

Court No. - 1

Case :- WRIT - A No. - 7531 of 2022

Petitioner :- U.P. Jal Nigam Thru. Chairman, Lko. And
Another

Respondent :- Pramod Kumar Bhukesh

Counsel for Petitioner :- Rishabh Kapoor, Krishna Kumar
Vishwakarma

Counsel for Respondent :- Raj Kumar Upadhyaya
(R.K.Upadhyaya)

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the petitioner and Sri Raj Kumar Upadhyaya, learned counsel for the respondent.

2. Petitioners have filed the present writ petition against the judgment and order dated 22.04.2022 passed by the State Public Services Tribunal, Lucknow (in short 'Tribunal') in Claim Petition No.856 of 2020 whereby the claim petition filed by the opposite party was allowed and the impugned dismissal order dated 09.05.2007 and the appellate order dated 01.05.2020 were set-aside with consequential service benefits.

3. The facts, in nutshell, of the the present case are that opposite party/Pramod Kumar Bhukesh working as Chief General Manager, Construction and Design Services (C&D.S) U.P. Jal Nigam, Ghaziabad was placed under suspension on 29.06.2005 by the Chairman, Board of Directors, U.P. Jal Nigam, Lucknow for some irregularities alleged to have been committed by him. The Enquiry Officer issued charge-sheet dated 02.07.2005 and supplementary charge-sheet dated 16.07.2005 to which opposite party submitted his reply on 20.09.2005 and 20.10.2005 respectively, denying the charges levelled against him. The enquiry officer, on the basis of reply

submitted by opposite party, concluded the enquiry and submitted the report on 30.12.2005 and 20.02.2006, holding the charged officer guilty of the charges levelled against him. The punishing authority issued show cause notice twice on 27.01.2006 and 10.02.2006, to which opposite party submitted his reply on 28.02.2006 and 13.03.2006, denying the charges and questioning the reports submitted against him. The reply of the opposite party was essentially left for was considered and he was dismissed from service by the competent authority/ Chairman of U.P. Jal Nigam vide order dated 09.05.2007.

4. Being aggrieved against the dismissal order, opposite party made a representation before the State Government on 18.05.2007. The State Government while suspending the punishment order, relegated the case of opposite party to the competent authority i.e. Chairman, U.P. Jal Nigam. In pursuance to the directions issued by State Government, the matter was placed before the Board of Directors in 148th meeting held on 27.08.2008 and a decision was taken to review the case of opposite party. Consequently, a fresh enquiry was conducted against the opposite party by the Enquiry Committee, which submitted its report on 21.01.2009, recommending the punishment to be given to other employees, who were involved in the same incident. Thereafter, a fresh order dated 02.03.2012 was passed whereby the opposite party was awarded a punishment of stoppage of two annual increments permanently alongwith special adverse entry.

5. Feeling aggrieved by the punishment order dated 02.03.2012, Claim Petition No.741 of 2012 was filed before the Tribunal. In the meantime, the Chairman vide order dated 26.07.2014, restored earlier punishment order dated 09.05.2007 and the opposite party preferred a departmental appeal against the order dated 26.07.2014, however, the same was rejected on

18.04.2016.

6. On being aggrieved, opposite party challenged the resolution dated 16.08.2012 and consequential orders dated 26.07.2014 and 18.04.2016 by filing Writ Petition No.1487 (S/B) of 2012 before this Court, which was dismissed vide judgment and order dated 10.10.2018. However, liberty was granted to the opposite party to challenge the original order of punishment dated 09.05.2007 by taking recourse to alternate legal remedy which may be available to him under law. Thereafter, the opposite party preferred a departmental appeal before the Board of Directors on 22/24.11.2018, which was rejected on 01.05.2020. Feeling aggrieved by the dismissal order dated 09.05.2007 and the appellate order dated 01.05.2020, opposite party filed Claim Petition No. 856 of 2020 which was allowed by the Tribunal vide impugned judgement and order, hence the present writ petition has been filed by the Jal Nigam

7. Learned counsel for the petitioners submits that the impugned orders dated 09.05.2007 and 01.05.2020 have been passed after affording due opportunity of hearing to the opposite party. He has submitted that on 29.06.2005, opposite party/ Pramod Kumar Bhukesh was suspended for the serious financial irregularities as were noticed from the Draft Audit Para 2002-2003, coupled with the preliminary enquiry report dated 30.10.2003. Opposite party was given an opportunity of personal hearing on 28.09.2005 and opportunity to cross examine the witnesses was also provided on 08.11.2005. It has been submitted by learned counsel for the petitioners that witnesses have not supported the case of opposite party. Out of six witnesses, three were officials of Jal Nigam and rest of three were Contractors. In the enquiry, the petitioners/U.P. Jal Nigam could not procure the presence of three contractors, as they were not the government employees.

8. On the other hand, learned counsel for opposite party has submitted that 15 persons, including opposite alongwith Sri Atul Krishna, the then Managing Director were prosecuted. The charges in the charge-sheet of Sri Atul Krishna and opposite party were identical and he was found guilty just like the opposite party, but Sri Atul Krishna was awarded only a warning on the analogy that no financial loss was caused to the U.P. Jal Nigam. Learned counsel for opposite party further submitted that all other employees, who were also involved in the incident, were given minor punishment but opposite party was awarded major punishment of dismissal which is excessive and not commensurate to the charges levelled against him. It was further argued by learned counsel for the opposite party that while awarding the punishment, pick and choose method has been adopted.

9. It has been submitted by learned counsel for the opposite party that negotiations were made on the point of rate of centage, which has been @ 12.5% of the total cost of work. The Noida Authority was not ready to give centage at the rate of 4.4% inasmuch as NBCC was already carrying out the work at the rate of 4.75% and the Agra Development Authority was doing at the rate of 4.5% and the U.P. Rajjkiya Nirman Nigam as well as the IRCON International was doing at the rate of 4.4% centage charges. The Board of Directors of U.P. Jal Nigam in its 106th meeting held on 11.07.2001, empowered the Director, C&DS to reduce the rate of centage in appropriate cases looking to the prevailing competition. Since power to take a decision to reduce the centage vested with the Board of Directors as well as the Managing Director, therefore, opposite party being an Engineer had no authority to take a decision regarding reduction of the rate of centage.

10. It has been submitted by learned counsel for opposite party

that opposite party has been punished on the charge that the U.P. Jal Nigam suffered financial loss, whereas the then Managing Director has been awarded only a warning with the note that no financial loss was caused to the Government. It has been submitted by learned counsel for opposite party that opposite party could not have awarded major punishment in view of the fact that a person, who was held responsible for taking decision, has been awarded a minor punishment, thus, there is an apparent discrimination in the punishment awarded to the opposite party viz-a-viz Managing Director which is evident on the face of record.

11. After hearing the learned counsel for the parties and going through the record, which reveals that the departmental proceedings were initiated against 15 persons including opposite party alongwith Sri Atul Krishna, the then Managing Director of the U.P. Jal Nigam, against whom identical charges were levelled and they were found guilty of the charges. While concluding the enquiry, Sri Atul Krishna was given only a warning by the competent authority with a note that no financial loss was caused to the U.P. Jal Nigam whereas other employees were also awarded minor punishment, but opposite party alone has been dismissed from service, which is clearly discriminatory and violative of Articles 14 and 16 of the Constitution of India. If the charge-sheet dated 29.06.2005 and the final order dated 01.03.2008 in respect of Atul Krishna, the then Managing Director are compared with the charge-sheet dated 02.07.2005 and the supplementary charge-sheet dated 16.07.2005 issued to the opposite party, we find that charges are identical; thus, the discrimination is apparent on the face of the record.

12. We further take note of the fact that in the departmental proceedings held against Sri Atul Krishna, it was mentioned

that no financial loss was caused to the U.P. Jal Nigam. This similarity by stretch of imagination can be disputed with reference of the opposite party. There is no role of opposite party in respect of fixing rate of centage; rather, it was the role of Sri Aul Krishna, the then Managing Director, who had taken a decision in pursuance of the direction of the Board of Directors. The opposite party, who was Chief Engineer was not competent to take a decision for less centage whereas Sri Atul Krishna was competent to take a decision for less centage.

13. We have gone through the impugned judgment and order passed by the Tribunal carefully, wherein the issue in hand has been dealt with by considering all the relevant evidence and material. We do not find any illegality or perversity in the judgment of the Tribunal. The petitioners have thus failed to make out a case for interference.

14. Accordingly, the writ petition being devoid of merits is accordingly **dismissed**.

(Brij Raj Singh, J.) (Attai Rahman Masoodi, J.)

Order Date :- 20.3.2024

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