

STATE PUBLIC SERVICES TRIBUNAL INDIRA BHAWAN,
LUCKNOW

COURT NO.IX

Present :Hon'ble Mr. Yogeshwar Ram Mishra (Admn.)

CLAIM PETITION NO. 1587 OF 2024

Satish Kumar, S.I. (M/Accountant) P.N.O- 950500012, aged about 59 years, son of Sri Ram Singh, Resident of -Village Ambari Post Office- Lalgarhi, Police Station Kotwali Dehat, District- Etah. Presently office of the Senior Superintendent of police, District- Muzzafernagar.

.....Petitioner

Versus

1. State of U.P through its Principal Secretary (Home), Govt. of U.P, Civil Secretariat, Vidhan Bhawan, Lucknow.
2. Additional Director General of Police, Zone, Agra Zone, Agra.
3. Inspector General of Police, Range, Agra Range, Agra.
4. Senior Superintendent of Police, District- Mathura.

....Opp.parties

J U D G M E N T

This Petition has been filed by the petitioner, U/s 4 of the U.P Public Services Tribunal Act of 1976. The petitioner has prayed to set-aside the order dated 8.8.2022, appeal rejection order dated 17.3.2023 and revision rejection order dated 6.12.2023, annexure nos.1,2 and 3 respectively. By means of order dated 8.8.2022, the petitioner has been punished equivalent to thirty days of salary and vide annexure nos. 2 and 3, his appeal and revision, against the punishment order, have been rejected.

2. The facts of the case, as stated in the claim petition are that the petitioner, while working as S.I(M/Accountant) at District

Mathura, was issued a show cause notice dated 18.7.2022, on the basis of a preliminary enquiry, conducted by SSP, Mathura dated 4.3.2022. The petitioner was required to submit his reply within a period of fifteen days, which he could not submit on the ground of his ailment, as alleged.

The charge against the petitioner, in the show cause notice was as under:

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3. As stated above, the petitioner did not submit his reply and after waiting for it, the disciplinary authority proceeded to punish the petitioner and accordingly, passed the punishment order, imposing him penalty equivalent to thirty days of salary. The petitioner, against the said order, filed an appeal, which was rejected on 17.3.2023 and thereafter, his revision was also rejected vide orders dated 6.12.2023. Hence this claim petition has been filed. The main ground, taken by the petitioner for assailing the said orders are that the (1) he has not been provided proper opportunity of hearing; (2) copy of the preliminary enquiry was not made available to the petitioner with the show cause notice (3) the petitioner has been found guilty during the preliminary enquiry and lastly, his appeal and revision have been rejected without due consideration and without application of mind.

4. The respondents have repudiated the claims of the petitioner by filing their CA/WS, in which they have stated that the petitioner was found guilty of misappropriation of funds by making

excess payment of TA/DA bills to the officials concerned, which showed his slackness, indifference, irresponsibility and arbitrariness. The petitioner was, then, issued a show cause notice, requiring his reply within stipulated period, which he did not submit and accordingly, the punishment order has been passed. The petitioner was called for participating in the preliminary enquiry but he did not cooperate in it. The appellate authority and revisionary authority have passed orders, which are just, legal and proper. There is no illegality or irregularity, committed in the proceedings and the claim petition is liable to be dismissed.

5. The petitioner filed RA, mostly reiterating his averments made in the claim petition.

6. I have heard Ld. counsel for both the parties and perused the record.

7. Firstly, the Ld. counsel for the petitioner has contended that the petitioner was not afforded adequate opportunity of hearing which is against the departmental Rules and Provisions.

8. Here, it would be relevant to look into the maneuver, which is provided in the Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991. The only requirement for awarding minor punishment under Rule 14(2) of Police Rules, 1991 is that after giving him a reasonable opportunity of making such representation as he may wish to make against the proposal, punishment order can be passed. Rule 14(2) of Police Rules, 1991 is being reproduced hereunder:

" 14(2) Notwithstanding any thing contained in sub-rule (1) punishments in cases referred to in sub-rule (2) of rule 5 may be imposed after informing the police officer in writing of the action proposed to be taken' against him and of the imputations of act or omission on which it is proposed to be taken and giving him a reasonable opportunity of making such representation as he may wish to make against the

proposal".

9. In the case in hand, procedure for awarding minor punishment has been completely followed. The petitioner has been issued show cause notice. The petitioner did not prefer to submit his explanation on the ground of his ailment, as is clearly mentioned in para-2 of his appeal, though in the claim petition he has taken the plea of collecting the documents for submitting his reply. These two stands contradicts each other. However, in the appellate order, the authority concerned has dealt with each and every point, raised by the petitioner in his appeal. same is the situation with his revisional order and hence these cannot be termed as unreasoned or bald order.

10. The petitioner has taken the plea that along with show cause notice, he was not provided copy of the preliminary enquiry. This plea is also not sustainable as in the show cause notice, at the bottom line it is categorically stated that "प्रश्नगत प्रकरण में करायी गयी प्रारम्भिक जांच की छायाप्रति नोटिस के साथ संलग्न की जा रही है।" This itself is sufficient to show that the petitioner was given copy the preliminary enquiry reply and hence, this argument also fails.

11. The Ld. counsel for the petitioner has also stressed in para 4-12 of the claim petition that "*Constitution of India, Article 311- Departmental Enquiry- Natural Justice-Copies of documents relied on in support of the charges must be supplied to the delinquent officer.....*" This head note, Ld. counsel for the petitioner has extracted from the Judgment of the Hon'ble Apex Court in the case of "*Committee of Management, Kisan Degree College Vs. Shambhu Saran Pandey and Ors, decided on 28.10.1994.*"

12. The said stand, taken by Ld. Counsel for the petitioner is not tenable in the case in hand for the reason that a preliminary enquiry is basically a fact finding exercise and it does not prejudice the rights of the delinquent in any way. It has been held by the Courts that there is no punitive element in the preliminary enquiry

and it is not governed by Article 311(2) of the Constitution (Champat Lal vs. Union of India, AI1964 SC 1954).

13. The charge against the petitioner is regarding excess payment of TA/DA bills to certain official, which comes into the definition of financial irregularity, a serious charge, which can be named as embezzlement and is a grave misconduct.

While discussing misconduct in service law, there is not a straight jacket definition or formula which can be uniformly a lot of case law has developed in the course of time to define this term. The literal meaning of misconduct is wrong or improper conduct. Misconduct is a relative term which depends upon the circumstances and facts of each case. The three Judge Bench of Apex Court consisting of Hon'ble A. M. Ahmedi, M. M. Punchhi and K. Ramaswamy, JJ., while elaborating the term 'misconduct' in the case of 'State of Punjab v. Ram Singh, 1992 Lab IC 2391 : AIR 1992 SC 2188 referred to the definitions of the misconduct as laid down in Black's Law Dictionary and Law Lexicon, which read as under : "Misconduct has been defined in Black's Law Dictionary, Sixth Edition at page 999 thus : "A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong"

Therefore, from the above, it is crystal clear that the act of the petitioner comes into the definition of misconduct, which is certainly unlawful and wilful in character.

14. . "Misconduct" is a generic term and means "to conduct amiss; to mismanage; wrong or improper conduct: bad behaviour; unlawful behaviour or conduct." It includes malfeasance, misdemeanour, delinquency and offence. The term "misconduct" does not necessarily imply corruption or criminal intent.

15. Ld. counsel for the petitioner has relied upon the cases of *G. Valli Kumark vs. Andhra Education Society and Ors'* in Civil Appeal no. 5508 of 2003, decided on 1.1.2010, "*Raj Kumar Mehrotra vs. State of Bihar and Ors,*" 2006 SCC(L&S) 679, "*Union of India vs. Mohan Lal Kapoor (1973) 2 SCC 836*" and "*S.N. Mukherji vs. Union of India (1990) 4, SCC 594*, in respect of the passing of the orders reasoned and speaking. Further Ld. counsel for the petitioner has cited the judgment in the cases of "*Arvind Kumar Pandey vs. State of U.P and Ors, 2013(31) LCD 1964*, "*State of U.P and Ors. vs. Raj Mani Mishra and another*" 2018(36) LCD 644, "*Ashoka Vs. University of Agricultural Sciences (2017) 1, SCC (L&S) 517*, "*Union of India vs. Jamil Ahmad A.I.R, 1979 SCC, 1022*, "*State of Punjab and Ors vs. Ram Singh, A.I.R 1992 S.C.C, 2188*" and "*Baldev Singh vs. State of Punjab and Another, AIR 2002 SC, 1124*" By relying upon these judgments, the Ld. counsel for the petitioner has tried to convince the Tribunal that without applying his own mind, the punishing authority, on the basis of preliminary enquiry report, has passed the punishment order and also that there may be negligence in performance of duty or error of judgment but this would not constitute misconduct.

16. In the instant case, the petitioner was afforded opportunity to defence himself and since the matter involve financial irregularity and hence, when he did not avail the opportunity to defend himself and not submit his reply, there was no option except to make the preliminary enquiry report, a basis to punish the petitioner.

17. In the case in hand, the act of the petitioner is a fit case of misconduct and on account of any and comes in the ambit of misconduct. Keeping in view all the facts and circumstances, I do not find any merit in the claim petition, which is liable to be

dismissed. The case laws, cited above, is of no help to the petitioner. In my clear opinion, the claim petition is devoid of merit and is liable to be dismissed.

O R D E R

The claim petition is dismissed.

No order as to costs.

Sd/-

(Yogeshwar Ram Mishra)

Member(Admn.)

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

22/4/2025

Sd/-

(Yogeshwar Ram Mishra)

Member(Admn.)

VKS