

Court No. - 40

Case :- SPECIAL APPEAL No. - 291 of 2024

Appellant :- State Of U.P. And 2 Others

Respondent :- Shyam Kewal Ram

Counsel for Appellant :- C.S.C.,Tej Bhanu Pandey

Counsel for Respondent :- Ganesh Shankar Dubey,Upendra Upadhyay

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Syed Qamar Hasan Rizvi,J.

1. This appeal arises out of the judgment and order dated 13.3.2023 passed by learned Single Judge allowing the writ petition filed by the respondent-petitioner against imposition of punishment vide order dated 24.3.2008.

2. It transpires that disciplinary inquiry was initiated against the writ petitioner by the disciplinary authority with service of charge-sheet dated 19.1.2006. The inquiry officer ultimately submitted a report in which he found charge nos.1,2 and 3 not to be proved. Charge no.4 was in respect of the temporary embezzlement in which the inquiry officer found the petitioner to be guilty. It transpires that a notice dated 12.11.2007 was issued by the disciplinary authority who had disagreed with the conclusion of the inquiry officer with regard to exoneration of the writ petitioner in respect of charge nos.1,2 and 3. Writ petitioner submitted a reply to this notice whereafter the major punishment of reversion to basic pay was imposed by the disciplinary authority upon the petitioner.

3. Learned Single Judge has found the procedure for imposition of such punishment to be unsustainable, inasmuch as proper opportunity was denied to the writ petitioner to defend himself. Thus aggrieved, the State is before us challenging the judgment of learned Single Judge.

4. We have heard learned State counsel as well as Sri Upendra Upadhyay, learned counsel for the respondent-petitioner and have perused the materials on record.

5. The facts, as have been noticed above, are not in issue. We have perused the show cause notice dated 12.11.2007, issued by the

disciplinary authority, whereby he had disagreed with the conclusions drawn by the inquiry officer while exonerating the delinquent employee of charge nos.1,2 and 3. This notice only records the reasons for which the inquiry officer had exonerated the delinquent employee. Absolutely no reasons have been disclosed by the disciplinary authority for disagreeing with the conclusions arrived at by the inquiry officer. It is, therefore, urged on behalf of the writ petitioner that in the absence of reasons disclosed to the delinquent employee, by the disciplinary authority, for disagreeing with the opinion of the inquiry officer, the delinquent employee was denied of opportunity to explain the circumstances or his defense in that regard.

6. Recording of reasons in the show cause notice for disagreeing with the opinion of inquiry officer has a definite purpose to subserve. It gives an opportunity to the delinquent employee to offer his explanation on the issues that have weighed with the disciplinary authority. In a case where the disciplinary authority does not record reasons for his disagreement with the opinion of the inquiry officer the delinquent employee will be denied of his right to effectively explain his defense regarding reasons of disagreement. The law in that regard has been settled by the Supreme Court in Punjab National Bank vs. Kunj Behari Misra 1998 (7) SCC 84, wherein the Court has clearly observed that reasons of disagreement must be disclosed to the delinquent employee in order to enable him to effectively meet the material which is proposed to be relied upon against him. Para 17 and 19 of the judgment are relevant for the present purposes and are reproduced hereinafter:-

"17.....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.

19.....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."

The aforesaid point of law has been reaffirmed by the Apex Court in *State Bank of India & Ors. vs. Mohammad Badruddin* (2019) 16 SCC 69.

7. In the facts of the present case, we are inclined to concur with the view taken by the learned Single Judge that in fact reasons of disagreement were not disclosed to the delinquent employee by the disciplinary authority. In such view of the matter, the delinquent employee was denied opportunity to effectively put up his defense in respect of charge nos.1,2 and 3. So far as charge no.4 is concerned, the only allegation found proved against the writ petitioner was that he had belatedly deposited the government money. The disciplinary authority had already imposed a minor punishment by the order under challenge, inasmuch as adverse entry was awarded to the employee concerned. It transpires that major punishment has been imposed upon the writ petitioner primarily on account of his implication in other charges which were impermissible, in view of the discussions held above.

8. In such circumstances, the view taken by the learned Single Judge to quash the major punishment of reversion of basic pay scale requires no interference. We are also cognizant of the fact that the writ petitioner had otherwise superannuated. In that view of the matter, we are of the view that no interference in the present appeal is required which, consequently, fails and is, accordingly, dismissed.

Order Date :- 22.3.2024

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