

**STATE PUBLIC SERVICES TRIBUNAL, INDIRA BHAWAN, LUCKNOW.**

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

**Claim Petition No. 1089/2016**

Lal Chandra, aged about 42 years, son of Sri Chandra Pal, resident of -  
202 Puneet Apartment Teachers Colony Jaipur House, Agra, presently  
posted as Assistant Commissioner Commercial Tax, Sector-6 Mathura.

**Versus**

1. State of U.P. through Principal Secretary, Tax and Registration  
Department U.P. Civil Secretariat, Lucknow.
2. The Commissioner, Commercial Tax, Uttar Pradesh Lucknow.

.....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 11.07.2011  
(Annexure No. 1) and appellate order dated 22.02.2016  
(Annexure No. 2) with all consequential service benefits.
  - (ii) To issue any other order or direction, which may deem fit  
and proper in the circumstance of the case may kindly be  
passed in favour of the petitioner.
  - (iii) To award costs of the petition to the petitioner.
2. Briefly stated, case of petitioner is that he was initially appointed  
on the post of Trade Tax officer Grade-II in the year 1997, now known as  
Commercial Tax Officer. On the basis of good work and conduct  
petitioner was promoted to the post of Assistant Commissioner  
Commercial Tax in the month of February, 2009.

On the basis of the complaint made by Trader Girija Shankar Jaiswal, a show cause notice was issued to the petitioner on 01.10.2020 (Annexure No. 5) which is reproduced below:-

“ श्री गिरजा शंकर जायसवाल, स्वामी फर्म सर्वश्री गोदावरी डोमेस्टिक एप्लायन्सेज, एस-15/3 ए-5, धौंसबाद, वाराणसी द्वारा आपके विरुद्ध शिकायत की गयी है कि आप द्वारा उनकी फर्म के कर निर्धारण आदेश पारित किये जाने के लिए उत्कोच की माँग की गयी और उत्कोच न दिये जाने पर गलत दर से कर आरोपित किया गया तथा वर्ष 1999-2000 में अनुपयोगी स्टॉक का सर्वेक्षण किये बिना उनका उत्पीड़न करने के उद्देश्य से निष्प्रयोज्य स्टॉक पर कर आरोपित किया गया है। शिकायत की जाँच एडीशनल कमिशनर ग्रेड-1, वाणिज्य कर, वाराणसी जोन द्वितीय, वाराणसी से करायी गयी जिसमें निम्न अनियमिततायें पायी गयी :-

(क) जब आप व्यापार कर अधिकारी, खण्ड-9, वाराणसी के पद पर तैनात थे तब आपके द्वारा सर्वश्री गोदावरी डोमेस्टिक एप्लायन्सेज, एस-15/3 ए-5, धौंसबाद, वाराणसी के वर्ष 99-2000 का कर निर्धारण आदेश दिनांक 22.01.02 को पारित किया गया था। व्यापारी द्वारा दाखिल विवरण पत्र में प्रारम्भिक स्टॉक रू0 92,127.00 का घोषित किया गया था और कोई बिक्री घोषित नहीं की गयी थी। व्यापारी द्वारा दिनांक 16.01.2002 को एक प्रार्थना पत्र दिया गया था जिसमें कहा गया था कि रहतिये में बचा समस्त माल निष्प्रयोज्य हो गया है जिसकी बिक्री से कोई भी मूल्य प्राप्त होना सम्भव नहीं है। अतः स्टॉक की जाँच कर उचित निर्णय लिये जाने का अनुरोध व्यापारी द्वारा किया गया था। व्यापारी का प्रार्थना पत्र कर निर्धारण सम्बन्धी पत्रावली पर उपलब्ध पाया गया लेकिन आपके द्वारा व्यापारी के स्टॉक की बिना जाँच किये हुए समस्त घोषित स्टॉक की बिक्री रू0 1,10,000/- निर्धारित करते हुए 10 प्रतिशत की दर से रू0 11,000/- कर आरोपित किया गया। इस प्रकार बिना किसी जाँच के व्यापारी के घोषणा को अस्वीकार किया जाना उचित नहीं था।

(ख) शिकायत की जाँच पर यह भी पाया गया कि आप द्वारा संगत वर्ष में व्यापारी के स्टॉक पर गलत दर से कर आरोपित किया गया है। व्यापारी के स्टॉक में वाटर पम्प थे। वाटर पम्प की बिक्री पर दिनांक 17.01.2000 से करदेयता 8 प्रतिशत थी, जबकि इस तिथि के पूर्व करदेयता 7.5 प्रतिशत थी। आपके द्वारा पूरे वर्ष के लिए 10 प्रतिशत की दर से कर आरोपित किया गया जो विज्ञप्ति दर से अधिक दर थी।

2. उपर्युक्त तथ्यों से स्पष्ट होता है कि आप द्वारा व्यापारी का उत्पीड़न करने के उद्देश्य से बिना जाँच किये हुए निष्प्रयोज्य रहतिये पर बिना जाँच किये हुए कर आरोपित किया गया और वह भी अधिक दर से। ”

*Petitioner submitted reply to the show cause notice on 22.12.2010 (Annexure No. 4) denying all the charges levelled against him. Thereafter, disciplinary authority passed the impugned order dated 11.07.2011 by which censure entry has been awarded against the petitioner on the ground that the reply submitted by the petitioner was not found appropriate. Feeling aggrieved with the order dated 11.07.2011 petitioner preferred appeal on 12.08.2011 before the appellate authority, but the same was rejected by order dated 22.02.2016. The contention of the petitioner is that impugned order was passed on the basis of the enquiry report dated 17.06.2010, but copy of the said report was not supplied to the petitioner. The impugned punishment order was passed only on the ground that the petitioner's reply was not satisfactory but no reasons were recorded on the issues raised by the petitioner and only conclusion have been drawn. The matter is related to year 1999-2000, but impugned show cause notice was given to the petitioner in the year 2010 after ten year, as such impugned punishment order shall be considered only for the year 1999-2000, and same shall not be effect in granting any future service benefits. Impugned order passed by the opposite parties without proper considering the reply submitted by the petitioner and several issues raised by the petitioner in his reply but no reason was recorded only conclusion have been drawn by passing the punishment order. Impugned punishment orders have been passed in violation of U.P. Government Servant (Discipline and Appeal) Rules, 1999, 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. 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 on the ground 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. The preliminary enquiry was conducted and the enquiry report submitted, on the basis of enquiry report show cause notice was issued to the petitioner.

7. In Para- 7 of the claim petition, it has been averred by the learned counsel for the petitioner that punishment order was passed on the basis of the enquiry report, but the copy of said report was not supplied to the petitioner in passing the punishment order, the concerning authority has acted against the following directions of the Hon'ble High Court issued in **Ram Surat Singh vs. Inspector General of Police, Allahabad Zone, Allahabad (2005) 2 U.P.L.E. B.C. 1155:**

“Disciplinary Authority relied upon statements recorded in preliminary inquiry report while imposing punishment—Thus, copy of preliminary inquiry report ought to have been supplied to petitioners—Non supply thereof, is violation of mandatory requirement of Rule 14(2)—Apart from it, opportunity of hearing, also be given—That too was not given—Mere permission to inspect

file—Not sufficient— Principle of natural justice also violated—Punishment has to be set aside.”

8.. The importance of furnishing essential documents to the delinquent during the course of disciplinary proceedings has also been emphasized by the Hon'ble Supreme Court in **Union of India and Others vs. Mohd. Ramzan Khan, A.I.R. 1991 (S.C. Page 471)** as follows:-

“It is necessary for the department to supply a copy of the enquiry report and non-supply of the enquiry report is fatal and vitiates the entire enquiry proceedings. It seems that if preliminary enquiry has been relied upon by the department, then the copy of the report is required to be furnished in order to give the delinquent an opportunity to represent the matter sufficiently when penal consequences flow from the show cause notice. In the present case merely by issuing a direction to inspect the file was not sufficient. The respondents should have supplied the copy of the enquiry report and since the enquiry report was not supplied, the principles of natural justice were violated and the petitioner was not afforded a reasonable opportunity to defend his case and consequently the impugned order is not sustainable in the eye of law and is liable to be quashed.”

9. Further learned counsel for the petitioner contested the case on the ground that in passing the impugned punishment order the opposite parties failed to record reasons and without any basis and substance the impugned order was passed and only conclusion have been drawn that reply is not satisfactory, and no reasons was recorded in passing punishment order, as such, punishment order is non-speaking and unreasoned. In this regard, I have perused the impugned order of punishment dated 11.07.2011 which is reproduced as under:-

“ उपरोक्त तथ्यों के परिप्रेक्ष्य में श्री लाल चन्द्र यादव, असिस्टेंट कमिशनर (वि०अनु०शा०) रेन्ज-ए, आगरा को पत्र संख्या- 1022 दिनांक 01.10.10 द्वारा कारण बताओ नोटिस जारी किया गया। उक्त कारण बताओ नोटिस का उत्तर श्री लालचन्द्र यादव, असिस्टेंट कमिशनर (वि०अनु०शा०) रेन्ज-ए, आगरा ने अपने पत्र संख्या-737 दिनांक 22.12.2010 द्वारा प्रेषित किया। पत्रावली पर उपलब्ध शिकायती पत्र में दिये गये बिन्दुओं तथा प्राप्त जाँच आख्या के तथ्यों के परिप्रेक्ष्य में परीक्षणोपरान्त श्री लाल चन्द्र यादव, असिस्टेंट कमिशनर

(वि०अनु०शा०) रेंज-ए, आगरा का स्पष्टीकरण उचित नहीं पाया गया।

समस्त तथ्यों पर भलीभाँति विचारोपरान्त तथा यह संज्ञान में रखते हुए कि अधिकारी की प्रथम तैनाती कर निर्धारण अधिकारी के रूप में रही है, श्री लाल चन्द्र यादव, असिस्टेंट कमिश्नर (वि०अनु०शा०) रेंज-ए, आगरा को परिनिन्दा प्रविष्टि प्रदान की जाती 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 उचित 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. In view the action of opposite parties in the present case is illegal, arbitrary and violation of principles of Natural Justice. The impugned punishment order and appellate 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 be 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. I have also perused the appellate order and find that grounds taken by the petitioner in appeal have also not been considered properly and appeal was rejected in mechanical manner vide order dated 22.02.2016, this is consequential order, so, the appellate 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 11.07.2011 (Annexure No. 1) and appellate order dated 22.02.2016 (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.)

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Dated: 13th September, 2024  
MK/-