

Court No. - 21

Case :- WRIT - A No. - 3786 of 2022

Petitioner :- State Of U.P. Through Secretary Revenue And 4 Others

Respondent :- State Public Service Tribunal And 4 Others

Counsel for Petitioner :- Chandra Shekhar Singh

Hon'ble Manoj Kumar Gupta,J.

Hon'ble Dr. Yogendra Kumar Srivastava,J.

(Per : Dr. Yogendra Kumar Srivastava,J.)

1. Heard Sri S.N.Shukla, learned Standing Counsel for the State of U.P. appearing for the petitioners.

2. The present petition seeks to raise a challenge to an order dated 09.09.2021 passed by the U.P. State Public Services Tribunal, Lucknow¹ in terms of which Claim Petition No. 444 of 2008 (Krishna Kumar Tevatia and others Vs. State of U.P. and others) filed by the deceased respondent no. 2 has been allowed and the order of punishment dated 30.04.2005, the appellate order dated 24.12.2005 and the revisional order dated 18.10.2007, have been set aside and benefits withheld due to the said punishment order have been directed to be refunded to the legal representatives of the deceased respondent no. 2.

3. The facts of the case as reflected from the pleadings are that disciplinary proceedings were initiated against the respondent no. 2 while he was posted as Collection Amin at Jahanabad, District Pilibhit and a charge-sheet dated 30.09.2004 was issued whereupon an inquiry was conducted and a report was submitted on 20.01.2005 holding the respondent no. 2 guilty of the charges. A show cause notice was issued to him on 05.02.2005 to which he submitted a reply on 28.02.2005 and thereafter the order of punishment was passed on 30.04.2005 whereby the respondent no.

1 the Tribunal

2 was reverted to his original pay scale in addition to award of adverse entry in his character role. The appeal and revision filed thereagainst were dismissed on 24.12.2005 and 18.10.2007 respectively.

4. The Tribunal taking into consideration the inquiry report came to a conclusion that neither any date, time or place was fixed by the inquiry officer nor any oral evidence was led and only on the basis of some documentary evidence, the respondent no. 2 was held guilty of the charges. It was also held that the respondent no. 2 was not afforded any opportunity to adduce evidence and was denied reasonable opportunity of defence. Referring to Rule 7 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999² and also certain legal authorities for the proposition that even in a case where the delinquent employee does not submit any reply to the charge-sheet, the inquiry officer is not absolved from his duty to record oral evidence and provide an opportunity to adduce evidence in defence, the inquiry was held to be vitiated. It was also held that the disciplinary authority has proceeded only on the basis of the inquiry report and therefore the order of punishment being in violation of the principles of natural justice was not sustainable and was accordingly quashed and the claim petition was allowed. Taking notice of the fact that the respondent no. 2 had expired during the pendency of the claim petition, the Tribunal held that no fruitful purpose would be served in remitting the matter for fresh inquiry and in view thereof while setting aside the orders of punishment, the appellate order and the revisional order, the benefits withheld due to the punishment order have been directed to be refunded to the legal representatives of the respondent no. 2.

² the Rules, 1999

5. Learned counsel appearing for the petitioner has sought to urge that once the charges stood proved there was no need for any formal oral inquiry or cross-examination of the witnesses and for the said reason the order passed by the Tribunal is manifestly erroneous and legally unsustainable. It is also sought to be contended that the order passed by the Tribunal does not give any cogent reason to set aside the order of punishment and also the orders passed in appeal and revision.

6. The procedure with regard to holding of disciplinary proceedings against government servants in State of U.P. is governed as per the provisions of the Uttar Pradesh Government Servant (Discipline and Appeal), Rules 1999. The procedure for imposing major penalties, the manner in which charge-sheet is required to be given, the holding of an enquiry by the inquiry officer designated for the purpose the grant of opportunity to call witnesses and record their oral evidence are also provided for under the said Rules.

7. The report of the inquiry officer, as has been noticed in the order passed by the Tribunal, shows that neither any date, time and place was fixed by the inquiry officer nor any oral evidence was led to prove the charges. It also records that only on the basis of the certain documentary evidence the employee was held guilty of the charges and therefore it was a case of denial of reasonable opportunity to him to place his defence. The Tribunal has referred to Rule 7 of the Rules, 1999 and also the legal position that even in a situation where the delinquent employee does not submit any reply to the charge-sheet, the inquiry officer is not absolved from his duty to record oral evidence and to provide an opportunity to him to adduce evidence in his defence.

8. The legal position with regard to grant of reasonable opportunity to a delinquent employee to place his defence during the course of a departmental inquiry and the necessity of observance of principles of natural justice and following the due procedure is fairly well settled.

9. A Division Bench of this Court in the case of **Radhey Kant Khare vs. U.P. Cooperative Sugar Factories Federation Ltd.**³, has held that after a charge sheet is given to the employee, an oral inquiry is must whether the employee requests for it or not. Further, it is mandatory to give a notice to him indicating the date, time and place of the enquiry, the principle being that charge-sheeted employee should not only know the charges against him but should also know the evidence against him so that he can properly reply to the same.

10. In **State of U.P. and others Vs. Saroj Kumar Sinha**⁴, the inquiry officer has been held to be in the position of an independent adjudicator and acting in a quasi-judicial authority with a duty enjoined upon him that even in the absence of the delinquent, he is to see whether the unrebutted evidence is sufficient to hold that the charges are proved. It was also observed that in a case where no oral evidence was examined and the documents have not been proved, the charges could not be held to have been proved against the delinquent employee.

11. The aforementioned judicial authorities have been referred to by the Tribunal in its order to record its conclusion that the inquiry officer was legally bound to conduct an oral inquiry informing the date, time and place of the enquiry, providing an opportunity to the delinquent employee to cross-examine the

3 2003 (1) AWC 704 All

4 (2010) 2 SCC 772

witnesses, whether or not any request had been made for the purpose and in the absence thereof, the charges against the employee could not be held to have been proved.

12. The Tribunal has also recorded that even the reply submitted by the employee to the show cause notice issued by the disciplinary authority consequent to the inquiry and the defence raised therein have not been accorded consideration and the disciplinary authority has passed the order of punishment only on the basis of inquiry report in gross disregard to the provisions under the Rules, 1999 and also the principles of natural justice.

13. The departmental proceedings pursuant to which the punishment order has been passed having thus not followed the procedure prescribed under the Rules, 1999 and there being several procedural infirmities in the conduct of enquiry, the order of punishment has rightly been held to be legally unsustainable.

14. It has been consistently held that a departmental inquiry against government servant is not to be treated as a casual exercise and the principles of natural justice are required to be observed so as to ensure not only that justice is done but is manifestly seen to be done; the object being to ensure that the delinquent is treated fairly in proceedings which may culminate in imposition of a major penalty against him.

15. The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the delinquent employee is afforded a reasonable opportunity to defend himself against charges on which inquiry is held and has to be given an opportunity to deny his guilt and establish his innocence.

16. The administrative authorities are obliged in law to follow their own regulations, policies and procedures with regard to conduct of departmental proceedings and non-adherence thereto would have potential of causing serious prejudice to the person concerned in the inquiry proceedings and would clearly amount to denial of a reasonable opportunity to submit a plausible and effective rebuttal to the charges being enquired into.

17. In the present case, as the inquiry officer failed to fix any date, place or time in the conduct of inquiry and the absence of any witness having been examined to support the charges levelled against the respondent-employee has led to a situation where the delinquent has been condemned unheard. The entire proceedings, being a violation of principles of natural justice and total disregard of procedural fairness, have rightly been held by the Tribunal to be vitiated.

18. The principal contention sought to be raised by the learned counsel for the petitioner that once the charges stand proved, there is no need of any formal oral inquiry or cross-examination of the witnesses, cannot be held to be sustainable for the reason that the same would amount to gross denial of a fair opportunity to the delinquent to place his defence and would amount to by-passing the procedure under the Rules, 1999, apart from being violative of the principles of natural justice.

19. The Tribunal upon taking notice of the fact that the respondent no. 2 (petitioner in the claim petition) had expired during the pendency of the claim petition held that no fruitful purpose would be served in remitting the matter for fresh enquiry and while allowing the petition and quashing the order of punishment, the appellate order and the revisional order, the

Tribunal has rightly directed the benefits withheld due to the said punishment order, be refunded to the legal representatives of the deceased respondent no. 2.

20. No other ground has been urged on behalf of the petitioner to support the challenge to the order passed by the Tribunal.

21. The petition thus fails and is accordingly dismissed.

Order Date :- 25.3.2022

Pratima

(Dr.Y.K.Srivastava,J.) (Manoj Kumar Gupta, J.)