

Court No.VIII

State Public Service Tribunal, Indira Bhawan, Lucknow.

Present: Hon'ble Mr. K. Ravinder Naik, Vice-Chairman(Admn.)

Claim petition No.1318/2023

Alok Kumar Singh, aged about 48 years, S/o Sri Kedarnath Singh, Resident of Village & Post-Jalalabad, District-Ghazipur, U.P.

Petitioner

Versus

- 1- State of U.P. through Additional Chief Secretary/Principal Secretary, Consumer Protection & Weights & Measures, Govt. of U.P., Civil Secretariat, Lucknow.
- 2- Controller, Legal Metrology, U.P., 7 Wala Qudar Road, Near Family Court, Lucknow.

Opposite Parties.

J U D G M E N T

This Claim petition has been filed by the petitioner under section- 4 of UP Public Service Tribunal Act 1976. The petitioner has prayed to set-aside the order dated 05.09.2018 as contained in Annexure No.1 to the claim petition by which punishment of reprimand and stoppage of one increment temporarily have been awarded to the petitioner.

2- Briefly stated facts of the case are that the petitioner, while posted as Senior Inspector Legal Metrology in the year 2016, was served with the chargesheet dated 21.09.2017 under Rule-7(ii) of U.P. Government Servant (Discipline & Appeal) Rule-1999 in which one charge was leveled against him, which was as under:

“vkidi ygjkchj dUæ ij rlukrh di nkjku 'kkl u di vkn'k l[;k 158@29&7&2 8
ihih 2 !nukd 2 "#% 2 17 &'i 'kkl u di vkn'k l[;k 29(@29&7&2 17&1
ihih)2 !nukd 15* +*2 17 ,kjk -k.r !unl'k di vu/ " "i !0yk!)kdkjh ,kjk 1!2r
3h" &'i &!*3h*&4* dh 0k5 di nkjku vkidi v!)k6k7 "i l!5k!yr i3ky) 9h0y i:ik
dh 0k5 dh 1;h; 0k5 di nkjku 1 i3ky@9h0y i:i "i i<l j ;!u3 "i v!r!j>
rkj ik; 1; ' i<l j ;!u3 "i !5i ik;h 1;h; ?> i3ky)9h0y i:ik dh 0k5 &'i

l@;kiu "ækdu vkid ,kjk !d;k 0krk g% !0 l l ;g ik!jy!6kr gkrk g! !d vkid ,kjk i3ky@9h0y i:ik dh 0k5 l";&l"; ij ugh dh 1;h &' l@;kiu "ækdu " Akh vkid Brj l ykij'kgh dk ilj5; ln;k 1;k !0 l d dkjCk vkid v!)k6k7 " i3ky @9h0y i:ik ij D;kid v!u;!"rrk ik;h 1;h vkj !'Akk1 dh E!')k!"y g#; vkidk ?> F@; ?Gkj -n'k ljdkjh d"l5kjh vk5jCk !u;"k'yh% 195+ d !u;"&H d vu!kj viu inh; drD;k dk ij"l@;!ul2k &' drD;ijk;Ckrk l u djuk iljy!6kr djrk g! !0 l d !y& vki nklkh g!;"

The petitioner, vide letter dated 17.02.2018 submitted his reply before the enquiry officer denying the charges. The petitioner has alleged that Rule-7(vii) of U.P. Government Servant (Discipline & Appeal) Rule-1999 specifically provides that if the employee denies the charge enquiry officer is required to fix date, time and place for calling the witnesses and conducting oral hearing of the petitioner but in the present case the enquiry officer did not fix any date, time & place for conducting enquiry as required under law. Petitioner was neither any show cause notice has been served upon petitioner nor the copy of the enquiry report has been provided to the petitioner, which is clear violation of Rule-9 of Rules, 1999. Disciplinary authority without issuing any show cause notice to the petitioner and without serving the copy of enquiry report to the petitioner has passed punishment order dated 05.09.2018 in most arbitrary manner. Petitioner has been awarded punishment of reprimand which is not provided as punishment in Rule-3 of U.P. Government Servant (Discipline & Appeal) Rule-1999.

3- Petitioner was served with the Annual Confidential Report of year 2017-18 in which it was mentioned in the comments of the accepting authority that petitioner has been awarded punishment vide order dated 05.09.2018. Petitioner vide his letter dated 27.08.2019, 03.10.2019 and 14.06.2023 requested opposite party no. 2 to provide the copy of the punishment order and the petitioner was provided the copy of the punishment order dated 05.09.2018 for the first time vide letter dated 14.06.2023 requested opposite party no.2 to provide the copy of the punishment order and the petitioner was provided the copy of the punishment order dated 05.09.2018 for the first time vide letter dated 14.06.2023. The disciplinary authority in the punishment order has himself recorded the finding that there is no negligence on the part of petitioner but still has awarded punishment for the reasons best known to him. Against impugned order dated 05.09.2018 petitioner preferred

an appeal dated 14.06.2023 before the State Government through registered post but same is pending for disposal till yet.

The main grounds taken by the petitioner for assailing the punishment order are that enquiry officer has not conducted the enquiry in accordance with law as he did neither fix any date, time & place in the enquiry nor has conducted any oral hearing of the petitioner. No show cause notice has been issued to the petitioner as required in Rule-9 of the U.P. Government Servant (Discipline and Appeal) Rule-1999. Copy of the enquiry report has not been provided to the petitioner as required in Rule-9 of Rule-1999. The punishment order dated 05.09.2018 passed by the Opposite Party No. 2 is non speaking and unreasoned. Hence, this claim petition.

4- The respondents refuted the claims of the petitioner in their CA/WS by stating that as per directions/guidelines given in the Government Order No.- 158/29-7-2008-PP/2008 dated 02.05.2017 and G.O. No. 294/29-7-2017-1lugug/2000 dated 15.06.2017 at the level of District Magistrate a Joint Enquiry Team was constituted for checking of the petrol/diesel pumps in the Lahuraveer, Varanasi area of the petitioner where in on one petrol/diesel pump in pulsar unit extra wires and a pulsar chip was found and for these defects Assistant Controller, Legal Metrology, Varanasi Division vide his office letter No.390 dated 26.7.2017 found guilty the petitioner. Vide order dated 26.07.2017 a departmental enquiry was instituted and Assistant Controller, Legal Metrology, Jhansi Division, Jhansi was appointed as enquiry officer who has submitted enquiry report holding the guilty. Enquiry has been conducted according to the provisions of Rules-1999. Petitioner has not produced any evidences in support of the charge leveled against him. Petitioner was afforded full opportunity of defence. There is no any legal defect in the enquiry conducted against the petitioner. On the basis of the enquiry report of Controller/Punishing Authority has passed the order dated 05.09.2018 awarding punishment of withholding one increment temporarily alongwith censure entry. Appeal/representation preferred against the impugned order has been dismissed as time barred. Impugned punishment order dated 05.09.2019 and appellate order dated 17.10.2019 have been passed according to rules and there is no any defect in these orders. Claim petition has no force and is liable to be dismissed with cost.

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

6. I have Heard Ld. Counsel for both the parties and have perused the record.

7- Ld. counsel for the petitioner has argued that in regard to charge leveled against him a chargesheet dated 21.09.2017 was issued to which he submitted his reply dated 17.02.2018 denying the charge but enquiry officer without holding the enquiry as per procedure prescribed in the Rule-7(vii) of the U.P. Government Servant (Discipline and appeal) Rules, 1999, as no date, time and place of the enquiry. Since the petitioner has denied the charge, Enquiry Officer was duty bound to conduct the inquiry in accordance with the provisions contained in Rule-7(vii) of U.P. Government Servant (Discipline & Appeal) Rules, 1999. Petitioner was also denied to provide a reasonable opportunity of his defence making cross examination with material witnesses, hence the entire proceedings was done in utter violation of provisions of Rule-7 of the U.P. Government Servants(Discipline and Appeal) Rules,1999. It is settled legal position that if petitioner does not submit any reply to the charge sheet, enquiry officer is not absolved from his duty to record oral evidence and provide an opportunity to adduce his evidence in his defence. In the absence of oral evidence, the report of the enquiry officer stands vitiated. Hence, the punishment order is a non-speaking order as no reason has been discussed on the averments made through his final reply to the charge sheet by the Punishing Authority.

8- Further petitioner place the reliance of final reply to the charge sheet, dated 17.02.2018 which was not duly considered and the enquiry report dated 06.01.2018 has been made a basis for passing the punishment order, which is legally not permissible in eyes of law and hence I find the case in hand, a case of no enquiry.

9- In regard to conducting the enquiry, the law is well settled in case of *State of Uttar Pradesh v. Saroj Kumar Sinha reported (2010) 2 SCC 772* in which the Court held that:-

"An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative

of the department/ disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service."

10- Fixing the date by the Disciplinary Authority for hearing after submitting the Enquiry report is not only illegal but is arbitrary too as the law held by the Division Bench of Hon'ble High Court in case of ***State of U.P. & Others Vs. Santosh Kumar Rai & Another in writ petition bearing no. 1717(S/B) of 2009***, the relevant para 3 of the judgment is quoted as under:-

"In the present case, the Disciplinary Authority seems to acted functus officio while usurping the power of Enquiry Officer. In case he was of the view that further enquiry is required, then, he could have remitted the matter to the Enquiry Officer for further enquiry. While allowing the Claim Petition, the Tribunal has further recorded a finding that Enquiry Officer/Disciplinary Authority had violated the principles of natural justice while recording the evidence. The impugned order passed by the Tribunal does not suffer from impropriety or illegality. The writ petition is dismissed in limine."

11- The learned counsel for the petitioner has further argued that disciplinary authority without issuing any show cause notice and without serving the copy of the enquiry report has passed the impugned punishment order dated 05.09.2018, which is violation of Rule-9 of U.P. Government Servant (Discipline & Appeal) Rule-1999. This ground has been taken in para.4-7 of the claim petition. Its reply has been in para-6 of the CA/WS but nothing has been said about issuing any show cause notice to the petitioner after submitting the enquiry report to the Ops. and for providing the copy of the Enquiry report to the petitioner nothing has been said by the Opposite Parties. Copy of the enquiry report is not available on file and on behalf of the Opposite Parties it has not been produced before the Tribunal.

12- I have perused the impugned punishment order dated 27.08.2018 in which nothing has been mentioned about to provide the copy of the show cause notice to the petitioner. Thus, it is clear that petitioner was not issued the copy of the show cause notice for asking his reply against the enquiry report, moreover, copy of the enquiry report is not available on file, which is violation of Rule 9 of the Rules, 1999.

13- The learned counsel for the petitioner further submits that the disciplinary authority in the punishment order has himself recorded the finding that there is no negligence on the part of the petitioner. In this regard, I have perused the impugned punishment order dated 27.08.2018 and in its para-5 it has been mentioned that

!''k1k 0k5 3h" ,kjk i<l j " d3 'k;j &' !5i y1 gku l vi5kj h d"i5kj h
dh ykij'kgh &' dk;l d i!r ?nkl hurk !n[kk;h n jgh g;l vrP Lh vkykd d"kj
!lg d !'Q, i5!yr !'Akk1h; dk;l'kgh !u:u nC9 d l kMk l "k.r dh 0krh g;lJ

1* ?0r ykij'kgh &'! !Rk!Mkyrk d; n!T31r vi5kjh d"!5kjh dh UAk@!lukV dh
0krh q;

2* &d 'ru'!, vBMkk;h Q.k l jkdh 0krh g;

14- It is clear from the Rules, that reprimand entry is not provided as a punishment in the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 and hence, it could not have been awarded.

Further the second punishment i.e stoppage of one increment has also been passed without application of mind as no period, whatsoever, has been provided in it as to what period, the increment is being stopped. Further from perusal of the impugned order above, it is found that petitioner was punished on the basis of inspection made on 06.05.2017 by joint inspection team, which inspection's comment or record has not been filed by the petitioner along with his reply. I have perused the chargesheet dated 21.09.2017 in which charge

imposed upon the petitioner is that JJ0k5 d nkjku vkid v!)k6k7 "i
 l5k!yr@i3ky@9h0y i:ik dh 0k5 dh 1;h; 0k5 d nkjku 1
 i3ky@9h0y i:i "i i<l j ;!u3 "v!r!j0r rkj ik; 1; ' i<l j ;!u3
 "i !5i ik;h 1;h; ?0r i3ky@9h0y i:ik dh 0k5 &' l@;kiu "nkdu
 vkid ,kjk !d;k 0krk g% !0l l ;g i!jy!6kr gkrk g!d vkid ,kjk
 i3ky@9h0y i:ik dh 0k5 l";&l"; ij ugh dh 1;h &' l@;kiu
 "nkdu "i Akh vkid Brj l ykij'kgh dk i!j5; !n;k 1;k !0ld dkjCk
 vkid v!)k6k7 "i i3ky@9h0y i:ik ij D;kid v!u;!"rrk ik;h 1;h vkj
 !'Akk1 dh E!')k!"y g#; vkidk ?0r d@; ?@rj ini'k ljdkjh d"i5kj
 vk5jCk !u;"k'yh% 195+ d !u;"&H d vulkj viu inh; drD;k dk
 ij"l@;!ul2k &' drD;ijk;Ckrk l u djuk i!jy!6kr djrk g!0ld !y&
 vki nkikh g; This shows that petitioner has not been found guilty for the
 charge leveled against him and finding recorded by the punishing authority
 holding guilty the petitioner is perverse and petitioner was not afforded
 reasonable opportunity in this regard, hence, this the part of the impugned
 order holding guilty the petitioner is not justified and is liable to be quashed.

15- In view of the above observations I find force in the contention
 of petitioner's counsel that enquiry was not conducted in accordance with law
 and petitioner was not afforded reasonable opportunity of hearing which is
 against the principles of natural justice. In the interest of justice, I find force in
 the submission of the petitioner's counsel. Consequently, impugned
 punishment order dated 05.09.2018 is not just and proper and is liable to be
 quashed and claim petition is liable to be allowed.

O R D E R

Claim petition is allowed. Impugned order dated 05.09.2018 as
 contained in Annexure No.1 to the claim petition is hereby quashed. Petitioner
 shall be paid all the consequential service benefits which have been withheld
 on account of this punishment order. 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/-

(K. Ravinder Naik)
Vice-Chairman(Admn.)

Judgment signed, dated and pronounced today in open court.

Sd/-

(K. Ravinder Naik)
Vice-Chairman(Admn.)

19/8/2026

VKS