

U.P. STATE PUBLIC SERVICES TRIBUNAL INDIRA BHAWAN, LUCKNOW

Court No.-7

PRESENT: HON'BLE SRI ANAND KUMAR SINGH MEMBER (ADMN.)
HON'BLE SMT. ANITA RAJ MEMBER (JUDICIAL)

Claim Petition No. 329 of 2020

ARUN KUMAR UPADHYAY, aged about 49 years, S/o Sri Madan Upadhyay, resident of village-Lohadi, Post- Veerpur (Rawai), Karchhana, District-Prayagraj, U.P.

...Petitioner.

Versus

1. State of U.P. through Principal Secretary, Department of Jail, Jail Administration & Reform Services, U.P. government, Civil Secretariat, Lucknow.
2. Inspector General of Prison, Jail Administration & Reform Services, U.P. Lucknow.
3. Deputy Inspector General of prison, Allahabad Range, Allahabad/Prayagraj.
4. Senior Superintendent, Central Jail, Naini Allahabad/Prayagraj.

...Opposite Parties

SRI S.N.GOSWAMI, ADV. LD. COUNSEL FOR PETITIONER
SRI S.P. SINGH, LD. PRESENTING OFFICER, FOR OPPOSITE PARTIES.

JUDGMENT

(DELIVERED BY HON'BLE SRI ANAND KUMAR SINGH MEMBER (ADMN.))

1. The present claim petition has been instituted under Section 4 of the U.P. Public Services (Tribunals) Act, 1976, challenging the punishment order dated 04.10.2005, whereby five increments of the petitioner were withheld permanently, the appellate order dated 21.11.2008, whereby the departmental

appeal preferred by the petitioner was rejected, and the revisional order dated 07.02.2020, whereby the revision preferred by the petitioner was also rejected. The petitioner has, therefore, sought the following reliefs:

“(i) The Hon'ble tribunal may kindly be pleased to quash the impugned order of punishment dated 04.10.2005 and appellate order dated 21.11.2008 and revisional order dated 07.02.2020 (as contained as Annexure Nos. 1, 2 and 3 to this claim petition) with all consequential service benefits, in the interest of justice.

(ii) The Hon'ble tribunal may kindly be pleased to direct the opposite parties to restore the increments of the petitioner and make payment of arrears with interest, in the interest of justice.

(iii) The Hon'ble Tribunal may kindly be pleased to pass any other order or direction which it deems, just and proper in the circumstances of the matter alongwith the cost of claim petition.”

2. The aforesaid reliefs have been sought mainly on the ground that the disciplinary enquiry was not conducted in accordance with the applicable rules and the principles of natural justice. It is pleaded that the enquiry report dated 24.06.2005 was submitted ex-parte without conducting any effective oral enquiry; the Enquiry Officer neither fixed and communicated the date, time and place of enquiry nor summoned and examined the witnesses in the presence of the petitioner; the petitioner was not afforded an opportunity to cross-examine the witnesses or to participate effectively in the oral enquiry;

and the documentary evidence relied upon against him was not supplied along with the charge-sheet. It is further pleaded that the charges were not established by legally sustainable evidence and that the punishment order dated 04.10.2005 was passed without proper consideration of the petitioner's reply dated 22.09.2005 to the enquiry report dated 24.06.2005. According to the petitioner, the punishment order is a non-speaking order based upon an illegal and ex parte enquiry report. Similar grounds were raised before the appellate and revisional authorities, but, according to the petitioner, neither authority properly considered them. The petitioner had also objected in his reply dated 03.02.2005 that no preliminary enquiry or preliminary enquiry report was prepared, as reflected in Annexure No. 5.

3. The case of the petitioner, in substance, is that he was appointed as a Jail Warder and was posted at Central Jail, Naini, Allahabad, where his service record and conduct had remained satisfactory. A charge-sheet dated 24.01.2005 was served upon him, to which he submitted his detailed reply dated 03.02.2005 denying the charges and, inter alia, objecting to the absence of any preliminary enquiry. According to the petitioner, thereafter no proper oral enquiry was conducted and the Enquiry Officer submitted his enquiry report dated 24.06.2005. The disciplinary authority supplied a copy of the enquiry report to the petitioner vide letter dated 16.07.2005, whereupon he submitted his reply dated 22.09.2005 pointing out the defects in the enquiry and reiterating his defence. However, without properly considering the same, the disciplinary authority passed the punishment order dated 04.10.2005 withholding five increments with cumulative effect. The petitioner preferred a departmental appeal dated 20.12.2005, which was rejected by the appellate authority vide order dated 21.11.2008. Thereafter, the petitioner submitted a

revision dated 24.02.2009. As the revision remained pending, the petitioner instituted Claim Petition No. 1773 of 2019, which was disposed of by this Tribunal on 18.11.2019 with a direction to the revisional authority to decide the revision within the stipulated period. The petitioner thereafter submitted a certified copy of the said order before the revisional authority on 26.11.2019. Ultimately, the revisional authority rejected the revision vide order dated 07.02.2020. It is in these circumstances that the present claim petition has been instituted challenging the punishment order dated 04.10.2005, appellate order dated 21.11.2008 and revisional order dated 07.02.2020.

4. The opposite parties have denied the material averments of the memo of claim petition and have asserted that the petitioner was deployed on 10.12.2004 from 02:00 p.m. to 10:00 p.m. at Swarup Rani Nehru Hospital, Prayagraj, for the security of convicted prisoner Suresh Yadav, who escaped from the petitioner's custody at about 6:30 p.m. It is stated that the petitioner was found prima facie negligent and lacking due care in discharge of his duties, whereupon he was suspended and departmental proceedings were initiated. The opposite parties have further stated that a charge-sheet was served upon the petitioner, to which he submitted his reply on 03.02.2005, and that the Enquiry Officer, after providing opportunity of defence, submitted his report dated 24.06.2005 holding the petitioner guilty of negligence and dereliction of duty. According to the opposite parties, the petitioner was also supplied the enquiry report and was given opportunity to submit his explanation, which he submitted on 22.09.2005. Thereafter, the disciplinary authority, after considering the material on record and the petitioner's explanation, passed the punishment order dated 04.10.2005 withholding five increments with permanent effect.

5. The opposite parties have further stated that the petitioner's appeal against the punishment order was duly considered and rejected by a reasoned order dated 11.11.2008. It is also stated that, pursuant to the Tribunal's order dated 18.11.2019 in Claim Petition No. 1773 of 2019, the petitioner's revision was considered on all the grounds raised by him and was rejected by a reasoned order dated 07.02.2020. The opposite parties have denied any violation of the applicable rules, principles of natural justice or procedural requirements and have maintained that the petitioner was afforded adequate opportunity to defend himself during the departmental proceedings. They have also disputed the petitioner's claim that the proceedings were otherwise defective or that the impugned orders suffered from non-application of mind. On this basis, the opposite parties have asserted that the punishment, appellate and revisional orders are lawful and that the petitioner is not entitled to any relief.

6. The petitioner has filed a Rejoinder Affidavit reiterating the averments made in the claim petition and denying the assertions contained in the Written Statement.

7. Upon hearing the learned counsel for the parties, considering the pleadings and the submissions advanced on their behalf, and upon careful perusal of the entire record, we are of the considered opinion that the following issues arise for adjudication:

- (i) Whether the absence of a preliminary enquiry and the manner in which the regular departmental enquiry was conducted rendered

the disciplinary proceedings against the petitioner contrary to the U.P. Government Servant (Discipline and Appeal) Rules, 1999, the applicable provisions of the U.P. Jail Manual and the principles of natural justice?

(ii) Whether the enquiry report dated 24.06.2005 is vitiated for non-examination of the departmental witnesses in the presence of the petitioner, denial of opportunity of cross-examination, non-supply of relied-upon documents, or failure to afford the petitioner an effective opportunity of defence?

(iii) Whether the punishment order dated 04.10.2005, withholding five increments permanently, was passed upon proper consideration of the petitioner's defence and on the basis of legally sustainable findings of guilt?

(iv) Whether the appellate order dated 21.11.2008 and revisional order dated 07.02.2020 suffer from non-consideration of the petitioner's grounds and are consequently unsustainable in law?

(v) Whether the petitioner is entitled to the reliefs claimed, including quashing of the impugned orders and restoration of the withheld increments with consequential service benefits?

8. We have heard the learned counsel for the petitioner and the learned Presenting Officer for the opposite parties, considered their rival submissions and perused the record. The issues framed hereinabove are adjudicated as follows:—

Issue Number (i) : Whether the absence of a preliminary enquiry and the manner in which the regular departmental enquiry was conducted rendered the disciplinary proceedings against the petitioner contrary to the U.P. Government Servant (Discipline and Appeal) Rules, 1999, the applicable provisions of the U.P. Jail Manual and the principles of natural justice?

The petitioner had specifically raised an objection in his reply dated 03.02.2005 to the charge-sheet, as reflected in Annexure No. 5, that before initiation of the departmental proceedings neither any preliminary Enquiry Officer had been appointed nor any preliminary enquiry report had been prepared. However, no specific submission on this aspect was advanced by learned counsel for the petitioner during final hearing. We have, nevertheless, examined the objection in the light of the statutory scheme governing the departmental enquiry. **Rule 2(d) defines “Departmental enquiry” as “the enquiry under Rule 7 of these Rules.”** Rule 7 provides:

“Before imposing any major penalty on a Government servant, an enquiry shall be held in the following manner:”

Rule 7(i) provides:

“The disciplinary authority may himself enquire into the charges or appoint an authority subordinate to him as Enquiry Officer to enquire into the charges.”

Rule 7(ii) provides:

“The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge-sheet. The charge-sheet shall be approved by the disciplinary authority.”

Rule 7(iii) provides:

“The charges framed shall be so precise and clear as to give sufficient indication to the charged Government servant of the facts and circumstances against him. The proposed documentary evidence and the name of the witnesses proposed to prove the same alongwith oral evidence, if any, shall be mentioned in the charge-sheet.”

Rule 7(iv) provides:

“The charged Government servant shall be required to put in a written statement of his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge-sheet and to state whether he desires to cross-examine any witness mentioned in the charge-sheet and whether desires to give or produce evidence in his defence.”

Rule 7(v) provides:

“The charge-sheet, alongwith the copy of the documentary evidences mentioned therein and list of witnesses and their statements, if any shall be served on the charged Government servant personally or by

registered post at the address mentioned in the official records.”

Rule 7(vii) provides:

“Where the charged Government servant denies the charges, the Enquiry Officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charged Government servant who shall be given opportunity to cross-examine such witnesses.”

The aforesaid provisions regulate the formal departmental enquiry and do not prescribe a preliminary enquiry as a condition precedent to initiation thereof. The Full Bench of the Allahabad High Court in **State of U.P. v. Jai Singh Dixit, 1974 ALJ 862**, held:

“A departmental enquiry is contemplated when on objective consideration of the material the appointing authority considers the case as one which would lead to a departmental enquiry, irrespective of whether any preliminary enquiry, summary or detailed, has or has not been made or if made, is not complete.”

No provision of the U.P. Jail Manual has been shown to us making a preliminary enquiry mandatory before initiation of a regular departmental enquiry under the 1999 Rules. We are, therefore, of the considered view that the absence of a preliminary enquiry, by itself, did not invalidate the departmental proceedings.

Accordingly, Issue No. (i) is decided against the petitioner.

Issue Number (ii) :Whether the enquiry report dated 24.06.2005 is vitiated for non-examination of the departmental witnesses in the presence of the petitioner, denial of opportunity of cross-examination, non-supply of relied-upon documents, or failure to afford the petitioner an effective opportunity of defence?

The learned counsel for the petitioner has argued that although the petitioner specifically denied the charge, the Enquiry Officer did not examine the departmental witnesses in his presence and no opportunity of cross-examination was afforded to him. It is further argued that the statements recorded on 10.12.2004, prior to the regular departmental enquiry, could not by themselves constitute evidence in the enquiry, and that the petitioner was also not supplied the relied-upon documents despite his request.

The opposite parties, on the other hand, rely upon the enquiry report and contend that the petitioner was supplied the charge-sheet along with the relevant evidence, submitted his written reply, and was afforded personal hearing on 25.02.2005, when his statement was recorded.

We have considered the material placed on record. Rule 7(vii) of the U.P. Government Servant (Discipline and Appeal) Rules, 1999 mandates that, where the charge is denied, the Enquiry Officer shall call the witnesses named in the charge-sheet and record their evidence in the presence of the charged employee, who shall have an opportunity to cross-examine them. The provision specifically states:

Rule 7(vii)

“Where the charged Government servant denies the charges, the Enquiry Officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charged Government servant

who shall be given opportunity to cross-examine such witnesses.”

The record, particularly the enquiry report dated 24.06.2005, shows that the Enquiry Officer relied upon the statements of the petitioner, the Incharge Dy. Superintendent, the Chief Warder and the escaped prisoner, all recorded on 10.12.2004 or 30.12.2004, and there is no material showing that these witnesses were subsequently examined during the regular enquiry in the presence of the petitioner or that he was permitted to cross-examine them. The recording of the petitioner's own statement on 25.02.2005 cannot substitute the examination of departmental witnesses. In **Radhey Kant Khare v. U.P. Co-operative Sugar Factories Federation Ltd., 2003 (1) AWC 704**, it has been held:

“After a charge-sheet is given to the employee, an oral enquiry is a must, whether the employee requests for it or not. Hence, a notice should be issued to him indicating him the date, time and place of the enquiry.”

And the departmental evidence should ordinarily be led in the employee's presence. The Supreme Court in **Meenglas Tea Estate v. Their Workmen, AIR 1963 SC 1719**, has likewise held:

“He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires.”

As regards non-supply of documents, the charge-sheet records the documentary evidence and statements relied upon by the department, and the material does not establish complete non-supply of those documents to the extent necessary to invalidate the proceedings on that ground alone. The decisive infirmity, however, is that the substantive

departmental evidence was not proved through examination of witnesses in the petitioner's presence with an opportunity of cross-examination, as expressly required by Rule 7(vii). Consequently, the enquiry report dated 24.06.2005 cannot be sustained as a valid determination based upon legally proved departmental evidence.

Issue No. (ii) is accordingly decided in favour of the petitioner.

Issue Number (iii) : Whether the punishment order dated 04.10.2005, withholding five increments permanently, was passed upon proper consideration of the petitioner's defence and on the basis of legally sustainable findings of guilt?

The learned counsel for the petitioner has argued that the punishment order dated 04.10.2005 was passed without proper consideration of his detailed reply dated 22.09.2005 to the enquiry report and that the finding of guilt was based upon an enquiry report which itself rested upon statements recorded before the regular enquiry.

The opposite parties contend that the enquiry report was duly supplied to the petitioner, his reply was received and the charge was found proved on the basis of the documentary and oral material available on record.

We have considered the enquiry report dated 24.06.2005, the petitioner's reply dated 22.09.2005 and the punishment order dated 04.10.2005. The petitioner had specifically explained that on 10.12.2004 the prisoner complained of bleeding and severe abdominal pain, became distressed and fell from his bed, whereupon, according to the petitioner, his fellow warder Naresh Kumar asked him to call the doctor; he accordingly went to obtain medical assistance and, by the time he returned with the nurse, the prisoner had escaped. The petitioner also disputed the allegation of negligence and relied upon the circumstances in which the escape occurred. The

punishment order, while noticing that the enquiry report had been supplied and that the petitioner had submitted his reply, does not deal with these material aspects of his defence or record reasons for rejecting them. Rule 9(4) of the 1999 Rules requires the disciplinary authority, after considering the relevant records and the representation of the charged Government servant, to

Rule 9(4):

“pass a reasoned order imposing one or more penalties mentioned in Rule 3 of these rules and communicate the same to the charged Government servant.”

The Supreme Court in **Raj Kumar Mehrotra v. State of Bihar, (2005) 12 SCC 256**, held:

“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 principle applies where the disciplinary authority is required to consider the employee's representation before imposing punishment. Further, in **Roop Singh Negi v. Punjab National Bank, (2009) 2 SCC 570**, the Supreme Court held that:

“The charges levelled against the delinquent officer must be found to have been proved”

And that material collected during investigation cannot, by itself, be treated as substantive evidence in the disciplinary proceeding. In the present case, as already found under Issue No. (II), the departmental witnesses were not examined in the petitioner's presence with an opportunity of cross-

examination. Consequently, the statements relied upon in the enquiry report were not duly tested through the procedure prescribed by Rule 7(vii). The factual finding of negligence, therefore, could not furnish a legally sustainable foundation for the punishment merely because the prisoner escaped during the petitioner's duty.

We are, therefore, of the considered view that the punishment order does not demonstrate proper consideration of the petitioner's material defence and the finding of guilt is not founded upon evidence duly proved in the regular enquiry.

Issue No. (iii) is accordingly decided in favour of the petitioner.

Issue Number (iv) :Whether the appellate order dated 21.11.2008 and revisional order dated 07.02.2020 suffer from non-consideration of the petitioner's grounds and are consequently unsustainable in law?

The learned counsel for the petitioner has argued that the appellate authority failed to consider the specific grounds raised in the appeal, particularly the defects in the departmental enquiry, non-examination of departmental witnesses in his presence, denial of opportunity of cross-examination and absence of legally proved evidence. It is further argued that the revisional authority also failed to properly examine these objections and proceeded substantially on the departmental version.

The opposite parties contend that the appellate authority examined the entire record and found that adequate opportunity had been afforded to the petitioner, while the revisional authority considered the revision, obtained the departmental report and rightly maintained the punishment.

We have considered the appellate order dated 21.11.2008 and revisional order dated 07.02.2020. Rule 12 of the 1999 Rules requires the appellate authority to consider:

“(a) Whether the facts on which the order was based have been established;

(b) Whether the facts established afford sufficient ground for taking action; and

(c) Whether the penalty is excessive, adequate or inadequate.”

The Supreme Court in **R.P. Bhatt v. Union of India, (1986) 2 SCC 651**, held:

“The word ‘consider’ in rule 27(2) implies due application of mind.”

The appellate authority must, therefore, examine the procedural compliance, the evidentiary basis of the findings and the proportionality of the penalty. In **Ram Chander v. Union of India, (1986) 3 SCC 103**, the Supreme Court further held that the appellate authority must not only give a hearing but also pass a reasoned order dealing with the contentions raised in the appeal. In the present case, the appellate order records that the entire record was examined and that the petitioner had been given adequate opportunity, but it does not deal with his specific objections regarding examination of witnesses, cross-examination or the evidentiary basis of the charge.

The revisional order is more elaborate and notices several grounds raised by the petitioner; nevertheless, while rejecting them, it proceeds on the premise that the statements of both warders had been taken during the enquiry and that adequate opportunity had been afforded. As already found under Issue No. (II), the record does not establish examination of the departmental witnesses in the petitioner's presence with an

opportunity of cross-examination. The revisional authority thus failed to appreciate the legal consequence of the fundamental defect in the regular enquiry.

We are, therefore, of the considered view that the appellate order suffers from inadequate consideration of the grounds raised by the petitioner, while the revisional order, despite being more detailed, cannot sustain the punishment upon an erroneous appreciation of the legality of the underlying enquiry.

Issue No. (iv) is accordingly decided in favour of the petitioner.

Issue Number (v) : Whether the petitioner is entitled to the reliefs claimed, including quashing of the impugned orders and restoration of the withheld increments with consequential service benefits?

The learned counsel for the petitioner has argued that the impugned punishment order dated 04.10.2005, appellate order dated 21.11.2008 and revisional order dated 07.02.2020 are unsustainable in view of the illegalities committed in the departmental enquiry, failure to afford an effective opportunity of defence and non-consideration of the grounds raised by the petitioner.

The opposite parties, on the other hand, have opposed the claim and submitted that the charge of negligence resulting in escape of the convict prisoner was duly established and the punishment imposed was justified.

We have considered the record and our findings on the preceding issues. The regular enquiry has been found to suffer from failure to examine the departmental witnesses in the petitioner's presence and to afford him an opportunity of cross-examination. The punishment order has also been found

deficient in consideration of the petitioner's material defence, while the appellate and revisional authorities failed to cure the defects in the underlying enquiry. These infirmities go to the root of the findings of guilt and materially affect the validity of the impugned orders. We are, therefore, of the considered view that the petitioner has made out a case for grant of the reliefs claimed.

Issue No. (v) is accordingly decided in favour of the petitioner.

9. In view of the foregoing discussion and the findings recorded on Issues Nos. (I) to (V), we are of the considered view that although the absence of a preliminary enquiry, by itself, did not vitiate the departmental proceedings, the regular enquiry was not conducted in accordance with Rule 7(vii) of the U.P. Government Servant (Discipline and Appeal) Rules, 1999, as the departmental witnesses were not examined in the presence of the petitioner and no opportunity of cross-examination was afforded to him. The punishment order dated 04.10.2005 and the consequential appellate and revisional orders dated 21.11.2008 and 07.02.2020, therefore, cannot be sustained in law. The claim petition has substantial force and is liable to be allowed.

O R D E R

10. Accordingly, the claim petition No. 329 of 2020 is allowed with the following reliefs:

(i) The impugned punishment order dated 04.10.2005 (Annexure No. 1) passed by the Senior Superintendent, Central Jail, Naini, Allahabad, whereby five increments of the petitioner were withheld with cumulative effect, is hereby quashed and set aside.

(ii) The consequential appellate order dated 21.11.2008 (Annexure No. 2) passed by the Deputy Inspector General of Prisons, Allahabad Range, Allahabad, and the revisional order dated 07.02.2020 (Annexure No. 3) passed by the competent revisional authority, are also quashed and set aside.

(iii) The opposite parties are directed to restore the five increments withheld from the petitioner and to extend all consequential service benefits flowing therefrom, in accordance with law.

(iv) The aforesaid exercise shall be completed by the competent authority within a period of three months from the date of production of a certified copy of this judgment.

11. There shall be no order as to costs.

Sd/-

(SMT. ANITA RAJ)
MEMBER (JUDICIAL)

U.P. State public Services Tribunal
Indira Bhawan Lucknow

Sd/-

(ANAND KUMAR SINGH)
MEMBER (ADMN)

U.P. State Public Services Tribunal
Indira Bhawan Lucknow

The judgment is signed, dated, and pronounced in open court today.

Sd/-

(SMT. ANITA RAJ)
MEMBER (JUDICIAL)

U.P. State public Services Tribunal
Indira Bhawan Lucknow

Sd/-

(ANAND KUMAR SINGH)
MEMBER (ADMN)

U.P. State Public Services Tribunal
Indira Bhawan Lucknow

Dated: 18/ 08/2026

Vinod /PA