



Reserved
A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 913 of 2022

Thakurdeen

.....Petitioner

Versus

State of U.P. and others

.....Respondents

Counsel for Petitioner : Mr. Adarsh Bhushan, Advocate

Counsel for Respondents : Ms. Monika Arya, Addl. Chief
Standing Counsel

Court No. - 42

HON'BLE J.J. MUNIR, J.

1. The petitioner, a Senior Assistant with the Department of Irrigation, Water Works Division, Jhansi, has challenged a multitude of orders passed against him, numbering a total of eleven, by the Chief Engineer (Nal Koop Madhya), Department of Irrigation, Lucknow, U.P. and the Superintending Engineer, Water Works Division, Jhansi. Initially, when the petition was instituted, ten orders passed by the two respondents above named, dated 12.10.2018, 16.03.2019, 01.04.2019, 12.06.2019, 13.06.2019, 19.07.2019, 31.07.2020, 05.09.2020, 01.10.2021 and 18.03.2021, were impugned. Later on, by amendment, the petitioner added to the cart of the orders impugned, the order dated 17.01.2023 passed by the Chief Engineer (Nal Koop Madhya), Department of Irrigation, Lucknow, U.P.

2. The petitioner was appointed as a Junior Assistant on 20.02.2009 with the Department of Irrigation, Water Works Division, Jhansi. He was promoted to the post of a Senior Assistant on 13.06.2016. The petitioner asserts that he is working to the satisfaction of the Department and its various officers. The

petitioner asserts that the various orders passed against him are the result of *mala fides* and personal grudge harboured against him by Ram Pratap Yadav, Superintending Engineer, Water Works Division, Jhansi. It is further pleaded by the petitioner that he has been targeted by the Superintending Engineer aforesaid to gratify his ego. It is for this reason that Ram Pratap Yadav has been impleaded *eo nomine* as respondent No.5.

3. The petitioner says that while posted as a Senior Engineer with the Water Works Division, Jhansi, he was not allotted work earmarked for that position. Accordingly, the petitioner requested the Superintending Engineer aforesaid that he may be allotted work meant for the post that he occupies. The aforesaid request was refused by the Superintending Engineer *vide* orders dated 11.06.2018, 12.06.2018 and 13.06.2018. The Superintending Engineer passed further orders dated 20.06.2018 and 11.10.2018, saying that the petitioner had not signed the attendance register on 09.10.2018 and 10.10.2018, and, on that account, required the petitioner by the orders last mentioned to submit his explanation. On the day following the order dated 11.10.2018, seeking the petitioner's explanation, the Superintending Engineer passed the first of the orders impugned dated 12.10.2018, awarding an adverse entry to the petitioner as a measure of penalty, without considering the petitioner's reply.

4. It is next pleaded that the Superintending Engineer, yet again, maliciously passed an order dated 15.11.2018, calling for the petitioner's explanation regarding his absence from duty on 15.11.2018. The petitioner submitted his explanation dated 16.11.2018, in response where to a memo dated 03.12.2018 was issued by the Superintending Engineer, addressed to the petitioner, saying that the language, in which the petitioner's reply was couched, was objectionable, unparliamentary and based on falsehood. It was remarked that his integrity appeared doubtful.

The petitioner was warned to be careful in future. This order is not under challenge.

5. The petitioner next says that the Superintending Engineer bears personal grudge against him and motivated by that, in the most arbitrary fashion, he issued show cause notices dated 12.02.2019, 06.03.2019 and 15.03.2019 to the petitioner, without any rhyme or reason, proposing disciplinary action against him on the ground of misconduct. On 16.03.2019, the Superintending Engineer carried out an inspection, where the petitioner along with two other employees were absent from duty. The Superintending Engineer passed an order on the same day i.e. 16.03.2019, withholding the petitioner's integrity under Rules 2 and 3 of the Uttar Pradesh Government Servant's Conduct Rules, 1956 (for short, 'the Rules of 1956') and awarded an adverse entry to him for the year 2018-19. The order dated 16.03.2019 is under challenge.

6. The Superintending Engineer further passed orders dated 30.03.2019 and 31.03.2019, saying that the petitioner was absent from duty for 10 hours 55 minutes. These orders are said to be highhanded and the product of malice and personal grudge, harboured by the Superintending Engineer against the petitioner. The Superintending Engineer then passed the third of the orders impugned, that is to say, the order dated 01.04.2019, withholding one day's salary, payable to the petitioner. He next passed another order dated 15.05.2019, followed by a show cause notice dated 01.06.2019, asking the petitioner to show cause for his misconduct on account of unlawful absence from duty. The Superintending Engineer then passed the fourth of the orders impugned, that is to say, the order dated 12.06.2019, awarding adverse entry to the petitioner for the year 2019-20.

7. The Superintending Engineer passed another of the impugned orders impugned, being an order dated 13.06.2019,

withholding a day's salary payable to the petitioner. The Superintending Engineer next passed orders dated 10.07.2020 and 29.07.2020, followed by a show cause notice dated 24.07.2020, calling upon the petitioner to reply and show cause. These three orders were again followed by the next of the orders impugned, that is to say, the order dated 19.07.2019, awarding an adverse entry in the petitioner's character roll.

8. The petitioner preferred a representation dated 01.08.2019 against the bad entry for the year 2018-19, described as a censure by the petitioner in paragraph No.18 of the writ petition. A representation against the bad entry was also filed to the Chief Engineer, respondent No.2, who passed the order impugned dated 31.07.2020, affirming the adverse entry awarded to the petitioner in his character roll.

9. It is next pleaded by the petitioner that the Superintending Engineer by his order dated 05.09.2020, also impugned, has awarded an adverse entry to the petitioner in his character roll for the year 2019-20, according to the petitioner, without authority of law. The petitioner says that the Superintending Engineer, by an order dated 01.10.2021, awarded yet another bad entry in the petitioner's character roll, holding his integrity doubtful for the year 2020-21 without authority of law. The order dated 01.10.2021 is also under challenge.

10. Aggrieved by the orders dated 31.07.2020 passed by the Chief Engineer (Nal Koop Madhya), Department of Irrigation, Lucknow, U.P., which are said to be two in number of the same date, the petitioner filed Writ-A No.10876 of 2020. This Court, *vide* order dated 03.12.2020, directed the petitioner's revisions dated 21.08.2020 and 14.09.2020 against the orders dated 31.07.2020 to be decided by the concerned Authorities in accordance with law, within a period of three months, from the date of production of a certified copy of the order passed by this

Court in the writ petition under reference. The Chief Engineer (Nal Koop Madhya), Department of Irrigation, Lucknow, U.P., *vide* his memo dated 18.03.2021, held the petitioner's representation dated 21.08.2020 against the order dated 31.07.2020 not worth consideration, since the issue had already been examined and decided. So far as the representation dated 14.09.2020 is concerned, it was said that it related to the adverse entry for the year 2019-20, which is being examined and necessary proceedings would be taken.

11. It appears that, apart from the various adverse entries that were awarded to the petitioner during the years 2018-19, 2019-20 and 2020-21 for the petitioner's acts of misconduct noticed by the Superintending Engineer, disciplinary proceedings were also instituted against him on 31.07.2020. A charge-sheet was issued to the petitioner, to which he submitted a reply. An inquiry report was submitted in the matter on 28.06.2022 and on its basis, the Engineer-in-Chief, Irrigation and Water Works Department, Government of U.P., Lucknow, passed an order dated 17.01.2023, punishing the petitioner with the award of a censure and withholding of two increments without cumulative effect (temporarily).

12. The order dated 17.01.2023 was passed during the pendency of this writ petition and, therefore, challenged by means of an amendment application, which this Court granted. Some pleadings were incorporated, including grounds and challenged to the last of the impugned orders, that is to say, the one dated 17.01.2023 passed by the Engineer-in-Chief.

13. It is in this manner that aggrieved by as many as eleven impugned orders, above described, this writ petition has been instituted by the petitioner.

14. Notice of motion was issued on 21.03.2022 and a counter affidavit filed on 30.04.2022. After the last of the impugned orders

was passed and amendment application granted on 08.08.2024, since respondent Nos.2 to 5 had already filed a counter affidavit to the amendment application, and, the respondents had answered the amended pleas subsequently incorporated, the petition was admitted to hearing on 08.08.2024. After hearing learned Counsel for the parties, judgment was reserved.

15. Heard Mr. Adarsh Bhushan, learned Counsel for the petitioner and Ms. Monika Arya, learned Additional Chief Standing Counsel on behalf of the State.

16. Mr. Adarsh Bhushan, learned Counsel for the petitioner, has advanced his submissions on behalf of the petitioner at great length and criticized the various orders impugned on their individual grounds, that are summarized hereinafter.

17. The impugned order dated 12.10.2018 awarding censure, according to the learned Counsel for the petitioner, has been passed by the respondents without considering the petitioner's replies dated 11.06.2018, 13.06.2018, 15.06.2018 and 21.06.2018. It is, thus, an order passed in violation of principles of natural justice. Regarding the impugned order dated 16.03.2019, it is argued that the petitioner was found absent on 15.11.2018 between 1.00 p.m. to 3.45 p.m., and, also, on 14.03.2019 between 11.15 a.m. to 1.15 p.m., but the allegation shows that respondent Nos.4 and 5, without calling for any explanation from the petitioner, have passed the order impugned, withholding the petitioner's integrity and giving him an adverse entry for the year 2018-19. The order is also criticized as one being in violation of natural justice.

18. About the next order impugned dated 01.04.2019, it is submitted by the learned Counsel for the petitioner that the petitioner is said to have absented from duty for five hours on 31.03.2019 and on this ground, punishment of stoppage of a day's and four hours' salary has been awarded, which is not one

of the contemplated penalties under the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 (for short, 'the Rules of 1999').

19. So far as the impugned order dated 12.06.2019 is concerned, it is submitted that it is about the petitioner's unauthorized absence on 11.06.2019, regarding which a punishment has been awarded to him, without calling for his explanation, showing the 5th respondent's *mala fides*. This order is one withholding the petitioner's integrity as doubtful and giving him a bad entry for the year 2019-20. Assailing the impugned order dated 13.06.2019, the submission is that the punishment awarded to the petitioner is stoppage of a day's salary, which is not one of the punishments prescribed under the Rules of 1999. It is also urged that this order, though one visiting the petitioner with adverse civil consequences, has been passed without opportunity of hearing.

20. The next order that falls in the line of criticism by the learned Counsel for the petitioner is the one dated 19.07.2019, awarding a bad entry in the petitioner's character roll and withholding his integrity as doubtful for the year 2018-19. It is submitted that this punishment has been awarded without calling for any explanation from the petitioner. The order is, therefore, said to be one in violation of the principles of natural justice.

21. Learned Counsel for the petitioner next submits that the order impugned dated 31.07.2020, rejecting the petitioner's representation dated 01.08.2019 by the Chief Engineer (Nal Koop Madhya), Department of Irrigation, Lucknow, U.P., affirming the adverse entry awarded to the petitioner in his character roll for the year 2018-19 by the Superintending Engineer, is manifestly illegal, inasmuch as the petitioner has not been supplied the comments/report of the Superintending Engineer, respondent No.4, with opportunity to make his submissions thereagainst, before

rejecting his representation dated 01.08.2019. It is submitted that the report of the Superintending Engineer, which is material adverse to the petitioner, has been considered by the Chief Engineer behind his back, while passing the impugned order, which renders it vitiated by malice in law. The impugned order dated 05.09.2020 has been assailed by the learned Counsel for the petitioner on ground that in awarding a bad entry in his Annual Confidential Report (for short, 'ACR') for the year 2019-20 and withholding his integrity, the Superintending Engineer lost sight of the fact that for the same misconduct, he has already been awarded a punishment *vide* order dated 13.06.2019, stopping a day's salary, which is not a punishment contemplated under the Rules of 1999. Still, learned Counsel would submit that giving him a bad entry and withholding his integrity for the same misconduct, regarding which he has been punished with stoppage of a day's salary, constitutes punishment twice over for the same wrong or misconduct. He has also urged that no opportunity has been given to the petitioner regarding the impugned order dated 18.03.2021.

22. It is urged that the petitioner's revision has been rejected by the Chief Engineer (Nal Koop Madhya) by almost a laconic order dated 18.03.2021 in a cursory manner without application of mind to the petitioner's grievance raised in the revision/ representation. It is next urged that the impugned order dated 01.10.2021 is bad in law because in awarding an adverse entry in the petitioner's character roll for the year 2020-21, his explanation has not at all been called, which shows the respondents' *mala fides*.

23. It is in the last submitted by the learned Counsel for the petitioner that the impugned order dated 17.01.2023 has been passed, awarding a censure to the petitioner and withholding two increments in consequence of proceedings of inquiry held in breach of Rule 7 of the Rules of 1999. Elaborating his submissions on this point, it is argued by the learned Counsel for

the petitioner that no date, time and place has been fixed by the Inquiry Officer for holding the inquiry, vitiating it. It is also urged that no documents have been supplied to the petitioner in order to enable him to answer the charge(s), as required by the Rules of 1999. Learned Counsel submits that the punishment awarded is absolutely illegal, being one in breach of the salutary principles, governing the holding of such inquiries and Rule 7 of the Rules of 1999. Learned Counsel for the petitioner has placed heavy reliance upon **Vijay Singh v. State of U.P. and others, (2012) 5 SCC 242** in aid of his submissions on multiple counts, challenging the various orders impugned, and those would presently be considered.

24. Ms. Monika Arya, learned Additional Chief Standing Counsel, has supported the orders impugned and submits that the petition is multifarious because different orders impugned, giving rise to distinct causes of action, have been challenged in one writ petition, which is impermissible. She has further argued that the orders impugned, awarding bad entries in the ACRs relating to the petitioner, are not really orders of punishment, but ones of annual appraisal and assessment of the employee's performance. These do not require opportunity to be given, like that in case of an order awarding punishment, major or minor. She has next submitted that so far as withholding of the petitioner's salary for a day is concerned, that is an order passed in the exercise of the employers' jurisdiction to deny wages to an employee, who does earn it by not working for the day. Ms. Arya has particularly defended the order dated 17.01.2023 on ground that the order impugned awards a minor penalty, and, therefore, this is not a case where Rule 7 of the Rules of 1999 would require a date, time and place of the inquiry to be fixed and notified by the Inquiry Officer to the parties. She submits that a minor penalty can be awarded on the basis of a simple show cause notice.

25. The first of the orders impugned, to wit, the one dated 12.10.2018, is not really an order, writing a bad entry as a matter of the employee's performance in his ACR. It is an order referring to a misconduct about the petitioner's rude behaviour with his superior and then punishing him with a censure to the effect that the petitioner's conduct is being censured for his indiscipline and rude behaviour. A censure entry, as distinct from a bad entry in the ACR, is one of the minor penalties contemplated under Rule 3(i) of the Rules of 1999. The procedure for imposing a minor penalty is envisaged under Rule 10 of the Rules of 1999. Rule 10 reads:

"10. Procedure for imposing minor penalties- (1) Where the Disciplinary Authority is satisfied that good and sufficient reasons exist for adopting such a course, it may, subject to the provisions of sub-rule (2) impose one or more of the minor penalties mentioned in Rule 3.

(2) The Government Servant shall be informed of the substance of the imputations against him and called upon to submit his explanation within a reasonable time. The Disciplinary Authority shall, after considering the said explanation, if any, and the relevant records, pass such order as he considers proper and where a penalty is imposed, reason thereof shall be given.

(3) The order shall be communicated to the concerned Government Servant."

26. The imposition of a minor penalty, therefore, requires the Disciplinary Authority to communicate the substance of the imputations against the employee granting him a reasonable time to submit his explanation. After the explanation is received or the opportunity forfeited, the Disciplinary Authority, after considering the explanation, if any, and the records, may pass orders that the said Authority considers appropriate. It is also a requirement of Rule 10 that reasons for imposing a minor penalty be given. It is, thus, evident that the imposition of a minor penalty provided under Rule 3(i) to (v) too requires adherence to the principles of natural justice, in particular, the furnishing of opportunity and giving of reasons. It is quite another matter that the more elaborate procedure for holding a departmental inquiry under Rule 7, where

a major penalty under Rule 3(i) to (iv), falling under the part, governing 'Major Penalties', is not required to be followed in cases of imposition of a minor penalty. *Ex facie*, the impugned order dated 12.10.2018 has been passed without any opportunity of hearing being afforded to the petitioner and it is definitely an order, punishing the petitioner for a misconduct imputed to him. The impugned order is, therefore, bad, first, on the principle of violating the rule of *audi alteram partem*, and, also being one made in breach of Rule 3(i) of the Rules of 1999, governing imposition of minor penalties on government servants, serving the State Government of Uttar Pradesh. The impugned order dated 12.10.2018 is, therefore, fit to be quashed with liberty to the respondents to pass a fresh order, after affording opportunity of hearing to the petitioner, if they so desire.

27. So far as the orders dated 16.03.2019, 19.07.2019 and 31.07.2020 are concerned, we propose to consider the validity of all the three orders together. All the three orders are grouped together to consider their validity because the subject matter in all the three orders are bad entries or adverse entries awarded to the petitioner for the year 2018-19. The order dated 31.07.2020 is an affirmation of the two orders by the Reviewing Authority, awarding adverse entries/ bad entries in the ACR upon the petitioner, assailing the award of those entries by the Reporting Authority. A perusal of the order dated 16.03.2019 indicates that the order directs the petitioner's integrity to be recorded as suspect/ withheld on ground of his misconduct, for speaking falsehood and unbecoming behaviour. It appears on a closer perusal of the order that the basis to withhold the petitioner's integrity and class it as suspect, is the petitioner's act of absenting from duty on 15.11.2018 without information to the petitioner from 1.00 p.m. to 3.45 p.m., and, again on 14.03.2019, from 11.45 a.m. to 1.15 p.m.

28. The other limb of the basis to withhold the petitioner's integrity is that when called upon to explain his absence, the

petitioner employed objectionable and unparliamentary language, founding his explanation on false and concocted facts. It is also noticed that baseless allegations were said to be made by the petitioner against the Superintending Engineer, the Authority who awarded the adverse entry dated 16.03.2019. The latter order dated 19.07.2019 shows that for the same period, that is to say, 2018-19, the petitioner was awarded an entry in his ACR, classifying him as bad or poor and his integrity doubtful. The precise words employed in the order dated 19.07.2019 are *Shreni – Kharab* and *Satyanishtha – Sandigdh*. A reading of the order dated 19.07.2019 together with the impugned order dated 16.03.2019 would show that doing an appraisal of the petitioner's performance, the Superintending Engineer, for acts of absenteeism and impertinent behaviour on the petitioner's part in employing unparliamentary language against his superiors when asked to explain, withheld the petitioner's integrity for the year 2018-19. By the latter order dated 19.07.2019, the respondents did a final appraisal of the petitioner's performance and finally rated his category as poor or bad in the ACR for the year 2018-19 and integrity suspect. The order passed on 19.07.2019 is also founded on the same material, may be incorporating some later events, where the petitioner has been found at fault for not doing duties assigned to him and his rude and impertinent behaviour. Both these orders or the last of them, finally awarding a bad entry to the petitioner in his ACR for the year 2018-19, has been affirmed by the Reviewing Authority *vide* the order impugned dated 31.07.2020.

29. So far as the petitioner's objection that before awarding these entries, the petitioner has not been called to give his explanation, which shows the respondents' *mala fides*, is concerned, it requires some profound consideration.

30. An entry in the employee's confidential roll is about his performance and rating done by the employers in the course of

his service during the relevant period of time. All that is required is that if the entry is adverse to the employee, it should be communicated to him, after it has been awarded. The essential purpose of writing an ACR, amongst others, is to enable the employee to know his shortcomings and improve upon them. Still, since these adverse entries in the ACR can have some impact on the employees' avenues of promotion etc., the employee has opportunity to represent against such entries to the Reviewing Authority, who may pass such orders, as he thinks fit, after appraising the record and the comments of the Authority, awarding the entry. Generally, adverse entries given by the employers in the ACR are not much open to intrusion in a secondary review done by Courts, except when the entry given is patently illegal or perverse. It is not for the Court to step into the shoes of the employers, who are the primary decision maker in the matter of grading and appraising the performance of their employees and revise those entries

31. Now, the question is if the employee is entitled to opportunity before an entry is awarded in his ACR, that rates him poor or is otherwise adverse to him. As a rule that is not the requirement for an adverse entry in the ACR, inasmuch as it is not a punishment awarded to the employee. But, there is an exception. ACRs are generally non-speaking and cryptic expressions of opinion about the employee, rating him as poor, good, very good, outstanding etc., or certifying his integrity or holding it suspect. No detailed reasons with reference to specific incidents, acts or omissions are mentioned in the ACR. If for some reason, an adverse assessment in the ACR is backed by specific instances of action or inaction attributed to an employee, opportunity of hearing him may become necessary. In cases, such as these, the imputations that then go in the ACR, partake of the colour of punishment or penalty, that is censured in the ACR. In such cases, as already remarked, the employee has the right to

be heard, may be not through a very elaborate procedure. In this context, we may refer to with profit to the decision of the Constitution Bench of the Supreme Court in **R.L. Butail v. Union of India and others, 1970 (2) SCC 876**. The decision was rendered in the context of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, and the award of the adverse entry in the ACR under Rule 11 of those Rules. In **R.L. Butail (supra)**, it has been held:

"12. On March 3, 1961, an office order was issued by the Commission which superseded all instructions issued previously on the subject of maintenance of confidential reports. This order applied to all officers of the Commission, gazetted and non-gazetted, and also to its subordinate offices. The order once again recites the importance of preparing and maintaining confidential reports. Rule 4 requires that such a report should contain an appreciation of the general qualities of the Government servant such as integrity, intelligence, keenness, industry, tact, attitude towards his superiors and subordinates, relations with fellow employees, work-attitudes, etc. and also "a summing-up" in general terms of the government servant's good and bad qualities and a categorisation or rating such as "Outstanding", "Very good", "Good", "Fair", or "Poor". Such a categorisation is, however, not necessary in the case of officers of or above the rank of Superintending Engineer. Rule 10 expressly provides that the reporting authority is not required to give any specific instances of his good or bad work or conduct upon which the opinion is based. Rule 28 provides that while communicating an adverse remark to the concerned government servant the substance of such report and not its actual wording need be conveyed. That is because the primary object of such communication is, firstly, that the concerned government servant may remedy his defects, and secondly, that it should serve as a timely warning to the government servant of such defects which might otherwise deprive him of chances of promotion in future. Rule 32 entitles a government servant to make a representation. Such representation would be examined by an officer superior in rank to the reviewing officer. That officer would either reject the representation or alter the remark where he thinks necessary and in the event of his finding that the remark is actuated by malice or is incorrect or unfounded, he would expunge it. Rule 34 provides that adverse entries relating to any specific incident will not ordinarily find place in the confidential record. But, where a warning is

issued as a result of any specific incident, a copy thereof will ordinarily be kept in the personal file of the government servant concerned. In that case he has to make a specific order to that effect. But before making such an order he must give to the concerned government servant a reasonable opportunity to present his case relating to the incident. In case departmental proceedings are instituted as a result of such an incident and a formal punishment, such as censure, is awarded, a copy of the order of such punishment should invariably be placed in the confidential record of the government servant.

13. These rules abundantly show that a confidential report is intended to be a general assessment of work performed by a government servant subordinate to the reporting authority, that such reports are maintained for the purpose of serving as data of comparative merit when questions of promotion, confirmation, etc. arise. They also show that such reports are not ordinarily to contain specific incidents upon which assessments are made except in cases where as a result of any specific incident a censure or a warning is issued and when such warning is by an order to be kept in the personal file of the government servant. In such a case the officer making the order has to give a reasonable opportunity to the government servant to present his case. The contention, therefore, that the adverse remarks did not contain specific instances and were, therefore, contrary to the rules, cannot be sustained. Equally unsustainable is the corollary that because of that omission the appellant could not make an adequate representation and that therefore the confidential reports are vitiated."

(emphasis by Court)

32. Here, a perusal of the impugned orders dated 16.03.2019 and 19.07.2019 shows that the Superintending Engineer has relied upon specific instances of unauthorized absence, exhibition of rude behaviour, *vis-a-vis* superiors etc., as the basis for awarding the impugned ACR for the year 2018-19. It is on account of these specific instances that the law would entitle the petitioner to an opportunity of hearing before he is rated bad or poor in the ACR for the relevant year. This is the principle laid down by the Constitution Bench in **R.L. Butail**.

33. There is another feature and a distinct part to the orders impugned dated 16.03.2019 and 19.07.2019, awarding an adverse entry to the petitioner for the year 2018-19.

34. What we notice is that, apart from rating the employee as poor or bad, his integrity has been held suspect *vide* order dated 19.07.2019, after being withheld by the order dated 16.03.2019.

35. In order that an employee's integrity may be classed as suspect, there must be some act of immorality, like financial dishonesty or other moral turpitude, affecting the employee's character before his integrity can be classed as suspect. Here, the conduct of the employee, appraised during the financial year 2018-19, shows a case of unauthorized absence from duty for two days, for some hours of the duty time, and then, employment of rude or impertinent language by the employee in his written and oral address to the competent officer of the employers. The other is about not performing his assigned duties when asked to do those by the Superintending Engineer. The petitioner's conduct again, in using unparliamentary language and threatening the Superintending Engineer, may be instances of insubordination, but certainly not anything to do with integrity. If every word of the imputations against the petitioner, that have been the subject matter of appraisal in passing the orders impugned dated 16.03.2019 and 13.06.2016, is regarded as truthful, a case of withholding integrity or regarding it as suspect, is not made out by any standard. The part of the adverse entry in the ACR, which by the first order, withholds the petitioner's integrity, and by the latter order, classes it as suspect, is the result of a perverse conclusion. Reference in this regard may be made to **Vijay Singh** (*supra*) relied upon by the learned Counsel for the petitioner, where it was held:

"17. In such a fact-situation, the subordinate officer has to face the adverse consequences without any fault on his part. The grievance raised by the appellant that recording the past criminal

history of an accused is relevant in non-bailable offences only as it may be a relevant factor to be considered at the time of grant of bail, and he did not record the same as it was a bailable offence, has not been considered by any of the authorities at all. Undoubtedly, the statutory authorities are under the legal obligation to decide the appeal and revision dealing with the grounds taken in the appeal/revision, etc. otherwise it would be a case of non-application of mind.

18. The present case shows dealing with the most serious issues without any seriousness and sincerity. Integrity means soundness of moral principle or character, fidelity, honesty, free from every biasing or corrupting influence or motive and a character of uncorrupted virtue. It is synonymous with probity, purity, uprightness, rectitude, sinlessness and sincerity. The charge of negligence, inadvertence or unintentional acts would not culminate into the case of doubtful integrity."

(emphasis by Court)

36. We are, therefore, of considered opinion that the impugned orders dated 16.03.2019, 19.07.2019 and 31.07.2020, insofar as these direct withholding of integrity and classifying it as suspect, are bad in law. The consequence would be that the impugned orders 16.03.2019, 19.07.2019 and 31.07.2020, insofar as these rate the employee as poor or bad in his ACR, would have to be quashed with liberty to the respondents to pass a fresh order, after granting reasonable opportunity of hearing to the petitioner in regard to the specific incidents, on the foot of which he has been rated adversely. The other part of these impugned orders, where the petitioner's integrity was earlier withheld and then opined to be suspect, must be quashed altogether.

37. We next turn to the impugned orders dated 01.04.2019 and 13.06.2016, the validity of both of which can be tested together, as the same point is involved. These orders direct the withholding of a day's salary on two occasions, covered by the two orders impugned. It is trite law that a punishment, that can be awarded, is only one, which the Rules provide. The punishment, to be meted out to an employee by the employers for a defined

misconduct, is not something for the employers' fancy or innovation. Only that punishment can be awarded, which the rules provide; not anything different. In **State of U.P. and others v. Madhav Prasad Sharma, (2011) 2 SCC 212**, which was a case arising under the Uttar Pradesh Subordinate Police Officers/ Employees (Punishment and Appeal) Rules, 1991, the Supreme Court held:

"16. We are not concerned about other rules. The perusal of major and minor penalties prescribed in the above Rule makes it clear that "sanctioning leave without pay" is not one of the punishments prescribed, though, and under what circumstances leave has been sanctioned without pay is a different aspect with which we are not concerned for the present. However, Rule 4 makes it clear that sanction of leave without pay is not one of the punishments prescribed. Disciplinary authority is competent to impose appropriate penalty from those provided in Rule 4 of the Rules which deals with the major penalties and minor penalties. Denial of salary on the ground of "no work no pay" cannot be treated as a penalty in view of statutory provisions contained in Rule 4 defining the penalties in clear terms. Rule 7 empowers the Government or any officer of the police to award the punishment mentioned in Rule 4. Rule 8 provides for punishment of dismissal and removal. Thus the punishment of dismissal from the service is the punishment which has been awarded to the respondent in accordance with Rules 4 and 8 of the Rules. There is no question of awarding two punishments in respect of one charge."

38. In the present case under the Rules of 1999, all the penalties, that can be awarded to a government servant, are enumerated in Rule, which reads:

"3. Penalties

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed upon the government servants;

Minor Penalties

- (i) Censure;
- (ii) Withholding of increments for a specified period;
- (iii) Stoppage at an efficiency bar;

(iv) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of order;

(v) Fine in case of persons in holding Group D posts;

Provided that the amount of such fine shall in no case exceed twenty five percent of the months pay in which the fine is imposed.

Major Penalties

(i) Withholding of increments with cumulative effect;

(ii) Reduction to a lower post or grade time scale or to a lower stage in a time scale;

(iii) Removal from the service which does not disqualify from future employment;

(iv) Dismissal from the service which disqualify from future employment.

Explanation- The following shall not amount to penalty within the meaning of this rule, namely:

(i) Withholding of increment of a Government Servant for failure to pass a departmental examination or for failure to fulfill any other condition in accordance with the rules or orders governing the service;

(ii) Stoppage at the efficiency bar in the time scale of pay on account of ones not being found fit to cross the efficiency bar;

(iii) Reversion of a person appointed to probation to the service during or at the end of the period of probation in accordance with the terms of appointment or the rules and orders governing such probation;

(iv) Termination of the service of a person appointed on probation during or at the end of period of probation in accordance with the term of the service or the rules and order governing such probation."

39. A perusal of Rule 3 of the Rules of 1999 would show, particularly the part relating to minor penalties, that there is no penalty envisaged there, which may authorize the respondents to withhold one day's salary for unauthorized absence of an employee. Unauthorized absence may be a misconduct, which may entail punishment under the Rules of 1999, but punishment, depending upon the gravity of the misconduct proved, has to be one that is enumerated in Rule 3 of the Rules of 1999. As such,

the impugned orders dated 01.04.2019 and 13.06.2019, imposing the punishment of withholding a day's salary, are manifestly illegal.

40. The next to be considered is the validity of the impugned orders dated 12.06.2019 and 05.09.2020, both of which relate to the adverse entry awarded to the petitioner in his ACR for the year 2019-20. By the order impugned dated 12.06.2019, the petitioner has been awarded an adverse entry saying that his conduct is censured and integrity suspect. This entry has been made in the petitioner's ACR for the year 2019-20. By a later order dated 05.09.2020, the petitioner's integrity has been classed as suspect. The order dated 05.09.2020 is a sequel to the earlier order dated 12.06.2019. The later order rates the petitioner's category in his ACR for the year 2019-20 as bad or poor and his integrity suspect. The first of these orders was a tentative assessment made early during the year 2019-20, whereas the later order, that is to say, the one dated 05.09.2020, makes a final award of the petitioner's performance in his character roll. The order dated 12.06.2019 cites a specific instance for censuring the petitioner and withholding his integrity. The specific instance is an incident dated 11.06.2019, when the petitioner signed the attendance register for 10.06.2019 on 11.06.2019, while signing it for 11.06.2019 as well. The order says that the petitioner was absent from duty on 11.06.2019 as well. The petitioner's conduct was censured for his act of posting attendance on an antedated basis. Likewise, the latter order dated 05.09.2020, that rates the petitioner's category as poor and integrity suspect during the year 2019-20, is also based on specific instances of misconduct. It is mostly about signing the attendance register on 10.06.2019 and 11.06.2019, though absent from duty. There is also a remark in the order that he caused political pressure to be brought upon the respondents through his wife, instead of improving his conduct and performance. In substance, while finally awarding the

petitioner an adverse ACR for the year 2019-20 *vide* order dated 05.09.2020, rating his category as poor and integrity suspect, the respondents have relied upon specific instances of misconduct etc. It is not a non-speaking entry, founded on appraisal of the petitioner's performance. Both the impugned orders dated 12.06.2019 and 05.09.2020 are replete with reasons, censuring the petitioner's conduct and awarding him an adverse entry, both as regards his performance, category and integrity.

41. Learned Counsel for the petitioner is, therefore, right in his submission that this kind of an order ought not have been made without affording the petitioner opportunity of hearing. This is the principle laid down by the Constitution Bench of the Supreme Court in **R.L. Butail**. Both the orders impugned dated 12.06.2019 and 05.09.2020 would have to be quashed with liberty to the respondents to pass fresh orders, both as to the petitioner's performance, category and integrity. We may remark here that in case of the orders dated 12.06.2019 and 05.09.2020, we have not examined the issue, whether the misconduct attributed to the petitioner, comes within the mischief of shadowing his integrity.

42. The next order to be considered is the order dated 18.03.2021 of the Superintending Engineer, rejecting the petitioner's revisions/ representations dated 31.08.2020 and 14.09.2020 in compliance with the orders of this Court dated 03.12.2020. One of the representations, that is to say, the one dated 31.08.2020, had already been considered and decided, calling for no further action, and about the other representation dated 14.09.2020, relating to the adverse entry for the year 2019-20, the same is shown to be still under consideration.

43. So far as the impugned order dated 18.03.2021 is concerned to the extent that this order discards the petitioner's representation dated 31.08.2020 on the ground that the issue had already been decided *vide* order dated 31.07.2020, the same

cannot be upheld because we have quashed the order dated 31.07.2020 with liberty to the Reporting Authority to pass fresh orders regarding the petitioner's ACR for the year 2018-19 relating to his performance entry, after affording opportunity of hearing. Also, we have quashed the order dated 31.07.2020 as also the orders of the Reporting Authority for the year 2018-19, insofar as these class the petitioner's integrity as suspect absolutely and without any liberty for further inquiry or fresh orders. In the fitness of things, we are of opinion that the order dated 18.03.2021 passed by the Chief Engineer (Nal Koop Madhya), Department of Irrigation, Lucknow, U.P., deserves to be quashed to the extent it relates to the petitioner's representation dated 31.08.2020, disposed of by the order dated 31.07.2020 and since quashed by this judgment.

44. The next order under challenge is the order dated 01.10.2021. It awards an adverse entry to the petitioner in his ACR for the year 2020-21. It rates the petitioner as bad or poor rating him, in Hindi as follows: *Shreni – Kharab*. A perusal of the impugned order dated 01.10.2021 reveals that the material on which the Reporting Authority has acted, is to the effect that the petitioner had misbehaved with a colleague of his one Santosh Kumar Tripathi, regarding which the latter had complained through his complaint dated 29.04.2020. The petitioner's explanation was sought by the Superintending Engineer *vide* memo dated 04.05.2020 within three days. In reply, the petitioner had expressed himself in words of taunt and acknowledging whatever he had said. The conduct was regarded by the Superintending Engineer as an act of indiscipline, violating official propriety and decorum, besides gross disobedience of official directions. On the totality of the material, he was rated as poor in the ACR for the year 2020-21. Now, there is objective material available, on the basis of which the Reporting Authority arrived at a subjective satisfaction to rate the petitioner 'poor'. There is no good ground for

this Court to interfere with that conclusion of the Superintending Engineer in the exercise of our jurisdiction under Article 226 of the Constitution. We are, therefore, minded to uphold the order dated 01.10.2021.

45. This takes us to the last of the orders impugned, that is to say, the one dated 17.01.2023. By this order, the petitioner has been punished on as many as five charges and awarded punishment of withholding two increments, without cumulative effect (temporarily), besides award of censure. This order has been passed after departmental proceedings were initiated under the Rules of 1999 and charge-sheet issued. It does appear that some major penalty was in the respondents' contemplation and it is for this reason that a regular departmental inquiry was convened with the issue of a charge-sheet. But, upon conclusion of proceedings, the Disciplinary Authority found it to be a case, which did not call for the imposition of a major penalty, as it seems, and proceeded to award the penalty of withholding two increments without cumulative effect and a censure. Now, both these punishments are minor penalties within the meaning of Rule 3 of the Rules of 1999. None of them is a major penalty.

46. The learned Counsel for the petitioner has assailed the impugned order dated 17.01.2023 on the ground that no date, time and place for holding the inquiry was fixed or intimated to the parties. It is true that in a departmental inquiry, both salutary principle and Rule 7 of the Rules of 1999 mandate the scheduling of a date, time and venue by the Inquiry Officer and its due intimation to the delinquent as well as the establishment. The said rule, however, is applicable in a case, where a major penalty is likely to be imposed. May be in this case, it was likely to be imposed, but it was not in fact imposed. What was imposed are minor penalties. Minor penalties have a far shorter procedure of giving the delinquent a show cause notice and seeking his explanation, after considering which, orders may be passed,

disposing of the proceedings, may be punishing the delinquent with one or more minor penalties. If, therefore, after commencing a regular inquiry, post issue of a charge-sheet, the employers do not proceed to award a major penalty, and, instead, inflict a minor penalty within the meaning of Rule 3 of the Rules of 1999, the failure to adhere to the letter of Rule 7 in holding the inquiry, would in no way vitiate the outcome. The reason is that for a minor penalty, a far more summary procedure of simply issuing a show cause notice is envisaged under Rule 10 of the aforesaid Rules. The requirements of Rule 10 have been satisfied within the fold of the proceedings taken by the respondents, and in fact, much more than that while passing the order impugned dated 17.01.2013. The said order cannot, therefore, be faulted.

47. In the result, this petition succeeds and is **allowed in part**. The impugned order 12.10.2018, the orders dated 16.03.2019, 19.07.2019 and 31.07.2020, the orders dated 01.04.2019 and 13.06.2019, 12.06.2019, 05.09.2020 and the order dated 18.03.2021 passed by the respondents to the extent indicated in the body of the judgment alone are hereby **quashed**. The orders dated 01.10.2021 and 17.01.2023 are hereby **upheld** and the writ petition dismissed to that extent.

48. Consequences to follow.

49. There shall be no order as to costs.

(J.J. Munir,J.)

September 23, 2025

Anoop