

A.F.R.

Court No. - 10

Case :- SERVICE BENCH No. - 9541 of 2021

Petitioner :- State Of U.P.Thru Prin.Secy. Excise Lucknow & Ors.

Respondent :- Neeraj Verma

Counsel for Petitioner :- C.S.C.

Hon'ble Ramesh Sinha,J.

Hon'ble Ved Prakash Vaish,J.

(Per Ramesh Sinha, J.)

- (1) The Court has convened through **Video Conferencing**.
- (2) Heard Shri Mohit Jauhari, learned Standing Counsel for the State/petitioners.
- (3) By means of the instant writ petition under Article 226 of the Constitution of India, the petitioner is challenging the judgment and order dated 26.02.2019 passed by the State Public Services Tribunal, Lucknow (hereinafter referred to as “**the Tribunal**”) in Claim Petition No. 253 of 2018 : *Neeraj Verma Vs. State of U.P. and others*, whereby the Tribunal, while allowing the claim petition, quashed the order of punishment dated 30.11.2017 and directed that if any service benefits are withheld on account of the punishment order dated 30.11.2017, the claimant/respondent is entitled to get the same, in accordance with law.
- (4) Shorn off unnecessary details, the brief facts of the case are that while the claimant/respondent was working as District Excise Officer, Balrampur, a departmental inquiry against him was instituted under Rule 7 of the U.P. Government Servants

(Discipline and Appeal) Rules, 1999 vide order dated 09.07.2015 on the ground that he committed various irregularities with regard to the realization of basic license fee, non-deposition of the Challan license fees amounting to Rs.5,64,250/- till the date of special audit, non-deposition of the challan license fees of 56 shops of countrymade liquor, 08 shops of foreign liquor, 11 beer shops and non-deposition of the security amount of 81 shops of countrymade liquor, 14 shops of foreign liquor, 06 beer shops. The Joint Excise Commissioner, Gorakhpur Zone, Gorakhpur was appointed as the enquiry officer to conduct the departmental enquiry in the matter of the claimant/respondent.

- (5) A charge-sheet dated 03.07.2015 was served upon the claimant/respondent, levelling eight charges against him. After receipt of the charge-sheet, the claimant/respondent had submitted his reply dated 21.08.2015 to the Enquiry Officer. Thereafter, the Enquiry Officer has submitted his report dated 09.11.2015 to the Disciplinary Authority, exonerating the claimant/respondent from all the charges but the Disciplinary Authority, after examining the enquiry report, disagreed with the report of the enquiry officer and after finding the claimant/respondent responsible for charges no. 6, 7 and 8, issued a show cause notice dated 26.04.2016 to the claimant/respondent. On receipt of the show cause notice dated 26.04.2016, the claimant/respondent submitted his reply dated 11.05.2016, stating therein

that no loss of revenue was caused to the Government instead all efforts were made towards increasing the revenue generated through liquor sale. Thereafter, the Disciplinary Authority, vide order dated 30.11.2017, concluded the disciplinary proceedings by awarding punishment of stoppage of one increment temporarily for a period of one year and also awarded censure entry to the claimant/respondent.

- (6) Feeling aggrieved by the punishment order dated 30.11.2017, the claimant/respondent has approached the Tribunal by filing Claim Petition No. 253 of 2018. The Tribunal, after hearing the learned Counsel for the parties and going through the record, allowed the claim petition vide order dated 26.12.2019, which is impugned in the instant writ petition.
- (7) Learned Counsel for the petitioners has argued that the Tribunal, while passing the impugned order, has failed to consider the most relevant fact that there was an admission on the part of the claimant/respondent with regard to the delay in depositing the basic license fees and the security amount of the shops and, therefore, the charge levelled against him vide charges no.6, 7 and 8 were proved on the basis of available material evidences as well as on the own admission of the claimant/respondent and, therefore, the disciplinary authority took dissenting opinion and has given show cause notice to the claimant/respondent, to which the claimant/respondent submitted his reply. Thereafter, the Disciplinary Authority,

after due process of law, found that the charge nos. 6, 7 and 8 stand proved and, therefore, the punishment order has rightly been passed against the claimant/respondent but the Tribunal has erred in quashing the order of punishment.

- (8) It has been argued by the learned Counsel for the petitioners that the punishment order is well reasoned and speaking and also contains the reasons for coming to the conclusion for awarding the punishment of stoppage of one increments with temporary effect for one year. He also argued that even if the Tribunal had noticed certain infirmities that the version of the respondent in his reply/explanation given in reply to the show cause notice was not discussed in the punishment order by the disciplinary authority, it could have remanded the matter to the disciplinary authority for removing the defects as observed by the Tribunal but the Tribunal has erred in quashing the punishment order and has also allowed the claim petition with all the consequential benefits, which is in fact without jurisdiction and also against the principle of law laid down by the Apex Court in **M.D. ECIL Vs. B. Karunakaran** : AIR 1994 SC 1074, **State of U.P. and another Vs. Manmohan Nath Sinha and another** : 2010 (8) SCC 310 and **Chairman, Life Insurance Corporation of India and others Vs. A. Masilamani** : 2019 (6) SCC 530.

- (9) We have heard learned Counsel for the petitioner and gone through the impugned order.
- (10) It is not in dispute that the disciplinary proceedings were initiated against the claimant/respondent under the U.P. Government Servant (Discipline and Appeal) Rules, 1999 (hereinafter referred to as “**1999 Rules**”) in which there is a complete mechanism for conducting the disciplinary proceeding.
- (11) Rule 9 of 1999 Rules provides for action on inquiry report and reads as under:

“9. Action on Inquiry Report.- (1) The disciplinary authority may, for reasons to be recorded in writing, remit the case for re-inquiry to the same or any other Inquiry Officer under intimation to the charged Government servant. The Inquiry Officer shall thereupon proceed to hold the inquiry from such stage as directed by the Disciplinary Authority, according to the provisions of Rule 7.

(2) The Disciplinary Authority shall, if it disagrees with the findings of the Inquiry Officer on any charge, record its own findings thereon for reasons to be recorded.

(3) In case the charges are not proved, the charged Government servant shall be exonerated by the disciplinary authority of the charges and inform him accordingly.

(4) If the disciplinary authority having regard to its findings on all or any of charges is of the opinion that any penalty specified in Rule 3 should be imposed on the charged Government servant, he shall give a copy of the inquiry report and his findings recorded under sub-rule (2) to the

charged Government servant and require him to submit his representation if he so desires, within a reasonable specified time. The disciplinary authority shall, having regard to all the relevant records relating to the inquiry and representation of the charged Government servant, if any, and subject to the provisions of Rule 16 of these rules, 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.”

- (12) Sub-rule 2 of Rule 9 of the 1999 Rules clearly provides that if the disciplinary authority disagrees with the findings of the Inquiry Officer on any charge, it shall record its own finding thereto with the reasons. Sub-rule (4) of Rule 9 of the 1999 Rules further requires that if the disciplinary authority is of the opinion that the Government servant deserves imposition of some penalty under Rule 3, he shall furnish a copy of the inquiry report along with his findings recorded, if any, under Sub-rule 2 of Rule 9 to the delinquent employee and would allow him reasonable time to submit a reply/representation. After receiving the representation, the disciplinary authority shall again consider the aforesaid material along with the reply, if any, and pass a reasoned order imposing one or more penalty mentioned in Rule 3 and communicate the same to the delinquent employee.
- (13) From the aforesaid, it transpires that when the rule framing authority itself has made separate provision, making it obligatory upon the disciplinary authority to record reasons at

two different stages, one, when it disagrees with the findings of the inquiry officer and, secondly, when it decides to pass an order of punishment after considering the reply given by the delinquent employee against the findings of disagreement of the disciplinary authority, then it is obligatory upon the disciplinary authority to follow such procedure strictly. The reasons contained in the disagreement note constitute the ex parte view taken by the disciplinary authority against the findings recorded by the inquiry officer. When it is communicated to the delinquent employee and he submits its reply, the disciplinary authority is benefited with the explanation given by the delinquent employee. In order to find out as to whether it would like to stick to its earlier view of disagreement with the finding of the inquiry officer or the same needs to be changed, modified, partly or wholly in the light of explanation given by the delinquent employee, it has to apply its mind again. The reasons, therefore, are required to be recorded by the disciplinary authority as to why the explanation given by the delinquent employee is or is not satisfactory. The purpose and objective of reasons to be recorded under Sub-rule 2 and 4 of Rule 9 are different. They are to be recorded at different stages with slightly different material inasmuch as at the former stage, the stand of the delinquent employee is not available to the disciplinary authority while in the later case it is available. We, therefore, are clearly of the view that non-observance of Rule 9(4) is fatal since its compliance is mandatory. If the delinquent

employee after communicating its disagreement note and inquiry officer's finding to the delinquent employee and after receiving the reply failed to pass a reasoned order imposing punishment upon the delinquent employee, such order would not be tenable in law and has to be set aside.

- (14) In the present case, a perusal of the impugned order transpired that the inquiry officer exonerated the claimant/respondent of all the charges. However, the Disciplinary Authority disagreed with the findings particularly in respect to charges No.6, 7 and 8, and without recording/mentioning any reason with respect to the point on which the Disciplinary Authority has not agreed with the findings of the inquiry officer, straightaway issued a show cause notice to the claimant/ respondent, who, after receipt of the show cause notice, submitted his reply, but without considering the issue raised by the claimant/respondent in its reply to the show cause notice, the Disciplinary Authority has passed the order of punishment, which has been challenged by the claimant/respondent in Claim Petition No. 253 of 2018. The Tribunal has also found that so far as delayed payment of the license fee is concerned, the Excise Commissioner had fixed 15.04.2015 for deposition of the license fee and prior to it, the claimant/respondent has deposited the license fee. The Tribunal has also opined that the punishment order is against the principle of natural justice. In these backgrounds, vide impugned order, the Tribunal allowed the claim petition and

quashed the order of punishment with a direction that if any service benefits if withheld on account of the punishment order dated 30.11.2017, the claimant/respondent is entitled to get the same, in accordance with law.

- (15) Considering the facts and circumstances of the case, we are of the view that there is no illegality or infirmity in the impugned order passed by the Tribunal.
- (16) The writ petition lacks merit and is liable to be dismissed, which is hereby **dismissed**.
- (17) Costs easy.
- (18) The party shall file computer generated copy of order downloaded from the official website of High Court Allahabad, self attested by it alongwith a self attested identity proof of the said person(s) (preferably Aadhar Card) mentioning the mobile number(s) to which the said Aadhar Card is linked, before the concerned Court/Authority/Official.
- (19) The concerned Court/Authority/Official shall verify the authenticity of the computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

(Ved Prakash Vaish,J.) (Ramesh Sinha, J.)

Order Date :- 14.6.2021

Ajit/-