

Court No. - 6

Case :- WRIT - A No. - 12275 of 2024

Petitioner :- Santosh Kumar

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Panchayat Raj Lko. And 3 Others

Counsel for Petitioner :- Sridhar Awasthi, Akhilesh Kumar Yadav

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Sri Sudeep Seth, Senior Advocate assisted by Sri Sridhar Awasthi for the petitioner and the Standing counsel for the respondents.
2. Learned counsel for the parties have been heard extensively and with the consent of the parties, the petition is being decided at the admission stage itself.
3. It has been submitted on behalf of the petitioner that when the petitioner was posted as Gram Panchayat Adhikari, Sitapur certain acts of misconducts are said to have been committed by him for which purpose decision was taken for holding inquiry against him. He was placed under suspension vide order dated 18.11.2022 and charge sheet was issued to the petitioner on 06.06.2023 leveling two charges relating to misappropriation of Government Funds and also for disobedience of the orders of higher officials.
4. The petitioner denied the allegations levelled against him by submitting reply on 13.09.2023. It has further been submitted that in fact no oral hearing was held by the inquiry officer though 15.09.2023 was fixed for oral submission of the petitioner but when he appeared to reply on the said date no proceedings took place. It has been submitted that on the basis of the reply submitted by the petitioner the inquiry officer has submitted his report to the disciplinary authority on 16.09.2023 pursuant to which a show cause of notice was given to the petitioner to which he has replied and subsequently the impugned order of punishment dated 11.12.2023 has been passed inflicting the petitioner with removal from the services and recovery of Rs.2,23,000/-.
5. While assailing the aforesaid order the petitioner has submitted that firstly the order is illegal, and arbitrary on the

ground that the same is in gross violation of principles of Natural Justice and also Rule 7 of U.P. Government Servants (Discipline and Appeal) Rules, 1999 (hereinafter referred to as the Rules of 1999) has been violated with impunity. He submits that it was incumbent upon the inquiry officer to have fixed date, time and place for inquiry and due opportunity of hearing should have been given to the delinquent government servant and oral inquiry should have been conducted which was not done by the inquiry officer. He submits that though date 14.09.2023 was fixed but on the said date, no transaction took place and this aspect of the matter was raised by the petitioner while filing appeal against the order of punishment before the appellate authority but the appellate authority has neither considered nor passed any order in this regard.

6. The second ground for assailing the impugned order of punishment is that major penalty i.e. penalty of removal from service has been inflicted upon the petitioner along with minor penalty for recovery of an amount of Rs. 2, 23, 000/-. In this regard, he submits that a bare perusal of rule 7 along with Rule 9 (e) of the Rules of 1999 would indicate that only single penalty could have been inflicted but the disciplinary authority has inflicted both the punishments in the same proceedings and, as such, the same would be illegal and arbitrary and contrary to the Rules of 1999. In support of his submissions he has relied upon the judgment of Supreme Court in the case of ***Union of India and another Vs. S.C. Parashar, 2006 (3) SCC 167.***

7. Learned Standing counsel, on the other hand, has opposed the writ petition and submitted that due opportunity of hearing was given to the petitioner where he has submitted reply to the charge sheet which was duly considered and even show cause notice was issued to him and after the submission of the inquiry report by the inquiry officer and after considering the reply submitted by the petitioner, the impugned order of punishment has been passed. With regard to infliction of major and minor penalties by means of the impugned order, he submits that the word used in Rule 3(4) is 'penalties' and consequently there is no infirmity in the disciplinary proceedings and also in the order of punishment imposing minor and major punishments on conclusion of the disciplinary proceedings.

8. I have heard the rival contentions and perused the record.

9. From a perusal of the impugned order of punishment, it is clear that the inquiry officer has narrated the charge leveled against the petitioner and also the reply submitted by him to the said charge and finally in a most cursory manner rejected the contentions of the petitioner only on the ground that he has

deposited the amount alleged to have been misappropriated by means of the demand draft taking it to be an admission of the guilt of the petitioner and only on this ground the inquiry officer has proceeded to hold him guilty of the charges levelled against him. The finding recorded by the inquiry officer would indicate that he has neither considered the reply submitted by the petitioner nor gave any reasons for rejection of the same.

10. It has been held by Supreme court as well as by this Court in number of cases that giving reasons is heartbeat of any order which discloses the ground of the charges concerned. Hon'ble the Supreme Court in **S.N. Mukherjee Vs. Union of India, (1991) 4 SCC 594, Kranti Associates (P) Ltd. & another v. Masood Ahmed Khan and others, reported in (2010) 9 SCC 496** has held that reasons recorded in any order are the soul of the order without which an order is clearly vitiated. The same view has been reiterated by this Court in the case of **Buddhraj Vs. State of U.P. and others** passed in Writ C No.1545 of 2017 and **Allahabad Bank Staff Association Thru Its General Secretary Vs. Presiding Officer Central Govt.Industrial Tribunal-Cum-Labour Court** passed in Writ C No.1004474 of 2010.

11. Accordingly, the inquiry officer did not considering the reply of the petitioner submitted by him and passed the order merely on the fact of deposit of the disputed amount with the government by means of the demand draft which was the only reason for inflicting punishment upon the petitioner which is clearly arbitrary. Apart from the above, the impugned order clearly discloses that no oral hearing had taken place during the entire proceeding held by the inquiry officer, as such, the same is illegal and arbitrary as per Rule 7 of Rules of 1999 and the said issue has been duly considered by Supreme Court in the case of **Satyendra Singh Vs. State of U.P. and another, 2024 SCCOnLine SC 3325** vide judgment and order dated 18.11.2024. The relevant observations have been made by the Supreme court in following paragraphs:

*"13. This Court in a catena of judgments has held that the recording of evidence in a disciplinary proceeding proposing charges of a major punishment is mandatory. Reference in this regard may be held to **Roop Singh Negi v. Punjab National Bank and Others** and **Nirmala J. Jhala v. State of Gujarat** and Another.*

14. In the case of **Roop Singh Negi**, this Court held that mere production of documents is not enough, contents of documentary evidence have to be proved by examining witnesses. Relevant extract thereof reads as under: -

“14. 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.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

...

19. The judgment and decree passed against the respondent in Narinder Mohan Arya case [(2006) 4 SCC 713 : 2006 SCC (L&S) 840] had attained finality. In the said suit, the enquiry report in the disciplinary proceeding was considered, the same was held to have been based on no evidence. The appellant therein in the aforementioned situation filed a writ petition questioning the validity of the disciplinary proceeding, the same was dismissed. This Court held that when a crucial finding like forgery was arrived at on evidence which is non est in the eye of the law, the civil court would have jurisdiction to interfere in the matter. This Court emphasised that a finding can be arrived at by the enquiry officer if there is some evidence on record. ...” (emphasis supplied)

15. Same view was reiterated in State of Uttar Pradesh v. Saroj Kumar Sinha, wherein, this Court held that even in an ex-parte inquiry, it is the duty of the Inquiry Officer to examine the

evidence presented by the Department to find out whether the un rebutted evidence is sufficient to hold that the charges are proved. The relevant observations made in **Saroj Kumar Sinha** are as follows: -

“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.

33. As noticed earlier in the present case not only the respondent has been denied access to documents sought to be relied upon against him, but he has been condemned unheard as the inquiry officer failed to fix any date for conduct of the enquiry. (In other words, not a single witness has been examined in support of the charges levelled against the respondent. The High Court, therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of the principles of natural justice and total disregard of fair play). The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge-sheet.” (emphasis supplied)."

12. From the aforesaid renditions of the Supreme Court, it is clear that holding of oral inquiry in compliance of provisions containing in Rule 7 of the Rules of 1999 is mandatory and not holding the same or fixing date, time or place where no transaction took place, also falls within the mischief of violation of Rule 7 and this aspect of the matter was raised by the petitioner by filing appeal before the appellate authority wherein in paragraph 11 of the appeal he has specifically stated that no direction was complied by the inquiry officer and fixing the date of 14.9.2023 was a sham and accordingly this aspect of the matter has not been dealt with by the appellate authority and he has evaded considering the submissions made by the petitioner and in this regard rejected his appeal

13. In the aforesaid circumstances, there is no dispute that the inquiry proceedings have been conducted in violation of Rule 7 of the Rules of 1999. It is noticed that no date, time or place

was fixed nor any oral inquiry held against the petitioner wherein the charges pertaining to imposition of major penalty are also found infirm. In support of his submissions he has also relied upon the judgment of the Supreme Court in the case of ***Union of India and another Vs. S.C. Parashar*** (Supra) where the penalty of removal and minor penalty of recovery of the amount has been inflicted upon the petitioner on the same ground imposing major and minor penalties which is impermissible as per the aforesaid judgment.

14. In light of the above, the writ petition is **allowed**.

15. The impugned order dated 22.8.2024 passed by opposite party No.3 and the order of punishment dated 11.12.2023 passed by opposite party No.4, as contained in Annexure No.s 1 and 2 to the writ petition, are set aside.

16. The matter is remitted back to the inquiry officer for conducting the inquiry afresh after the stage of submission of charge sheet.

17. It is made clear that the inquiry officer shall proceed to conduct the inquiry strictly in accordance with the Rules of 1999 and conclude the inquiry with expedition, say within a period of three months from the date a certified copy of this order is placed before the competent authority.

18. The petitioner undertakes to cooperate in the inquiry proceedings.

19. It is submitted that the petitioner was placed under suspension during the inquiry, he shall continue under suspension till conclusion of the disciplinary proceeding as directed by this Court herein-above.

(Alok Mathur, J.)

Order Date :- 18.12.2024
RKM.