

Court No. - 20

Case :- WRIT - A No. - 7124 of 2023

Petitioner :- Anand Kumar Asthana

Respondent :- State Of U.P. Thru. Prin. Secy. Housing And Urban Planning Deptt. Lko. And Another

Counsel for Petitioner :- Shishir Jain, Lakshyadeep Srivastava

Counsel for Respondent S.C., Ajay Kumar Singh

Hon'ble Shree Prakash Singh, J.

1. Heard Sri Shishir Jain, learned counsel for the petitioner, Sri Shailendra Kumar Singh, learned Chief Standing Counsel, Sri Pankaj Patel, learned Additional Chief Standing Counsel for the State and Sri Ajay Kumar Singh, for Varanasi Development Authority, Varanasi.

2. Under challenge is the impugned punishment order dated 24-08-2023 passed by the opposite party no. 1 and the charge no. 1 of the chargesheet dated 28-12-2021.

3. The factual matrix of the case is that the petitioner was appointed as Junior Engineer on daily wage basis in Lucknow Development Authority on 01-01-1988 and thereafter, his services were regularized and he was transferred to Varanasi Development Authority, Varanasi (hereinafter referred to as, 'VDA'). When the petitioner was posted as Junior Engineer Enforcement (Nagwan Ward) surprisingly, on 21-07-2021, inspection of various roads in Nagwan Ward was conducted by the Vice Chairman, VDA and allegedly, unauthorized building constructions were found in progress and thereafter, a show cause notice dated 22-07-2021, was issued to the petitioner and the petitioner submitted reply to the show cause notice, on 28-07-2021. Thereafter, a departmental enquiry was instituted, wherein the

charges were framed and the chargesheet dated 28-12-2021 was served upon the petitioner. The petitioner submitted reply to the chargesheet and the enquiry proceeding was concluded and the enquiry report was sent to the disciplinary authority, whereafter, issuing the show cause notice, the disciplinary proceeding was concluded and the final punishment order was passed on 24-08-2023.

4. Contention of learned counsel for the petitioner is that the chargesheet contains three charges and so far as the charge no. 1 is concerned, it finds mention that the same is framed on the basis of the show cause notice dated 22-07-2021, though the same was replied, but, the alleged noting dated 29-07-2021, has never been communicated to the petitioner, wherein, it is mentioned that the report with respect to the work of the petitioner is 'unsatisfactory'. He further argued that the Enquiry Officer, ignoring the request of the petitioner for furnishing the copy of the order dated 29-07-2021, proceeded in the matter and even the same has repeatedly been sought not only from the Enquiry Officer but, to the Disciplinary authority as well, though the same was never served upon the petitioner.

5. Adding his arguments, he submits that the petitioner has also taken specific plea in paragraph nos. 17 & 26 of the writ petition, which has not been controverted in specific terms, in the Counter Affidavits filed by VDA as well as by the State and therefore, it is an admitted fact that the order dated 29-07-2021, has never been served upon the petitioner, thus, the whole disciplinary proceeding including the chargesheet, vitiates in the eyes of law.

6. Further contended that the nature of the order is as such, which cannot be the basis of the charge no. 1 and even the same would be of no

avail, if relied upon.

7. In support of his contentions, he has placed reliance on the Judgment of the Hon'ble Apex Court, on the case reported in **(2013) 6 Supreme Court Cases 515, Anant R. Kulkarni Vs. Y.P.Education Society and Others**, and has referred paragraph no. 31 of the abovesaid Judgment, which is quoted hereinunder :-

31. The conclusion reached by the Division Bench that the Tribunal and the learned Single Judge had found that there was a defect in the manner in which the enquiry was held, and therefore there was no question of it recording a finding on merit to the effect that charges levelled against the appellant were not proved, is also not sustainable in law. It is always open for the Court in such a case, to examine the case on merits as well, and in case the court comes to the conclusion that there was in fact, no substance in the allegations, it may not permit the employer to hold a fresh enquiry. Such a course may be necessary to save the employee from harassment and humiliation."

8. Referring the aforesaid, he submits that the Hon'ble Apex Court in abovesaid case has held that it is always open for the court to examine the case on merits and in case, the court comes to the conclusion that there was in fact no substance in the allegations, it may not permit the employer to hold a fresh enquiry.

9. Further reliance is placed on the Constitutional Bench Judgment reported in **(1993)4 Supreme Court Cases, 727, Managing Director, ECIL, Hyderabad and Others Vs. B.Karunakar and Others** and has referred paragraph no. 28 of the said Judgment, which is quoted hereinunder :-

"28. The position in law can also be looked at from a slightly different angle. Article 311(2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him". The findings on the charges given by a third person like the enquiry officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence

or misconstruing it, could themselves constitute new unwarranted imputations. What is further, when the proviso to the said Article states that "where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed", it in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the enquiry officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the enquiry officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry. The second stage follows the inquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the enquiry officer. The latter right was always there. But before the Forty-second Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the Forty-second Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges.

10. Referring the aforesaid, he submits that the provision of Article 311(2) of the Constitution of India, speaks about reasonable opportunity of being heard in respect of charges against a delinquent employee and therefore, it is well settled that reasonable opportunity of hearing to a delinquent employee is 'hallmark' test of any disciplinary proceeding against a delinquent

employee, under the constitutional scheme'.

11. Further, he has placed reliance on the Judgment of the Hon'ble Apex Court in case of **Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja**, reported in **(2008)9 Supreme Court Cases, 31**, and has referred paragraph no. 21 of the said Judgment, which is quoted herein under :-

"21. From the ratio laid down in B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] it is explicitly clear that the doctrine of natural justice requires supply of a copy of the inquiry officer's report to the delinquent if such inquiry officer is other than the disciplinary authority. It is also clear that non-supply of report of the inquiry officer is in the breach of natural justice. But it is equally clear that failure to supply a report of the inquiry officer to the delinquent employee would not ipso facto result in the proceedings being declared null and void and the order of punishment non est and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the court on that point, the order of punishment cannot automatically be set aside."

12. The constitutional Bench has laid down that doctrine of natural justice, requires supply of copy of enquiry report to the delinquent employee, and non supply of such report would amount to breach of principle of natural justice.

13. Concluding his arguments, he submits that the charge no. 1 mentioned in the chargesheet, is hit by the settled proposition of law as well as the procedure prescribed in the U.P. Government Servant(Discipline & Appeal) Rules, 1999 and therefore, the impugned order dated 24-08-2023 including the whole disciplinary proceeding may be quashed.

14. Refuting the aforesaid contentions, learned counsel for VDA submits that since the petitioner was having the charge of the area of Nagwan

Ward, wherein the allegation for unauthorized construction of building was initially raised and thereafter a show cause notice was given, thus this fact was well within the knowledge of the petitioner, however now the petitioner is not posted in the domain of VDA and therefore, so far as any exigency regarding DPC is concerned, the same is not required to be addressed by VDA.

15. Learned counsel appearing for the State has also opposed the contentions and submitted that once, it was found that the petitioner is involved, while permitting illegal construction in Nagwan Ward, he was suspended and the charges were framed against him and thereafter conducting a full fledged enquiry, the enquiry report was submitted and the disciplinary authority, after providing the due opportunity of hearing, even according the opportunity of personal hearing, concluded the disciplinary proceedings and the punishment order was passed and therefore, there is no erroneousness or ambiguity in the order impugned.

16. Adding his arguments, he submits that infact it is an admitted position that two charges were not found proved, but, in so far as the charge no. 1 is concerned, after due discussion in the enquiry, it was found proved partly, on the basis of the order dated 29-07-2021. He added that the order dated 29-07-2021 was passed on the reply submitted by the petitioner to the show cause notice dated 22-07-2021 and therefore, it cannot be said that the same was not in the knowledge of the petitioner, thus, submission is that no interference is warranted.

17. Having heard learned counsels for the parties and after perusal of material placed on record, it transpires that the petitioner has approached this court while taking a plea that the final punishment order dated 24-08-2023 is passed without serving

a copy of the noting dated 29-07-2021, which is said to be transcribed on the show cause notice dated 22-07-2021.

18. The Disciplinary Authority, initially proceeded with the procedure for imposing the major penalty and issued undated chargesheet alongwith covering letter dated 28-12-2021. The contents of the chargesheet are extracted as under :-

आरोप-पत्र

श्री आनन्द कुमार अस्थाना,

अवर अभियन्ता, सम्प्रति निलम्बित,

वाराणसी विकास प्राधिकरण, वाराणसी, वाराणसी विकास प्राधिकरण, वाराणसी के अन्तर्गत वार्ड नगवां में प्रधानमंत्री आवास योजना कुरुहुआ के आस-पास एवं कार्य स्थल तक पहुँच मार्ग, अखरी रोड, चुनार रोड, अवलेशपुर, चितईपुर एवं अन्य मुख्य मार्गों पर 100 से अधिक संख्या में अनाधिकृत भवनों का निर्माण कार्य गतिमान पाये जाने के संबंध में।

आरोप

संख्या:-1

वाराणसी विकास प्राधिकरण, वाराणसी के अंतर्गत वार्ड नगवां में प्रधानमंत्री आवास योजना कुरुहुआ के आस-पास एवं कार्यस्थल तक पहुँच मार्ग, अखरी रोड, चुनार रोड, अवलेशपुर, चितईपुर एवं अन्य मुख्य मार्गों पर 100 से अधिक संख्या में अनाधिकृत भवनों का निर्माण कार्य गतिमान पाया गया। आपका यह कृत्य कर्मचारी आचरण नियमवाली के विपरीत है। इस प्रकार प्रथम दृष्टया आप द्वारा अपने पदेन दायित्वों का निर्वहन नहीं किया गया, जो उ०प्र० सरकार कर्मचारी आचरण नियमावली 1956 का उल्लंघन है, जिसके लिए आप दोषी हैं। उक्त अनाधिकृत निर्माणों के सम्बन्ध में कारण बताओं नोटिस पत्रांक संख्या-119/वि० प्रा०/ उपा०/2021/22, दिनांक 22.07.2021 जारी किया गया एवं उक्त के कम में सभी स्थलों का शत-प्रतिशत निरीक्षण कर आख्या प्रस्तुत किये जाने के निर्देश दिये गये थे, किन्तु एक माह बीत जाने के पश्चात् भी आख्या प्रस्तुत नहीं की गयी। अवैध निर्माण कर्ताओं द्वारा किये जा रहे अवैध निर्माण को बाधित करने में / रोकने में, सौंपे गये कार्यों/दायित्वों का उचित प्रकार से निर्वहन न किये जाने के फलस्वरूप प्राधिकरण की छवि धूमिल हुई है एवं अवैध निर्माण होने के कारण प्राधिकरण को सम्भावित वित्तीय क्षति पहुँचाये जाने के प्रथम दृष्टया दोषी पाये जा रहे हैं एवं कार्यों के प्रति घोर लापरवाही व अवैध निर्माण में संलिप्तता प्रतीत होती है, जो उ०प्र० सरकारी कर्मचारी आचरण नियमावली 1956 का उल्लंघन है।

पठनीय-अभिलेखीय

साक्ष्य:-

कारण बताओं नोटिस पत्रांक संख्या-119/ वि० प्रा०/ उपा०/2021-22 दिनांक

22.07.2021 की छायाप्रति ।

आरोप

संख्या-2

कार्यालय पत्र संख्या-490/ वि० प्रा०/ उपा०/2019-20, दिनांक 31.01.2020 द्वारा दिनांक 29.01.2020 को बिना पूर्व अवकाश स्वीकृत करायें कार्यालय से अनुपस्थित रहने पर कारण बताओं नोटिस जारी किया गया, जो उ०प्र० सरकारी कर्मचारी आचरण नियमावली-1956 का उल्लंघन है, जिसके लिये आप दोषी हैं।

पठनीय-अभिलेखीय साक्ष्य:-

कारण बताओं नोटिस पत्र संख्या -490/ वि०प्रा०/ उपा०/2019-20 दिनांक 31.01.2020 द्वारा दिनांक 29.01.2020 की छायाप्रति ।

आरोप संख्या-3

दिनांक 18.02.2020 को आहूत मानचित्र अनुभाग की समीक्षा बैठक के दौरान मानचित्र स्वीकृत हेतु लम्बित प्रकरणों की समीक्षा करने पर यह तथ्य संज्ञान में आया कि मानचित्र की पत्रावलियों पर लम्बे समयान्तराल में कोई कार्यवाही सम्पादित नहीं की गयी। जिसके संबंध में आपको कारण बताओं नोटिस पत्र संख्या-515/वि० प्रा०/उपा०/ 2019-20. दिनांक 19.02.2020 जारी किया गया। उक्त के संबंध में आप द्वारा दिनांक 24.02.2020 को जवाब दिया गया , जो संतोषजनक नहीं पाया गया। तद्वक्त में कार्यालय पत्र संख्या-683/वि०प्रा०/अधि०/2019-20, दिनांक 07.03.2020 द्वारा कठोर चेतावनी निर्गत की गयी। इस प्रकार आप द्वारा गम्भीर लापरवाही एवं कूटचित कृत्य एवं विभागीय कर्तव्यों के निर्वहन के पदेन दायित्वों के प्रति लापरवाही एवं उदासीनता परिलक्षित होती है. जो उ०प्र० सरकारी कर्मचारी आचरण नियमावली -1956 का उल्लंघन है, जिसके लिये आप दोषी हैं।

पठनीय-अभिलेखीय साक्ष्य-

1. कारण बताओं नोटिस पत्र संख्या -515/वि०प्रा०/ उपा०/2019-20, दिनांक 19.02.2020 की छायाप्रति ,
2. श्री अस्थाना द्वारा कारण बताओं नोटिस दिनांक 19.02.2020 के सम्बन्ध में दिनांक 24.02.2020 को प्रस्तुत उत्तर की छायाप्रति ,
3. कठोर चेतावनी पत्र संख्या-683/वि०प्रा० / अधि०/2019-20. दिनांक 07.03.2020 की छायाप्रति।

आपसे यह अपेक्षा की जाती है कि आप आरोप पत्र प्राप्त होने की तिथि से अधिरोपित

आरोप के संबंध में अपना लिखित उत्तर 15 दिन से 01 माह के अन्दर जांच अधिकारी को अनिवार्य रूप से प्रस्तुत कर देगे तथा प्रस्तुत किये लिखित कथन में यह भी स्पष्ट रूप से अंकित करेंगे कि आप आरोप पत्र में उल्लिखित किसी साक्ष्य का परीक्षण करना चाहते हैं अथवा किसी साक्षी का प्रति परीक्षण करना चाहते हैं या अपने बचाव में अपनी तरफ से किसी साक्षी या साक्ष्य को प्रस्तुत करना चाहते हैं , तो उनका नाम व पता तथा विवरण भी स्पष्ट रूप से लिखित कथन में ही इंगित करेंगे। यदि आप स्वयं सुनवाई के कम में जाँच अधिकारी से मौखिक सुनवाई का व अवसर भी प्राप्त करना चाहते तो उसे भी स्पष्टतः अपने लिखित उत्तर में इंगित करेंगे। जांच अधिकारी द्वारा आरोप के समर्थन में साक्ष्य प्रस्तुत किये जायेंगे, जिसमे मौखिक एवं अभिलिखित साक्ष्य सम्मिलित होंगे। मौखिक या लिखित साक्ष्य होने के समय जांच अधिकारी द्वारा अपचारी अभियंता को गवाहों से प्रति परीक्षण करने का अवसर भी दिया जायेगा। जांच अधिकारी द्वारा अपचारी अभियंता को साक्ष्य के अंतर्गत दिये गये अनियमिताओं की स्वीकार्यता के सम्बन्ध में आपत्ति प्रस्तुत करने का अवसर भी दिया जायेगा। जांच में साक्ष्य लेने की कार्यवाही पूर्ण हो जाने के पश्चात जांच अधिकारी अपचारी अभियंता को अपने बचाव में मौखिक /लिखित कथन प्रस्तुत करने हेतु स्थान, समय व तिथि निर्धारित करते हुए अपचारी अभियन्ता को यथोचित सूचित करते हुए अपचारी अभियन्ता का उत्तर प्राप्त किया जायेगा , जिसमें मौखिक व अभिलेखीय साक्ष्य सम्मिलित होंगे।

उक्त के अतिरिक्त अपचारी अभियंता को यह भी निर्देशित किया जाता है कि यदि व उक्त निर्धारित अवधि में अधिरोपित आरोप के सम्बन्ध में अपना लिखित उत्तर जांच अधिकारी को प्रस्तुत नहीं करता है तो यह माना जायेगा कि उसे आरोप के सम्बन्ध में कुछ भी नहीं कहना है तथा आरोप स्वीकार्य है और तदोपरान्त दण्डन प्राधिकारी / अनुशासनिक प्राधिकारी द्वारा जांच आख्या का गुण दोष के आधार पर परीक्षण कर तथा सम्यक निर्णय लेकर आदेश प्रख्यापित कर दिया जायेगा।

श्री राज्यपाल की आज्ञा से

आरोप पत्र अनुमोदित।

(जांच अधिकारी)

अपर आयुक्त (प्रशासन)

प्रयागराज मण्डल, प्रयागराज।

(दीपक कुमार)

प्रमुख सचिव,

आवास एवं शहरी नियोजन विभाग

उ०प्र० शासन

19. After serving the aforesaid chargesheet, the reply was submitted by the petitioner and the Enquiry Officer concluded the enquiry proceedings vide enquiry report dated 20-10-2022, which is evident that out of total three charges, charge nos. 2 & 3 were not found proved and the charge no. 1 is found proved, partly.

20. A bare reading of charge no. 1 is apparent that the documentary evidence in support of charge no. 1 is letter dated 22-07-2021, which is a show cause notice. The show cause notice dated 22-07-2021 is quoted in verbatim as under :-

वाराणसी विकास प्राधिकरण, वाराणसी

119/वि.प्रा./उपा./2021-22

दिनांक: 22/07/2021

कारण बताओ नोटिस

श्री आनंद कुमार अस्थाना,

अवर अभियंता- प्रवर्तन (नगवां वार्ड)।

अधोहस्ताक्षरी द्वारा 21.07.2021 को औचक स्थल निरीक्षण के दौरान आपके अधीनस्थ कार्यक्षेत्र वार्ड नगवा में प्रधानमंत्री आवास योजना कुरुहुआ के आस-पास एवं कार्यस्थल तक पहुंच मार्ग, अखरी रोड, चुनार रोड, अवलेशपुर, चित्तईपुर एवं अन्य मुख्य मार्गों पर 100 से अधिक संख्या में भवनों का निर्माण कार्य गतिमान पाया गया। प्रथम दृष्ट्या ये समस्त निर्माण कार्य प्राधिकरण से अनुमति प्राप्त किए बिना अवैध रूप से गतिमान प्रतीत हो रहे हैं। आपके कार्यकाल में अधीनस्थ नागवां वार्ड / क्षेत्र में अवैध निर्माणों में अप्रत्याशित वृद्धि हुयी है तथा वार्ड / प्रवर्तन अवर अभियंता के रूप में आप द्वारा शिकायतों एवं अवैध निर्माणों पर प्रभावी कार्यवाही कर निस्तारण नहीं किया जा रहा है। आपके उपरोक्त कृत्य से स्पष्ट है कि प्रवर्तन अवर अभियंता के रूप में अपने विभागीय कर्तव्यों एवं दायित्वों के निर्वहन एवं उच्चाधिकारियों द्वारा प्रदत्त दिशा निर्देशों के अनुपालन में लापरवाही एवं घोर उदासीनता बरती गयी है, जो अत्यंत खेद

का विषय है तथा उत्तर प्रदेश सरकारी सेवक आचरण नियमावली -1956 में निहित प्रावधानों के विपरीत है।

इस संबंध में 03 दिवस में अधोहस्ताक्षरी के समक्ष प्रकरणवार स्थलीय निरीक्षण के साथ कृत वैधानिक कार्यवाही की आख्या एवं इस आशय का लिखित प्रत्यावेदन प्रस्तुत करें कि आपके विरुद्ध अपने विभागीय कर्तव्यों एवं दायित्वों के निर्वहन एवं उच्चाधिकारियों द्वारा प्रदत्त दिशा निर्देशों के अनुपालन में लापरवाही एवं घोर उदासीनता बरतने के कारण क्यों न अनुशासनात्मक कार्यवाही संस्थित कर दी जाये।
संग्रहक निर्माण स्थलों के फोटोग्राफ्स ।

(ईशा दुहेन)

उपाध्यक्ष।

दिनांक:

प्रत्रांक: /वि.प्रा./उपा/2021-22

प्रतिलिपि - निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

1. सचिव।
2. प्रभारी अधिकारी-अधिष्ठान।
3. जोनल अधिकारी- नगवां ।
4. गार्ड फाइल।

(ईशा दुहेन)

उपाध्यक्ष।

21. From perusal of the show cause notice dated 22-07-2021, it is evident that the charges are not so grave in nature, which could lead to the major punishment, though, it has been pleaded by the opposite parties that on the show cause notice itself, a note was transcribed that 'the work of the petitioner is unsatisfactory', to which petitioner has vehemently controverted and stated that aforesaid noting was never intimated/served upon the petitioner. For the other reasons also, the show

cause notice cannot be a proof of any misconduct, unless a decision is taken, while affording the opportunity of hearing to such employee, more so, noting 'unsatisfactory' was also not intimated to the petitioner, as the opposite parties have failed to substantiate it, before this court.

22. So far as the disciplinary proceedings instituted against the petitioner under the U.P. Government Servant (Discipline and Appeal) Rules, 1999 (hereinafter referred to as 'Rules 1999'), are concerned, that has not been adhered to, as the Rule 7 of Rules, 1999, clearly prescribes that the charges framed, should be precised and clear and the chargesheet alongwith copy of the documentary evidence and the list of witnesses, if any, should be served upon the charged government servant. The Rule 7((iii) & (v) of the Rules, 1999, are quoted hereinunder :-

"(iii) The charges framed shall be so precise and clear as to give sufficient indication to the charged Government servant of the facts and circumstances against him. The proposed documentary evidence and the name of the witnesses proposed to prove the same alongwith oral evidence, if any, shall be mentioned in the charge-sheet.

(v) The charge-sheet, alongwith 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 charged Government servant shall be permitted to inspect the same before the Inquiry Officer."

23. The provisions are very clear in it's terms that documentary evidences and list of witnesses mentioned in the chargesheet, must be given to the delinquent, but, the said noting/order dated 29-07-2021, was never served to the petitioner,

though the same is very basis of charge no. 1 as on the basis of the same, the Enquiry Officer came to the conclusion that the charge no. 1 is partly proved.

24. Undisputedly, the said order dated 29-07-2021, is a noting/internal order, as it was not communicated to the petitioner and prior to passing of this order, no opportunity of hearing was afforded to the petitioner.

25. It's so long settled 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 and further, he must be given the copy of the documentary evidence mentioned in support of the charge. Further non supply of the documents/evidences mentioned in the chargesheet absolutely vitiate the enquiry proceedings.

26. This court is also aware about the Judgment and order, rendered in the case of Delhi Development Authority Vs. Hello Home Education Society, reported in (2024) 3 Supreme Court Cases, 148, wherein, in paragraph no. 19.7, it has been held as follows:-

"19.7. The issue relating to internal notings as to whether it would confer any right or not has been adequately dealt with and settled by series of judgments of this Court. It is well settled that until and unless the decision taken on file is converted into a final order to be communicated and duly served on the party concerned, no right accrues to the said party. Mere notings and in-principle approvals do not confer a vested right. Relevant extracts from judgments of this Court in this regard are being reproduced hereunder.

(a) Bachhittar Singh [Bachhittar Singh v. State of Punjab, 1962 SCC OnLine SC 11 : AIR 1963 SC 395] : (AIR p. 398, paras 9-10)

"9. The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does

not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. ...

10. ... Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be regarded as anything more than provisional in character."

27. Hon'ble Supreme Court, in very clear words, has held that merely writing something on the file does not amount to an order. In fact, in the present matter, on the basis of the noting dated 29-07-2021, the Enquiry Officer had come to the conclusion that since the noting says that the work of the petitioner is unsatisfactory and therefore, he found that the charge no. 1 is partly proved, though the noting dated 29-07-2021, is not an order and even the same has never been served upon the petitioner and therefore, that cannot be treated as documentary proof against the petitioner and thus, the Enquiry Officer as well as the Disciplinary Authority are not only mistaken, but, they have ignored the settled proposition of law.

28. In view of the abovenoted submissions and discussions, the writ petition, is hereby **allowed**.

29. Consequently, the impugned punishment order dated 24-08-2023 is hereby quashed.

30. With all respect at my command to the settled law, there seems to be no substance in the charge

no. 1, as the same is based only on the show cause notice and a noting on the file thereof, which cannot be treated as documentary evidence as such, the same is of no consequence, therefore, for saving the petitioner from further humiliation and harassment, the charge no. 1 of the chargesheet dated 28-12-2021, is also hereby quashed.

31. Consequences shall follow.

Order Date :- 9.5.2024

AKS