon petitioner after enquiry.
3. At the very outset, learned counsel for opposite parties has raised a preliminary objection regarding maintainability of this petition directly under Article 226 of the Constitution of India inasmuch as Rules 42 and 43 of the Model Conduct, Discipline and Appeal Rules applicable upon petitioner provide the departmental remedy of Appeal.
4. With regard to preliminary objection, learned counsel for petitioner submits that alternative and equally efficacious remedy has already been held not to be a bar to entertainability of a writ petition under Article 226 of the Constitution of India. He further submits that the present petition would be maintainable in view of fact that the procedures as required to be followed in enquiry proceedings in terms of the Service Rules have not been followed by opposite parties. He also alleges violation of principles of natural justice.
5. With regard to maintainability of a petition under Article 226

of the Constitution of India, the law is well-settled as held by Hon'ble the Supreme Court in **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai & others**, reported in (1998) 8 SCC 1.

6. Upon applicability of aforesaid judgment in present facts and circumstances, it is evident that averments have been made in the petition that impugned order as well as enquiry proceedings are in violation of principles of natural justice as also against disciplinary procedure required to be followed in terms of the Service Rules.

7. In view of such averments having been made in the petition and particularly the fact that this petition has been entertained about three years ago with calling for a counter affidavit, this Court does not find any good ground to relegate the petitioner to alternative remedy at this stage.

8. The preliminary objection raised by learned counsel for opposite parties is therefore rejected.

9. It is submitted that with regard to certain allegations levelled against petitioner, he was suspended from service whereafter charge sheet dated 01.09.2017 was served upon him containing a single charge that during the time when he was deployed as Project Manager with effect from 18.07.2016 till 31.03.2017, a complaint along with audio and video recordings had been received with regard to illegal gratification being demanded by petitioner from the complainant. The charge sheet was replied to by petitioner vide reply dated 13.09.2017 whereafter the enquiry proceedings commenced and culminated in filing of enquiry report dated 22.01.2021. The impugned order of reversion has thereafter been issued against petitioner.

10. It has been submitted by learned counsel for petitioner that Rule 35 of the Service Rules applicable upon petitioner

specifies procedure to be followed by the department for imposing major penalties. Rule 35(8) indicates the procedure required to be followed in case the employee pleads not guilty whereafter certain documents are required to be supplied to him and oral enquiry is also required to be held.

11. It has been submitted that a perusal of enquiry report will make it evident that the complainant being the sole proprietor of her firm was never produced in the enquiry proceedings. On the contrary, her husband was produced in the enquiry proceedings but petitioner was not granted any opportunity to cross-examine the said witness. It has been submitted that in fact, the enquiry report clearly indicates the fact that allegations levelled against petitioner as per the complaint were not made out whereafter the enquiry officer has recommended a higher level enquiry in the matter.

12. It is therefore, submitted that once the enquiry officer himself did not find the charges established against petitioner, there was no occasion for opposite parties to have passed the impugned order of major penalty. He has placed reliance on the following decisions of Hon'ble the Supreme Court:-

(1) **State of Uttaranchal and others v. Kharak Singh**, reported in (2008) 8 SCC 236;

(2) **Roop Singh Negi v. Punjab National Bank and others** reported in (2009) 2 SCC 570;

(3) **G. Vallikumari v. Andhra Education Society and others** reported in (2010) 2 SCC 497; and

(4) **State of Uttar Pradesh and others v. Saroj Kumar Sinha**, reported in (2010) 2 SCC 772

13. Learned counsel for opposite parties has refuted the submissions advanced by learned counsel for petitioner with submission that petitioner was unable to discharge the burden

cast upon him to explain the receipt of an amount of Rs.2,00,000/- from the complainant which was evidenced in the compact disc (C.D.), the genuineness of which was verified during enquiry proceedings. It is further submitted that explanation given by petitioner for receipt of aforesaid amount of money was found to be incorrect in the enquiry proceedings whereafter the burden shifted upon petitioner to explain the nature of amount received by him. Such explanation not being provided by petitioner, would cast a reasonable doubt on nature of transaction whereafter it can be concluded that the nature of such transaction was in fact illegal and therefore the impugned order has been correctly passed. It has been further submitted that the nature of disciplinary proceedings are quite separate and distinct from criminal proceedings and therefore the charges were not required to be proved beyond all reasonable doubt.

14. Learned counsel has also submitted that in cases of major penalty where disciplinary proceedings have been followed, there is limited scope for interference in writ jurisdiction. Learned counsel has placed reliance on following decisions to buttress his submission:-

(1) **State of Bihar v. Phulpari Kumari**, reported in (2020) 2 SCC 130; and

(2) **Deputy General Manager (Appellate Authority) v. Ajai Kumar Srivastava**, reported in (2021) 2 SCC 612.

15. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it is evident from a perusal of enquiry report dated 22.01.2021 that disciplinary proceedings ensued against petitioner on the basis of a complaint having been filed by one Smt. Santosh Sharma along with audio and video clippings levelling allegations of

demand of illegal gratification by petitioner. The enquiry report also evidences the fact that the complainant was never produced during enquiry proceedings but her husband did appear before the enquiry officer with a written statement of the complainant herself. It is also evident by enquiry report that the genuineness of audio and video clippings was thereafter established and in which petitioner can be seen with a few other persons. One such person has been identified as Mr. Vijay Shuka who deposed before enquiry officer and made a specific statement that illegal gratification was given to petitioner by husband of complainant.

16. It is also on record that despite such a statement being made by Mr. Vijay Shuka and appearance of husband of complainant during enquiry proceedings, no question has been put to said person to verify the statement given by Mr. Vijay Shuka. Even as per the statement of the said witness, it was the bounden duty of enquiry officer to have put some questions to husband of complainant since he is the one who allegedly made good the demand of illegal gratification. Failure to put questions to husband of complainant who allegedly was the main person entering into such transaction, renders the statement of Mr. Vijay Shuka only in the realm of statement without corroboration.

17. Rule 35 of the Service Rules indicates procedure for imposing major penalties with Sub-rule (8) indicating that in case employee does not plead guilty, he has a right to inspect the documents listed with the charge sheet, submit a list of documents and witnesses that he wants to examine and to be supplied with copies of the statements of witnesses, if any listed in the charge sheet. Sub-rule (11) of Rule 35 thereafter indicates that on the date fixed for enquiry oral and documentary evidence is required to be led by the parties by

which articles of charge shall be required to be corroborated. It also provides that the witnesses shall be examined by or on behalf of the Presenting Officer and may also be cross-examined by or on behalf of the delinquent employee. The Presenting Officer is also entitled to cross-examine the witnesses. Sub-rules (12) and (13) of Rule 35 specify that prior to close of prosecution case, the employees is to be given opportunity to inspect the documentary evidence and cross-examine a witness who has been so summoned whereafter upon closure of the case for disciplinary authority, the employee is required to state his defence, which if made oral shall be recorded and an employee will be required to sign the record.

18. Upon applicability of aforesaid procedure in present facts circumstances of the case, it is quite evident that witnesses have been examined and statement of complainant has been taken without providing any opportunity of cross-examination to petitioner or even of inspection of statement given by complainant to him. The entire enquiry report places the burden of proof upon petitioner.

19. It is also evident from a perusal of enquiry report that the enquiry officer himself has indicated in enquiry report that from the evidence on record, allegations levelled against petitioner by complainant are not made out. He has thereafter recommended further investigation by higher authorities in the matter. However, the aspect that petitioner was unable to discharge the burden of proof has been placed squarely upon petitioner.

20. Hon'ble the Supreme Court in **State of Uttar Pradesh and others v. Saroj Kumar Sinha**(supra) has held as under:-

"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."

21. Further Hon'ble the Supreme Court in **Roop Singh Negi**(supra) 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 levelled 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 reads as follows:

"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."

22. Even in the decisions relied upon by learned counsel for opposite parties, the aforesaid proposition of law has clearly been enunciated.

23. In **State of Bihar v. Phulpari Kumari**(supra), it has been held that in the said case, the enquiry officer had concluded that the charge of demand and acceptance of **illegal** gratification by the respondent was proved and therefore it was held that interference with the orders passed pursuant to a departmental enquiry can be only in case of 'no evidence' and sufficiency of evidence is not within the realm of judicial review.

24. Clearly, upon applicability of aforesaid judgment in the present case, it is evident that there is no conclusion of enquiry

officer at all of charge of illegal gratification having been proved against petitioner. On the contrary, the enquiry officer has clearly held that there is no evidence against petitioner with regard to complaint made against him. Therefore, the said judgment in fact goes to help the petitioner.

25. In **Ajay Kumar Srivastava**(supra), Hon'ble the Supreme Court has also enunciated the same propositions of law that a Court is required to examine and determine whether rules of natural justice are complied with and that findings or conclusions are based on some evidence or not.

26. The judgment also is a proposition of law that the disciplinary authority has to record the reasons for disagreement with the enquiry report and after affording an opportunity of hearing to the delinquent may record his own findings. It also postulates that although strict rules of evidence are not applicable to departmental proceedings but the only requirement of law is that the allegations against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably may arrive at a finding upholding the gravity of charge. The relevant paragraphs are as follows :-

"25. When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the court is to examine and determine:

(i) whether the enquiry was held by the competent authority;

(ii) whether rules of natural justice are complied with;

(iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.

26. It is well settled that where the enquiry officer is not the disciplinary authority, on receiving the report of enquiry, the disciplinary authority may or may not agree with the findings recorded by the former, in case of disagreement, the disciplinary authority has to record the reasons for disagreement and after affording an opportunity of hearing to the delinquent may record his own findings if the evidence available on record be sufficient for such exercise or else to remit the case to the enquiry officer for further enquiry.

27. It is true that strict rules of evidence are not applicable to departmental enquiry proceedings. However, the only requirement of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee. It is true that mere conjecture or surmises cannot sustain the finding of guilt even in the departmental enquiry proceedings."

27. In the present facts and circumstances of the case, it is quite evident that the enquiry officer himself in the enquiry report has stated that the charges levelled against petitioner are not made out as per evidence on record. Petitioner has been found to be guilty only of doubt cast upon him.

28. In **Roop Singh Negi**(supra), Hon'ble the Supreme Court has clearly held that mere suspicion cannot substitute hard evidence even in enquiry proceedings. A perusal of enquiry report indicates the fact that petitioner has been held guilty only on the basis of doubt created in the mind of enquiry officer, who has also thereafter recommended further enquiry in the matter.

29. However, the disciplinary authority has thereafter passed the impugned order merely basing the order on enquiry report. The authority has not at all adverted to the findings recorded by the enquiry officer exonerating the petitioner from the charges levelled against him. The disciplinary authority has thereafter proceeded to pass the impugned order imposing major penalty without indicating any reason for disagreement with the enquiry report. Such a course of action clearly is against the law enunciated in **Ajay Kumar Srivastava**(supra).

30. In view of aforesaid facts and circumstances, it being quite evident that enquiry proceedings are not in accordance with the enquiry procedure established as per service rules and the impugned punishment order dated 02.06.2021 also not being in consonance with settled law propounded by Hon'ble the Supreme Court, is hereby quashed by issuance of a writ in the nature of Certiorari.

31. Resultantly, the petition succeeds and is **allowed**. There shall be no order as to costs.

32. It has been submitted that in the meantime, petitioner has

already superannuated on 31.07.2023. In view of fact that despite lacuna indicated herein above in the enquiry proceedings, petitioner has been exonerated in the same with disciplinary authority not being able to indicate reasons for a divergent view, this court does not find any occasion to remit the matter for a fresh enquiry.

33. In view of aforesaid, opposite parties shall ensure payment of consequential post-retiral benefits to petitioner expeditiously within a period of three months from the date a certified copy of this order is produced before competent authority.

Order Date :- 5.2.2024

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