IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition (S/B) No.397 of 2014

State of Uttarakhand and another .....Petitioners

Vs.

Madan Gopal Pushkarana .....Respondent

Present :

Shri B.P.S. Mer, learned brief holder for the State/petitioners.
Shri M.C. Pant, learned counsel for the respondent.

22nd December, 2020

Coram : Hon'ble Ravi Malimath, A.C.J.
Hon'ble Alok Kumar Verma, J.

Alok Kumar Verma, J. (Oral)

This writ petition is filed seeking a writ of certiorari to set aside the judgment and order dated 06.01.2014 passed by the Public Services Tribunal, Uttarakhand at Dehradun (hereinafter referred to as, "Tribunal") in Claim Petition No.32 of 2011, "Madan Gopal Pushkarana vs. State of Uttarakhand and another" whereby learned Tribunal has allowed the claim petition preferred by the respondent and the impugned order dated 11.04.2008, awarding censure entry as well as the order passed in departmental appeal are quashed.

2. In order to appreciate the issues involved in this writ petition, the relevant facts need mentioned *infra*.

3. The facts, to the limited extent necessary, are that while working as Superintending Engineer, P.W.D. Circle 24, Dehradun, a charge-sheet dated 11.04.2007 was served upon the respondent by the Enquiry Officer, Additional Secretary, Public Works Department, on the allegations that the respondent had acted negligently and in violation of Finance Rules in issuing the orders for the supply of Road Signage. The respondent submitted his reply dated 19.04.2007 and had explained that he had acted in conformity with the established practice and procedure of the department and in accordance with Finance Rules. Subsequently, the enquiry report dated 11.06.2007 was sent by the Enquiry Officer to the State Government, which was considered along with the representation dated 18.08.2007 of the respondent and he was found having committed the mischief. Therefore, the respondent was awarded censure entry vide order dated 11.04.2008. Against the said order dated 11.04.2008, the respondent submitted his representation dated 16.04.2008 for expunging the censure entry. The representation of the respondent was rejected on 15.10.2008. Aggrieved, the respondent challenged both the orders i.e. 11.04.2008 and 15.10.2008 in his claim petition before the Tribunal.

4. After hearing both the parties, the Tribunal allowed the claim petition. The impugned order of the censure as well as the order passed on departmental appeal are quashed by the Tribunal.

5. The Tribunal referred to a judgment of Punjab and Haryana High Court in *Ram Kumar Goel vs. State of Haryana, 1991(5) SLR 263,* cited by the respondent herein, in which it has been laid down that once the procedure is initiated for inflicting the major penalty then that procedure had to be followed irrespective of the fact that only a minor penalty has been imposed.

6. Learned Tribunal observed once the procedure for an enquiry is adopted that should be followed by the disciplinary authority. The procedure should not be broken on the ground that only the minor punishment is to be awarded. In the present case it is admitted that the proceedings of enquiry was initiated which is prescribed for inflicting major penalty, which has not been followed and this fact goes against the respondents consequently the enquiry proceedings cannot be held justified. Apart from the above fact, it is also important that copy of the enquiry report was not supplied to the petitioner. The above two facts vitiate the proceedings of enquiry. Learned Tribunal further observed that in the present case, the representation/departmental appeal has been disposed off by the same authority, whereas the appeal or representation should have been decided by an officer who is higher in rank to that of disciplinary authority.

7. Learned counsel for the State submitted that for the illegality committed by the respondent, an enquiry was conducted against him in terms of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (hereinafter referred to as, “the Rules, 2003”). The respondent was charged with one misconduct and the same

was found to be proved and accordingly censure entry, a minor penalty, was imposed on the respondent. The observation of the Tribunal that once the charge was framed against the respondent, it was mandatory for the petitioners herein to conduct the enquiry as prescribed for inflicting the major penalty as has been provided under Rule 7 of the Rules, 2003, cannot be sustained since only minor penalty has been imposed not major penalty. The respondent cannot ask for adopting the procedure which is prescribed for awarding major penalty.

8. *Per contra,* learned counsel appearing for the respondent submitted that the Enquiry Officer has not conducted any enquiry against the respondent. The Enquiry Officer neither informed him the place, date and time of the enquiry nor supplied any enquiry report/findings of the Enquiry and the petitioner no.1 herein has issued the impugned order dated 11.04.2008 without following the rules. No opportunity was given to him for hearing. Therefore, there is no illegality in the impugned judgment and order, passed by the Tribunal.

9. We have heard rival contentions of the learned counsel for the parties through video conferencing.

10. The respondent is a Government Servant and his service so far as disciplinary matters are concerned, is governed by the Rules, 2003. Rule 3 thereof deals with the minor penalties and major penalties. The four penalties viz., (i) Censure; (ii) Withholding of increments for a specified period; (iii) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or

breach of orders; (iv) Fine in case of persons holding Group ”D” posts are classified as minor penalties and four penalties viz., (i) Withholding of increments with cumulative effect; (ii) Reduction to a lower post or grade or 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 disqualifies from future employment are classified as major penalties.

11. Rule 7 of Rules, 2003 contains the procedure for imposing major penalties. Sub-rule (vii) of Rule 7 runs thus,

> *“Where the charged Government Servant denies the charges the Enquiry 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 Enquiry 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 Enquiry Officer may for reasons to be recorded in writing refuse to call a witness.”*

12. Rule 9 of Rules, 2003 provides for action on enquiry report. According to sub-rule (4) of Rule 9 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 enquiry 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 enquiry and

representation of the charged Government Servant, if any, and subject to the provisions of Rule 16 of these rules (Rule 16 stipulates consultation with the Commission), 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.

13. Rule 10 of Rules, 2003 provides for procedure for imposing minor penalties. Rule 10 runs thus:-

> *"10.(i) Where the Disciplinary Authority is satisfied that good and sufficient reasons exist for adopting such a course, it may, subject to the provisions of sub-rule (2) impose one or more of the minor penalties mentioned in Rule 3.*
> *(ii) The Government Servant shall be informed of the substance of the imputations against him and called upon to submit his explanation within a reasonable time. The Disciplinary Authority shall, after considering the said explanation, if any, and the relevant records, pass such orders as he considers proper and where a penalty is imposed, reason thereof shall be given, the order shall be communicated to the concerned Government Servant."*

14. An analysis of above mentioned provisions would clearly show that summary procedure is to be followed for imposing minor penalty. For major penalty an enquiry is a condition precedent. If the charged Government Servant wants to lead his evidence in support of his plea, it is essential that he should be given an opportunity to lead such evidence. The failure on the part of the enquiry officer to fix a date for recording such evidence and give due intimation to the charged Government Servant is a clear violation of statutory requirements. As regards minor penalties, the rules prescribe that no such penalty shall be imposed unless

the Government Servant is informed in writing the substance of the imputations against him, he is given an opportunity to submit his explanation and that explanation is considered by the Disciplinary Authority. Having regard to the mandatory provision of the rules regulating imposition of minor penalties, no minor penalty can be imposed unless the prescribed procedure is followed.

15. When the disciplinary authority initiates proceedings under the rules which prescribe the procedure for imposing a major penalty, it is obligatory for the disciplinary authority to hold the enquiry in conformity with the rules. The mere fact that ultimately a minor penalty is imposed cannot be taken as the basis for an argument that any defect in holding the enquiry stands cured. The non-compliance with the mandatory provision in holding the enquiry vitiates the final order, though it imposes only a minor penalty and though the disciplinary authority could have imposed the said penalty without following the procedure prescribed for a major penalty. Once the enquiry proceedings are vitiated for violation of the rules under which the enquiry is held, such an enquiry proceeding cannot be taken as the basis for imposing any penalty.

16. Thus, in view of the above, the penalty order is not maintainable in the eye of the law.

17. In view of the above detailed discussion, we are of the considered view that learned Public Services Tribunal has not erred in law or on facts. We do not find any perversity or infirmity in the impugned judgment and order

warranting interference. Therefore, the writ petition is liable to be dismissed.

18. In the result, the writ petition is dismissed. No costs.

(Alok Kumar Verma, J.) **(Ravi Malimath)**
A.C.J.

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