

Court No. - 4

Case :- WRIT - A No. - 14254 of 2019

Petitioner :- Bharat Singh

Respondent :- U.O.I. Thru. Secy. Railway Board New Delhi And Ors.

Counsel for Petitioner :- Birendra Narain Shukla,Prabhav Kumar Tripathi

Counsel for Respondent :- Shiv P. Shukla,Kailash Narain Srivastava,Pankaj Kumar Awasthi

Hon'ble Vivek Chaudhary,J.

Heard learned counsel for the parties.

The petitioner has approached this Court challenging the order dated 6.3.2018 whereby punishment order is passed against the petitioner, order dated 26.6.2018 whereby the appeal filed by the petitioner is rejected and the order dated 1.2.2019 whereby his revision is also rejected as well as communication letters of the said orders.

The facts of the present case are that the petitioner was charged for being absent from duty for few hours without any information and during the said period, he misbehaved with a minor girl for which, FIR under Sections 328 and 354 I.P.C. as well as Sections 7/8 of the POCSO Act at Case Crime No.66 of 2017, Police Station Mailani, was registered. The enquiry officer submitted his report finding the petitioner guilty of absence without any information, but the charge of misbehaviour with the minor girl was not found proved. The disciplinary authority by the punishment order dated 6.3.2018 reversed the finding of the enquiry officer to the extent of misbehaviour with the minor girl.

Learned counsel for the petitioner has submitted that the disciplinary authority has reversed the finding of the enquiry officer without giving any notice to the petitioner. Such averment is made in Para-16 of the writ petition.

In the counter affidavit, it is stated that orders were passed after giving proper opportunity of hearing to the petitioner. However, there is no notice filed which was given to the petitioner before taking a view contrary to the finding given in the enquiry report. Even the order does not show that any hearing was given to the petitioner while reversing the said finding.

The Supreme Court in the case of ***Punjab National Bank and others vs. Kunj Behari Misra (1998) 7 SCC 84***, in Paras-17, 18 and 19 held:

"17. These observations are clearly in tune with the observations in Bimal Kumar Pandit case [AIR 1963 SC 1612 : (1964) 2 SCR 1 : (1963) 1 LLJ 295] quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the enquiry officer had given an adverse finding, as per Karunakar case [(1993) 4

SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the enquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority.

18. Under Regulation 6, the enquiry proceedings can be conducted either by an enquiry officer or by the disciplinary authority itself. When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of enquiry as explained in Karunakar case [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] .

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a

final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

Thus, it was incumbent upon the disciplinary authority to give proper opportunity of hearing to the petitioner before taking a view contrary to the enquiry report. The appellate court and the revisional court have also ignored the said aspect of the matter. Since opportunity of hearing was not given to the petitioner, therefore, the impugned orders cannot stand and are liable to be set aside.

In view thereof, the impugned orders dated 6.3.2018, 26.6.2018 and 1.2.2019 as well as communication letters of the said orders are set aside. The matter is remanded back to the disciplinary authority to pass appropriate orders in accordance with law after giving proper opportunity of hearing to the petitioner. Since the matter is very old, appropriate orders be passed as far as possible, say within a period of three months from the date, a certified copy of this order is placed before the authority concerned.

The writ petition stands ***allowed***.

[Vivek Chaudhary,J.]

Order Date :- 18.1.2023

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