

**STATE PUBLIC SERVICES TRIBUNAL, INDIRA BHAWAN****LUCKNOW****CLAIM PETITION NO. 2161/2019**

**SHIV BAHADUR KHAN**, aged about 48 years, Son of late Banwari Lal, Resident of Village Jaitpur Post Hanumanganj, Police Station, Sari Inayat Distrcit Allahabad. Presently posted as Constable at Police Line District Varanasi.

Petitioner

Versus

- 1- State of U.P. through its Principal Secretary, Home, Government of U.P. Civil Secretariat, Lucknow.
- 2- Inspector General of Police Varanasi Zone Varanasi.
- 3- Deputy Inspector General of Police Mirzapur Range Mirzapur.
- 4- Superintendent of Police District Mirzapur.
- 5- Senior Superintendent of Police District Varanasi.

Opposite parties

Shri R.P. Singh, counsel for petitioner

Shri K.P. Singh, Presenting Officer on behalf of the O.Ps

**JUDGMENT**

(Delivered by Hon'ble Shri Jitendra Kumar Singh, Member (Judicial))

This claim petition has been filed under Section-4 of the U.P. Public Services Tribunal Act 1976 for quashing the order dated 27-12-2013 (Annexure No.3) passed by O.Ps no. 4 withholding the pay of the petitioner equivalent to one month, appellate order dated 07-02-2014 (Annexure No.2) passed by the O.Ps no. 3 and revisional order dated 28-04-2014 providing all consequential service benefits likewise Bonus, Additional increments, First promotional pay scale, Promotional increments & Second Promotional Pay scale along with interest from due date till actual payment made to him which have been withheld on account of these orders.

2- Briefly stated the facts of the case are that the petitioner was initially appointed on post of Constable (Civil Police) on 21-08-1990 at district Faizabad. A show cause notice was issued to him on 28-11-2013 to the following effect;-

“वर्ष 2013 में जब आप थाना कोतवाली कटरा जनपद मीरजापुर में नियुक्त रहें तो आप द्वारा हथिया फाटक के पास कलिम नामक व्यक्ति के घर जाकर उसकी बहन से अशलिल बातें करते रहे तथा शास्त्रीपुल पिकेट पर बाहर की औरत को चौकी पुल पिकेट पर बैठाये जाने पर चौकी इंचार्ज उ०नि० श्री राममिलन यादव द्वारा मना किये जाने पर आप द्वारा उनके विरुद्ध जनता के मध्य जनता के व्यक्तियों से गलत बातें बताकर भड़काने आदि का कार्य किया गया।”

To verify the veracity of allegation levelled against the petitioner a preliminary enquiry was constituted against him which was conducted by the then Circle Officer City Shri Sachidanand who submitted his report on 02-11-2013 holding the petitioner guilty. The disciplinary authority upon receipt of preliminary enquiry report issued a show cause notice to the petitioner for filing reply which was filed by him and thereafter on the basis of evidence on record considering reply to the show cause notice, the pay of the petitioner equivalent to one month was withheld. The petitioner being aggrieved with the order passed by the disciplinary authority preferred departmental appeal which was rejected vide order dated 07-02-2014 then he preferred revision against the appellate order which was rejected too vide order dated 28-04-2014 thereafter ultimately petitioner came before this Tribunal with this petition for quashing impugned orders and directing the ops to provide him all consequential service benefit which have been withheld due to impugned orders and to grant him pay equivalent to one month along with other dues @18% per annum.

3- The petitioner submitted his reply vide Annexure No. 5 date Nil denying the allegations levelled upon him Ops. no. 4 without considering the reply submitted by the petitioner and without recording any findings and assigning any reason held the charges proved against him and passed the impugned punishment order through a non speaking order on 27-12-2013 against which the petitioner preferred an appeal dated 07-02-2014 which was rejected in a casual manner then he preferred revision which was rejected too vide order dated 28-04-2014

without considering the grounds taken by the petitioner in the reply to the show cause notice as well as appeal and revision. A preliminary enquiry was conducted behind the back of the petitioner and the requisite documents including the copy of enquiry report were not enclosed with the show cause notice. The petitioner has been punished without any evidence and without affording opportunity of hearing. The petition deserves to be allowed.

4- The CA/Ws has been filed by the Opposite parties with the allegation for an act of indiscipline a preliminary enquiry was conducted by Circle Officer City Shri Sachidanand. The statement of the petitioner and Shri Shafeeq Ahamd Khan, S.H.O Kotwali Katra Mirzpur, Shri Ram Milan Yadav, Sub Inspector/Chowki Incharge, Lal Diggi, ?Thana Kotwali Katra were recorded. The enquiry officer submitted his report on 02-11-2013 holding the petitioner guilty. It is contended that while recording statement Shri Shafeeq Ahmad Khan, Inspector Incharge disclosed that he had already furnished his confidential report to the Superintendent of Police Mirzapur about the conduct of the petitioner on 09-09-2013 and in view of seriousness of the allegation levelled in his report, the petitioner was placed under suspension. On receipt of the enquiry report and after affording him an opportunity of hearing the enquiry was concluded and thereafter a show cause notice was issued to the petitioner. The petitioner submitted his reply to the show cause notice and thereafter punishment order has been passed. Further the petitioner appeared in person in the office on 30-11-2013 and perused the departmental file. Petitioner received the copy of enquiry report as well as the copy of the statement of Najma. Thus there is no procedural or legal infirmity in passing of the impugned punishment order. His appeal and revision has also been disposed off with a reasoned order. The petition is devoid of merit and is liable to be dismissed.

5- In reply to Opposite parties' CA/Ws, the petitioner filed Rejoinder Affidavit refuting the allegations of CA/Ws and reiterating the averments made in the claim petition.

6- Heard the learned counsel for the petitioner and learned Presenting Officer on behalf of the O.ps and perused the record carefully.

7- The learned counsel for the petitioner has mainly assailed the impugned punishment order as well as the appellate order on the ground of denial of opportunity to defend himself.

8- Going by the respective submissions of the rivals parties and taking into account documents placed on record by the learned counsel of the petitioner who drawn my attention towards the application submitted by Kaleem Son of Shri Kallu on report of Enquiry officer and in this parlance it has been submitted that as per statement of brother of the victim the incident started on 20-09-2013 whereas in the enquiry report Shri Shafeeq Ahmad, S.H.O Kotwali Katra Mirzapur stated “ that petitioner was posted at Chowki Lal Diggi, he went to Kaleem’s home and was talking obscenely to his sister about which Kaleem compliant to me. Apart from this at Shastri Pul picket the petitioner detained outside woman at the post then Chowki Incharge Lal Diggi/Sub Inspector Shri Ram Milan Yadav has scolded him then he talked nonsense about him among the public and instigated them. I have furnished the report about the conduct of the petitioner to the Superintendent of Police Mirzapur on 09-09-2013. The submissions of the learned counsel is that the incident ought to have been happened on 20-09-2013 then how it was possible for S.H.O concerned to get it report furnished much before i.e. 9-9-2013. Thus all these shows that both the S.H.O. as well as enquiry officer were prejudiced to the petitioner and they were having ill will with the petitioner. The respective submissions of the learned counsel for the petitioner have been supported even by the appended note of the disciplinary authority i.e. S.P. Mirzapur on the last page of enquiry report that “ **Issue one month pay file notice.**” Thereby it may be inferred that disciplinary authority was predetermined to punish the petitioner that is why this appended notice was made by him at the last page of the enquiry report.

9- Also it has been submitted that none of the point raised by the petitioner in his explanation has been taken into account hence respective punishment orders is quite unreasoned and non speaking. I have gone through the impugned punishment order and the perusal of which shows that the disciplinary authority has quoted the explanation

submitted by the petitioner and also mentioned about the enquiry report and it has been observed as under:-

“अतः आरोपी का लिखित स्पष्टीकरण उपरोक्त अंकित तथ्यात्मक आधारों पर संतोषजनक न पाये जाने पर नोटिस मे प्रस्तावित आरोपी की पुष्टि करते हुये एतद्वारा आदेशित किया जाता है कि आरक्षी 688/902160068 ना0पु0 शिव बहादुर खाँ के उक्त अपकृत्य के लिये उ0प्र0 अधीनस्थ श्रेणी के पुलिस अधिकारियों/कर्मचारियों की (दण्ड एवं अपील) नियमावली 1991 के नियम 14(2) के अन्तर्गत यथा प्राविधानित एक माह के वेतन के समतुल्य अर्थ दण्ड से दण्डित किये जाने का आदेश पारित किया जाता है।”

In case of **Raj Kumar Mehrotra & Ors Vs State of Bihar and Ors, 2006 SCC (L&S) 679** the Hon’ble Apex Court has held as follows:

“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.”

A distinction between “reason” and “conclusion” has been spelt out by Hon’ble the Apex Court in **Union of India Versus Mohan Lal Kapoor, (1973) 2SCC 836**, it has been held 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 rational nexus between the facts considered and the conclusions reached.”

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 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.”

10- In the instant case a preliminary enquiry was conducted but the copy of the same has not been supplied along with show cause notice as it is evident from the punishment order itself. The O.Ps have admitted in CA/Ws that the permission to inspect the file was given to the petitioner. The petitioner appeared in person in the office on 30-11-2013 and perused the departmental file. Thereupon petitioner received the copy of enquiry report as well as the copy of the statement of Najma and after obtaining his reply the punishment order has been passed. This is simply denial of opportunity to defend. If the disciplinary authority really intended to give an opportunity to the petitioner to defend himself instead of inviting him to inspect the record of preliminary enquiry, a copy of the same could have been given to him. All along, it has been urged by the petitioner's learned counsel that opportunity to defend was not given to him. In support of his contention he has cited a judgment of the **Hon'ble High Court of Allahabad reported in 2005 (2) UPLBEC 1154 Ram Surat Singh and Ors Vs Inspector General of Police Allahabad Zone Allahabad and others** in which the Hon'ble High Court had held that non supply of copy of preliminary enquiry report is violation of mandatory requirement of Rule 14(2) of the **U.P. Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules 1991**. Mere permission to inspect the file not sufficient and under these circumstances the Court found it to be a case of violation of principles of natural justice.

11- In **Union of India and others Vs Mohd. Ramzan Khan A.I.R 1991 SC 471**. It has been held by the Hon'ble Supreme Court that 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 is thus clear that if the preliminary enquiry report has been relied upon by the department then the copy of the same is required to be furnished to the petitioner affording him 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 was violated and the petitioner was not afforded a reasonable opportunity to represent his case as contemplated under Rule 14(2) of the U.P. Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules 1991 and consequently the impugned order is not liable to be sustainable in the eyes of law and is liable to be quashed. If the O.Ps intended to rely on the preliminary enquiry report then its copy ought to have been provided and non supply of the same amounts to violation of the principles of natural justice and the punishment order suffers from procedural irregularities. It has been further urged by the learned counsel of the petitioner that in order to afford a reasonable opportunity of hearing to any delinquent employee there is a circular letter of D.G. Police U.P namely the confidential **D.O. No. DG-7/001 dated 08-03-2001** which provides as under:-

“ (1) नियमावली के नियम-14(2) में युक्तियुक्त अवसर का तात्पर्य अपचारी अधिकारी को बचाव हेतु समुचित सामग्री उपलब्ध कराते हुये पर्याप्त समय उपलब्ध कराना है अतः अपचारी अधिकारी को कारण बताओ नोटिस के साथ जाँच आख्या की प्रति एवं स्पष्टीकरण देने के लिये कम से कम 15 दिन का समय अवश्य दिया जाये।”

In view of the above mentioned case laws when the impugned punishment order scrutinized it is found that it has been passed without adverting to the contents and important points raised in the reply of the petitioner dated 02-11-2013 and giving a semblance of indication of application of mind by passing the impugned punishment order, therefore, there is no escape from the conclusion that the order of punishment was passed by the disciplinary authority without complying the mandate of the relevant rules of Rule 4 of the U.P. Police Officer of Subordinate Ranks (Punishment and Appeal) Rules 1991 which provides there for good and sufficient reasons the penalty can be awarded.

12- Admittedly, minor punishment of withholding equivalent to one month pay of the petitioner has been awarded to the petitioner under **Rule 4(1) (b) (ii) of the Rules. Rule 5(2)** provides that the cases in which minor punishment enumerated in clause (b) of sub rule-1 of Rule 4 may be awarded, shall be dealt with in accordance with the procedure

laid down in sub rule 2 of Rule 14. Sub rule 2 of Rule 14 provides as under:-

**“ Notwithstanding anything 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.”**

13- Learned counsel of petitioner vehemently argued that disciplinary authority has placed the petitioner under suspension and initiated inquiry proceeding under Rule-14 (1) of Rules 1991 in order to award major punishment to the petitioner but in mid-way the proceeding was dropped and minor punishment has been imposed upon petitioner which is against the settled principle of law held by the Allahabad High Court in the case of **Suresh Kumar Singh Vs State of U.P. and others- 2018 (36) LCD 1614, W.P. No. 63644/2013 decided on March 28, 2018.**

14- In the light of aforementioned, it is clear that if procedure for major penalty was initiated, it is mandatory to conduct the regular enquiry and further provided opportunity of oral evidence to the concerned employee. Thus the punishment order is not sustainable as the entire enquiry proceedings vitiated due to non compliance of procedure prescribed thereof. Once the enquiry proceedings held vitiated no penalty either major or minor can be imposed. `

In the light of above discussion, I am of the definite view that the impugned punishment order suffers from grave procedural and legal infirmity and has been passed in violation of the principle of natural justice and therefore is not sustainable in the eyes of law and is liable to quashed. The claim petition deserves to be allowed.

### **ORDER**

The claim petition is allowed. The impugned order dated 27-12-2013 (Annexure No.3) passed by O.Ps no. 4 withholding the pay of the petitioner equivalent to one month, appellate order dated 07-02-2014 (Annexure No.2) passed by the O.Ps no. 3 and revisional order dated 28-04-2014 are hereby quashed. The petitioner shall be entitled for all



consequential service benefits which has been withheld on accounts of these orders. The compliance of the order shall be made within 03 months from the date a certified copy of this judgment is received by the O.Ps. There shall be no order as to costs.

Sd/-  
(Jitendra Kumar Singh)  
Member (Judicial)

Judgment signed, dated and pronounced in open Court today.

Sd/-  
(Jitendra Kumar Singh)  
Member (Judicial)

Dated: 14<sup>th</sup> October 2024  
M. Husain/Ps