



2025:AHC:111479

Neutral Citation No. - 2025:AHC:111479

Court No. - 4

Case :- WRIT - A No. - 795 of 2025

Petitioner :- Santosh Kumar Pandey

Respondent :- The State Of U.P. And Another

Counsel for Petitioner :- Shivendu Ojha, Sneh Pandey, Sr. Advocate

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar, J.

1. Heard Sri R.K. Ojha, learned Senior Advocate assisted by Ms. Geeta Saket, learned Advocate holding brief of Sri Shivendu Ojha, learned counsel for the petitioner and Sri Rahul Sahai, learned Additional Chief Standing Counsel.

2. A very short point arises for consideration by this Court as to whether in the matter of exercise of power of review under Rule 14 of the U.P. Government Servants (Discipline and Appeal) Rules, 1999, petitioner has stood discriminated against as review petitions of identically placed two employees *qua* final punishment of termination from service, were allowed whereas the review petition of the petitioner was got dismissed in a very cursory manner.

3. Present petitioner Santosh Kumar Pandey was awarded with the final punishment of dismissal from service which may not have barred the petitioner from seeking employment in future. From the order of punishment dated 05.07.2023 brought on record as Annexure No.1 to the petition, I find that petitioner was held to be guilty of the charges basically for not meeting the charges by submitting reply before the inquiry officer despite opportunities given to him. The charges were claimed to have amounted to misconduct within the meaning of Government Servants Rules, 1956. The charge was that petitioner despite upon being relieved on 25.06.2018 pursuant to the order of transfer dated 31.05.2018, failed to join at the transferred place and even upon being served with the notice dated 23.10.2023 to report for duty within three days, but he failed to report for duty even after six months which affected

the work of the Government in District Gorakhpur.

4. Since the petitioner failed to submit reply, the charges were held to be proved and ultimate penalty of dismissal from service was awarded. Petitioner applied for review of the decision of major penalty taking recourse to the provisions contained under Rule 14 of the Discipline and Appeal Rules, 1999 on 05.04.2024 taking a plea that the inquiry officer proceeded to submit report without fixing any date for oral inquiry to be held in the matter of disciplinary proceedings drawn as per procedure laid under Section 7 of the 1999 Rules and further that petitioner was never paid subsistence allowance and hence the action taken was also bad because the petitioner could not have participated in the inquiry for non-payment of subsistence allowance. Petitioner also referred to certain letters dated 01.06.2018, 28.06.2018, 11.07.2018, 16.07.2019, 31.07.2019 and 20.08.2019 for short request for examination and cross examination but the inquiry officer even negated those letters of Joint Development Commissioner, Gorakhpur dated 16.07.2019 and 01.08.2019. It is claimed that while the inquiry officer took notice of the two letters dated 16.07.2019 and 01.08.2019 but did not fix any date. Admittedly, it is a case where major penalty has been imposed and hence the Rules laying down the procedure, to be specific Rule 7 of 1999 Rules were required to be followed as the inquiry officer holds position of an adjudicatory authority. Inquiry officer is bound in law to evaluate and appreciate the evidence available before it and to record evidence of the delinquent employee as well as of the departmental witness *qua* the charges before it comes to conclude that delinquent charged officer was guilty of the charges.

5. Upon perusal of the inquiry report that has been brought on record along with the show cause notice as Anneuxre No.15 to the petition there is no recital to the effect that any date, time and place was fixed for the petitioner to appear before him to get his statement recorded.

6. It appears that inquiry officer acted more in haste to comply with the directions of the State authority contained in the letter dated 04.07.2019 and the directions of the High Court dated 28.05.2019 to conclude the inquiry instead of holding inquiry as per procedure meant and prescribed for under Rule 7 of the Rules 1999. It appears that inquiry officer led to conclude that non-reply to the chargesheet would amount to acceptance of the guilt and hence it will result in indicting charged officer *ipso facto*.

7. I am afraid, this is not the law applicable to disciplinary proceedings in service jurisprudence where the proceedings are governed under statute rule.

8. In the case of **Salahuddin Ansari v. State of U.P. & others, (2008) (4) ADJ 58**, the Court has very clearly held that oral inquiry is sine qua non in matter of disciplinary proceedings if drawn against the delinquent employee for major penalty. This Court in the case of Kishor Kumar v. State of U.P. and others (Writ - A No.- 10177 of 2019) decided on 9th October, 2023 has held vide paragraph 12 thus:

"12. In my above view, I find support in the division bench judgment of this Court in the case of Salahuddin Ansari vs. State of UP & ors; 2008 (4) ADJ 58, wherein the Bench has relied upon an earlier division bench judgment in the case of Subhash Chandra Sharma vs. Managing Director & anr, MANU/UP/0757/1999 in which it was held that imposition of penalty in the nature of major penalty without holding inquiry was bad. The said judgment came to be affirmed by Supreme Court in SLP as the SLP against the judgment stood dismissed on 16.08.2000. Citing the aforesaid judgment and another judgment of the Supreme Court in the case of State of UP & anr vs. T.P. Lal Srivastava; 1997 (1) LLJ 831, the Division Bench in the case of Salahuddin Ansari (supra) vide paragraphs 11, 13 and 14, held thus:

"11. A Division Bench of this Court in Subhash Chandra Sharma Vs. Managing Director & another, 2000 (1) U.P.L.B.E.C. 541, considering the question as to whether holding of an oral inquiry is necessary or not, held that if no oral inquiry is

held, it amounts to denial of principles of natural justice to the delinquent employee. The aforesaid view was reiterated in Subhash Chandra Sharma Vs. U.P. Cooperative Spinning Mills & others, 2001 (2) UPLBEC 1475 and Laturi Singh Vs. U.P. Public Service Tribunal & others, Writ Petition No. 12939 of 2001, decided on 06.05.2005.

13. The aforesaid exposition of law makes it clear that the delinquent employee has a right to defend himself at different stages. When the charge sheet is served upon him, he has a right to submit his reply and in case he does not submit reply, that itself would not amount to admission of guilt or that the charge stand proved. If the allegations are serious and may result in major penalty, the disciplinary authority may appoint Inquiry Officer. Such Inquiry Officer, thereafter would have to fix a date for oral evidence. At this stage the delinquent employee has a right to participate in the oral inquiry, examine witnesses, if produced by the department, and after the evidence of the department is completed, the delinquent employee may produce evidence in his defence. During the course of oral inquiry, the delinquent employee has right to participate at every stage and date and if there is any failure in participation on one or more occasions, the Inquiry Officer cannot deny him participation from the subsequent stage. The delinquent employee can participate at subsequent other stage also. The Inquiry Officer, after completion of oral inquiry, will submit its report after discussing the entire material and if any charge is proved, the disciplinary authority shall supply a copy of the inquiry report to the delinquent employee and he would again have a right to submit reply to the inquiry report.

14. Non holding of oral inquiry, therefore, is a serious flaw which vitiates the entire disciplinary proceeding including the order of punishment."

9. Thus a disciplinary proceeding *qua* charges that may invite major penalty, in the absence of oral inquiry is *per se* bad and, therefore, any consequential action pursuant thereto is liable to be held *void ab initio*. In other words, the Courts hold that in the matters where the rule contemplates full fledged inquiry inclusive of oral inquiry even in the cases where the replies to the chargesheet have not been submitted, it is imperative on the part of the inquiry officer to hold oral enquiry and, therefore, in the absence of oral

enquiry, inquiry report if submitted, it deserves to be quashed and so also the resultant action. In the case of **Satyendra Singh v. State of U.P. and another, 2024 SCC OnLine SC 3325**, the Supreme Court vide paragraphs 13, 14, 15 and 16 has held thus:

"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 (2009) 2 SCC 570 and Nirmala J. Jhala v. State of Gujarat (2013) 4 SCC 301.

14. In the case of Roop Singh Negi (supra), 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..."

15. Same view was reiterated in State of Uttar Pradesh v. Saroj Kumar Sinha (2010) 2 SCC 772, 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 unrebutted evidence is sufficient to hold that the charges are proved. The relevant observations made in Saroj Kumar Sinha¹³ 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 unrebutted 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."

16. In the case of *Nirmala J. Jhala* (supra, this Court held that evidence recorded in a preliminary inquiry cannot be used for a regular inquiry as the delinquent is not associated with it and the opportunity to cross-examine persons examined in preliminary inquiry is not given. Relevant extract thereof reads as under:-

"42. A Constitution Bench of this Court in *Amalendu Ghosh v. North Eastern Railway* [AIR 1960 SC 992], held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.

43. Similarly in *Champaklal Chimanlal Shah v. Union of India* [AIR 1964 SC 1854] a Constitution Bench of this Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. Preliminary inquiry may be held ex parte, for it is merely for the satisfaction of the Government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the Government as to whether a regular inquiry must be held. The Court further held as under : (AIR p. 1862, para 12)

"12. ... There must therefore be no confusion between the two enquiries and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of that article [, nor prior to that]."

44. In Narayan Dattatraya Ramteerthakhar v. State of Maharashtra [(1997) 1 SCC 299 : 1997 SCC (L&S) 152 : AIR 1997 SC 2148] this Court dealt with the issue and held as under:

"... a preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice of (sic) nor, remains of no consequence."

45. In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.

(emphasis supplied)

10. The principle of compliance of prescribed procedure and to act in the same manner as prescribed under the rules, is a well settled legal position in matters of discharge of duties by administrative authorities. In the case of **Tata Chemical Ltd. v. Commissioner of Customs (2015) 11 SCC 628** and **Krishna Rai v Banaras Hindu University (2022) 8 SCC 713**, it has been held that when a procedure is laid down to do a thing then it should be done in that manner alone.

11. Now turning to the order of review which is impugned in this petition, I find that like petitioner, one Arvind Kumar Jain was also held guilty of

the charges and upon review being preferred by him, the Governor has been pleased to review the decision of termination from service by only recording a finding to the effect that upon perusal of records, he finds that case for termination of service was not made out. The relevant paragraph of the order passed at the behest of the Governor dated 14.02.2024 is reproduced hereinunder:

उत्तर प्रदेश शासन

ग्राम्य विकास अनुभाग-1 संख्या-R-55/38-1-2024-560/2018

लखनऊ: दिनांक 14 फरवरी, 2024

कार्यालय-ज्ञाप

श्री अरविन्द कुमार जैन, तत्कालीन उपायुक्त (श्रम रोजगार), जनपद बांदा सम्प्रति "सेवा समाप्त" के विरुद्ध शासन के कार्यालय ज्ञाप दिनांक 21.06.2018 द्वारा स्थानान्तरित करते हुए उपायुक्त (श्रम रोजगार), बांदा के पद पर तैनात किया गया और आयुक्त, ग्राम्य विकास के पत्र दिनांक 25.06.2018 द्वारा कार्यमुक्त कर दिया गया, परन्तु इनके द्वारा उक्त पद पर योगदान नहीं किया गया। लगभग 06 माह का समय का व्यतीत होने के उपरान्त भी नवीन तैनाती के स्थान पर योगदान न करने आदि के लिए शासन के कार्यालय ज्ञाप संख्या-आर-280/38-1-2019-560/2018, दिनांक 20.02.2019 द्वारा निलम्बित कर अनुशासनिक कार्यवाही संस्थित करते हुये संयुक्त आयुक्त (प्रशासन), ग्राम्य विकास को जांच अधिकारी नामित कर शासन के एक अन्य पत्र संख्या-आर-281(1)/38-1-2019-560/2018, दिनांक 20.02.2019 द्वारा आरोप पत्र निर्गत किया गया।

2- तत्कम में संयुक्त आयुक्त (प्रशासन), ग्राम्य विकास द्वारा अपने पत्र संख्या-4039/वै०स० / सं०आ० (प्रा 0)/2019-20, दिनांक 26.08.2019 द्वारा जांच आख्या उपलब्ध करायी गयी, जिसमें अपचारी अधिकारी पर अधिरोपित आरोप को पूर्ण रूप से सिद्ध पाया गया। सिद्ध पाये गये आरोप के सम्बन्ध में शासन के पत्र संख्या -1456/38-1-2019-560/2018 दिनांक 18.09.2019 द्वारा अपचारी अधिकारी श्री अरविन्द कुमार जैन का अभ्यावेदन मांगा गया, तत्कम में अपचारी अधिकारी के पत्र दिनांक 03.01.2020 द्वारा अभ्यावेदन उपलब्ध कराया गया।

3- अपचारी अधिकारी के विरुद्ध संस्थित अनुशासनिक कार्यवाही में उ०प्र० लोक सेवा आयोग, प्रयागराज की सहमति के उपरान्त सिद्ध पाये गये आरोप, उनके द्वारा अपने पदीय दायित्वों, कर्तव्यों का निष्ठापूर्वक निर्वहन न करने, दिये गये दिशा निर्देशों का पालन न करने एवं कर्मचारी आचरण नियमावली के नियमों का घोर उल्लंघन किये जाने हेतु शासन के कार्यालय ज्ञाप संख्या-553/38-1-2021-560/2018, दिनांक 05.08.2021 द्वारा

श्री अरविन्द कुमार जैन को "सेवा समाप्ति" का दण्ड दिया गया।

4- शासन के उक्त दण्डादेश के विरुद्ध श्री जैन द्वारा प्रस्तुत प्रत्यावेदन दिनांक 12.10. 2023 द्वारा उ०प्र० सरकारी सेवक (अनुशासन एवं अपील) नियमावली-1999 के नियम-14 के अन्तर्गत पुनर्विलोकन (रिव्यू) किये जाने का अनुरोध किया गया तथा श्री अरविन्द कुमार जैन द्वारा मा० उच्च न्यायालय, लखनऊ बेंच में रिट याचिका संख्या-24842/2021 अरविन्द कुमार जैन बनाम उ०प्र० राज्य व अन्य योजित की गयी, जिसमें मा० उच्च न्यायालय द्वारा दिनांक 02.01.2024 को सुनवाई के पश्चात पारित आदेश का कार्यकारी अंश निम्नवत है :-

"In view of the above, without entering into merits of the case and with the consent of learned counsel for the parties, Respondent No.1 (Additional Chief Secretary, Rural Development, Civil Secretariat, U.P. Lucknow) is directed to consider and decide the Review Application dated 12.10.2023 pending against him in accordance with law expeditiously, say within a period of six weeks from the date certified copy of this order is placed before him.

With the aforesaid, the writ petition stands disposed of."

मा० उच्च न्यायालय के उक्त आदेश के अनुपालन में श्री अरविन्द कुमार जैन द्वारा दिनांक 06.01.2024 को पुनः प्रत्यावेदन शासन में प्रस्तुत किया गया।

5- प्रश्नगत प्रकरण में मा० उच्च न्यायालय द्वारा पारित उक्त आदेश दिनांक 02.01.2024 12.10. के कम में अपचारी अधिकारी द्वारा उपलब्ध कराये गये उक्त प्रत्यावेदन दिनांक 2023 एवं 06.01.2024 एवं पत्रावली में उपलब्ध जाँच आख्या तथा अन्य सुसंगत अभिलेखों के परीक्षणोपरान्त पाया गया कि राज्य चिकित्सा परिषद की संस्तुति दण्डादेश पारित करते समय होती तो अवश्य ही श्री जैन के विरुद्ध "सेवा समाप्ति" का दण्डादेश पारित किये जाने का औचित्य नहीं उत्पन्न होता। उक्त के दृष्टिगत उ०प्र० सरकारी सेवक (अनुशासन एवं अपील) नियमावली-1999 के नियम-14 के अन्तर्गत सम्यक विचारोपरान्त शासन के कार्यालय ज्ञाप संख्या-553/38-1-2021-560/2018, दिनांक 05.08.2021 द्वारा अपचारी अधिकारी पर अधिरोपित दण्ड "सेवा समाप्ति" को श्री राज्यपाल एतद्वारा समाप्त करती हैं।

(emphasis added)

12. In the matter of one Adesh Kumar, I find, when he preferred a review taking a plea that order of maximum penalty deserved to be reviewed and on the basis of the medical papers, his absence from leave between the period 23.09.2014 and 01.10.2015 be condoned as leave without pay, review came to be allowed. Vide paragraph 5, the reason to review the order terminating the service of that Adesh Kumar in the order of review

dated 06.09.2023 is reproduced hereinunder:

"4- अपचारी अधिकारी श्री आदेश कुमार द्वारा अपने प्रत्यावेदन दिनांक 31.07.2023 (द्वारा आयुक्त, ग्राम्य विकास, उ०प्र० के पत्र संख्या-2270/स्था०प्र०/2023 दिनांक 04.08.2023) के माध्यम से उपरोक्त दण्ड को समाप्त किये जाने के सम्बन्ध में पुनर्विचार किये जाने एवं ग्राम्य विकास विभाग में योगदान कराये जाने का अनुरोध किया गया है। प्रश्नगत प्रकरण में अपचारी अधिकारी द्वारा उपलब्ध कराये गये उक्त प्रत्यावेदन दिनांक 31.07.2023 एवं पत्रावली में उपलब्ध जॉच आख्या तथा अन्य सुसंगत अभिलेखों का सम्यक परीक्षण किया गया। परीक्षणोपरान्त उक्त प्रत्यावेदन में उल्लिखित उनकी चिकित्सीय विवशता के कारण योगदान नहीं कर पाने सम्बंधी तथ्यों / कथनों पर मानवीय दृष्टिकोण अपनाते हुए उ०प्र० सरकारी सेवक (अनुशासन एवं अपील) नियमावली 1999 के नियम-14 के अन्तर्गत पुनर्विचार कर शासन के कार्यालय ज्ञाप संख्या-178/38-1-2021-3563/2017 दिनांक 16.06.2021 द्वारा अपचारी अधिकारी पर अधिरोपित दण्ड सेवा से हटाने जो भविष्य में सेवा से निरहित नहीं करता हो" को श्री राज्यपाल एतद्वारा समाप्त करती है।

5- श्री आदेश कुमार, तत्कालीन खण्ड विकास अधिकारी, जनपद बुलन्दशहर को दिनांक 16.08.2017 से सेवा में इस शर्त के साथ बहाल कर योगदान कराये जाने की अनुमति प्रदान की जाती है कि दिनांक 16.08.2017 से अब तक की अवधि में ये किसी वृत्ति/ व्यापार में संलग्न नहीं है उक्त अवधि में वे किसी अपराध में सजा प्राप्त / जेल में निरुद्ध नहीं रहे हो तथा उक्त अवधि में उनके द्वारा विदेश यात्रा नहीं की गयी हो।

(emphasis added)

13. Thus, upon perusal of the reasonings assigned in both the orders, I find that the power of review has been exercised in a most casual manner just by referring to a fact that upon examination of the records and inquiry report and other connected material, petitioner/review applicant was found to be genuinely restrained from performing his duties for the period in question and hence the order deserved to be reviewed, however, in the case of petitioner where the petitioner had taken specific plea that oral inquiry was not held as per the procedure the reviewing authority hold that plea was fully met in the inquiry report by the inquiry officer and, therefore, review deserved to be rejected.

14. The order records that petitioner took the plea that for certain compelling and unavoidable circumstances, he could not have been reported for duty even upon being transferred, upon which plea the

inquiry has been conducted and report was submitted and hence punishment was awarded and that employee once transfer may not have right of choice posting and that petitioner was guilty of non-compliance of the transfer orders but rightfully, the inquiry officer instead of deciding his representations that were made by him on 13.05.2018, 01.06.2018 and 28.06.2018 disciplinary proceeding was instituted against him on 22.02.2019 and the plea further taken by the petitioner that he was not paid subsistence allowance though referred to in the order but there is no discussion upon the same, nor there is any consideration thereof more especially looking to the inquiry report in which there is no discussion of any material at all. Paragraph 6 of the order impugned is reproduced hereinunder:

"6- उल्लेखनीय है कि श्री सन्तोष कुमार पाण्डेय के उक्त पुनर्विलोकन प्रार्थना पत्रों दिनांक 05.09.2023, 01.02.2024, 05.04.2024 एवं दिनांक 30.05.2024 पर शासन स्तर पर समग्र रूप से विचार किया गया और यह पाया गया कि उक्त प्रार्थना पत्रों में ऐसा कोई बिन्दु निहित नहीं है, जिसे जांच अधिकारी द्वारा अथवा दण्डादेश पारित करने के पूर्व अनुशासनिक प्राधिकारी द्वारा विचारित न किया गया हो। इसके अतिरिक्त यह भी स्वयं सिद्ध है कि व्यक्तिगत सुनवाई हेतु अनेक अवसर प्रदान किये जाने के बावजूद श्री सन्तोष कुमार पाण्डेय द्वारा इन अवसरों का उपयोग नहीं किया गया। यह स्थिति भी उनके विरुद्ध सिद्ध अनुशासनहीनता के आरोप के कम में एक अन्य अनुशासनहीनता को ही स्थापित करती है।

(emphasis added)

15. Upon perusal of paragraph 6, it becomes apparent that the authority has not applied its mind to the review application. What discrimination in treatment appears to be is that in other two cases of Arvind Kumar Jain and Adesh Kumar the discretion is exercised without discussing inquiry report in those two cases and yet imposition of the major penalty has been reviewed, whereas, in the case of petitioner the order of dismissal from service without having any adverse impact in future has been maintained.

16. In my considered view, this is a clear case of the discrimination at the end of the State while I do not approve the manner in which order dated

14.02.2024 in the matter of Arvind Kumar Jain and 16.04.2023 in the matter of Adesh Kumar were passed reviewing the order of penalty, I equally do not approve the order passed at the behest of the Governor in the case of petitioner rejecting his review petition I may further observe that insofar as the Arvind Kumar Jain's case is concerned, he was also indicted in inquiry by the inquiry officer in the domestic inquiry and State proceeded to first punish him with the maximum penalty of dismissal from service like petitioner but it reviewed the penalty in that case. I may add here that in so far as the petitioner's case is concerned the entire procedure adopted by the inquiry officer was *de hors* the rules and hence, I quash the order passed at the behest of the Governor dated 09.11. 2024 and so also the order passed by the disciplinary authority imposing major penalty upon the petitioner dated 05.07.2023, the respondents are directed to give similar treatment as given to the petitioner Arvind Kumar Jain by reinstating petitioner in service.

17. However, in the event respondents decide to hold inquiry afresh in the matter of petitioner then the respondents should also review its order dated 14.04.2024 passed in the matter of Arvind Kumar Jain. So far as the payment of salary is concerned petitioner's period of service may be treated towards the post retirement dues and other dues including notional benefit etc. but petitioner would be entitled for condoning the same as leave without pay.

18. Appropriate order shall be passed by the appropriate authority within two months from the date of production of certified copy of this order.

Order Date :- 9.7.2025
S.A.