

29.11.2024
(D/L-26)
Ct. No.4
(Naba)

W.P.C.T. 90 of 2013

Sanjay Kumar Yadav
Vs.
Union of India & Ors.

Mr. Debdutta Basu
... for the Petitioner.

Mr. Rabindra Nath Bag,
Mr. Tridip Misra
... for the Respondent Nos.1 to 5.

1. Affidavit-of-service filed on behalf of the petitioner is taken on record.
2. Heard the learned Counsel for the petitioner as well as the learned Counsel for the respondents.
3. The petitioner, a primary teacher, was served with a Memorandum of Charges dated 15.02.2002. The substance of the allegation against the petitioner was using abusive language against his superiors and also delaying the conduct of examinations. The substantial allegations of misconduct and insubordination form the basis of the proceedings initiated against the petitioner by the said Judgment. The petitioner has participated in the proceedings.
4. It is submitted by the learned Counsel for the petitioner that there was serious procedural lapses in the conduct of the proceedings which culminated in issuance of an enquiry report vide a

Memorandum dated 12.08.2004 issued by the Assistant Commissioner of the respondent Sangathan. The Inquiry Officer found the charges to be true against the petitioner. The petitioner thereafter submitted his representation against the findings of the Inquiry Officer on 30th August, 2004. After submission of the representation by the petitioner the Disciplinary Authority, namely, the Assistant Commissioner of the Sangathan was under a legal obligation to consider the representation and pass a reasoned and speaking order thereupon with reference to the procedure adopted by the Inquiry Officer and the findings recorded by him, prejudicial to the petitioner.

5. We find from the order of the Disciplinary Authority disposing of the petitioner's representation which is dated 17th November, 2004 that the same does not manifest any consideration of the petitioner's elaborate representation filed against the enquiry report. There is also no reason in support of the decision of the Disciplinary Authority of holding the findings of the Inquiry Officer. After recording the sequence of events leading to submission of the representation against the report of the Inquiry Officer, the Disciplinary Authority has affirmed

the findings of the Inquiry Officer by an order which reads as follows:

“ ...AND WHEREAS on careful consideration of the record of the else findings of the Inquiry Officer, deposition of witnesses, submissioin of Shri S. K. Yadav on the inquiry report, which do not regard the findings, and also taking into account the facts and circumstantial evidences generated during the inquiry, the undersigned is satisfied that Shri S. K. Yadav is quilty of not only designation process it also using unparliamentary and filthy language towards the principal which amounts to unbecoming of a KVS employer and good and sufficient reasons all there to impose on him the Penalty of reduction to a lower stage by three increments in the time scale of pay of PRT, for a period of three year with cumulative effect.

NOW THEREFORE, the undersigned, in his capacity as Disciplinary Authority orders that the pay Shri K. Yadav be reduced by three stages from Rs.5375/- to Rs.5000/-, in the time scale of Rs.4000-125-7000, for a period of three years w.e.f. 01.11.2004, and during the period of reduction Shri S. K. Yadav will not earn increments of pay and that on the expiry of the period, the reduction will have the effect of postponing his future increments of pay, if otherwise admissible.

FURTHER the undersigned decides that the period of suspension of Shri S. K. Yadav, from 06.12.2001 to 05.11.2003, be treat as dies-non and orders accordingly.”

6. A bare perusal of the order itself is illustrative of the fact that it is devoid of any substance whatsoever. Neither there is any consideration of the points raised by the petitioner in his reply to the enquiry report, nor is there any reason in support of the conclusion of the Disciplinary Authority to sustain the findings of the Inquiry Officer. The requirement of assigning reasons by *quasi* judicial authority while considering the matter, is by now a settled proposition of law. The importance of assigning reasons has been reiterated time without number and quite elaborately in a decision of the Hon’ble Apex Court in case of ***M/s. Kranti Associates Pvt. Ltd. & Anr. Vs. Sh. Masood Ahmed Khan & Ors.*** reported in ***(2010) 9 SCC 496***. The Disciplinary Authorities’ conclusions are not in conformity with the legal proposition as contained in the said Judgment in the case of ***Kranti Associates Pvt. Ltd.*** (*supra*) and therefore, the same is unsustainable in the eyes of law. The petitioner thereafter has assailed the decision of the

Disciplinary Authority before the Appellate Authority.

7. Upon going through the decision of the Appellate Authority, namely, the Joint Commissioner (Administration) dated 18.10.2005, we find that the Appellate Authority has committed the same error in exercising his jurisdiction as an Appellate Authority as was committed by the Disciplinary Authority. The consideration of the petitioner's appeal has been recorded by the Appellate Authority by an equally cryptic order which reads as follows:

"...And Whereas the undersigned being the appellate authority considered his appeal, submission made in the appeal & on perusal of the case file, personal records etc. & has observed that:-

i) Order Sheet No.1 to 10 reveals that the Inquiry was conducted by the Inquiry Officer, by providing sufficient opportunities to the appellant to defend his case and all natural justice was extended to the Charged Officer. Appellant was offered the assistance of Defence Assistant but

he decided to defend his case on his own Documents listed in Annexure-III of the Charge-sheet was provided Defence documents which were relevant to the case were provided to the appellant namely Sl. No.1, 2, 4, 5 & 6. Appellant was provided opportunity to cross examine and re-examine the witness.

ii) Article No.1 was proved to the extent that the appellant delayed the conduct of cumulative examination by half an hour approximately in Class-IV-A from the scheduled time on 21.11.01. Article No.2 was proved to the extent that appellant used unparliamentary/filthy words to the Principal on 21.11.01.

iii) The misconduct committed by the appellant after rendering only 06 years of service cannot be termed as being of a minor nature, rather it should be treated as a serious charge which cannot be tolerated from

teachers. Thus the appellant deserves penalty.

NOW, THEREFORE, the undersigned after careful consideration of the case confirms the order of the Disciplinary Authority dated 17.11.2004 and rejects the appeal preferred by the said Shri S K Yadav on merit accordingly.”

8. The learned Counsel for the petitioner submits that in view of the non-assigning of the reasons and non-consideration by the Disciplinary and Appellate Authority/s, the petitioner cannot be made to suffer the consequences of such an order.
9. The learned senior Counsel representing the respondent Sangathan submits that from the record it is clear that there is no procedural lapse in the conduct of proceedings before the Inquiry Officer.
10. Considering the rival submissions and on going through the order of the Disciplinary Authority as well as the Appellate Authority, as discussed above, we find that the two orders passed by the Disciplinary Authority and the Appellate Authority dated 17.11.2004 and 18.10.2005 are legally unsustainable. The learned Central Administrative

Tribunal, Calcutta has also failed to consider this aspect of the matter and dismissed the petitioner's original application assailing the punishment awarded to the petitioner of reduction to a lower stage by three increments in the time scale of pay for period of three years with effect from 01.11.2004. The order of the learned Central Administrative Tribunal dated 08.06.2010 is also unsustainable in the eyes of law.

11. We, therefore, set aside the order passed by the Disciplinary Authority dated 17.11.2004, the order passed by the Appellate Authority on 18.10.2005 as well as the decision of the learned Central Administrative Tribunal, Calcutta Branch dated 08.06.2010 passed in O.A. No. 1249 of 2005.
12. We remit the matter to the Disciplinary Authority to take a final decision by passing a reasoned and speaking order considering the points raised by the petitioner in his representation against the enquiry report. The consequential benefits shall abide the result of the Disciplinary Authority which it is expected shall be taken within three months.
13. The Writ Petition is allowed in the above terms.
14. There shall be no order as to costs.

15. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)