

**Court No. - 8**

**Case :-** WRIT - A No. - 17257 of 2020

**Petitioner :-** Eklavya Kumar

**Respondent :-** State Of U.P. Thru. Addl.Chief  
Secy./Prin.Secy.P.W.D. And Anr.

**Counsel for Petitioner :-** Anwar Ashfaq,Rina Pandey

**Counsel for Respondent :-** C.S.C.

**Hon'ble Alok Mathur,J.**

1. Heard Sri Anwar Ashfaq, learned counsel for the petitioner as well as learned Standing Counsel for the respondents.

2. By means of present writ petition the petitioner has assailed the order of punishment dated 05.06.2020, passed by the Secretary (PWD), Government of U.P., Lucknow, holding the petitioner guilty and awarded punishment of deduction of 5% from petitioner's pension for period of three years.

3. It has been submitted by learned counsel for the petitioner that the petitioner was appointed on the post of Assistant Engineer in the year 1992 and was promoted to the post of Executive Engineer on 20.11.2005 and since then he worked on the said post till his superannuation on 30.09.2018. It is submitted that disciplinary proceedings were initiated against the petitioner by means of office memorandum dated 26.03.2018 and Chief Engineer, PWD was appointed as inquiry officer. The charge sheet was given to the petitioner on 26.05.2018, wherein the charge against the petitioner was that when he was posed at General Manager, U.P.R.N.N. he gave charge of work agent to daily wager Sri Ram Shanker as per requirement of the work, on the recommendation of the Assistant Engineer. The second charge was with regard to appointment of Daily Wagers Sri Rajesh Kumar and Brijesh Pal Singh (Mate), who were also given charge of work agent. According to charge sheet, said promotions were illegal and de-hors the rules, consequently the petitioner was asked to submit response to the said charges.

4. It is next submitted by learned counsel for the petitioner prior to aforesaid promotions, the petitioner had sought certain documents from the respondents by means of letter dated 05.05.2018. It is submitted that none of the documents were supplied to him and hence in absence of aforesaid material/documents, the petitioner submitted his reply to the

charge sheet on 17.10.2018. The petitioner in his reply had denied all the charges and stated that he had in fact not promoted the daily wagers to the post of work agent but only said work of the post of "work agent" was assigned to them. He further stated that such an action was neither illegal nor contrary to rules inasmuch as, no rules for promotion had been framed and consequently orders passed by the petitioner did not amount to promotion orders and had further stated that in any view of the matter in case the orders passed by the petitioner were illegal, they could very well have been set aside by the higher authorities.

5. It is further submitted that subsequent to submission of reply by the petitioner inquiry was concluded and report was submitted to the disciplinary authority. Show cause notice was given to the petitioner on 12.07.2019, to submit his reply to the inquiry report. The petitioner submitted his reply on 13.08.2019, again denying the charges. He replied that he had not passed any order for promotion with regard to said daily wagers. He had further stated that said employees are Class IV employees which is minimum requirement for being eligible to hold post of work agent.

6. Considering the response/reply filed by the petitioner, the impugned order of punishment has been passed, considering the fact that the petitioner superannuated from service on 30.09.2018, and the order of punishment was passed after three years of his superannuation.

7. Learned counsel for the petitioner has assailed the impugned order on the ground that punishment passed by the respondents, could not have been passed as the same does not even find mention in the U.P. Government Servant (Discipline and Appeal) Rules, 1999 or under Section 351- A of the Civil Service Regulations, which is applicable to the employees of the State Government. He further submits that no date, time and place was fixed for the said inquiry which has disabled the petitioner from defending himself and said inquiry proceedings in absence of fixing any date, time and place, the petitioner could not submit any evidence and even the inquiry proceedings would stand vitiated inasmuch as evidence on the basis of which the punishment has been awarded was not submitted to the inquiry officer by any of the presenting officer on behalf of the department.

8. Learned Standing Counsel on the other hand has opposed the writ petition. He submits that inquiry proceedings were proceeded in accordance with the rules and the petitioner was afforded adequate opportunity of hearing in the said inquiry

proceedings. He submits that charge sheet was given to the petitioner to which he has submitted his reply and even after conclusion of inquiry proceedings a show cause notice was given and a copy of the inquiry report was provided to him and hence the impugned order has been passed.

9. Heard learned counsel for the parties and perused the record.

10. It has been submitted by learned counsel for the petitioner that punishment under Rule 351- A which empowers the respondents to pass order to recover from the pension of the petitioner can be passed only in cases where it is established that some financial loss has been caused to the State. Provision of Regulation 351 - A of the Regulations is quoted herein below :

*"351-A - The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave mis-conduct, or to have caused pecuniary loss to the Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement;*

*Provided that -*

*(a) such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment -*

*(i) shall not be instituted save with the sanction of the Governor,*

*(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings, and*

*(iii) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.*

*(b) judicial proceedings, if not instituted while the officer was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a), and*

*(c) the Public Service Commission, U.P. shall be consulted before final orders are passed.*

*Explanation - For the purposes of this article -*

*(a) departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him, or, if the officer has been placed under suspension from an earlier date, on such date; and*

*(b) judicial proceedings shall be deemed to have been instituted;*

*(i) in the case of criminal proceedings, on the date on which a complaint is made, or a charge-sheet is submitted, to a criminal court; and*

*(ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made, to a civil court."*

11. From bare perusal of Regulation 351-A, it is clear that though the State has been empowered to recover from the pension, but, it has to be categorically recorded that the act of the delinquent employee has caused pecuniary loss to the State. It is mandatory that such finding is recorded, pursuant to which the respondent could have validly pass the order of recovery from the pension of the petitioner.

12. In the present case, neither there is any charge levelled against the petitioner to have caused pecuniary loss to the State nor there is any evidence on record of promoting employees to the post of work agent, hence order of recovery from the pension of the petitioner, could not have been passed.

13. In the light of above, this Court is of view that punishment order is clearly vitiated and impugned order is illegal and arbitrary and the petitioner already stands retired on 30.09.2018, which is clearly two years prior to the passing of impugned order. It is further noticed that no date, time and place was fixed by the inquiry officer which evident from the inquiry report. In this regard Hon'ble Supreme Court in catena of judgments has held that the inquiry proceedings is not a casual exercise but have to be conducted in accordance with law and appropriate opportunity of hearing has to be given to the delinquent employee to place all the material in his defence. Date, time and place is fixed for affording opportunity to the delinquent employee to place material in his defence before the inquiry officer. By not fixing date, time and place, the inquiry

officer has committing gross illegality which vitiates the entire disciplinary proceedings.

14. This Court in the case of **Radhey Kant Khare Vs. U.P. Co-operative Sugar Mill, 2003 (1) AWC 704**, in para 7, has observed as under :

*"7. In a Division Bench of this Court in Subhash Chandra Sharma V. U.P. Co-operative Spinning Mills, 1999 (4) AWC 3227, in which one of us (Hon'ble M. Katju, J.) was a member, this law has been laid down. The law is as follows :*

*"After a charge-sheet is given to the employee, an oral enquiry is a must, whether the employee requests for it or not. Hence, a notice should be issued to him indicating him the date, time and place of the enquiry. On that date the oral and documentary evidence against the employee should first be led in his presence. ...."*

15. Division Bench of this Court in **Writ Petition No. 1756 (S/B) of 2006 - Yog Narain Dubey Vs. Managing Director and Others** (decided on 14.07.2011), has held as under :-

*"Statutory procedure is prescribed for holding the enquiry in departmental matters. Principle of natural justice have to be followed even if there are no rules prescribing any such procedure. The enquiry starts after issuance of charge sheet in which charges are mentioned which should be clear and unambiguous. If the petitioner requires the copies of any document and makes an application in that behalf, the Enquiry Officer shall consider the application of the petitioner for supply of documents and after being satisfied about the relevancy of such documents, he shall supply the copies of such documents to the petitioner and in case it is not practically possible for any valid reason to supply the copy of any such document, he may allow inspection of such document to the petitioner by fixing date, time and place for such inspection. The enquiry officer shall ensure free access to the petitioner to such documents which are to be inspected by the petitioner. After gathering such information, reply is submitted to the charge sheet . On receipt of reply of the charge sheet the Enquiry Officer has to fix date, time and place for holding enquiry, for which formally the Department is to give one opportunity first, to lead evidence wherein the delinquent is also permitted to remain present, who is given opportunity to cross-examine the witnesses, if any examined and also to rebut the documentary evidence. Thereafter a date is to be fixed by the Enquiry Officer to allow adducing of evidence by the delinquent, if he so desires, which may be oral as well as*

*documentary. It is thereafter that the Enquiry Officer after hearing the parties records his finding on the basis of the evidence which is collected during the enquiry and enquiry report is submitted by the Enquiry Officer to the Disciplinary Authority. Disciplinary Authority has to see whether procedure in holding enquiry has been followed or not and if not then the matter need be remitted to the Enquiry Officer to rectify the mistake but during the enquiry if he finds that all required procedure has been followed and enquiry has been held following the principles of natural justice, then he would see whether charge stands proved on the basis of material collected or brought before the enquiry officer . If the disciplinary authority is satisfied with the report of the enquiry officer, he will pass final orders after affording opportunity to the delinquent."*

16. In the light of above, this Court is of the opinion that impugned order dated 26.05.2018, is illegal and arbitrary and is accordingly quashed. The amount of deduction made from the pension of the petitioner is liable to be refunded within six weeks from the date of production of certified copy of this order before the competent authority, alongwith interest at the rate of 6% from the date of deduction till the amount is refunded to the petitioner.

17. The writ petition is **allowed**.

**Order Date :- 18.8.2022**

A. Verma

(Alok Mathur, J.)