

Court No. - 4

Case :- WRIT - A No. - 56748 of 2010

Petitioner :- Ajay Kumar Singh

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Dharendra Singh, J. P. Singh

Counsel for Respondent :- C. S. C.

Hon'ble Ajit Kumar, J.

1. Heard Sri J.P. Singh, learned counsel for the petitioner and learned Standing Counsel for the State respondents.
2. By means of this petition filed under Article 226 of the Constitution, petitioner has challenged the order of punishment dated 14th May, 2002, whereby he has been awarded with a major penalty of withholding one increment with cumulative effect as well as the order passed by the appellate authority dated 26th March, 2007 and the order of court sitting in revision dated 5th April, 2010.
3. The sheet anchor of the arguments advanced by learned counsel for the petitioner is that the second show cause notice which was required to be issued to the petitioner after the submission of the inquiry report by the inquiry officer in the light of the judgment of Supreme Court in the case of **Managing Director, ECIL, Hyderabad and others v. B. Karunakar and others (1993) 4 SCC 727**. According to no show cause notice was issued to the petitioner, nor petitioner was supplied with a copy of the inquiry report to meet the findings returned by the inquiry officer and the disciplinary authority straightaway proceeded to pass order of punishment. It is submitted that this was a serious lacuna in the procedure followed in the matter of disciplinary proceedings initiated against the petitioner for imposition of a major penalty. It is contended that this procedure, therefore, was a flawed one and yet the appellate and revisional authority affirmed the order passed by the punishing authority without adverting to and addressing the said legal issue.
4. Learned counsel for the petitioner submits that in the above regard petitioner has made a clear statement of fact in paragraph 4 and 13 of the writ petition and yet the reply thereof in paragraphs 7 and 12 are very vague as averment has been made that the

petitioner was given an opportunity at every stage. It is contended that not only the averments in reply to the paragraphs of counter affidavit were quite evasive and vague, even these paragraphs are sworn on the basis of record and yet no record has been annexed along with the counter affidavit to demonstrate that the petitioner was at any point of time served with the show cause notice accompanied with the inquiry report.

5. It is contended further by learned counsel for the petitioner that even the order impugned passed by the disciplinary authority imposing major penalty does not discuss anywhere that a particular show cause notice was issued of the proposed punishment so as to invite explanation from the petitioner.

6. Learned Standing Counsel though sought to defend the orders impugned in this petition for the reasons assigned therein but could not demonstrate from the counter affidavit as to how and in what circumstances, the averments have come to be made in paragraph 12 that petitioner was afforded reasonable opportunity of hearing at every stage.

7. Learned Standing Counsel also could not demonstrate from any of the recitals contained in the order impugned that at any point of time, any show cause notice was issued to the petitioner of the proposed punishment.

8. Having heard learned counsel for the respective parties and having perused the records, I find that in paragraph 13 a very specific averment has come to be made to the effect that no show cause notice was issued to the petitioner. Relevant paragraph 13 of the writ petition is reproduced hereunder:

"13. That attention is drawn to latest judgment reported in 2010 (6) ADJ 47 Ram Dulare Giri Vs. Sub Divisional Magistrate, Bansi and others. Hon'ble High Court has held that on receipt of the enquiry report it is incumbent on the part of the Disciplinary Authority to supply copy of the enquiry report and all concerned materials relied upon by the Enquiry Officer to enable him to offer his defense, if any. Here in the given case Petitioner was not given enquiry report despite repeated requests. The Disciplinary Authority further failed to issue any show cause notice after receiving the enquiry report The Disciplinary Authority proceeded to pass the order impugned relying upon the findings recorded by the Enquiry Officer. Admittedly this was an ex parte material and Petitioner was not given any opportunity even to see the enquiry report. Thus the order impugned awarding punishment is vitiated."

(Emphasis added)

9. Reply to the above paragraph 13 has been given vide paragraph

12 of the counter affidavit in following terms:

"12. यह कि याचिका के प्रस्तर-13 में वर्णित कथन के प्रतिउत्तर में यह कहना है कि याची को आरोप पत्र के साथ प्रकरण से सम्बन्धित समस्त सुसंगत अभिलेख यथा साक्ष्य एवं बयानों की प्रति उपलब्ध कराया गया था तथा इनको प्रत्येक अवसर पर अपना पक्ष प्रस्तुत करने का अवसर प्रदान किया गया।"

10. Thus, from the averments made in paragraph 12 of the counter affidavit, it is clear that neither any date was mentioned about the opportunity being afforded to the petitioner, nor was there any mention of show cause notice ever issued to the petitioner. Once the averment has been made in the pleading part of the writ petition quite specific to the effect that no show cause notice was issued to the petitioner a specific reply was needed to be made at the end of the answering respondent that particular show cause notice was issued on a particular date and that the inquiry report also accompanied the show cause notice.

11. In view of the above, therefore, the averments made in paragraph 12 are not only vague but also are quite evasive as if respondent deliberately tried to shield the lacuna in a disciplinary proceeding that had been conducted against the petitioner. In the case of Managing Director, ECIL, Hyderabad (*supra*) vide paragraphs 61 to 64 the Supreme Court has held thus:

*"61. It is now settled law that the proceedings must be just, fair and reasonable and negation thereof offend Arts. 14 and 21. It is well settled law that principle of natural justice are integral part of Article 14. No decision prejudicial to a party should be taken without affording an opportunity or supplying the material which is the basis for the decision. The enquiry report constitutes fresh material which has great persuasive force or effect on the mind of the disciplinary authority. The supply of the report along with the final order is like a post mortem certificate with purifying odour. The failure to supply copy thereof to the delinquent would be unfair procedure offending not only Arts. 14, 21 and 311(2) of the Constitution, but also, the principles of natural justice. The contention on behalf of the Govt./management that the report is not evidence adduced during such enquiry envisaged under proviso to Article 311 (2) is also devoid of substance. **It is settled law that Evidence Act has no application to the enquiry conducted during the disciplinary proceedings. The evidence adduced is not in strict conformity with Indian Evidence Act though the essential principle of fair play envisaged in the Evidence Act are applicable. What was meant by 'evidence, in the proviso to Article 311 (2) is the totality of the material collected during the enquiry including the report of the enquiry officer forming part of that material. Therefore, when reliance is sought to be placed, by the disciplinary authority, on the report of the enquiry officer for proof of the charge or for imposition of the penalty, then it is incumbent that the copy thereof should***

be supplied before reaching any conclusion either on proof of the charge or the nature of the penalty to be imposed on the proved charge or on both.

62. Shri P.P. Rao obviously realising this effect, contended that the enquiry officer being a delegate of the disciplinary authority is not bound by the delegatee's recommendations and it is not a material unless it is used by the disciplinary authority. Therefore, the need for its supply does not arise and the principles of natural justice need not be extended to that stage as the officer/workman had opportunity at the inquiry. In support thereof he placed strong reliance on *Suresh Koshy George v. University of Kerala* [(1969) 1 SCR 317 : AIR 1969 SC 198] ; *Shadi Lal Gupta v. State of Punjab* [(1973) 1 SCC 680 : 1973 SCC (L&S) 293 : (1973) 3 SCR 637] ; *Hira Nath Misra v. Principal, Rajendra Medical College, Ranchi* [(1973) 1 SCC 805 : AIR 1973 SC 1260] ; *Satyavir Singh v. Union of India* [(1985) 4 SCC 252 : 1986 SCC (L&S) 1 : AIR 1986 SC 555] ; *Secretary, Central Board of Excise & Customs v. K.S. Mahalingam* [(1986) 3 SCC 35 : 1986 SCC (L&S) 374] and *Union of India v. Tulsiram Patel* [(1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985 Supp (2) SCR 131] . I am unable to agree with his contentions. Doubtless that the enquiry officer is a delegate of the disciplinary authority, he conducts the inquiry into the misconduct and submits his report, but his findings or conclusions on the proof of charges and his recommendations on the penalty would create formidable impressions almost to be believed and acceptable unless they are controverted vehemently by the delinquent officer. At this stage non-supply of the copy of the report to the delinquent would cause him grave prejudice. *S.K. George case* [(1969) 1 SCR 317 : AIR 1969 SC 198] renders no assistance. It is only an inquiry against malpractice at an examination conducted by the University under executive instruction. Therein the students were given an opportunity of hearing and they were supplied with all the material, the foundation for the report. The observations of the Bench of two Judges with regard to the theory of two stages in the Inquiry under Article 311 also bears little importance for the foregoing consideration in this case. It is already seen that this Court held that the inquiry from the stage of charge-sheet till the stage of punishment is a continuous one and cannot be split into two. The reliance in *Keshav Mills Co. Ltd. v. Union of India* [(1973) 1 SCC 380 : (1973) 3 SCR 22] is also of no avail. Therein it was pointed out that under Section 18-A of the I.D.R. Act there was no scope of enquiry at two stages and the omission to supply enquiry report, before taking the action, did not vitiate the ultimate decision taken. In *Shadi Lal case* [(1973) 1 SCC 680 : 1973 SCC (L&S) 293 : (1973) 3 SCR 637] Rule 8 of the Punjab Civil Service (Punishment and Appeal) Rules did not provide for the supply of copy of the report of an inquiry conducted by the fact finding authority before inquiry. It was held that the delinquent officer was supplied with all the materials and was given opportunity to make representation and the same was considered. The report did not indicate anything in addition to what was already supplied to him. Under those circumstances it was held that the principles of natural justice cannot be put into an iron cast or a strait-jacket formula. Each case has to be considered and the principles applied in the light of the facts in each case. The effect of the violation of the principles of natural justice on the facts of the case on hand needs to be considered and visualised. The effect of *Tulsiram Patel* [(1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985 Supp (2) SCR 131] ratio was considered by my brother Sawant, J. and it needs no reiteration. The reliance on *S.K. George case* [(1969) 1 SCR 317 : AIR 1969 SC 198] in *Tulsiram Patel* [(1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985

Supp (2) SCR 131] ratio renders no assistance in the light of the above discussion. Since Mahalingam case [(1986) 3 SCC 35 : 1986 SCC (L&S) 374] which was after the Forty-second Amendment Act, the need to supply second show-cause notice was dispensed with, regarding punishment and therefore, that ratio renders no assistance to the case. Hira Nath Misra case [(1973) 1 SCC 805 : AIR 1973 SC 1260] also is of no avail since the inquiry was conducted relating to misbehaviour with the girl students by the erring boys. The security of the girls was of paramount consideration and therefore, the disclosure of the names of the girl students given in the report or their evidence would jeopardise their safety and so was withheld. Accordingly this Court on the fact situation upheld the action of the Medical College. Satyavir Singh [(1985) 4 SCC 252 : 1986 SCC (L&S) 1 : AIR 1986 SC 555] ratio also is of no assistance as the action was taken under proviso to Article 311(2) and Rule 199 of the CCA Rules. The inquiry into insubordination by police force was dispensed with as the offending acts of the police force would generate deleterious effect on the discipline of the service. Asthana case [(1988) 3 SCC 600 : 1988 SCC (L&S) 869] was considered by my brother Sawant, J. in which the report was not supplied and it was upheld. It should, thus be concluded that the supply of the copy of the enquiry report is an integral part of the penultimate stage of the inquiry before the disciplinary authority considers the material and the report on the proof of the charge and the nature of the punishment to be imposed. Non-compliance is denial of reasonable opportunity, violating Article 311(2) and unfair, unjust and illegal procedure offending Articles 14 and 21 of the Constitution and the principles of natural justice.

(Emphasis added)

12. In view of the above, therefore, it is quite apparent that second show cause notice to the proposed punishment was never given to the petitioner, nor the copy of the inquiry report was supplied to the petitioner to offer his explanation.

13. In the circumstances, therefore, the entire proceedings from the stage of submission of inquiry report till the decision is taken by the disciplinary authority is liable to be held as a flawed one and thus the order of punishment passed by the disciplinary authority as well as order passed by the appellate authority and revisional authority deserve to be set aside and the matter deserves to be remitted to be decided afresh on the stage of submission of inquiry report.

14. Accordingly, the writ petition is allowed. The orders passed by the disciplinary authority dated 14th May, 2002, the appellate authority dated 26th March, 2007 and that of the revisional authority dated 5th April, 2010 are hereby quashed.

15. The matter is remitted to the disciplinary authority to issue a fresh show cause notice to the petitioner with consequential

benefits and since the petitioner's status shall continue to remain the same as it was on the date of passing of the order by the disciplinary authority. The disciplinary authority shall now be issuing a fresh show cause notice to the petitioner accompanied by the inquiry report to offer explanation from the petitioner and thereafter only disciplinary authority shall be taking final decision in the matter.

16. Cost made easy.

Order Date :- 6.5.2025

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