

Court No. - 4

Case :- WRIT - A No. - 2377 of 2024

Petitioner :- Dharm Dev Maurya

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Raghavendra Singh, Suvarna Singh, Upendra Singh

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar, J.

1. Heard Shri Vibhu Rai and Shri Upendra Singh, learned counsel appearing for the petitioner and learned Additional Chief Standing Counsel appearing for the State-respondent.

2. By means of this petition filed under Article 226 of the Constitution, petitioner has assailed the order dated 03.12.2020 passed by the Under Secretary, Government of Uttar Pradesh issuing him warning as a sequel to the disciplinary proceeding accepting the domestic inquiry report and directing for reinstatement of the petitioner revoking the order of suspension. Assailing the order dated 03.12.2020, three fold arguments have been advanced by learned counsel for the petitioner:

(A) Once the disciplinary authority has proceeded to accept the domestic inquiry report in which the delinquent employee was exonerated of the charges leveled in the charge sheet, there was no occasion for the respondent disciplinary authority to have issued warning to such delinquent employee as a consequence to the domestic inquiry;

(B) The disciplinary authority was not justified even in issuing warning without disagreeing with the findings of inquiry report submitted by the inquiry officer in the domestic inquiry and that

too without issuing any notice to the petitioner, delinquent employee to show cause as to why the domestic inquiry report may not be partially rejected to issue such a warning;

(C) There is no punishment as such prescribed under punishment and appeal rules namely Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 (hereinafter referred to as 'The Rule, 1999') either by way of minor penalty or major penalty and hence the order is bad for want of authority in law, inasmuch as for want exercise of lawful authority by the disciplinary authority.

Sufficient pleadings have come to be raised *qua* above grounds in various paragraphs of the petition and more specifically in paragraph nos. 46, 47, 48, 49 and 50 that run as under:-

"46. That the impugned order itself is non speaking order and the same is baseless and without any reason and the grounds and reasons as given by the petitioner in his representation dated 11.10.2022 as well as 11.11.2022 has not been considered and without considering the reasons and grounds in regard to cancel the 'Chetawani' against the petitioner has been decided.

47. That the said impugned order dated 24.05.2023 is not speaking and liable to be set aside.

48. That the impugned order dated 24.05.2023 is arbitrary and illegal.

49. That there is no reason and occasion to give the 'Chetawani' being no fault of the petitioner, however the inquiry report as well as request of the respondent no. 2 itself is clear that the petitioner is not guilty and as such he has been exonerated from all charges by the inquiry officer and letter of the respondent no. 2 to the respondent no. 2 in regard to revoking the suspension of the petitioner is very clear.

50. That the disciplinary authority cannot punish anyone without reason or material on record but in the present case the respondent has given the 'Chetawani' against the petitioner merely on the basis of surmises and conjectures, the said action of the respondent is illegal arbitrary and baseless and not sustainable in the eyes of law."

3. It is next contended by learned counsel appearing for the petitioner that in view of the Government order dated 27.09.2019 for the purposes of consideration of promotion and allotment of marks five marks may be deducted *qua* punishment of 'warning' issued to an employee. He contends further that according to

government order five marks could be deducted only for the warning issued but with a prior show cause notice, which discloses this aspect of the matter that every such warning needed to be issued only after a show cause notice. However, the order impugned is absolutely silent as there is no recital to the effect that petitioner was ever issued with the notice much less a show cause notice prior to 'warning' under the order impugned.

4. Defending the order assailed in the writ petition, learned Additional Standing Counsel submits that the disciplinary authority can always take a different view from the one taken by the domestic inquiry officer and the order impugned specifically assigns reasons for issuing warning to the petitioner. However, on the question of show cause notice he would concede that recitals in the order impugned do not refer to any such notice ever issued to the petitioner prior to passing of the order, inasmuch as in none of the paragraphs of counter affidavit a stand has been taken by the State-respondents that any notice was ever issued to the petitioner prior to passing of the order dated 03.12.2020. Insofar as reply to various paragraphs quoted above is concerned learned Standing Counsel has drawn attention towards paragraph nos. 28 & 29 to suggest that department has proceeded to place more reliance upon the order in meeting the arguments recorded in the relevant paragraphs.

5. Having heard learned counsel for the respective parties and having perused the material available on records, I find the points that arises for consideration of the court is, as to whether disciplinary authority is justified in issuing a 'warning' to the petitioner as a sequel to domestic inquiry while accepting the domestic inquiry report and directing for reinstatement of the petitioner and that too without giving any notice prior to issuing

such warning; and as to whether the disciplinary authority could have issued warning by way of punishment as a result of the domestic inquiry even though there is no such penalty prescribed under the relevant Discipline and Appeal Rules.

6. In order to find answer to the first point as to whether the authority could have issued or could have taken a different view from the one taken by the domestic inquiring authority, I see Rule, 1999 provides sufficient discretion to be exercised by the authority to take a different view from the one taken by the inquiry officer or even reject the findings returned by the inquiry officer in his inquiry report. However, the relevant provisions provide that either the disciplinary authority would order for re-inquiry by the same inquiry officer or shall appoint inquiry officer afresh or otherwise if it satisfied that no further inquiry is required may issue notice to the delinquent employee assigning reasons seeking for no explanation before taking different view from the one taken by the inquiry officer. The relevant provisions of the Rules (9) is reproduced hereunder:-

"9. Action on Inquiry Report- (1) The Disciplinary authority may, for reason to be recorded in writing, remit the case for re-enquiry to be same or any other Inquiry Officer under intimation to the charged Government Servant the Inquiry Officer shall thereupon proceed to hold the inquiry from such stage as directed by the Disciplinary Authority, according to the provisions of Rule 7.

(2) The Disciplinary Authority shall, if it disagrees with the finding of the Inquiry Officer on any charge, record its own finding thereon for reasons to be recorded.

(3) In case the charges are not proved, the charged Government Servant shall be exonerated by the Disciplinary Authority of the charges and inform him accordingly.

(4) If the Disciplinary Authority, having regard to its finding on all or any of charges is of the opinion that any penalty specified in Rule 3 should be imposed on the charge Government Servant, he shall give a copy of the inquiry report and his finding recorded under sub-rule (2) to the charged Government Servant and require him to submit his representation if he so desires, within a reasonable specified time. The Disciplinary Authority shall

having regard to all the relevant records relating to the inquiry and representation of the charge Government Servant, if any, and subject to the provisions of Rule 16 of these rules, pass a reasoned order imposing one or more penalties mentioned in Rule 3 of these and communicate the same to the charged Government Servant."

(Emphasis Supplied....)

7. From the perusal of the order impugned dated 03.12.2020, it does not transpire that the disciplinary authority proposed to disagree with the findings reached by the inquiry officer while issuing a show cause notice or while taking final decision. Insofar as the recitals contained in paragraph no. 3 of the order are concerned that petitioner was assigned duties in relation to Home-guard Office, Gautam Buddha Nagar and, therefore, even if he had not been found guilty of the charges but his dereliction in discharge of duties, are concerned, was apparent, it is a kind of finding that could have been returned only after disagreeing with the findings of the inquiry officer and that too by giving a notice in the nature of show cause as why in the given facts and circumstances petitioner may not be held guilty of negligence even though findings were to the contrary arrived by the inquiry officer. Comparing the finding part of the inquiry report in its concluding paragraphs and the one returned in paragraph no. 3 of the order impugned, I find the paragraph no. 3 of the order impugned runs absolutely in counter to the findings return by inquiry officer. Conclusion part of the inquiry officer's report dated 19.02.2020 as well as paragraph no. 3 of the order impugned are reproduced hereunder:-

Inquiry officers' conclusion:

"शासन द्वारा निर्गत अनुमोदित आरोप पत्र दिनांक 26.11.2019 एवं उसके साथ संगलग्न पढ़े जाने वाले साक्ष्य, श्री धर्मदेव मौर्य तत्कालीन मंडलीय कमांडेंट मेरठ सम्प्रति निर्लंबित सम्बद्ध होमगार्ड्स मुख्यालय, उत्तर प्रदेश लखनऊ द्वारा उपलब्ध कराई गयी आख्या दिनांक 30.12.2019 एवं संगलग्न साक्ष्यों व ऊपर वर्णित जांच आख्या आदि के विधिवत अध्ययन के पश्चात् श्री धर्मदेव मौर्य के विरुद्ध संस्थित अनुशासनिक कार्यवाही में अंकित आरोप संख्या १

एवं २ प्रमाणित नहीं पाए गए हैं."

View formed in the impugned order:

"जांच अधिकारी की जांच आख्या के परीक्षणोपरांत पाया गया कि दिनांक 19.11.2019 की घटित घटना के मात्र 18 दिन पूर्व ही श्री धर्मदेव मौर्य , तत्कालीन मंडलीय कमांडेंट होमगाडर्स द्वारा दिनांक 31.10.2019 को जिला कमांडेंट होमगाडर्स, द्वारा गौतमबुद्धनगर का अतिरिक्त प्रभार ग्रहण किया गया था। श्री धर्मदेव मौर्य के पास जिला होमगाडर्स कार्यालय, गौतमबुद्धनगर के अतिरिक्त प्रभार की अवधि में कार्यालय के अभिलेख जलाये गए थे। यद्यपि जांच में श्री धर्मदेव मौर्य की प्रत्यक्षतः संलिप्तता नहीं पायी गयी, फिर भी लापरवाही व शिथिल पर्यवेक्षण स्पष्ट है।

अतः श्री धर्मदेव मौर्य तत्कालीन मंडलीय कमांडेंट होमगाडर्स, मेरठ अतिरिक्त प्रभार जिला कमांडेंट होमगाडर्स, गौतमबुद्धनगर सम्प्रति निलंबित सम्बद्ध होमगाडर्स मुख्यालय लखनऊ को लापरवाही एवं शिथिल पर्यवेक्षण हेतु 'चेतावनी' देते हुए उनके विरुद्ध संस्थित अनुशासनिक कार्यवाही को एतद्वारा समाप्त कर बहाल किये जाने की श्री राज्यपाल महोदय सहर्ष स्वीकृति प्रदान करते हैं।"

8. In the considered view of the Court proper approach ought to have been for the disciplinary authority to have issued a show cause notice in the first instance to the writ petitioner expressing its view as to why it was disagreeing with the finding part of the report of the inquiry officer. This, I find to be absolutely lacking in the order impugned and therefore, the first point stands answered in favour of the petitioner and the authority has proceeded without due application of mind in forming an independent view. While doing so it was imperative on its part to at least deal with the subject matter which was subjected to inquiry as well as the charges leveled in the charge sheet. Here it also becomes relevant to quote relevant paragraph nos. 26 to 29 of the counter affidavit, which are absolutely sketchy and vague. Paragraph nos. 26 to 29 of the counter affidavit are held as under:---

" 26. That the contents of paragraph no. 42 of the writ petition are not admitted for the reasons stated in the preceding paragraphs.

27. That the content of paragraph no. 43, 44 & 45 of the writ petition need no comments.

28. That the contents of paragraph no. 46 to 50 of the writ petition are not admitted for the reasons stated in the preceding paragraphs.

29. That the content of paragraph no. 51 to 55 of the writ petition need no comments.

9. In dealing with the specific allegations made in the relevant paragraphs of the writ petition insofar as the second argument is concerned that the authority could not have imposed a penalty which was not prescribed under the relevant rules, the counter affidavit should have dealt with it exclusively. In my considered view, this issue is no more *res integra*. It is very well settled legal position that disciplinary authority while holding disciplinary inquiry into the charges leveled against the delinquent employee in a duly drafted and approved charge sheet, can impose only those punishments that are prescribed under the Discipline and Appeal Rules. Since the 'warning' as such is no punishment prescribed under the Discipline and Appeal Rules 1999, therefore, the authority could not have imposed this warning to the petitioner by way of punishment. If it was not satisfied with the inquiry report, it could have re-enquired the charges before passing an order of penalty. For appreciation of this point *qua* major and minor penalties as prescribed in para 3 of Rules 1999 are held as under:-

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.*

10. In the case of *Vijay Singh v. State of Uttar Pradesh and others, (2012) 5 SCC 242*, Hon'ble Supreme Court has held paragraph nos. 21, 22 and 23 as under:-

"21. Undoubtedly, in a civilised society governed by the Rule of Law, the punishment not prescribed under the statutory rules cannot be imposed. Principle enshrined in criminal jurisprudence to this effect is prescribed in the legal maxim nulla poena sine lege which means that a person should not be made to suffer penalty except for a clear breach of existing law.

*22. In *S. Khushboo v. Kanniammal* this Court has held that a person cannot be tried for an alleged offence unless the legislature has made it punishable by law and it falls within the offence as defined under Sections 40, 41 and 42 of the Penal Code, 1860, Section 2(n) of the Code of Criminal Procedure, 1973, or Section 3(38) of the General Clauses Act, 1897. The same analogy can be drawn in the instant case though the matter is not criminal in nature.*

23. Thus, in view of the above, the punishment order is not maintainable in the eye of the law. In the result, the appeal succeeds and is allowed. The impugned order dated 8-7-2010 withholding the integrity certificate for the year 2010 and all subsequent orders in this regard are quashed. The respondents are directed to consider the case of the appellant for all consequential benefits including promotion, etc. if any, afresh taking into consideration the service record of the appellant in accordance with law."

11. I may further take notice of the Government order which directs for deduction of five marks for warning issued to employee by considering promotion and I find that the Government Order

dated 27.09.2019, prescribes for deduction of marks in the event warning issued to an employee after issuing the show cause notice. Thus, in the considered view of the Court, this type of punishment even if conceived of otherwise by means of any circular or Government Order, it could not have been imposed without giving notice and opportunity of hearing to the delinquent employee.

12. In view of the above, writ petition succeeds and is **allowed**. The order dated 03.12.2020 passed by respondent no. 2, is hereby quashed.

Order Date :- 14.7.2025
Sharad/-

(Ajit Kumar, J.)