

Court No. - 4

Case :- WRIT - A No. - 16676 of 2024

Petitioner :- Dr Dharm Pal Yadav

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Prem Prakash

Counsel for Respondent :- C.S.C.,M.N. Singh

Hon'ble Ajit Kumar,J.

1. Heard Sri Prem Prakash, learned counsel for the petitioner and Sri Ajeet Kumar Singh, learned Additional Advocate General assisted by Additional Chief Standing Counsel appearing for the State respondents.

2. By means of this petition filed under Article 226 of the Constitution of India, petitioner has assailed the order dated 15.10.2024 passed by the State Government imposing major penalty withholding two increments with cumulative effect and further recovery after assessment and valuation of the financial loss for the misconduct of the petitioner. The order of punishment also provides that petitioner shall not be awarded with any financial dues.

3. Three fold submission has been advanced before this Court:-

(i) The procedure prescribed under U.P. Government Servants Rules 1999 having not been strictly adhered to for holding inquiry for the purposes of imposing major penalty and hence the order of

punishment unsustainable.

(ii) The respondents have proceeded to impose punishment as a result of some in-house inquiry, to which petitioner was not made party, inasmuch as, certain other extraneous material were taken into consideration as well as report a three members committee to which petitioner was not party.

(iii) Imposing a punishment in the nature that petitioner would not be entitled to hold any financial charge is not the punishment prescribed under the disciplinary rules and hence punishment is bad.

4. Learned Additional Advocate General on the contrary tried to defend the order and submitted that petitioner was accorded sufficient opportunity after the first inquiry report was submitted as the disciplinary authority issued him a show cause notice requiring him to submit his reply in respect of the report dated 07.12.2019 and since the petitioner required participation, yet another inquiry was held permitting the petitioner due participation and hence the it cannot be said that the petitioner was not afforded reasonable opportunity of hearing in the matter and not oral inquiry was conducted.

5. The other argument advanced by learned Additional Advocate

General is that after the inquiry report was submitted on 05.08.2022, the disciplinary authority did not agree with the same and hence required the petitioner to answer the three charges which the disciplinary authority wanted to examine in light of the material available for it and this order according to Sri Singh is well within the scope and ambit of disciplinary Rules, 1999. He has placed before the Court Rule 1999, in support of the arguments so advanced.

6. Sri Singh argues that the representation of the petitioner made on 14.09.2023 was taken into consideration and it appears that order impugned came to be passed thereafter. Thus, according to Sri Singh, the procedure prescribed was duly followed.

7. There is no quarrel about the fact that there were three inquiry reports before the disciplinary authority dated 28.11.2019, 05.08.2022 and 05.06.2023. While the first two reports related to the charges reduced two article of the charges in the charge-sheet issued to the petitioner in the matter of disciplinary authority on 18.03.2019, the third inquiry report of the three member committee constituted by the State Government at its level, *qua* charge no.3 as contained in the letter dated 14.09.2023.

8. Learned Additional Advocate General has not disputed the aforesaid facts.

9. Now, considering the arguments advanced by learned counsel for the petitioner, I consider it appropriate to reproduce Rule 9 of the 1999 Rules:-

"9. Action on Inquiry Report (1) The disciplinary authority may, for reasons to be recorded in writing, remit the case for re-inquiry to the 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 findings of the Inquiry Officer on any charge, record its own findings 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 findings on all or any of charges is of the opinion that any penalty specified in Rule 3 should be imposed on the charged Government servant, he shall give a copy of the inquiry report and his findings 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 charged 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 rules and communicate the same to the charged Government servant."

10. From the perusal of the aforesaid Rule, it is absolutely clear that disciplinary authority while disagreeing with the report of the inquiry officer, can order either order de-novo inquiry by a same inquiry officer or another inquiry officer or can itself proceed to consider evidence to form a view.

11. Now, I proceed to examine the facts of the case. The first charge-sheet dated 18.03.2019 that was served upon the petitioner contained 30 charges in respect of which a detailed inquiry was held and a report was submitted by the one inquiry officer dated 28.11.2019. In this inquiry, petitioner was indicted of the charges. The petitioner had complained against *ex parte* proceeding of inquiry in the matter as he had no opportunity to participate in the inquiry to put up his defence and also to cross examine the departmental witnesses. He had pleaded in his reply to the show cause notice, that procedure as prescribed for to hold inquiry had not been followed and, resultantly, in order to provide opportunity to the petitioner, the State Government proceed to hold inquiry afresh. Thus it constituted another inquiry committee requiring the petitioner to participate in the oral inquiry. Since the petitioner was not participating, he was again informed of the oral inquiry vide

letter dated 04.08.022 but ultimately, as the petitioner failed to appear despite opportunity granted to him, the inquiry officer submitted his detailed report on 05.08.2022 and finding was returned to the effect that the charges against the petitioner could not be brought home.

12. Now, looking to the seuquence of events, it is absolutely correct, as argued by learned Additional Advocate General that disciplinary authority was justified in ordering a fresh inquiry in order to provide opportunity of hearing to the petitioner and if he did not participate, the inquiry officer had no other option but to submit report.

13. After this inquiry, report was submitted, petitioner was again served with a show cause notice as the disciplinary authority did not agree with the report on the ground that findings as against 30 charges levelled in the charge-sheet were compositively given without dealing with each charge and hence the report of the inquiry officer was not only not convincing but even misleading and thus he rejected the report and proceeded to examine the matter at his own level on the basis of the material collected by him.

14. It is in this order dated 14.09.2023 that he referred to another three member committee inquiry report dated 08.08.2023 for the

first time. Petitioner was issued with this show cause notice and he gave a detailed reply on 19.09.2023 requiring the disciplinary authority to furnish the documents including such additional documents on the basis of which disciplinary authority has formed his view against the findings returned by the inquiry officer. Petitioner again wrote a letter on 13.10.2023 requiring the authority to furnish the documents. Petitioner also approached this Court at that stage when the disciplinary authority had yet not taken decision in the matter of show cause notice issued to the petitioner, vide Writ-A No.13516 of 2024 which came to be dismissed on the ground that petitioner was only apprehensive of disciplinary authority to rely upon some additional documents while finally passing the order in the matter of show cause notice.

15. After this order was passed, the disciplinary authority passed an order on 15.10.2024 and from the recitals contained in the order it is absolutely clear that while it referred to the report dated 28.11.2019 it did not discuss at all the three member committee report, nor even referred to three charges that it had levelled in the show cause notice issued to the petitioner on 14.09.2023.

16. In my considered view, the authority had fallen in serious error of law in not following the procedure prescribed under Rule 9(4). The authority when proceeded to issue a show cause notice upon

three distinct charges brushing aside the inquiry report dated 05.08.2022, it was duty of the disciplinary authority to have discussed those charges and also the findings of three member inquiry report and also the reply of the petitioner and also ought to have referred to the additional documents upon perusal of which, it had proceeded to reject the inquiry report. Surprisingly, the disciplinary authority has considered the report dated 28.11.2019 which according to Rule 9(4) stood superseded with another inquiry held and report submitted on 05.08.2022, which also got superseded with another show cause notice issued on 14.09.2023. While order dated 14.09.2023 cannot be questioned on the ground that the authority did not possess the power but the manner in which the impugned order have come to be passed, it is clear that the charges levelled in the show cause notice dated 14.09.2023 remained unaddressed in the order. I find that authority has manifestly erred in not recording any finding in the matter of show cause notice in referring to report dated 28.11.2023 which had stood already superseded by a subsequent report. Thus, the manner in which the order has been passed and the procedure was adopted by the disciplinary authority, it cannot be approved. It is not disputed by the authority that three member inquiry committee report dated 05.06.2023 was relied upon in the show cause notice but there was no participation of the petitioner in the said inquiry

and still further what is surprising is, that report does not find mention at all in the order impugned. In my considered view, therefore, the authority could not have referred to the first inquiry report dated 28.11.2019 in awarding the punishment. Insofar as the argument advanced by learned counsel for the petitioner that punishment prescribed for withholding financial power is concerned, in my considered view, the authority could have passed this order independently by issuing a show cause notice but since now it is a part of punishment order and no such punishment is prescribed under the Rules, the order of punishment cannot be sustained. The relevant rule 3 of Rules 1999 prescribing for the minor and major penalties are reproduced hereinunder:-

"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 caused to Government by negligence or breach of orders,

(v) Fine in case of persons holding Group 'D' posts: Provided that the amount

of such fine shall in no case twenty-five percent of the month's pay in which fine is imposed.

Major Penalties-

(i) Withholding of increments with cumulative effect;

(ii) Reduction to a lower post or grade or time scale or to a stage in a time scale;

(iii) Removal from the service which does not disqualify from future employment;

(iv) Dismissal from the service which disqualifies from him 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 fulfil 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 one not being found fit to cross the efficiency bar,

(iii). Reversion of a person appointed on 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 the period of probation in accordance with the terms of the service or the rules and orders governing such probation.

17. At this Stage, learned Additional Advocate General submits that if the court is setting aside the order of punishment and finds that the inquiry has also not been properly held, it may give opportunity to the State-respondents to proceed afresh from the stage of charge-sheet and in support of this submission, he relied upon five Judges' Bench in the case of **Managing Director, ECIL, Hyderabad and others v. B. Karunakar AIR 1994 SC 1074.**

18. I find that inquiry report dated 08.02.2024 could not have been relied upon in the face of the fact that subsequent inquiry had been held and report was submitted on 05.08.2022 exonerating the petitioner of the charges and then another order came on 14.09.2023 superseding all the previous actions in the form of show cause notice exercising power under Rule 9(4) discarding the inquiry report dated 08.08.2022. The order deserves to be quashed for such procedural irregularity. I find merit in the submission advanced by the learned Additional Advocate General that liberty may be given to initiate fresh inquiry from the stage of charge-sheet.

19. In view of the above, writ petition succeeds and is allowed.

20. Order dated 15.10.2024 passed by respondent no.1, filed as Annexure No.1 to the writ petition is hereby quashed with all consequential benefits, however, liberty rests with the State

Government to proceed from the stage of charge-sheet by holding an inquiry afresh giving full opportunity of hearing to participate in the inquiry. It is made clear that the inquiry shall be held strictly under relevant Rules and the procedure prescribed under Rules 1999 shall be strictly adhered to and principles of natural justice shall also be complied with.

21. The petitioner shall not only be accorded further opportunity but shall also be under obligation to participate in the inquiry. The State Government shall also while holding an inquiry follow the procedure that it has also notified vide Government Orders in the matter of domestic inquiry under Rules 1999 meant for major penalty.

Order Date :- 22.4.2025
S.A.