

Court No. - 4

"AFR"

Case :- WRIT - A No. - 65267 of 2015

Petitioner :- Ratan Singh

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Sanjeev Kumar Tripathee, Sharad Chand Rai, Syed Mehdi Haider Zaidi

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar, J.

Heard Sri S.C. Rai, learned counsel for the petitioner and Sri P.K.Srivastava, learned Additional Chief Standing Counsel.

By means of present petition filed under Article 226 of the Constitution, petitioner who has been dismissed from the police establishment while working on post of constable has challenged the said order dated 22nd April, 2015 on the ground that there was no application of mind at all by the disciplinary authority, inasmuch as, procedure prescribed under the relevant Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 were not followed.

It is argued on behalf of the petitioner that petitioner was dismissed from service merely on the ground that petitioner has been convicted in the criminal case by the judgment of the trial court dated 23rd March, 2011 under Section 376 of the IPC and was awarded 10 years R.I. alongwith fine of Rs. 10,000/-. This Court set aside the order of the disciplinary authority vide detailed judgment dated 19.11.2013 passed in Writ A No. 11685 of 2013. In the penultimate paragraph, the Court made following paragraph:

"9. In view of the finding in favour of petitioner on second issue, as above, that, the impugned order of dismissal has not been passed by competent authority after considering "conduct led to conviction" but only in a mechanical way on the basis of mere conviction, the writ petition deserves to be allowed. "

Thus, learned counsel for the petitioner argued that the above observations made by the High Court were not followed in its letter and spirit while passing another order of dismissal from service. It is

also argued by learned counsel for the petitioner that despite the fact that petitioner demanded certain documents from respondents upon receiving show cause notice, on 15.5.2015, yet no documents were made available. It is thus submitted by learned counsel for the petitioner that the order passed by respondent impugned herein this petition is clearly unsustainable.

Meeting above submissions, learned Additional Chief Standing Counsel has argued before the Court that after the matter was remanded by this Court under its final judgment and order dated 19.11.2013 passed in earlier round of litigation a detailed fact finding in-house enquiry was held and it was recorded by the Additional Superintendent of Police Traffic, Aligarh in its final view that an employee who has been convicted in a case of rape committed upon a girl, has not only been attributed to a guilt of moral turpitude, but even has brought bad name to disciplined police force and continuance of such constable in service who had committed such ghastly act of committing rape upon a girl, would further erode moral values in police force and report recorded that an employee guilty of gross moral turpitude cannot be continued in government establishment to demoralize not only the police force but even a common man and accordingly recommendation was made for immediate removal of petitioner from force. The said report came to be approved by higher officer, namely disciplinary authority on 28th July, 2015 and thereafter a consequential show cause notice was issued to the petitioner, and therefore, petitioner was under obligation in law to submit reply to show cause notice and he having failed to put up his defence though he was asked to submit reply alongwith show cause notice, he cannot be permitted to take plea that he was not offered adequate opportunity .

Learned counsel for the petitioner has argued that show cause notice did not notice any cogent material so as to frame any charge against petitioner of moral turpitude except for conviction of petitioner in a criminal case and prosecution witness had deposed against the petitioner that an in-house enquiry was conducted to

remove the the petitioner from police force on the basis of conviction and this document was only available in an inhouse enquiry, copy of which has supplied to learned counsel for the petitioner along-with show cause notice. He further argued that provisions as contemplated in Article 311(2) do contemplate a show cause notice to an employee convicted in a criminal case to be afforded opportunity to defend himself of the charge of moral turpitude as has also come to be recorded in-house enquiry but petitioner failed to put up any defence.

In the circumstances, therefore, it is argued that respondents were justified in holding that petitioner had not explanation to offer to the reply to the show cause notice and hence department had no other option but to dismiss him from employment.

Learned Standing Counsel has relied upon the judgment of the Supreme Court in the case of State of **The State of Madhya Pradesh and Others v. Bhupendra Yadav, 2023 INSC 837** and has placed before paragraph 18 that runs as under:

"18. The aforesaid aspects were rightly factored in by the appellant – State Government while issuing the communication dated 24th August, 20178 and declaring that the respondent was unfit for appointment to the said post. The yardstick to be applied in cases where the appointment sought relates to a Law Enforcement Agency, ought to be much more stringent than those applied to a routine vacancy. One must be mindful of the fact that once appointed to such a post, a responsibility would be cast on the respondent of maintaining law and order in the society, enforcing the law, dealing with arms and ammunitions, apprehending suspected criminals and protecting the life and property of the public at large. Therefore, the standard of rectitude to be applied to any person seeking appointment in a Law Enforcement Agency must always be higher and more rigorous for the simple reason that possession of a higher moral conduct is one of the basic requirements for appointment to a post as sensitive as that in the police service."

In rejoinder, learned counsel for the petitioner sought to contest the plea taken by Additional Chief Standing Counsel on the question of moral turpitude, but could not satisfy the Court as to why and under what circumstances, petitioner was not able to putforth his explanation while he was served with a show cause notice.

Having heard learned counsel for the respective parties and having perused the records, the only question that arises for consideration of this Court, is as to whether order passed this time by the competent authority/disciplinary authority is in compliance of the judgment of this Court in the matter of Writ No. 11685 of 2013, earlier round of litigation *qua* paragraph 9 of the said judgment that has already been reproduced hereinabove.

Before, I proceed to examine the report relied upon in the order impugned, I may observe that in matters of conviction in criminal cases where moral turpitude may be an issue in the departmental proceedings that are conducted after such conviction only this much is required to be examined as to whether act and conduct of the delinquent employee that has come to prove him guilty of an act for which he was tried, was of such nature that continuance of such an employee in the establishment would erode moral values for which an establishment like police force stands. There is no doubt that police force is meant for the protection of common man and to maintain law and order so that citizens always feel protected. While citizens are having protection of the police or even in common civil policing where police men are seen around, it would be quite an improper conduct on the part of police constable if he shakes confidence of a common man by such act or conduct towards an innocent citizen, unbecoming of a member of a disciplined police force. Paragraph of the judgment of the Supreme Court that has been quoted above records that yardstick to be applied in the cases where the appointment relates to law enforcement agency should be more stringent than those applied to the routine vacancies. Thus a policeman has to show a higher standard of moral value in comparison to a member of service of any other government establishment.

I now proceed to examine the facts of the case particularly report in the light of the above principles considering these observations made by this Court in its judgment dated 19.11.2013. The Court only observed that competent authority will consider

whether conduct that led to the conviction of the petitioner, was sufficient enough to dislodge him from service since this aspect of the matter was quite lacking in the earlier order of dismissal from service. The Court had set aside the order and had made it open for the respondents to proceed afresh in accordance with law. It is in the light of above observations that were made in the judgment of this Court that respondents authority has proceeded to hold an in-house enquiry which was conducted by Additional Superintendent of Police Traffic, Aligarh, where plea was also taken in the enquiry by the petitioner that in the light of U.P. Police Regulation paragraph 493 department could not have proceeded. The authority proceeded to evaluate and assess various statements made by prosecution witnesses during trial and came to be conclude that petitioner since was found guilty for such conduct of committing rape upon a girl and which came to be successfully proved by the prosecution and hence was further awarded sentence of RI of 10 years, he did not deserve continuance in police force. The enquiry report records that a member of the police force cannot claim that he was not aware of the legal principles of high moral values for which police force stands and having this in mind if a constable committed crime of rape it amounted to an unbecoming of a constable, a member of disciplined police force and hence a guilty person of such moral turpitude did not deserve to continue as it would have demoralized police force and further would have earned bad name and reputation to the force which was meant for public protection.

Last two paragraphs of the report that are relevant for the purpose are reproduced hereunder:

“माननीय न्यायालय, अपर जिला एवं सत्र न्यायाधीश, चतुर्थ ने भी सम्यक विचारण के उपरान्त आरोपी आरक्षी रतन सिंह को प्रथम सूचना रिपोर्ट एवं पुलिस की विवेचना को न्यायोचित ठहराते हुये बलात्कार जैसे घिनौने कृत्य का दोषी पाया है और अपने निर्णय दिनांकित 28-03-11 द्वारा आरोपी आरक्षी 510/1060 ना०पु० रतन सिंह को दस साल के कठोर कारावास एवं दस हजार रुपये के अर्थ दण्ड की सजा तथा अर्थ दण्ड अदा न करने पर अभियुक्त को दो माह के अतिरिक्त साधारण कारावास की सजा सुनाई है, जिस पर माननीय उच्च न्यायालय ने मात्र स्थगन आदेश दिया न कि दोषमुक्त करते हुये सजा समाप्त की है।

सम्पूर्ण विचारण से मैं पीठासीन अधिकारी इस मत का हूँ कि आरोपी आरक्षी रतन सिंह (पी०एन०ओ० 840820846) पुलिस जैसे कानून की रक्षा करने वाले एवं कानून का पालन कराने वाले विभाग में रहते हुये अपनी पदीय स्थिति का दुरुपयोग कर बलात्कार जैसा घृणित कृत्य करने के दोषी हैं जिसके लिये माननीय न्यायालय भी इन्हें सिद्ध दोष कर चुका है। ऐसे दुराचारी, सिद्ध दोष कर्मी को सेवा में बनाये रखने से भारतीय संविधान भी हमें रोकता है। अतः आरोपी आरक्षी रतन सिंह (पी०एन०ओ० 840820846) को उत्तर प्रदेश अधीनस्थ श्रेणी के पुलिस अधिकारियों की (दण्ड एवं अपील) नियमावली, 1991 के नियम-4, खण्ड (क) (2) के अंतर्गत सेवा से हटाये जाने की संस्तुति की जाती है। यह संस्तुति नियुक्ति प्राधिकारी वरिष्ठ पुलिस अधीक्षक, अलीगढ़ के अनुमोदनोपरान्त ही प्रभावी होगी।”

This report came to be approved by the disciplinary authority and it is thereafter a show cause notice was issued. From the show cause notice it is quite clear that it is conviction of the petitioner in the criminal case formed basis for department to proceed against the petitioner and also the statement recorded during trial of the prosecution witnesses. All this is quite reflected in the enquiry report that accompanied the show cause notice. However, petitioner refused to submit reply and kept asking repeatedly for documents so that he could offer proper explanation to the show cause notice. Thus, it is quite clear that petitioner was given reasonable opportunity to peruse the records if he so desired to offer explanation but it appears that petitioner did not care to peruse the records as pleadings to this Court in the petition are absolutely silent .

In the considered view of the Court, therefore, if the petitioner failed to offer any explanation, then it would be taken that he admitted the final findings returned in an in-house enquiry and had no explanation to offer, and therefore, disciplinary authority cannot be said to have faulted in passing order dismissing him from service. The manner in which findings have come to be returned in the enquiry report and which has been taken in consideration by the disciplinary authority, shows that observations made in the judgment in its earlier round of litigation by this Court were fully complied with in its letter and spirit. Thus parameters that have been laid down in various decisions of this Court and Supreme Court for compliance of Article 311 (2) in the matter of conviction in criminal case by an employee have been fully met. It is settled principle of

law that principles of natural justice cannot be put in a straitjacket formula. It's application depends upon the facts of each case that may vary from the other. If an employee has been given adequate opportunity to peruse records even if documents and not been supplied with, compliance of principles of natural justice shall be taken to be have been done as it was now turn for the delinquent employee to offer his explanation.

In the matter of **Madhyamam Broadcastings Ltd. v. Union of India and Others, (2023) 13 SCC 401**, Supreme Court has held even in the cases where documents are not supplied to delinquent employee and opportunity to peruse various records had been given then it will be taken as compliance of principle of natural justice. Vide paragraphs 66 and 67, it was held thus:

"66. MHA disclosed the material forming the opinion for denying of security clearance solely to the High Court. The High Court instead of deciding if any other less restrictive but equally effective means could have been employed, straight away received the material in a sealed cover without any application of mind. It is now an established principle of natural justice that relevant material must be disclosed to the affected party. This rule ensures that the affected party is able to effectively exercise their right to appeal. When the state government claims non-disclosure on the ground of public interest under Section 124 of the Evidence Act, the material is removed from the trial itself. As opposed to this method, when relevant material is disclosed in a sealed cover, there are two injuries that are perpetuated. First, the documents are not available to the affected party. Second, the documents are relied upon by the opposite party (which is most often the state) in the course of the arguments, and the court arrives at a finding by relying on the material. In such a case, the affected party does not have any recourse to legal remedies because PART F it would be unable to (dis)prove any inferences from the material before the adjudicating authority.

67. This form of adjudication perpetuates a culture of secrecy and opaqueness, and places the judgment beyond the reach of challenge. The affected party would be unable to "contradict errors, identify omissions, challenge the credibility of informants or refute false allegations". 51 The right to seek judicial review which has now been read into [Articles 14](#) and [21](#) is restricted. A corresponding effect of the sealed cover procedure is a non-reasoned order."

Thus in the given facts and circumstance, even if petitioner demanded copies that was not supplied with, he could have still perused the records. Besides this, I also find that petitioner has not

been able to disclose as to which document he needed to peruse for which he could have offered better explanation.

In the judgment of Supreme Court that has been cited by learned Additional Chief Standing Counsel it has been clearly observed that even in case of acquittal in a criminal case, employee has not indefeasible right to continue in employment. Overall conduct of employee is to be seen which was considered in an in-house enquiry, copy of which was supplied to petitioner and yet petitioner failed to offer his explanation.

Upon pointed query being made, petitioner's counsel also could not demonstrate as to which document petitioner needed to make effective reply or a plausible explanation. .

In such above view of the matter, it cannot be said, therefore, the order passed by the disciplinary authority suffers from any error of law or fact.

Petition fails and is accordingly dismissed.

Order Date :- 13.5.2025

Sanjeev