

Court No. - 4

Case :- WRIT - A No. - 18043 of 2022

Petitioner :- Lal Bahadur

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Pramod Kumar Srivastava, Sanjeev Kumar Pandey, Sanjeev Singh, Santosh Kumar Tiwari, Santosh Yadav, Sr. Advocate

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar, J.

Heard Sri Sanjeev Singh, learned counsel for the petitioner and learned Standing Counsel for the State respondents.

By means of present petition filed under Article 226 of the Constitution, petitioner has challenged the order dated 17.10.2022 passed by concerned respondent imposing penalty in the nature of reversion in the rank of cadre of the petitioner i.e. from the post of Settlement Officer, Consolidation and also awarding adverse entry of 'censure'.

The main plank of the arguments advanced by learned counsel for the petitioner is that entire enquiry report submitted by the enquiry officer against petitioner pursuant to the chargesheet dated 12th April, 2018, was result of a flawed procedure. According to him prescribed procedure under Rule 7 of The Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999, meant for major penalty was not followed and hence order of punishment in the nature of reversion deserves to be quashed.

Learned counsel for the petitioner has taken the Court to the charge-sheet dated 12th April, 2018 under which as many as four charges were levelled on the basis of a preliminary fact finding report dated 19.12.2017 and reply submitted by the petitioner to the said chargesheet on 15.12.2020. In the said reply, petitioner had also pleaded for immunity from any disciplinary proceeding since orders were passed by him in capacity of a Consolidation Authority in *bona fide* discharge of his official duties.

Petitioner has also taken the Court to the preliminary fact finding report submitted in the matter by the Joint Consolidation Commissioner, Lucknow dated 19.12.2017. It is submitted by Sri Sanjeev Singh, learned counsel for the petitioner that in so far as charge of fixing long dates and for not disposing off disputes pending adjudication, was absolutely vague and frivolous for the reason that Consolidation Court fixes dates as per convenience of the parties and the learned Advocates for the request made and it cannot be said that merely because Consolidation Authority fixes dates, it fixes it for extraneous considerations .

In so far as orders passed under Section 9(1) of Consolidation of Holdings Act are concerned, it is submitted by learned counsel for the petitioner that this was the exercise of power vested under the relevant act and was done on the basis material placed before him and view was formed and hence orders were passed by him in a *bona fide* discharge of duty. Learned counsel for the petitioner further submits that reply of the petitioner was in detail submitted to the enquiry officer and hence enquiry officer was required to fix dates for oral examination and since he had denied charges, therefore, it was incumbent upon enquiry officer to fix date for oral examination of petitioner and such complainant and departmental witnesses who could prove preliminary fact finding report.

A preliminary objection has been raised by learned Standing Counsel defending the action of State respondents as to the maintainability of this petition as petitioner has remedy to file departmental appeal and revision under the relevant punishment and appeal rules.

Replying the objection raised by learned Standing Counsel , learned counsel for the petitioner submits that it is well settled principle of law that if the procedure prescribed under the Rules are *de hors* the statutory rules, then entire consequential action becomes unsustainable, inasmuch as, non affording opportunity to examine and cross examine departmental witnesses amounts to

violation of principle of natural justice, and therefore, petition is entertainable by passing remedy of appeal and revision.

Having heard learned counsel for the respective parties and having perused the records, I proceed to examine this entire issue *qua non* compliance of the procedure laid down under Rule 7 of 1999 Rules. Rule 7 of 1999 are reproduced hereunder:

"7. Procedure for imposing major penalties.—*Before imposing any major penalty on a Government servant, an inquiry shall be held in the following manner:*

(i) The Disciplinary Authority may himself inquire into the charges or appoint an Authority subordinate to him as Inquiry Officer to inquire into the charges.

(ii) The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge-sheet. The charge-sheet shall be approved by the Disciplinary Authority:

Provided that where the Appointing Authority is Governor, the charge-sheet may be approved by the Principal Secretary or the Secretary, as the case may be, of the concerned department.

(iii) The charges framed shall be so precise and clear as to give sufficient indication to the charged Government servant of the facts and circumstances against him. The proposed documentary evidences and the name of witnesses proposed to prove the same along with oral evidences, if any, shall be mentioned in the charge-sheet.

(iv) The charged Government servant shall be required to put in a written statement of his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge-sheet and to state whether he desires to cross-examine any witness mentioned in the charge-sheet and whether desires to give or produce evidence in his defence. He shall also be informed that in case he does not appear or file the written statement on the specified date, it will be presumed that he has none to furnish and inquiry officer shall proceed to complete the inquiry ex parte.

(v) The charge-sheet, along with the copy of documentary evidences mentioned therein and list of witnesses and their statements, if any shall be served on the charged Government servant personally or by registered post at the address mentioned in the official records in case the charge-sheet could not be served in aforesaid manner, the charge-sheet shall be served by publication in a daily newspaper having wide circulation:

Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge-sheet, the charged Government servant shall be permitted to inspect the same before the Inquiry Officer.

(vi) Where the charged Government servant appears and admits the charges, the Inquiry Officer shall submit his report to the Disciplinary Authority on the basis of such admission.

(vii) Where the charged Government servant denies the charges the Inquiry Officer shall proceed to call the witnesses proposed

in the charge-sheet and record their oral evidence in presence of the charged Government servant who shall be given opportunity to cross examine such witnesses. After recording the aforesaid evidences, the Inquiry Officer shall call and record the oral evidence which the charged Government servant desired in his written statement to be produced in his defence:

Provided that the Inquiry Officer may for reasons to be recorded in writing refuse to call a witness.

(viii) The Inquiry Officer may summon any witnesses to give evidence or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental Inquires (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1976.

(ix) The Inquiry Officer may ask any question he pleases, at any time of any witness or from person charged with a view to discover the truth or to obtain proper proof of facts relevant to charges.

(x) Where the charged Government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding in spite of the service of the notice on him or having knowledge of the date, the Inquiry Officer shall proceed with the inquiry ex parte. In such a case the Inquiry Officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged Government servant.

(xi) The Disciplinary Authority, if it considers it necessary to do so, may, by an order appoint a Government servant or a legal practitioner, to be known as "Presenting Officer" to present on its behalf the case in support of the charge.

(xii) The Government servant may take the assistance of any other Government servant to present the case on his behalf but not engage a legal practitioner for the purpose unless the presenting officer appointed by the Disciplinary Authority is a legal practitioner of the Disciplinary Authority having regard to the circumstances of the case so permits:

Provided that this rule shall not apply in following cases:—

(i) Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) Where the Disciplinary Authority is satisfied, that for reason to be recorded by it in writing, that it is not reasonably practicable to held an inquiry in the manner provided in these rules; or

(iii) Where the Governor is satisfied that, in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules."

(emphasis added)

From reading of relevant provisions of rules as quoted above, it is explicit that after the chargesheet is submitted and in reply there is that denial of the charge by the delinquent employee, then enquiry officer was duty bound to fix a date to examine the delinquent employee and also fix dates to examine a departmental

witnesses and to give opportunity to the delinquent employee to cross examine departmental witnesses. Provisions also prescribe that even if a delinquent employee refuses to appear for oral examination and hearing , it is duty caste upon enquiry officer to examine departmental witnesses.

This Court as well as Supreme Court in a catena of decisions in the matter of department proceeding has held that when disciplinary authority proposes to hold an enquiry for major penalty then holding oral enquiry is *sine qua non*, meaning thereby witnesses have to be examined by enquiry officer before bringing home the charge. In the case of **Salahuddin Ansari v. State of U.P. and Others, (2008) 3 ESC 1667**, this Court has held that where the oral enquiry has been prescribed for, enquiry report would stand vitiated if no attempt is made by the enquiry officer to hold oral enquiry.

It is in this background of legal principle evolved in service jurisprudence as far as departmental proceedings are concerned, I proceed to examine enquiry report dated 12.8.2021, which has been brought as annexure 9 to the petition. From the recitals contained in enquiry report , I find that the enquiry report has recorded that *qua* charges levelled against delinquent employee vide order of the State Government dated 12.4.2018 the original records relating to the initiation of disciplinary proceedings were summoned vide letter issued by his office on 20th July, 2020, and thereafter enquiry officer records that vide letter dated 27th July, 2020, the State Government apprised the enquiry officer of the earlier order of State Government dated 12.4.2018, which was got received in the office of enquiry officer on 5.8.2020. According to enquiry officer, this letter directed the enquiry officer to submit report. It is in compliance of this letter received in his office on 5.8.2020 that the enquiry officer proceeded to hold and conclude enquiry. The enquiry officer thereafter records that a letter written by delinquent employee, was received in his office dated 18.8.2020 requesting for copy of the report dated 19.12.2017 submitted by the three

members committee, which was placed before the State Government on 27th August, 2020 and this copy of the entire preliminary fact finding report was given to the petitioner. Thereafter enquiry officer refers to certain letter received in his office on 26.09.2020 and also certain correspondence with authorities of State Government and also documents dated 5th October, 2020 received in office on 12.12.2020. Letter written to the delinquent employee on 12.12.2020 directing him to submit explanation. The explanation was submitted by the petitioner in a typed copy on 15.12.2020, and thereafter enquiry officer proceeds to record his finding upon various charges.

In the enquiry report, the enquiry officer has placed reliance upon a fact finding preliminary report earlier submitted in the matter, without fixing any date for recording oral statement of delinquent employee and/or to record the statement of departmental witnesses in support of the preliminary fact finding enquiry report and other documents which were to be relied upon by the enquiry officer and enquiry officer finally has found charges proved on the basis of evaluation and assessment of material placed before him but in an *ex parte* manner as no date was fixed inviting the petitioner to contradict report and documents.

In view of above, it is clear that enquiry officer proceeded to bring home the charge against the petitioner in the enquiry report without holding any oral enquiry and this fact position is absolutely clear from the records. It, therefore, becomes absolutely true as is argument of learned counsel for the petitioner that no procedure as prescribed under Rule 7 of 1999 Rules was followed. In the circumstances, I do not see any justification to direct the petitioner to first exhaust authoritative remedy of statutory appeal.

In view of legal principles laid down by this Court as well as by Supreme Court as discussed above, the enquiry report itself and the procedure followed in during enquiry report is liable to be held as flawed one and hence consequential action of imposing penalty is also held to be unsustainable. However, in the light of judgment of

the Supreme Court in the case of **Managing Director ECIL, Hyderabad and Others v. B. Karunakar and Others (1993) 4 SCC 727** matter deserves to be remained to the stage of enquiry.

In view of above, writ petition succeeds and is allowed. The order dated 17.10.2022 as well as enquiry report dated 19.12.2017 are hereby quashed. Matter is remitted to the disciplinary authority to appoint fresh enquiry officer within a period of four weeks from the date presentation of certified copy of this order commanding him to hold and conclude departmental enquiry into the charges as framed in the chargesheet dated. 12.4.2018 but this time giving full opportunity to the petitioner to participate in the enquiry and getting his oral statement recorded and also statement of departmental witnesses, if any, in proof of the charge. The disciplinary authority shall ensure that entire enquiry stands concluded within a maximum period of 60 days of appointment of the enquiry officer and also to ensure that thereafter disciplinary proceedings stands concluded finally within next two months' time. Since orders impugned as well as enquiry report have been set aside, petitioner's status will continue to remain same as was there earlier during pendency of the enquiry. If petitioner was in status of suspended employee, he shall continue to remain suspended employee and shall be entitled to receive subsistence allowance and in the event he was not suspended and was regularly work he will continue as such and receive salary. However, salary of the petitioner for the period he had remained under suspension previously or otherwise salary for the period he has not worked on account of orders impugned, will depend upon final outcome of the disciplinary proceedings.

Order Date :- 26.5.2025
Sanjeev