Neutral Citation No. - 2024:AHC:88051-DB

Court No. - 39

Case :- WRIT - A No. - 11668 of 2022

Petitioner :- Nyaydhish Pankaj
Respondent :- Allahabad High Court And Another
Counsel for Petitioner :- Akhilesh Singh,Jeetendra Kumar Yadav,Kumar Parikshit,Shivam Yadav
Counsel for Respondent :- Ashish Mishra,Chandan Sharma

Hon'ble Saumitra Dayal Singh,J.
Hon'ble Donadi Ramesh,J.

(Delivered by Hon'ble Donadi Ramesh,J.)

1. Heard Sri Shivam Yadav, alongwith Sri Rohit Nandan Shukla and Sri Jeetendra Kumar Yadav, learned counsel for the petitioner and Sri Chandan Sharma, learned counsel for the High Court.

2. Present writ petition has been filed questioning the impugned punishment order dated 13.5.2022 and the inquiry report dated 3.12.2019 with a consequential direction to release increments to the petitioner which have been withheld by the respondents since 2018.

3. Facts of the case are, the petitioner was selected as a Civil Judge (J.D.) and after completion of his training, has joined District Mau as his first posting. The services of the petitioner is counted by UP Government Servant (Service & Conduct) Rules, 1956 read with U.P. Government Servant (Discipline & Appeal) Rules, 1999 (hereinafter referred to as the Rules, 1956 & Rules, 1999). After

joining as Civil Judge (J.D.) at District Mau, the petitioner being newly recruited, received various friend requests on social media platform "Facebook" from various known and unknown persons for several queries with regard to competitive examinations.

4. Based on a complaint dated 26.12.2018 of one such person, Ms. Jyotima Mishra, the District Judge, Mau called an explanation/report from the petitioner on 01.01.2019. The petitioner submitted his reply on 16.01.2019 to District Judge, Mau and the same was forwarded on 17.10.2019 to Registrar General, Allahabad High Court, first respondent herein. Based on the same, a charge-sheet was issued to the petitioner and the District Judge, Mau was appointed as Inquiry Officer. The said charge-sheet was served on the petitioner on 2.8.2019. Contents of the charge-sheet are as under:

> *"You are hereby charged as under-*
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> *That, while you were posted as Judicial Magistrate, Mau during the period from 16.01.2017, you made acquaintance with Jyotima Mishra, aged about 25 years, C/o Sri Ramesh Tiwari, r/o A-44/363, Sector (A), L.D.A. Colony, Kanpur Road, Lucknow, and lured her with a false promise that you would marry her through Mobile Nos. 9415235202, 9453507007, 7390854079, 8707829470, 05472223245 and took her to a flat behind Janeshwar Mishra Park arid forcibly established physical relationship with her two times without her consent, after administering intoxicating drink and thereby committed rape on her. You again committed rape three times on her, by showing her video and also committed rape on her in your car. When she protested, you threatened her for life and threatened to put her entire family behind the bars, by implicating in a false case. You, also, threatened her to disfigure her face by throwing acid on her, if she made complaint anywhere in the matter. You also transferred Rs. 1000/- in her A/c No. 3674267172 and gave her Rs. 10,000 in cash, in this regard.*
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> *Thus, you have acted in a manner whiten is unbecoming of a Judicial Officer. Further, you have failed to maintain the dignity and decorum of a Judicial Officer. Thus, you have committed misconduct under Rule 3 of the U.P. Government Servants Conduct Rules, 1956, which is punishable u/s 3 of The Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999.*

5. The petitioner submitted his reply on 24.8.2019 denying the allegations made in the complaint and also brought to the notice of

the inquiry officer certain facts about the complainant. Based on the said reply, the inquiry officer has submitted his report on 3.12.2019 exonerating the petitioner from the main charge, but with an observation that accepting the Facebook friend request from unknown lady and conversation with her showing some objectionable photographs thereby paying Rs. 1000/- in her bank account and Rs. 10,000/- as cash, is against judicial norms. Based on the said report, the first respondent issued notice along with the inquiry report. The petitioner had submitted his reply to the said report on 13.01.2020. Finally, the impugned order has been passed by the first respondent, which was communicated to the petitioner on 13.5.2022.

6. The above said punishment order has been assailed primarily on the following grounds:

(i) The respondent-inquiry officer has not followed the procedure contemplated under the Rules, 1999. The inquiry report vitiated for not providing any opportunity to the delinquent officer to submit his case, before reaching such conclusion.

(ii) Though exonerated on the charges framed against him, the respondents have passed the impugned punishment order without assigning any reason as contemplated under the Rules.

7. To substantiate the above grounds, learned counsel for the petitioner has placed reliance on the reply submitted by him to the notice issued by the second respondent dated 16.01.2019. Though he specifically mentioned that one Ms. Jyotima Mishra, who is in touch with the petitioner on Facebook and started discussing about studies, preparation for competitive examinations and the petitioner under bonafide impression, considering the request made by her to pursue

her studies, he transferred Rs. 1000/- to her bank account and again she made a request for Rs. 10,000/- to meet financial crunch faced by her as was affecting her studies. The said amount was paid to her. Yet, when it became habit of Ms. Jyotima Mishra asking for money, noticing that she is a habitual blackmailer, she having blackmailed Dr. Nandesh Tiwari and Shahil Siddique, the petitioner immediately lodged a First Information Report against her, on 20.12.2018 at Police Station Kotwali, District Mau. Only to circumvent the said FIR, the complainant had made a complaint against the petitioner on 26.12.2018 i.e. within six days from the date of the First Information Report being lodged. Further, it is specifically pleaded that the complaint was made only on a piece of white paper not supported by any affidavit, which is mandatory as per Circulars of the Hon'ble High Court dated 31.12.2014 and 11.06.2015. As per the above Circular, no complaint against a Judicial Officer shall be acted upon and proceeded further unless supported by an affidavit. Without considering the reply submitted by the petitioner, the District Judge, Mau has forwarded the said complaint to the first respondent and the first respondent has initiated the disciplinary proceedings against the petitioner. In any case, the complainant never participated in the domestic inquiry. She never appeared.

8. The allegation in the charge sheet is that the petitioner has physical relationship with the complainant without her consent, thereby committing rape and threatened her for life and to put her entire family behind the bars by implicating in false cases. The petitioner denied the allegations made in the charge-sheet. In absence of any evidence, the inquiry officer submitted his report, exonerating the petitioner of the above said charge, with the following observations:

"Complainant Jyotima Mishra has not appeared before the

undersigned in departmental inquiry, after service upon her. On 15.10.2019, an application moved by the victim was received, in which victim had requested to dispense her from personal appearance and some time to produce her statement and piece of evidence soon in this month. After service of notices upon the victim on 05.10.2019 and 17.10.2019 and after her application for producing statement and piece of evidence in this month i.e. November 2019, victim has not produced any statement or piece of evidence as stated by her in her application dated 07.10.2019 in support of her allegations made in the complaint. Since, complainant has not appeared before the undersigned despite sufficient service, nor she produced her statement and piece of evidence as stated by her in her application dated 07.10.2019; in addition to it, allegations made by the victim is not supported by any affidavit, so charge of rape upon the victim by the charged officer is not proved. Therefore, the charged officer Sri Nyayadhish Pankaj, Judicial Magistrate, Mau is liable to be exonerated from the charge of rape.

From the perusal of complaint dated 26.12.2018 addressed to the District Judge Mau, complaint dated 29.12.2018 addressed to the Hon'ble Chief Justice. Hon'ble High Court of Judicature at Allahabad, report of the charged officer dated 16.01.2019, written statement of the charged officer submitted in rebut to the charge, complaint dated 20.12.2018 of the charged officer submitted in the Police Station Kotwali District Mau etc., it is crystal clear that there was relationship with the charged officer and the victim Jyotima Mishra, due to which the charged officer paid Rs. 1.000/- in the account of the victim and Rs. 10,000/- as cash to her as per admission of the charged officer."

9. Surprisingly, the said adverse observation in the inquiry report is solely based on the reply submitted by the petitioner. The inquiry officer (before reaching such conclusion), has not provided any opportunity to the delinquent officer to substantiate his defence. Hence, the entire inquiry is vitiated for non-providing of opportunity to the petitioner/delinquent officer. To support his contentions, learned counsel for the petitioner has relied on the observations made by the Hon'ble Apex Court in **Roop Singh Negi Vs. Punjab National Bank and Ors., reported in (2009) 1 CURLR 160**. Relevant paragraph of the above said order, is as under:

"10. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The

> *charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left."*

10. Further, learned counsel for the petitioner submitted that adverse observations in the inquiry report by taking the admission made with regard to the payment made to the complainant in his reply, is wholly illegal and contrary to the observations made by the Apex Court in **Jagdish Prasad Saxena Vs. The State of Madhya Bharat (Now Madhya Pradesh), reported in AIR 1961 Supreme Court 1070**. Relevant paragraph of the above said order, is as under:

> *"12. The two facts admitted by the appellant do not necessarily or inevitably lead to the conclusion that he was guilty of the offence with which he was charged; besides, if his statements are used against him all statements must be considered as whole and, thus considered, there is no admission of guilt at all. The essential part of the finding against him is that he was present at the time when liquor was transferred to the contractor; and his presence cannot be reasonably inferred from the facts admitted by him. Even as to the delivery of the key to Narona no rules has been produced in this case which positively prohibited the delivery of such a key even in an emergency. Indeed the report made by the Superintendent on 13 July, 1951, shows that as a prudent man the appellant should not have given the key to Narona. The appellant was told that in future "the key should be given only to reliable persons in case of need." This admonition would show that in case of need it was open to the appellant to give the key to a reliable person, and that must necessarily mean that there was no rule which absolutely prohibited the delivery of the key any person even in case of need. Therefore, the admission made by the appellant that he gave the key to Narona cannot*

necessarily lead to the conclusion that he was in league with Narona or Kethulekar."

11. Learned counsel for the petitioner has stressed his argument that despite notices the complainant has not participated in the inquiry proceedings and when there are no evidence available against the petitioner to prove the charge, the inquiry report was submitted exonerating the charge against the petitioner. If the disciplinary authority were to disagree with the findings of the inquiry officer, the disciplinary authority had to pass an order by giving reasons on which material and on what grounds they may have imposed the punishment against the delinquent, but in the instant case, respondents failed to pass any reasoned order. The same is contrary to the Rules, 1999.

12. On perusal of the inquiry report and also the impugned punishment order, no reasons are forthcoming while passing the punishment order by the respondents dated 13.05.2022. In **Writ A No. 10665 of 2021 (Umesh Kumar Sirohi Vs. State of U.P. and Another)**, we have an occasion to deal with the identical issue with regard to implementation of Rule 9 (4) of the Rules, 1999. The same is answered as below:

"33. Here, we consider the true import of Rule 9 of the Rules: (i) In the first place, Rule 9 of the Rules comes into play upon submission of the Inquiry Report by the Inquiry Officer. Under Rule 9(1) of the Rules, after perusing the Inquiry Report, the Disciplinary Authority may remit the case for re-Inquiry, either to the same Inquiry Officer or another. However, if such a course is to be adopted by the Disciplinary Authority, he would be obligated to first record his reasons to do so, in writing. That requirement flows, not on any pre-existing principle of law, but only in view of that mandatory requirement incorporated in the Rule 9(1) of the Rules.

(ii) Second, under Rule 9(2) of the Rules, if on perusal of the Inquiry Report, the Disciplinary Authority disagrees with the findings of the Inquiry Officer on all or any charge and proposes to impose penalty, without directing a re-Inquiry under Rule 9(1), he may record his own findings with respect thereto. If he so acts, he would be further obligated to record his reasons in support of such findings. Again, that requirement

flows only from the plain reading of Rule 9(2) of the Rules, only.

(iii) Thus, read together, Rule 9(1) and (2) provide for two alternative eventualities/courses, either of which may be adopted by the Disciplinary Authority, if he disagrees with the Inquiry Report exonerating the delinquent of all or any charge. In either case, he would be obligated to record his reasons to do so i.e. whether he proposes a re-Inquiry or to impose punishment, on existing material.

(iv) Third, upon submission of an Inquiry Report - exonerating a delinquent of all charges, the Disciplinary Authority, if he agrees with the findings of the Inquiry Officer, he may (in terms of Rule 9(3) of the Rules), accept that Inquiry Report and conclude the disciplinary proceedings, without issuing any notice to the delinquent.

34. In either of the three eventualities, the legislature has not contemplated any opportunity of hearing to the delinquent, at that stage. Thus, we conclude, the proceedings under Rule 9(1), (2) and (3) remain wholly ex parte, to the delinquent.

35. What follows is Rule 9(4) of the Rules. The said sub-Rule is clearly in three parts:

(a) The first part contains the pre-condition for its exercise. Thus, Rule 9(4) of the Rules may come into play when, in the light of the ex parte 'findings' recorded by the Disciplinary Authority under Rule 9(2) of the Rules, it is of the further view that any of the penalties specified under Rule 3 of the Rules, may be imposed i.e. without first requiring a re-inquiry. Explicitly, that is referable only to Rule 9(2) of the Rules, and not otherwise.

(b) The second part of Rule 9(4) prescribes the procedural compliance to be made by the Disciplinary Authority - to proceed under that sub-Rule. It provides, the Disciplinary Authority may at that stage, grant to the delinquent employee (i) copy of the Inquiry Report; (ii) his own findings (ex parte), recorded under sub-Rule (2) and (iii) reasonable opportunity to represent against his ex parte 'findings'.

(c) The third part of the Rule 9(4) confers the decision making power on the Disciplinary Authority. Here, the legislature mandates the Disciplinary Authority to record his fresh/second set of reasons i.e., his reasons to reject the objections that he may have received from the delinquent employee (to his own ex parte 'findings' recorded under Rule 9(2) of the Rules). Only then, the Disciplinary Authority is enabled to pass "a reasoned order" imposing any of the penalties specified in Rule 3 of the Rules.

36. Rule 9(2) of the Rules lays the mandatory pre-condition to be satisfied, to invoke Rule 9(4) of the Rules. Only where the Disciplinary Authority first disagrees with the Inquiry Officer and further, where (upon such disagreement), the Disciplinary Authority proposes - to himself impose any of the penalties on the delinquent (on the strength of the material contained in the Inquiry Report) after rejecting the

conclusions drawn by the Inquiry Officer and without seeking a re-Inquiry under Rule 9(1) of the Rules – first, the provisions of Rule 9(2) of the Rules would have to be strictly complied i.e. ex parte 'findings' and 'reasons' would have to be first recorded by the Disciplinary Authority. Those would be in the nature of a tentative/provisional opinion formed by the Disciplinary Authority on the strength of the material contained in the Inquiry Report, itself. Once that opinion would have been formed by the Disciplinary Authority, Rule 9(4) of the Rules would get activated, and not before. It would obligate the Disciplinary Authority to issue further notice to the delinquent and to supply him a copy of the Inquiry Report together with 'its own' [Rule 9(2)] 'its findings'/'his findings' [Rule 9(4)] and 'reasons' recorded in terms of Rule 9(2) of the Rules.

37. Consequently, further requirement would arise–to pass a reasoned order on all or any one charge that may have been inquired into. The legal mandate/requirement (on the Disciplinary Authority), to pass a 'reasoned order' created under Rule 9(4) of the Rules - to award any particular punishment to the delinquent arises only by way of a necessary consequence or sequel to Rule 9(2) first invoked by the Disciplinary Authority, and not otherwise."

13. Though the respondents have filed their counter affidavit denying the allegations which are made in the writ petition by stating that the inquiry report submitted by the inquiry officer dated 3.12.2019 along with comments dated 13.01.2020, the petitioner's case was considered in the Administrative Committee meeting held on 29.07.2021 and resolved to place the matter before the Hon'ble Full Court and the Hon'ble Full Court uphold the same. Accordingly, the impugned punishment order has been passed.

14. Based on the above averments, Sri Chandan Sharma, learned counsel for the High Court has pointed out that as the petitioner himself has admitted that as he has transferred Rs. 1000/- in the bank account of the complainant and also paid Rs. 10,000/- in cash to the complainant. Hence, there is no necessity to adduce any evidence with regard to the said charge.

15. We have perused the charge, inquiry report and the punishment order, it is evident that gross procedural irregularities have occurred in the disciplinary proceedings leading to the punishment order. The

principle of natural justice that demands the fair and transparent disciplinary proceedings must be adhered to in order to ensure just outcome, has been completely violated.

16. Failure to follow procedural requirements during inquiry stage, raises a serious concern about the validity of the punishment order. It is imperative that the disciplinary process is carried out in a manner that allows the affected parties to present their case, respond to the allegations and have a fair opportunity to defend themselves. The departmental proceedings are quasi judicial one. The principles of natural justice are required to be complied with. The High Courts under 226 of the Constitution dealing with these type of matters under judicial review, is entitled to consider as to whether while inferring commission of misconduct on the part of the delinquent officer, relevant piece of evidence were taken into consideration by excluding the irrelevant facts. Inference on facts to be based on evidence, which meet requirement of legal principles, the disciplinary authority was, thus, entitled to arrive at its own conclusion on the premise of evidence adduced by the authority.

17. On perusal of the inquiry report, it clearly demonstrates that no evidence was adduced before the inquiry officer to prove the charges. In fact, the complainant did not even appear in the inquiry proceedings. Then, no other evidence was led. Though, the petitioner specifically denied the charge in his reply to the notice issued by the District Judge, Mau and also to the charge-sheet, but surprisingly without adducing any evidence, the inquiry officer by taking irrelevant and extraneous facts into consideration, made an adverse observation in the passing, after exonerating the petitioner of the specific charge of rape. The primary charge framed against the petitioner was not proved. The inquiry report clearly mentions about the exoneration on the said charge. In the said circumstances, unless

the complainant had appeared and proved her complaint and/or unless some evidence had been led to prove any part of the charge levelled against the petitioner, it never became open to the inquiry officer to make any adverse observation against the petitioner by relying on the FIR allegation (levelled by the petitioner), against the complainant. The burden to prove the charge was not discharged by the employer, to any extent.

18. Issuance of a reasoned order is essential not only to justify the decision taken but to enable the affected party to understand the basis for punishment made out, but the same is absent in the impugned punishment order. Once, the petitioner had been exonerated for reason of complete absence of evidence led by the employee, no room survived to reach an adverse observation on surmises and conjectures, arising from the suspicion of the inquiry officer.

19. In the said circumstances, the petitioner is justified in seeking quashing of the punishment orders on the above grounds.

20. For the above reasons, the writ petition succeeds and is allowed. The impugned punishment order dated 13.5.2022 is set aside. No order as to costs.

Order Date :- 15.5.2024
Noman

(Donadi Ramesh, J.) (S.D. Singh, J.)