

Court No. - 49**Reserved****Case :- WRIT - A No. - 17578 of 2024****Petitioner :- Shiv Pal Singh****Respondent :- State of U.P. and Another****Counsel for Petitioner :- Hritudhwaj Pratap Sahi, Samarath Singh, Sankalp Narain****Counsel for Respondent :- Aditya Bhushan Singhal, C.S.C., Suresh Singh****Hon'ble J.J. Munir, J.**

1. This writ petition is directed against the order of the Managing Director, U.P. Jal Nigam, Urban, Lucknow dated 06.09.2024, punishing the petitioner, an officiating Superintending Engineer, with the withholding of one increment, without cumulative effect for a period of one year and censuring him. The aforesaid order, which shall hereinafter be referred to as 'the impugned order', has been passed after holding disciplinary proceedings.

2. The petitioner was at the relevant time and still is an officiating Superintending Engineer in the employ of the U.P. Jal Nigam (Urban) (for short, 'the Jal Nigam'). At the relevant time, the petitioner was posted as the officiating Superintending Engineer, Temporary Construction Division (Electrical/Mechanical), Jal Nigam, Banda. He was served with a charge-sheet dated 09.11.2020, carrying the following charge against him:

"जनपद चित्रकूट में जिला प्रशासन द्वारा ग्राम चुरेह केशरूवा, विकास खण्ड मानिकपुर में जल निगम के कार्यों हेतु वित्तीय वर्ष 2018-19, 2019-20 एवं 2020-21 हेतु कार्य योजना मांगी गयी। उक्त कार्य योजना के अनुसार संबंधित विभाग के पास उपलब्ध बजट के अनुरूप ही कार्य कराना था, जिसके अनुत्तर अधिशासी अभियंता यूनिसेफ प्रोजेक्ट यूनिट (वि०/या०), उ०प्र० जल निगम, चित्रकूट द्वारा प्रेषित रु० 24325 लाख की कार्य योजना का अनुमोदन जिला प्रशासन द्वारा दिनांक 05.03.2019 को किया गया।

अभिलेखों के अवलोकन में यह पाया गया कि जिला प्रशासन द्वारा अनुमोदित की गयी कार्ययोजना का प्राक्कलन बनाते हुए सक्षम स्तर से स्वीकृति हेतु प्रस्ताव मुख्यालय प्रेषित किया जाना चाहिए था, जिसके उपरान्त सक्षम स्तर से स्वीकृति एवं शासनादेश / धनावंटन होने के उपरान्त अनुबन्ध गठन की कार्यवाही की जानी चाहिए थी। आप द्वारा विभागीय नियमों / व्यवस्था के विपरीत एन०आई०टी०एफ० लोड की गयी। तत्पश्चात प्रथम न्यूनतम फर्म को सण्डिगो सोलर सोल्यूशन की आपूर्ति आदेश निर्गत करने संबंधी अनुमति प्रदान की गयी तथा फर्म को कार्य करने हेतु पत्रांक -392 दिनांक 07.06.2019 द्वारा कार्यादेश जारी कर दिया गया, जबकि प्रश्नगत कार्या हेतु अनुबन्ध दिनांक 14.06.2019 को गठित किया गया। इस अनियमित कार्यवाही को सुनियोजित ढंग से कार्य रूप दिया गया एवं किये गये अनियमित कृत्यों को उच्चाधिकारियों से छिपाया गया। दिनांक 26.07.2019 को उक्त कार्य का प्राक्कलन प्रस्तुत किया गया। तदक्रम में कार्यालय ज्ञाप संख्या-3041 दिनांक 28.07.2019 द्वारा प्रश्नगत कार्य हेतु अप्रेजल क्लीयरेन्स की स्वीकृति इस शर्त के साथ दी गयी कि योजना अनुमोदित होने एवं धनावंटन से पूर्व कोई कार्य न कराये जाये।

आप द्वारा पूर्व में बिना अनुमति के उक्त योजना के संबंध में निविदा संबंधी नियम विरुद्ध कार्यवाही करते हुए कार्यादेश जारी कर दिया गया तथा बिना प्राक्कलन स्वीकृत हुए सक्षम स्तर से अनुमोदन एवं शासनादेश / धनावंटन न होने पर भी अनुबन्ध गठित किया गया। फर्म द्वारा भुगतान हेतु लगातार दबाव बनाया जा रहा है। अतः आप अपने दायित्वों का अनुपालन न करने, योजना के निर्माण कार्य हेतु बिना अनुमोदन के निविदा आमंत्रित करने, बिना शासनादेश / धनावंटन के कार्य हेतु अनुबन्ध बनाते हुए कार्यादेश जारी करने, अनाधिकृत रूप से अनुबन्ध गठित करने के उपरान्त उच्चाधिकारियों को भ्रमित करने हेतु प्राक्कलन प्रेषित करने, वस्तुस्थिति से उच्चाधिकारियों को अवगत न कराने, विभाग को वित्तीय क्षति पहुंचाने, नियम विरुद्ध कार्य करने, विभाग की छवि धूमिल करने तथा उ०प्र० सरकारी कर्मचारी आचरण नियमावली-1956 (यथासंशोधित) के नियम-3 (1) व 3(2) में निहित प्राविधानों का उल्लंघन करने आदि हेतु आप उत्तरदायी है।"

3. The petitioner filed a reply to the charge-sheet on 22.02.2021, denying the charge.

4. The substance of the charge against the petitioner is that while posted as the officiating Superintending Engineer at Banda, the District Administration of Chitrakoot called for a work plan regarding work to be done by the Jal Nigam in Village Chureh Kesarua, Development Block Manikpur, District Banda. Under the aforesaid work plan, work had to be done in accordance with the budget available with the concerned

Department. The Executive Engineer, Unisef Project Unit (Electrical/ Mechanical), U.P. Jal Nigam, Chitrakoot had presented a work plan for work worth Rs.243.25 lacs, which was approved by the District Administration on 05.03.2019. Upon a perusal of papers, it was found that the estimate for the work to be done, according to the plan approved by the District Administration, had to be presented to the Jal Nigam Headquarters, and, thereafter, after permission from the competent level and issue of a Government Order/ allocation of funds, proceedings for execution of the works contract could be undertaken.

5. The charge goes that disregarding departmental rules and going against practice, a notice for invitation of tender was uploaded. Thereafter, the first firm, bidding the lowest, called the Sundigo Solar Solutions Limited, had permission granted in their favour for the issue of a supply order and the firm aforesaid were issued with a work order *vide* letter No.392 dated 07.06.2019, although the contract in favour of the said firm was executed on 14.06.2019. The aforesaid illegal proceedings were given a proper shape in a planned manner and these illegal actions were concealed from the higher authorities. On 26.07.2019, an estimate for the said work was presented. Thereupon, *vide* office order No.3041 dated 26.07.2021, appraisal clearance was granted, subject to the condition that prior to approval of the scheme and allocation of funds, no work should be got done.

6. The charge further goes on to say that without approval for the work/ scheme, going contrary to rules for award of such contracts, a work order was issued without the estimate being approved at the appropriate level and in the absence of the necessary Government Order or fund allocation being done. A

contract too was executed. The firm, awarded the contract, were pressing for payment of their dues. It was, accordingly, charged that the petitioner did not discharge his duty and without the necessary permission for the scheme or the work to be done under it, invited tenders and without the necessary fund allocation, entered into a contract with the firm, issuing a work order unauthorizedly. And, misleading the higher officials, an estimate was presented, keeping the said officials in the dark, resulting in financial loss to the respondents, arising from work done contrary to rules, besides leading to the image of the respondents being tarnished, all of which constitutes misconduct within the meaning of Rules 3(1) and 3(2) of the Uttar Pradesh Government Servant's Conduct Rules, 1956 (as amended), for which the petitioner was liable.

7. Upon inquiry, the Inquiry Officer submitted an inquiry report dated 19.09.2022, holding that the former Executive Officer, Yashveer Singh had exceeded his financial powers and gone ahead with the execution of the works contract, but the petitioner was not party to it, nor did he enter into the contract as charged. He had remitted the contract dated 14.06.2019 to the Executive Engineer with the remark that after issue of the necessary Government Order and fund allocation, should work be permitted to commence. The contract was remitted to the Executive Engineer by the petitioner also because the value of the contract was beyond the Executive Engineer's financial powers. The Inquiry Officer concluded that the charge levelled against the petitioner is not proved. It was then remarked that the petitioner still, having come to know of the irregularities being committed by the Executive Engineer, as the supervising authority, should have been more vigilant about the Executive Engineer's misdemeanour.

8. Upon consideration of the inquiry report, the Disciplinary Authority served the petitioner with a show cause notice dated 16.01.2023, which says that certain charges were found proved against him in the inquiry, regarding which he was required to answer. The petitioner sought some time to file his reply to the show cause *vide* his application dated 23.01.2023. Another show cause notice was issued on 07.02.2023. On 25.02.2023, the petitioner appeared before the Disciplinary Authority and submitted a very comprehensive reply, to what the petitioner says, are misconceived allegations against him. He had after all been exonerated by the Inquiry Officer. In his reply, he highlighted the fact that he had no role to play in the entire irregularities committed by the Executive Engineer and the Assistant Engineer, a fact that the Inquiry Officer had found duly proved. He, therefore, requested that the proceedings against him be dropped. Still, the impugned order was passed punishing the petitioner, as already set forth hereinbefore.

9. Aggrieved, this writ petition has been filed.

10. Heard Mr. Vijay Kumar Singh, learned Senior Advocate assisted by Mr. Samarth Singh, learned Counsel for the petitioner, Mr. M.C. Chaturvedi, learned Senior Advocate assisted by Mr. Aditya Bhushan Singhal, learned Counsel appearing on behalf of respondent No.2 and Mr. S.C. Upadhyay, learned Standing Counsel appearing on behalf of the State.

11. It is argued by Mr. Vijay Kumar Singh, learned Senior Advocate that the impugned order is one not based on any material on record. He has emphasized the fact that the Inquiry Officer has held the charge not proved against the petitioner. It is argued by the learned Senior Advocate that once there is a

specific finding carried in the inquiry report that the charge is not proved, there was no occasion for the Disciplinary Authority to have imposed any kind of minor penalty upon the petitioner. It is also urged that once the Disciplinary Authority has accepted the Inquiry Officer's report, there was no occasion to issue a second show cause to the petitioner and punish him. It is most importantly argued by Mr. Vijay Kumar Singh that the Disciplinary Authority did not record any disagreement with the findings of the Inquiry Officer and yet has punished the petitioner on the basis of an inquiry report, which exonerates him of all charges. The attention of the Court was drawn by Mr. Vijay Kumar Singh to the fact that no role for the petitioner was found in the financial irregularities committed in the opinion of the Disciplinary Authority as well, and yet, he has been awarded a minor penalty. The impugned order is castigated as one passed in violation of principles of natural justice.

12. Mr. M.C. Chaturvedi, learned Senior Advocate, on the other hand, has emphasized the fact that the petitioner has been punished, taking into account the lack of control over his subordinates, and not because the charge was proved against him. It is for this reason that the petitioner has been punished with the award of a minor penalty. There is absolutely nothing illegal about the impugned order, which deserves to be upheld.

13. We have carefully considered the submissions advanced on both sides and perused the record.

14. It is true that the petitioner has been exonerated of the charge formally framed and all the imputations that go to make the charge. If, therefore, the Disciplinary Authority had really to disagree with the findings of the Inquiry Officer and punish the petitioner, he would have to record reasons therefor. In this

case decidedly no reasons of disagreement or for that matter, any of disagreement with the findings of the Inquiry Officer have been recorded. But, what we find, on a careful perusal of the inquiry report dated 19.09.2022, is that there is a remark there that notwithstanding the charge against the petitioner not being proved, the fact, which is evident, is that the petitioner needed to be more vigilant about the financial irregularities being committed by the Executive Engineer, who was working under his supervision. It is the said remark in the inquiry report that led the Disciplinary Authority to issue a show cause notice to the petitioner asking him to respond to it. The petitioner did respond, explaining his position.

15. The Disciplinary Authority was of opinion that the petitioner, upon coming to know of the fact that there were no funds available to pay for the work, contracted to be done by the Executive Engineer which had been done irregularly, should have attempted to stop the work. The Disciplinary Authority has remarked that though the charge of committing the irregularity himself against the petitioner is not proved, it is a case, which shows breach of his supervisory duties in keeping control over the actions of the Executive Engineer. In substance, therefore, the Disciplinary Authority has not disagreed with the report of the Inquiry Officer at all; rather, he has agreed with it. The Disciplinary Authority has been of opinion that the petitioner exhibited slackness and lack of control over his subordinates, which include the Executive Engineer, on account of which the financial irregularities noticed, could be done by him. Therefore, while the loss caused to the respondents has been ordered to be recovered from the Executive Engineer and the Assistant Engineer, the petitioner has been awarded the minor penalty of

a temporary withholding of one of his increments for one year and a censure.

16. We are, therefore, not in agreement with the submission advanced by the learned Senior Advocate for the petitioner that this a case, where there was absolutely no material for the Disciplinary Authority to award the impugned punishment. It is true that the petitioner has been exonerated of the charge, but it is also true that facts and circumstances, showing slackness of control over his subordinates, have come to light. It is those facts that have led the Disciplinary Authority to inflict a minor penalty upon the petitioner. In doing that, no reasons for disagreement were at all required to be recorded. The Disciplinary Authority had sufficient material before him to reasonably conclude about the lack of supervision on the petitioner's part. For the imposition of a minor penalty, under the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 (for short, 'the Rules of 1999'), a full-fledged inquiry is not necessary. Apparently, as rightly argued by the learned Senior Advocate for the petitioner, the respondents had in mind to begin with the award of a major penalty. It is for this reason that they followed the procedure contemplated under Rule 7 of the Rules of 1999 and issued a charge-sheet to the petitioner. However, having held the inquiry and the Inquiry Officer coming to the conclusion that the charge about commission of financial irregularities was not proved against the petitioner, upon material surfacing during inquiry, showing lack of supervision and control that the petitioner exhibited over his subordinates, the impugned order, imposing a minor penalty, was passed. In order to impose a minor penalty under the Rules of 1999, all that is required is a show cause notice. The far more elaborate procedure followed here satisfies the requirements of show

cause necessary to impose a minor penalty. The view of the material, appearing against the petitioner taken by the Disciplinary Authority, is a reasonable one and in no manner perverse or one founded on irrelevant considerations. It is also not one that proceeds, ignoring relevant material.

17. In the total conspectus of facts, in our considered opinion, no case for interference with the impugned order, in the exercise of our jurisdiction under Article 226 of the Constitution, is made out.

18. This petition fails and is, accordingly, **dismissed**.

19. There shall be no order as to costs.

Order Date :- 26.5.2025

Anoop

(J.J. Munir)
Judge