

STATE PUBLIC SERVICES TRIBUNAL, INDIRA BHAWAN, LUCKNOW.

Present: Hon'ble Mr. Suresh Chandra, Vice-Chairman (Admn.)

Claim Petition No. 17/2016

Indrajeet Singh, aged about 57 years, son of late Sri Malook singh, R/o Village- Kurana, (कुराना), Police Station- Simmavali, (सिम्मावली) District- Hapur, (हापुड़)

.....Petitioner

Versus

1. State of U.P. through Principal Secretary /, Home Police Department U.P. Govt. Secretariat, Lucknow.
2. Inspector General of Police, (पुलिस महानिरीक्षक) Agra Zone, Agra, U.P..
3. Deputy Inspector General of Police, (पुलिस उपमहानिरीक्षक) Agra, Region Agra, .
4. Senior Superintendent of Police, District-Mathura.

.....Opposite Parties

JUDGMENT

(By Hon'ble Mr. Suresh Chandra, Vice-Chairman (Admn).)

This claim petition has been filed by petitioner under Section-4 of the U.P. Public Services (Tribunal) Act, 1976 and sought the following reliefs:-

- (i) To quash/set aside the impugned orders dated 22.09.2014 (Annexure No. 5), appellate order 31.01.2015 (Annexure No. 7) and revisionary order dated 05.05.2015 (Annexure No. 9) with all consequential service benefits.
 - (ii) Any other direction or order may also be passed which Court may kindly be pleased to issue in the facts and circumstances of the case and award the cost of the claim petition in favour of the petitioner.
2. Briefly stated, case of petitioner is that he was initially appointed on the post of Sub Inspector on 1982, thereafter on the basis of his good work and conduct he was promoted to the post of Inspector in the year 2005. Without conducted any preliminary enquiry against the petitioner a show

cause notice was issued to the petitioner on 12.05.2014 (Annexure No. 1) which is reproduced below:-

“जब याची वर्ष 2012 में थाना कोतवाली मथुरा में प्रभारी निरीक्षक के पद पर नियुक्त था तो दिनांक 30.03.2012 को गुड्डू पुत्र गोपाल बघेल निवासी नगला देवी सिंह, थाना छाता, जनपद मथुरा द्वारा थाना कोतवाली मथुरा पर उसकी आईकन गाड़ी से रु० 4.75 लाख लूटकर लेने के सम्बन्ध में प्रार्थना पत्र याची को दिया, जिस पर याची द्वारा मु०अ०सं० 336/2012 धारा 382/427 भादवि पंजीकृत कराया गया, जबकि याची द्वारा शिकायतकर्ता के प्रार्थना पत्र के आधार पर चोरी का मुकदमा पंजीकृत न कराकर लूट का मुकदमा पंजीकृत कराना चाहिए था। उक्त मुकदमें के विवेचक उपनिरीक्षक (वि०श्रे०) दफेदार सिंह द्वारा गिरफ्तार किये गये अभियुक्त प्रदीप खटिक से याची द्वारा पूछताछ की गयी लेकिन याची ने 4.75 लाख रुपये के चोरी के अभियुक्त प्रदीप खटिक को गिरफ्तार करने के बाद केवल उच्चाधिकारियों को सूचना देना बताया, लेकिन आप द्वारा किसी उच्चाधिकारी से अभियुक्तों की कोई वार्ता नहीं करायी गयी, याची ने मुकदमें का अल्पीकरण किया, याची द्वारा थाना प्रभारी के निहित कर्तव्यों / दायित्वों का कुशल पर्यवेक्षण नहीं किया गया। याची का यह कृत्य कर्तव्यपालन के प्रति घोर लापरवाही, उदासीनता एवं स्वेच्छाचारिता को परिलक्षित करता है, जिसकी घोर परिनिन्दा की जाती है। ”

Petitioner submitted reply to the show cause notice on 26.06.2014 (Annexure No. 2) denying all the charges levelled against him. Thereafter, disciplinary authority passed the impugned order dated 22.09.2014 by which censure entry has been awarded against the petitioner on the ground that the reply submitted by the petitioner is unsatisfactory. Feeling aggrieved with the order dated 22.09.2014 petitioner preferred appeal which was also rejected by order dated 31.01.2015. Petitioner filed revision against the appellate order which was also rejected by order dated 05.05.2015. Contention of the petitioner is that disciplinary authority has not disclosed neither the ground of allegation to the petitioner nor any material was found against the petitioner to prove the allegation as such the impugned punishment order is non speaking and unreasoned. The punishment order, appellate order and revisionary order passed by the opposite parties are not in accordance with rule, hence this claim petition.

3. *Opposite parties have filed their written statement denying material allegations mentioned in reference petition. They have stated that petitioner committed dereliction of duty and irregularity for which a show cause notice was issued upon petitioner. Full opportunity of hearing was given to petitioner to defend his case. Opposite parties had contended that impugned orders passed against petitioner are in accordance with Rule-14(2) of U.P. Subordinate Ranks of Police Officers (Punishment and Appeal) Rules, 1991. There is no illegality committed by the authorities concerned in passing the orders against the petitioner. Orders passed against the petitioner are reasoned and speaking order. Grounds shown in support of reference petition are devoid of merit, so petition deserves to be dismissed.*

4. *Reiterating his earlier submissions, the petitioner filed his R.A. wherein he submitted his version in view of the pleas agitated by the opposite parties.*

5. *I have heard the learned Counsel for the petitioner as well as the learned P.O. appearing on behalf of the opposite parties and perused the record available on the file.*

6. *The learned counsel for the petitioner has contested the case that petitioner always performed his work and duties with extra ordinary and honesty and always worked with full satisfaction of his superior authorities having unblemished service record. On the basis of enquiry report dated 24.01.2014, show cause notice was issued to the petitioner to which petitioner submitted reply to the show cause notice, thereafter, disciplinary authority passed the impugned order without considering reply of the petitioner which is illegal, arbitrary, and against the principles of natural justice.*

7. *The enquiry report 24.01.2014 submitted by the enquiry officer exceeds his power by giving his opinion that the petitioner is "guilty" and that too only on the basis of vague presumption without having any finding which*

shows that the disciplinary proceedings have been initiated with pre-determined mind and in an arbitrary manner only to punish the petitioner in any manner.

8. Highlighting the importance of finding of enquiry officer, the Hon'ble Apex Court in **Vijay Singh Vs. Union of India, (2007) scc 63 and Nirmla Jhala Vs. State of Gujrat and others, 2013(2)SCC (L&S) 270** has held as under :-

" As the object of the preliminary enquiry is only to take a prima facie view, as to whether there can be some substance in the allegation made against an employee which may warrant a regular enquiry or not; the enquiry officer may give his finding, but cannot made the opinion to hold guilt to the delinquent employees."

9. It has further been argued by the petitioner that impugned order of punishment dated 22.09.2014 is non-speaking, unreasoned, illegal and arbitrary order, as it has been passed without application of mind, so, it is liable to be quashed. In this regard, I have perused the impugned order of punishment dated 22.09.2014 which is reproduced as under:-

" आरोपित निरीक्षक द्वारा प्रस्तुत स्पष्टीकरण बलहीन, भ्रामक एवं किसी भी स्थिति में स्वीकार योग्य नहीं हैं क्योंकि उपलब्ध अभिलेखीय साक्ष्य से पाया गया कि आरोपित निरीक्षक ना0पु0 श्री इन्द्रजीत सिंह थाना कोतवाली मथुरा ने प्रश्नगत मु0अ0सं0336/2012 धारा 382/427 भादवि मुकदमें के विवेचक उपनिरीक्षक दफेदार सिंह द्वारा गिरफ्तार किये गये प्रदीप खटिक को गिरफ्तार करने के बाद केवल उच्चाधिकारियों को सूचना देना बताया है, लेकिन उन्होंने किसी भी उच्चाधिकारियों से अभियुक्तों की कोई वार्ता नहीं करायी थी, इस प्रकार आरोपित निरीक्षक ना0पु0 श्री इन्द्रजीत सिंह थाना कोतवाली मथुरा ने शिकायतकर्ता द्वारा दिये गये प्रार्थना पत्र में अंकित 4.75 लाख लूट की घटना का अभियोग पंजीकृत न कराकर चोरी का अभियोग पंजीकृत कराने में मुकदमा में अल्पीकरण करने, मुकदमें के गिरफ्तार शुदा अभियुक्त प्रदीप खटिक की जनपद मथुरा के उच्चाधिकारियों से कोई वार्ता न कराने एवं कुशल पर्यवेक्षण न करने के दोषी है। आरोपित निरीक्षक ना0पु0 ने बिना किसी साक्ष्य के अन्य को दोषारोपित करने का असफल प्रयास किया है। आरोपित निरीक्षक ना0पु0 को मौके का निरीक्षण कर उचित धाराओं अभियोग पंजीकृत कराने का उत्तरदायित्व आरोपित प्रभारी निरीक्षक का था, किन्तु आरोपित निरीक्षक ना0पु0 श्री इन्द्रजीत सिंह ने प्रभारी निरीक्षक के पदीय कर्तव्यों का भली प्रकार निर्वहन नहीं किया गया है, आरोपित

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निरीक्षक ना0पु0 श्री इन्द्रजीत सिंह का स्पष्टीकरण
संतोषजनक नहीं है।

10. *The punishment has been passed without any evidence and without proving the allegation against the petitioner merely it has been stated that “ आरोपी द्वारा प्रेषित स्पष्टीकरण संतोषजनक नहीं पाया गया ” No reason has been given in the impugned punishment order and only conclusion has been mentioned, as such, the impugned punishment order has been passed in violation of the law. The opposite party concerned did not consider the material facts of the case as such it cannot be said that the petitioner was afforded a reasonable opportunity of hearing. In my view there is nothing to show on the file that any act of the petitioner amounts to misconduct. As there is no evidence displaying or establishing any ill motive on the part of the petitioner, he has been unjustifiably punished for misconduct. The petitioner did not commit any dereliction in his duties but merely on the basis of presumption the disciplinary was initiated against him leveling false allegations and without considering any single word of the reply and without proving misconduct, the impugned punishment has been passed, which is non speaking and unreasoned order. It is settled law that if the intention of the employee is not bad, his conduct does not come into the category of misconduct and he may not be punished. Thus the opposite parties unusually and unlawfully exercised their power. The action of opposite parties in the present case is illegal, arbitrary and violation of principles of Natural Justice. The impugned punishment order, appellate order and revisionary order have been passed in illegal and arbitrary exercise of power.*

11. *Highlighting the importance of a reasoned order the Hon'ble Apex Court in **Raj Kumar Mehrotra Vs. State of Bihar and others, 2006 Supreme Court Cases (L&S) 679** has held as under :-*

“Without going into other issues raised, we are of the view that the impugned order of the respondent authority imposing punishment on the appellant cannot be sustained. Even if we assume that Rule 55-A which pertains to minor punishment, was

applicable and not Rule 55 which relates to major punishments, nevertheless Rule 55-A requires that the punishment prescribed therein cannot be passed unless the representation made pursuant to the show cause notice has been taken into consideration before the order is passed. There is nothing in the impugned order which shows that any of the several issues raised by the appellant in his answer to the show cause notice were, in fact, considered. No reason has been given by the respondent authority for holding that the charges were proved except for the ipse dixit of the disciplinary authority. The order, therefore, cannot be sustained and must be and is set aside."

12. A distinction between "reasons" and "conclusions" have been spelt and by Hon'ble the Apex Court in **Union of India Vs. Mohan Lal Kapoor, (1973)**

2 Supreme Court Cases 836, it has been held as under:-

"Reasons are links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered by the conclusions reached."

13. In **G. Valli Kumar Vs. Andhra Education Society, 2010(2) Supreme Court Cases 497**, it has been held by the Hon'ble Apex Court as under:-

"That the requirement of recording reasons by every quasi judicial or even an administrative authority entrusted with the task of passing an order adversely affecting an individual and communication thereof to the affected person is one of the recognized facets of the rules of natural justice and violation thereof has the effect of vitiating the order passed by the authority concerned."

14. In the case of **S.N. Mukherji vs. Union of India** it has been held by the Hon'ble Apex Court that:-

"reason must be recorded while awarding punishment and in this regard what is necessary is that the reason must clear and explicit so as to indicate that the authority has given due consideration to the point of controversy.

15. The Hon'ble High Court in case of **Arvind Kumar Pandey vs. State of U.P. & others reported in 2013(31) LCD 1964** has held that

"if the element of motive behind any lapse and dereliction of duty is absent, then for that reason, no employee shall be punished or face disciplinary enquiry as has been laid down by the Hon'ble Apex Court in the case of Union of India and others Vs. Jamil Ahmad.

16. The Division Bench of the Hon'ble High Court in case of **State of U.P. and others vs. Raj Mani Mishra and another reported in 2018(36)**

LCD 644, it has been held that:-

"lack of efficiency or failure to attain highest standards in discharge of duties attached to public office would not constitute 'misconduct' unless the consequent directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high."

17. By the Hon'ble High Court In the case of **Jagdish Prasad Singh vs. State of U.P. & others** has held that:

"There is not a single word as to whether he has perused the report of the enquiry officer before passing the order. The punishing authority also did not indicate about the report of the enquiry officer and the order was passed without any application of mind and it does not indicate that he had even perused the report of the enquiry officer and agreed with the report of the enquiry officer. The Hon'ble High Court accordingly quashed the illegal and non-speaking order, as even the enquiry report was not referred in the order."

18. In the light of above, I find that the order of punishment is clearly illegal, non speaking and un reasoned and there are sufficient reasons to quash it.

19. The learned Counsel for the petitioner has further argued that until charge of the negligence of petitioner has been proved, the conduct of the petitioner is not come under the purview of misconduct and regarding define misconduct catena of judgments have been passed by Hon'ble Apex Court and Hon'ble High Court.

20. In case of **Baldev Singh Gandhi Vs. State of Punjab & Another AIR 2002 SC Page 1124** considering the term misconduct held that **"Misconduct has not been defined in the Act. The work 'misconduct' is antithesis of the word 'conduct' unlawful behavior, misfeasance, wrong conduct, misdemeanor etc."**

21. I have also perused the appellate and revisionary orders and find that grounds taken by the petitioner in appeal and revision have also not been considered properly and appeal and revision were rejected in mechanical manner vide orders dated 31.01.2015 and 05.05.2015, these are consequential orders, so, the appellate and revisionary orders are also liable to be quashed.

22. In view of discussions made above, the claim petition deserves to be allowed.

ORDER

The claim petition is allowed. Punishment order dated 22.09.2014 (Annexure No. 5), appellate order dated 31.01.2015 (Annexure No. 7), and revisionary order dated 05.05.2015 (Annexure No. 9) are hereby quashed.

Petitioner shall be given all consequential service benefits which have been withheld on account of these punishment orders as per rules.

Compliance of this judgment and order shall be made within a period of three months from the date of receipt of certified copy of this order.

There is no order as to costs.

Sd/-
(Suresh Chandra)
Vice-Chairman(Admn.)

Judgment signed, dated and pronounced in the open court today.

Sd/-
(Suresh Chandra)
Vice-Chairman(Admn.)

Dated: 9th October, 2024
MK/-