**Court NO. 4**

**STATE PUBLIC SERVICE TRIBUNAL, INDIRA BHAWAN, LUCKNOW**

**Claim Petition No. 1949 of 2023**

**SHIVAKANT DIXIT**, aged about 28 years, son of Shri Suresh Chandra, R/O Village Sahimaipur, Post Deori Bujurg, District Fatehpur, presently posted as Constable at Thana Madawara District Lalitpur.

………Petitioner

Vs

1. State of U.P. through its Principal Secretary, Department of Home, Civil Secretariat, Lucknow.
2. Deputy Inspector General of Police, Jhansi Range, Jhansi.
3. Superintendent of Police, District- Lalitpur.

……Opposite parties

**Shri Ravi Pratap Singh, Advocate, Ld. Counsel for petitioner.**

**Shri AvinashDubey, Learned Presenting Officer for Ops.**

**JUDGMENT**

**(Delivered by Hon’ble Shri Vinod Kumar-III, Vice Chairman (J)**

**1-** This claim petition has been filed under Section-4 of the U.P. Public Services (Tribunal) Act, 1976 for following reliefs;-

 (a) To quash the punishment order dated 28.12.2022 and appellate order dated 12.04.2023 passed by the Opposite Party No. 2 and 3 respectively contained as Annexure No. 1 and 2 to this claim petition and further directing to the opposite parties to extend all service benefits which has been withheld on account of impugned punishment order in the interest of justice.

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 (b) Issue any other order or direction appropriate in the circumstances of the case and deem just and proper may also kindly be passed along with cost of the claim petition.

2- Briefly stated facts of the petitioner's case are that the petitioner was initially appointed as Constable on 16-10-2020 in Civil Police. Petitioner was served as show cause notice dated 10.10.2022 labelling following allegation:

**^^tc vki vkj{kh o"kZ 2022 esa Fkkuk eMkojk tuin yfyriqj esa vkj{kh uk0iq0 ds in ij fu;qDr Fks] rc Jko.k ekl@dkoM+ ;k=k ds volj ij thvkjih eqjknkckn dks fnukad 17-07-2022 ls 27-07-2022 rd dh vof/k ds fy;s 'kkfUr O;oLFkk ,oa lqj{kk@dkuqu O;oLFkk M~;wVh gsrq tuin yfyriqj ls iqfyl miyC/k djk;k x;k Fkk ftlesa ls vkidh budh eq[; vkj{kh uk0iq0 vdcky flag ih,uvks ua0&820910187] vkj{kh uk0iq0 vuwi iVsy ih,uvks ua0&182451212 ,oa vkj{kh uk0iq0 vafdr flag ih,uvks ua0&182451267 us thvkjih vuqHkkx eqjknkckn esa viuh vken u djk;s tkus ds lEcU/k esa izkjfEHkd tkWap {ks=kf/kdkjh lnj ls lEikfnr djk;h x;h rks tkWap vf/kdkjh us tkWap ds nkSjku ik;k fd vkidks Hkyh Hkkafr tkudkjh Fkh fd vkidks mDr M~;wVh gsrq ukfer fd;k x;k gS vkSj jokuk gsrq funsZf'kr fd;k x;k gSA blds ckotwn Hkh vki mDr M~;wVh gsrq izLFkku ugh fd;s vkSj tkap ds nkSjku tks dFku vafdr djk;s x;s mUdh iqf"V izHkkjh fujh{kd ds dFku ,oa uD'kk ukSdjh ls ugh gks ldh gSA buds }kjk tkucw>dj vius mPpkf/kdkfj;ksa ds vkns'k dh vogsyuk djrs gq;s vius drZO; ij izLFkku ugh fd;s ftlds fy;s vkidks nks"kh ik;k x;k gSA vkidk ;g d`R; drZO; ikyu esacjrh x;h ?kksj ykijokgh] vuq'kklughurk] LosPNkpkfjrk ,oa vdeZ.;rk dk ifjpk;d gS ftldh ifjfuankdh tkrh gSA^^**

 According to the petitioner along-with show cause notice dated 10.10.2022 enquiry report as well as the relevant documents which relied upon the same has neither enclosed nor supplied to the petitioner and merely on the ground the petitioner may perused the records for filing his reply, which is absolutely not sufficient for affording the opportunity of hearing, in the eye of law , prior passing the impugned order dated 28.12.2022, absolutely violate the provisions of natural justice, in the eye of law. Petitioner has submitted his reply to the show cause notice dated 10-10-2022 in

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 which he has specifically mentioned therein the relevant documents were not supplied to the petitioner prior to passing of the impugned order by the opposite party No. 3, that the inquiry officer has not recorded the statement of relevant of the important evidence, inquired in to the matter as per rules and norms framed for the inquiry by the department the whole inquiry proceedings is vitiated and punishments orders passed on the basis of inquiry report are liable to be quashed. The opposite party no.3 prior passing the impugned order dated- 28-12-2022 i.e. absolutely violate the provisions of natural justice, and Police Regulations Para 48 and 294, in the eye of law. Copy of the inquiry was not given along with the show cause notice that time the act for which he has been punished, he has not committed any irregularity, while he has been punished for the acts of the other personnel, which is bad and not sustainable in the eye of law.

 It has been stated by the petitioner that enquiry officer has been deputed to the Circle Officer of Sadar, District-Lallitpur but the inquiry officer has not recorded the statement of relevant of important evidence, inquired in to the matter as per rules and norms framed for the inquiry by the department the whole inquiry proceedings is vitiated, which can not be relied for the passing of punishment order. The inquiry officer did not check by General diary details and duty chart, therefore the whole inquiry proceedings is vitiated, but the opposite parties have not considered the same, which is bad and not sustainable in the eye of law. The inquiry officer did not check by VVIP duty chart.

 Against the impugned punishment order dated 28.12.2022 he has preferred the detailed appeal under the provisions of Rule 20 of U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991, before the O.P. No. 2 within prescribed period but same has been rejected vide order

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 dated 12.04.2023 which absolutely violate the provisions of natural justice and non-speaking, in the eye of law.

3- Case set up in the CA/WS is that for the alleged charge a preliminary enquiry was conducted by the enquiry officer, who has submitted enquiry report dated 22.09.2022 holding guilty the petitioner. On the basis of the aforesaid preliminary enquiry report, a show cause notices dated 10.10.2022 was issued to the petitioner by the Opposite Party No. 3 under Rule 14(2) Sub Rule-4(1)(Kha) of U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 to file his explanation within 15 days. Petitioner has filed his reply/explanation and Punishing Authority after considering averments made by the petitioner in his explanation has not found satisfactory the explanation of the petitioner, and accordingly by passing a speaking and reasoned order dated 28.12.2022 awarded the punishment of censure entry, which is absolutely law full and according to the rules. Reasonable opportunity was granted to the petitioner for his defence. Punishing Authority has passed the impugned order after considering the reply submitted by the petitioner. Impugned order of punishment dated 28.12.2022 is speaking and reasoned order and there is no any legal and procedural defect to punish the petitioner. Against the impugned order of punishment, petitioner has preferred the appeal before Opposite Party No. 2, which was decided and rejected vide order dated 12.04.2023 after due consideration. Petitioner is not entitled to get relief. Petitioner was afforded full reasonable opportunity of defence during preliminary enquiry and departmental proceeding. There is no any legal and procedural defect in the impugned orders passed by the Opposite Parties. Claim Petition have no force and is liable to be dismissed.

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4- Petitioner has filed Rejoinder Affidavit and has reiterated the averments made in the claim petition.

5- I have heard the arguments of learned counsel for petitioner and Ld. Presenting Officer on behalf of respondents and have gone through the record.

6- The learned counsel for petitioner has argued that impugned order of punishment dated 19.12.2022 has been passed without considering the, defence of the petitioner, therefore, punishment order is non-speaking and un reasoned order. On the other hand, the learned Presenting Officer has argued that after considering the reply/explanation impugned punishment order has been passed, which is speaking and reasoned order and not need any interference of this Hon'ble Tribunal. In this regard, I have perused the explanation dated 03.11.2022 filed by the petitioner in which he stated as under:-

**^^izkFkhZ dks M~;wVh ds lca/k es dksbZ tkudkjh ugh Fkh vkSj u gh mDr M~;wVh ds lEcU/k es fuxZr vkns’k ls izkFkhZ dks voxr ugh djk;k x;k FkkA izkFkhZ fujUrj Fkkuk eMkojk es M~;wVh djrk jgk vken jokuxh dh udy jiV layXu gSA izkFkhZ dks okV~lvi ds tfj;s tkudkjh gq;h Fkh rks izkFkhZ us Jheku izHkkjh fujh{kd egksn; dks M~;wVh ds ckjs es tkudkjh fn;k rks Jheku izHkkjh fujh{kd egksn; us dgk Fkk fd Fkkus ij i;kZIr iqfyl cy ugh gSA ftlls vkidks eqjknkcn ‘kkfUr O;oLFkk M~;wVh gsrq jokuxh ugh dh tk jgh gSA M~;wVh ds lEcU/k es Mppkf/kdkfj;ksa ls ckr dj ysa jgk gWw ] M;qVh fujLr djkus ds fy;s Jheku izHkkjh fujh{kd Onkjk mPpkf/kdkfj;ksa dks fjiksVZ Hkh izsf”kr fd;k x;k FkkA**

**dkoM+ ;k=k M~;wVh es tkus gsrq Fkkus ls esjh jokuxh dh tkrh vFkok eq>s jokuxh djkus gsrq fdlh Hkh Lrj ls voxr djk;k tkrk rks izkFkhZ fu’kfpr #i ls vius jokuxh djkdj mDr M~;wVh es izLFkku djrk ijUrq izkFkhZ dks u rks fdlh Hkh Lrj ls voxr djk;k x;k vkSj u gh jokuxh dh x;hA**

**izkFkhZ dh M~;wVh dkoM+ ;k=k esyk es thvkjih eqjknkckn es yxs gksus ds iw.kZ laKku izHkkjh fujh{kd egksn; dks Fkk ijUrq muds Onkjk esjh jokuxh ugh djk;h x;hA izHkkjh fujh{kd egksn; eMkojk Onkjk izkjfEHkd tkap ds nkSjku vius dFku es vafdr djk;k x;k gS fd mDr M~;wVh dks yxs dfe;ksa dks ejs Onkjk voxr djk;k x;k Fkk vkSj le; ls M~;wVh ij jokuk gksus gsrq funsZf’kr fd;k x;k FkkAˮ**

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7- From above mentioned relevant of the impugned punishment order it is transpire that averments made by the petitioner in his defence by filing explanation have not been considered and no finding has been recorded for not accepting the explanation submitted by the petitioner and only stating that I have gone through the explanation I find it unsatisfactorily and therefore, confirm the proposed punishment. Thus, impugned punishment order dated 28.12.2022 is non speaking and un reasoned order in the light of the law settled by the Hon'ble High Court and Hon'ble Apex Court.

8- In decision of **R.K. Mehrotra Vs. State of Bihar 2006 SCC(L&S) 769** the Hon'ble Apex Court has held as follows:

**"We are of the view that the impugned order of respondent authority imposing punishment on the applicant cannot be sustained without going into the order issue raised. Even if, we assume that Rule 55-A which pertains to minor punishment was applicable and not rule 55 which relates to major punishment, nevertheless, rule 55-A requires that the punishment prescribed therein can not 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 applicant in his answer to the show cause notice, 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, can not be sustained and must be set aside."**

9- A distinction between reason and conclusion has been spelt out by **the Hon'ble Apex Court in case of Union of India Vs. Mohan Lal Kapoor & others** (1973) 2 SCC 836 as under:

 **"Reasons are the 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 relational nexus between the facts considered by the conclusions reached."**

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

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

11- In the case of **S.N.Mukherjee Vs. Union Bank of India** (1990) 4 SCC 594, it has been held by the Hon'ble Supreme Court that:

 **"The reasons must be recorded while rejecting the representation, it is necessary that the reason must be clear and explicit, so as to indicate that the authority has given due consideration to the point in controversy."**

12- Mere mention in the impugned order that explanation was not found not satisfactory does not fulfil requirement of principles of natural justice, unless points raised in the explanation are addressed and dealt with. It is imperative upon the punishing authority to consider the points raised by petitioner in his explanation, but no reason whatsoever has been given in the order. Thus, punishment order dated 19.12.2022 is laconic and can not be sustained.

13- Next contention of the learned counsel for petitioner is that there was no ill motive or personal gain of the petitioner towards government duty, and he did not commit any negligence on his part in relation to the charge levelled against him. Merely on the ground of wrong facts and vague charges and the conduct of the petitioner does not come into the category of misconduct. It is submitted that 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 by the

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disciplinary authority for such act. On the point of ill-motive learned counsel for petitioner has relied on several decisions of Hon’ble High Court and Hon’ble Supreme Court.

14- Regarding define misconduct there catena of judgments have been passed by Hon’ble Apex Court and Hon’ble High Court. In the case of **Union of India vs. Jamal Ahmad reported in AIR (1979) 1022,** it has been held that

**“Misconduct means, misconduct arising from ill motive, acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct.”**

**”It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences 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. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence.”**

15- In case of **Arvind Kumar Pandey& State of U.P. (2013) (31) LCD 1864**, the Division Bench of Hon’ble High court held that. “ **if the element of motive behind laps and dereliction of duty absent, then for the reason, no employees shall be punished or face enquiry.**

**16- I**n case of **‘Baldev Singh Gandhi Versus State of Punjab & Another AIR 2002 SC Page 1124’** considering the term misconduct held that **‘‘Misconduct has not been defined in the Act. The word ‘misconduct’ is the antithesis of the word ‘conduct’. Thus, ordinarily the expression ‘misconduct’ means wrong or improper conduct, unlawful behaviour, misfeasance, wrong conduct, misdemeanor etc.’** in the light of above

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mentioned observation, I find that there was no bad intention or ill motive of the petitioner towards government duty as allegation labelled against him, as such, the act of the petitioner does not come into the category of misconduct and the petitioner may not be punished for such act in view of the aforesaid settled law.

17- In Para-4.3, 4.4 and 4.5 of the claim petition, it has been stated that relevant documents and copy of enquiry report which relied upon the same has neither enclosed nor supplied to the petitioner and merely on the ground the petitioner may perused the records for filing his reply, which is absolutely not sufficient for affording the opportunity of hearing in the eye of law. Proper opportunity of hearing has not been given by the O.P.No. 3 prior passing the impugned order dated 28.12.2022 which violative the provisions of natural justice, in the eye of law.

 Its reply has been given in Para-5 of the CA/Ws in which it has been stated that by show cause notice dated 10.10.2022 petitioner was permitted to inspect the departmental file and relevant documents.

 For providing copies of relevant documents and copy of the preliminary enquiry nothing has been stated in the CA/WS, thus, it is clear that petitioner was not provided copies of the relevant documents and copy of preliminary enquiry report, due to which petitioner could not get opportunity of hearing which is violation of principle of Natural Justice, therefore, impugned punishment order dated 19.12.2022 is unjust, unfair and not valid, hence, it is liable to be quashed.

18- Against impugned punishment order dated 28.12.2022, petitioner has filed appeal on various facts and legal grounds before the Opposite Party No 2 but according to the petitioner's Ld. counsel for petitioner the appellate authority has also not

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considered the points raised by the petitioner in the appeal and summarily rejected the appeal vide order dated 12.04.2023. In this regard, I am of the view that now question is that if punishment orders are not tenable than what will be the fate of appellate order. On this point there is settled legal proposition that if initial action is not in consonance with law, subsequent proceeding would not sanctify the same. **As per legal maxim sub lato fundamento cadit opus** “if the foundation is removed the super structure falls.” It has been observed by the Hon’ble High Court of Allahabad in case of **Umesh Kumar Singh Vs State of U.P. and others 2018 (5) ADJ 587** that defect at initial stage if renders the proceeding null and void, same cannot be cured at appellate stage. This makes it clear that if the punishment order is not tenable in the eyes of law then subsequent orders cannot sanctify the same hence appellate orders will fall automatically. In the present case, since impugned punishment order is not being found just and legal on which ground is being quashed, Thus, appellate order dated 12.04.2023 is not sustainable in the eyes of law and are liable to be quashed.

19- In view of the discussions made above, claim petition deserves to allow.

**ORDER**

20- Claim petition is allowed. The impugned punishment orders dated 28.12.2022 and appellate order dated 12.04.2023 as contained in Annexure No. 1 and 2 to the claim petition , passed by Opposite Party No. 3 and 2 by which petitioner was awarded punishment of censure entry and against this punishment order appeal has been rejected, are hereby quashed. Petitioner shall be paid consequential service benefits which have been withheld on

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account of this punishment order. Compliance of this order shall be done within three months from the date of receipt of certified copy of this judgment. There is no order as to costs.

 Sd-

 (Vinod Kumar-III)

 Vice Chairman (Judicial)

 Judgment signed, dated and pronounced today in open court.

 Sd/-

 (Vinod Kumar-III)

 Vice Chairman (Jud

Dated: 22nd April 2025.

M.Husain/Ps

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