

STATE PUBLIC SERVICES TRIBUNAL, INDIRA BHAWAN, LUCKNOW.

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

Claim Petition No. 195/2016

*Jitendra Kumar Singh, aged about 40 years, son of Sri Raj Pati Singh, R/o -
H.I.G. II / 26, Sidharth Enclave Extension, Near Tara Mandal, Gorakhpur.*

.....Petitioner

Versus

1. *State of U.P. through Principal Secretary Excise Department Govt. of
U.P. Civil Secretariat, Lucknow.*

2. *Excise Commissioner, Uttar Pradesh, Allahabad.*

.....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 the impugned orders dated 2.04.2015 (Annexure No. 1) and order dated 18.01.2016 (Annexure No. 2) with consequential service benefits.*
- (ii) *Any other direction or order may as this Court deems fit and proper in the circumstances of the case may also be passed in favour of the petitioner along with the costs of the claim petition.*

2. *Briefly stated, case of petitioner is that he was initially appointed on the post of Excise Inspector on 19.02.2001. All of a sudden, one morning petitioner received copy of the impugned punishment order dated 02.04.2015 by which a censure entry has been awarded to the petitioner in respect of the irregularities committed by him, when he was posted as Excise Inspector, Sector-1, Gorakhpur. Before passing the impugned punishment order dated 02.04.2015, no show cause notice was issued to the petitioner and without giving any opportunity of defense, the impugned punishment order was passed against the petitioner. The punishment of censure entry awarded to*

the petitioner is a minor penalty in Rule-3 of U.P. Government Servant (Discipline And Appeal) Rules, 1999 and the procedure for imposing the minor penalties is provided in Rule 10(2) of the aforesaid rules which provides that the Government Servant shall be informed of the substance of the imputations against him and called upon to submit his explanation within a reasonable time. The Disciplinary Authority shall, after considering the said explanation , if any, and the relevant records, pass such orders as he considers proper and where a penalty is imposed, reasons thereof shall be given, but in the instant case the said procedure was not adopted by the opposite parties as no show cause notice was issued to the petitioner before imposing the minor penalty of censure entry on the petitioner vide impugned order dated 02.04.2015, hence it is clear that the impugned order has been passed in clear violation of Rule 10(2) of the Rules, 1999. Feeling aggrieved with the impugned punishment order dated 02.04.2015, petitioner preferred a representation dated 26.05.2015 but the same was rejected by the opposite party no. 1 without considering the points raised by the petitioner on 18.01.2016. Contention of the petitioner is that impugned punishment order has been passed without giving any show cause notice to the petitioner and without affording any opportunity of defense to him. The impugned order has been passed in clear violation of Rule 10(2) of the Rules, 1999. Extraneous material has been considered by the opposite party no.1 while rejecting the representation of the petitioner. Impugned orders have been passed in violation of the principles of natural justice. There is no misconduct or ill motive on the part of the petitioner. The instant case is a case of no evidence. The impugned orders are arbitrary, illegal, non-speaking, unreasoned and have been passed without application of mind, 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. 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. 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 assailed the punishment order on the ground that before passing the impugned order dated 02.04.2015, no show cause notice was issued to the petitioner and without giving any opportunity of defense. Hence, it is clear that the impugned punishment order has been passed in clear violation of Rule 10(2) of the Rules, 1999, which is reproduced below:-*

“10. Procedure for imposing minor penalties-(1) *Where the Disciplinary Authority is satisfied that good and sufficient reasons exist for adopting such a course, if may, subject to the provisions of sub-rule (2) impose one or more of the minor penalties mentioned in rule 3.*

(2) *The Government servant shall be informed of the substance of the imputations against him and called upon to submit his explanation within a reasonable time. The Disciplinary Authority shall, after considering the said explanation, if any, and the relevant records, pass such orders as he considers proper and where a penalty is imposed, reason thereof shall be given. The order shall be communicated to the concerned Government servant.”*

7. *The next ground of the learned Counsel for the petitioner is that impugned order of punishment dated 02.04.2015 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 02.04.2015 which is reproduced as under:-

“ प्रकरण के परीक्षणोंपरान्त शिकायती पत्र दिनांक 20.10.2014 में उल्लिखित यह तथ्य अभिलेखाधारित प्रमाणित पाये गये कि श्री जितेन्द्र कुमार सिंह आबकारी निरीक्षक सेक्टर-1, गोरखपुर द्वारा अपने क्षेत्रान्तर्गत स्थित ताड़ी दुकानों का नियमानुसार नवीनीकरण कराये जाने हेतु जिला आबकारी गोरखपुर को उनके बार-बार पत्राचार करने के बाद भी कोई आख्या नहीं भेजी गयी है। स्पष्ट है कि श्री जितेन्द्र कुमार सिंह द्वारा राजस्व से जुड़े अत्यन्त महत्वपूर्ण शासकीय कार्यों में भी घोर लापरवाही व उदासीनता बरती गयी तथा श्री जितेन्द्र कुमार सिंह उच्चाधिकारियों के निर्देशों व नियमों का अनुपालन करने के प्रति सजग, जागरूक व गम्भीर नहीं है, जिससे श्री जितेन्द्र कुमार सिंह, आबकारी निरीक्षक सेक्टर-1, गोरखपुर की उच्चाधिकारियों के आदेशों के अनुपालन व शासकीय कार्यों के प्रति बरती गयी घोर लापरवाही व उदासीनता परिलक्षित है।

अतः उक्त अपचार के लिए श्री जितेन्द्र कुमार सिंह, आबकारी निरीक्षक सेक्टर-1, गोरखपुर की परिनिन्दा की जाती है। ”

8. The punishment has been passed without any evidence and without proving the allegation against the petitioner. 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. 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 and

representation rejection order have been passed in illegal and arbitrary exercise of power.

9. 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.”

10. 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.”

11. 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.”

12. 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.

13. 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.

14. 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."

15. 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.

16. The learned Counsel for the petitioner has further argued that 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.

17. 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."

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, as order go to show that before passing the punishment the show cause notice has not been issued which is mandatory in U.P. Govt. Servant (Discipline And Appeal) Rules, 1999.

19. I have also perused the representation rejection order and find that grounds taken by the petitioner in representation have also not been considered properly and representation was rejected in mechanical manner by order dated 18.01.2016, this is consequential order, so, the representation rejection order is also liable to be quashed.

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

ORDER

The claim petition is allowed. Punishment order dated 02.04.2015 (Annexure No. 1) and representation rejection order dated 18.01.2016 (Annexure No. 2) 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: 25th October, 2024
MK/-