

STATE PUBLIC SERVICES TRIBUNAL INDIRA
BHAWAN, LUCKNOW

COURT NO.VIII

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

CLAIM PETITION NO. 1907 of 2014

Counsel for the petitioner- Sri V.B. Srivastava.

Counsel for the OPs. - P.O.

Lalit Kumar, aged about 42 years, Son of Sri Kunwar Lal, resident of Village- Pataypur, P.O Lalpur (R.S), District Kanpur Dehat at present Consolidation Officer, Auraiya.

....Petitioner

Versus

1. State of Uttar Pradesh through Pramukh Sachiv, Revenue-8, Department Civil Secretariat, Lucknow.
2. Consolidation Commissioner, Uttar Pradesh, 7th Floor, Indira Bhawan, Lucknow.

..Opp.Parties.

J U D G M E N T

This claim petition has been filed by the petitioner U/s 4 of the U.P Public Services Tribunal Act, 1976. The petitioner has prayed for setting aside the orders dated 27.2.2008, awarding him punishment of stoppage of one increment temporarily and censure entry, annexure no.1, order dated 9.7.2008, annexure no.2 by which his salary for suspension period has been forfeited and order dated 19.2.2014, Annexure no.3, appeal rejection order, with all consequential service benefits.

2. The brief facts of the case are that petitioner, while holding the charge of Consolidation officer, Mahoba, was placed under suspension vide order dated 28.02.2007 in contemplation of

Departmental proceedings related to District Mainpuri related to the matter of judicial order U/s 9-A(2) of U.P. Consolidation of Holding Act, 1953. A charge sheet dated 7.3.2007 was served upon the petitioner, which he replied on 16.5.2007, denying the charges. It has been averred that the enquiry officer in clear breach of provisions of Rule-7 of Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 submitted his enquiry report dated 27.11.2007. Vide enquiry report, charge nos. 1,3 and 4 have been said as proved partially and charge no. 2 and 5 as not proved. The Disciplinary Authority, without conducting any enquiry and proving charges and without affording opportunity of cross examination, issued a show cause notice dated 2.1.2008. The petitioner submitted his representation to the show cause notice. The petitioner in paragraph 4(11) of the claim petition has stated that regarding charge no. 1, 3 and 4, the petitioner passed orders after taking approval the Ziladhikari-Cum District Dy. Director of Consolidation and it is also in-disputed and it is also undisputed that the subject matter of the charge no. 1,3 and 4 are subjudice in Court of settlement Officer Consolidation in appeal under section 11 of U.P Consolidation of Holdings Act 1953. Hence this claim petition has been filed.

3. The respondents have refuted the claims of the petitioner in their CA/WS. They have stated that the in the case files, related to District Mainpuri, on finding irregular orders, the petitioner was suspended on 28.2.2007 in contemplation of enquiry. The petitioner against his suspension order, filed a writ petition before the Hon'ble High Court in which Hon'ble High Court passed the stay order and hence, the suspension of the petitioner was revoked but departmental enquiry continued. Later, the Hon'ble High Court did not find any irregularity and hence finally disposed of the Writ Petition and ordered for completion of departmental enquiry within five months. The petitioner replied the charge sheet on 16.5.2007 thereafter after giving him opportunity of personal hearing on

17.10.2007. The enquiry officer as per Rules, completed the enquiry and submitted his report on 27.11.2007 in which charges nos. 1,3 and 4 were partially proved and 2 and 5 were not found proved. After due consideration on the enquiry report, it was provided to the petitioner along with show cause notice dated 2.1.2008. The petitioner submitted his explanation to the show cause notice and after its due consideration, the punishment order was passed, in which there is no illegality. His appeal has been duly considered and rejected by passing a speaking and reasoned order. His representation, too, has been rejected by the Government, considering all the points raised by the petitioner. There is no illegality or irregularity in the proceedings and the claim petition is liable to be dismissed.

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

5. I have heard Ld. Counsel for both the parties and have perused the record.

6. Ld. Counsel for the petitioner has mainly focused his argument on the point that the controversy of taking departmental proceedings in respect of Judicial order, passed by the Presiding Officers under U.P. Consolidation of Holdings Act 1953 have been set at rest by approval of Judgment of Tribunal in Claim Petition no. 451(1)/1984 'Mohd. Iqbal Azmi vs. State of U.P and others, decided on 28.7.1986 in Civil Appeal No. 338 of 1988, decided by Hon'ble Supreme Court on 22.8.1988.

7. Ld. PO, mostly reiterating the averments, made in the CA/WS has argued that there is no procedural lapse in the enquiry and no illegality or irregularity has been committed during the proceedings against the petitioner.

8. I have considered rivals submissions. For proper adjudication of the issue in question, Sections 40, 49 and 49-A of

the U.P. Consolidation of Holdings Act, 1953 are necessary to be seen, which are being reproduced below:

Section 40 of the U.P. Consolidation of Holdings Act, 1953 reads as under:-

"A proceeding before a Director of Consolidation, Deputy Director of Consolidation, Settlement Officer (Consolidation), Consolidation Officer and Asstt. Consolidation Officer shall be deemed to be judicial proceedings within the meaning of Section 193 and 228 and for the purposes of Section 196 of the Indian Penal Code."

From the perusal of the above it is clear that proceedings under the aforesaid Act are Judicial proceedings for purposes of Section 193 and 228 and also for purposes of Section 196 of the I.P.C. There is specific provision of appeal against the order of the CO, which post the petitioner was holding.

Section 49 and Section 49-A of the U.P. Consolidation of Holdings Act read as under:-

"49- Notwithstanding any thing contained in any other law for the time being in force, the declaration and adjudication of rights of tenure-holders in respect of land lying in an area for which a notification has been issued under sub section (2) of Section 4 adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under this Act shall be done in accordance with the provisions of this Act and no Civil or Revenue Court shall entertain any suit or proceedings with respect to rights in such land or with respect to any other matter for such a proceeding could or ought to have been taken under this Act.

Provided that nothing in the Section shall preclude the Asstt. Collector from initiating proceedings u/s 122-B of the U.P.Z.A. L.R. Act, 1950 in respect of any land, possession over which has been

delivered or deemed to be delivered to a Gaon Sabha under or in accordance with the provisions of this Act.

49-A: Protection of Action taken under this Act or Rule made thereunder- No prosecution or other legal proceedings shall lie against any person for any thing which is in good faith done at intended to be under this Act or rules made thereunder.

Thus Section 49 of the Act bars the jurisdiction of the Civil Court, and Section 49-A provides protection to Consolidation officer/Asstt. Consolidation Officer as well as other officers for any thing done in good faith under this Act or Rules made thereunder.

9. In this case the petitioner has been charge-sheeted on various grounds in connection with consolidation proceedings. As mentioned above Section 49 A, provides protection to such officers not only from Civil suit and criminal prosecution, but also from departmental proceedings which, as discussed above are covered within the meaning of the term "legal proceedings." Thus it is obvious that no departmental proceedings on the basis of judicial proceedings can be initiated in respect of matters decided by the petitioner as C.O. under the U.P. Consolidation of Holdings Act except by way of appeal or revision as provided under the law.

10. A similar case Claim No. 500(1)/1982 Satya Deo Prasad Srivastave Vs. State of U.P. and Consolidation Commissioner, U.P. had come up before this Tribunal, which was decided on 5.2.1985. In that claim petition it was held by the Tribunal that departmental proceedings cannot be initiated against a A.C.O. for giving decisions under the U.P. Consolidation of Holdings Act and he had full protection u/s 49-A. That claim petition was allowed and the order of punishment against the A.C.O. concerned was quashed. The judgement of the Tribunal in that case has become final as it was not challenged before the Hon'ble High Court, informed by the pairakar of O.P. No. 2. Moreover, the case of Mohd. Iqbal Azmi (Supra), cited by Ld. Counsel for the petitioner has also been upheld

by the Hon'ble Supreme Court and hence the instant case also deserves to be allowed.

11. It is also worth mentioning here that the enquiry officer has repeatedly stated in his enquiry report that there has been no loss to the Gram Sabha and also the appeal against the order, passed by the petitioner is also pending. Further he has mentioned that there is no evidence of integrity of the charged officer doubtful in the records. In view of the findings of the enquiry officer and also that the petitioner has done quasi judicial functioning, he may be given coverage of 49 A of the U.P. Consolidation of Holdings Act, 1953 and therefore, the claim petition deserves to be allowed.

12. Since the claim petition is being allowed on the ground above, and so I do not enter into the merits of other arguments raised by the learned counsel for the petitioner. In net result the claim petition is liable to be allowed.

O R D E R

The claim petition is allowed. The impugned orders dated 27.2.2008, 9.7.2008 and 19.2.2014, Annexure no.1,2 and 3 to the claim petition respectively, are hereby set-aside. The petitioner is held entitled to all the consequential service benefits, arising out of quashment of the orders above including salary for the suspension period.

Compliance of the judgment shall be made within a period of three months, from the date, a certified copy is produced before the respondents.

No order as to costs.

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

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

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

VKS

20/8/2026

