Neutral Citation No. - 2024:AHC-LKO:49553

Court No. - 33 **Reserved A.F.R.**

Case :- WRIT - A No. - 7162 of 2023

Petitioner :- Siraj Hussain
Respondent :- State of U.P. through Principal Secretary, Department of Home, Government of U.P., Lucknow and another
Counsel for Petitioner :- Mr. Alok Mishra, Advocate
Counsel for Respondent :- C.S.C.

Hon'ble J.J. Munir,J.

1. The petitioner is a dismissed Constable of the Uttar Pradesh Police. If there is anything to his cause, it is that he has never been heard on the merits of his challenge by any of the departmental fora of appeal and revision with all of them throwing out his case either on limitation or some other ground of maintainability.

2. The facts giving rise to this petition are these:

The petitioner was a Constable in the Civil Police. He was appointed on 01.02.1982 and worked up to the year 2010, when he was dismissed from service. The petitioner was placed under suspension pending inquiry *vide* order dated 17.02.2005 on the charge of unauthorized absence from duty. A charge-sheet was served upon the petitioner on 10.05.2008 under Rule 14(1) of The Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (for short, 'the Rules'). The Inquiry Officer, appointed to inquire into the charges, submitted his report on 21.11.2008. The petitioner, on the basis of findings of the Inquiry Officer, was dismissed by the Superintendent of Police, Lakhimpur Kheri *vide* order dated 28.05.2010.

3. The petitioner carried a departmental appeal impugning the order of his dismissal from service passed by the

Superintendent of Police last mentioned under Rule 20 of the Rules. The Deputy Inspector General of Police, Lucknow Range, Lucknow, before whom the appeal came up, dismissed the same *vide* order dated 30.11.2012 on ground that it was barred by an uncondonable period of limitation. The petitioner challenged the appellate order by instituting a claim petition before the Uttar Pradesh Public Service Tribunal, bearing No.426 of 2012. The Tribunal by their judgment and order dated 22.12.2015 held that the appeal being preferred before the Appellate Authority beyond the prescribed period of limitation of 90 days, which the Appellate Authority refused to condone, the Tribunal could do nothing in the matter. The power of condonation was vested with the Appellate Authority, which had declined the condonation of delay. The Tribunal held further that since the remedy of appeal had not been exhausted by the petitioner by preferring a competent appeal within the prescribed period of limitation, the claim petition was one instituted without exhausting the statutory alternative remedy. It was on this rather queer logic that the Tribunal dismissed the claim petition.

4. The petitioner challenged the Tribunal's judgment before this Court by means of Writ Petition No.4229 (S/B) of 2016. A Division Bench off this Court *vide* judgment and order dated 21.09.2016 quashed the order of the Appellate Authority, rejecting the petitioner's statutory appeal as barred by time, as well as the Tribunal's judgment dated 22.12.2015 and restored the appeal to the Appellate Authority's file for re-consideration, bearing in mind the observations carried in the order of the Division Bench. When the petitioner's appeal came up before the Appellate Authority, to wit, the Deputy Inspector General of Police, Lucknow Range, Lucknow afresh on 14.02.2017, it was

rejected again substantially on the ground of an uncondonable limitation. The petitioner challenged the order passed by the Appellate Authority by means of a revision under Rule 23 of the Rules to the Inspector General of Police, Lucknow Zone, Lucknow. The Inspector General dismissed the revision *vide* order dated 12.05.2017 with the remark that the appeal was rightly dismissed as barred by limitation.

5. The petitioner preferred a representation dated 10.08.2017 under Rule 25 of the Rules to the State Government. The State Government passed an order dated 14.08.2017 directing the Superintendent of Police, Kheri to look into the petitioner's case on humanitarian ground and take appropriate action with regard to his reinstatement in service. It appears that at this stage the petitioner filed a writ petition before this Court being Writ Petition No.25392 (S/S) of 2018, seeking a direction to the State Government to dispose of his representation under Rule 25 of the Rules. In the said petition, by way of an instance of a similar order being passed, copy of an order passed in Writ Petition No.7419 (S/S) of 2018 was annexed, which related to a case of a censure. It is possibly on account of the said reason that in the order of this Court dated 06.09.2018, deciding Writ Petition No.25392 (S/S) of 2018, there is a mention that the petitioner was awarded the minor punishment of censure. Be that as it may, this Court, *vide* order dated 06.09.2018 passed in the writ petition last mentioned, directed the State Government in terms that if any application has been filed by the petitioner to the Government under Rule 25 of the Rules, a decision as to whether it is inclined to exercise its power under Rule 25 or not be recorded within a period of six weeks from the date a certified copy of the order made in the aforesaid writ petition was submitted to the

Government. The petition was disposed of in terms of the aforesaid orders.

6. The State Government *vide* order dated 01.02.2022 dismissed the petitioner's statutory representation under Rule 25 holding: firstly, that the order of this Court dated 06.09.2018 passed in Writ Petition No. 25392 (S/S) of 2018 was incorrect in that, that this Court was wrong in observing that the petitioner was awarded the minor penalty of a censure whereas he had been dismissed from service, whereagainst he had unsuccessfully filed an appeal and revision to the Statutory Authorities, both of which were rejected as time barred. It was also observed in the order impugned passed by the State Government that the order dated 06.09.2018 was secured by the petitioner by presenting incorrect facts. Secondly, by the order impugned, the State Government has declined to exercise power under Rule 25 of the Rules on the ground that the remedy under Rule 25 was not open to the petitioner as he had appealed his order of dismissal and his remedy before the State Government under Rule 25 did not lie. Thirdly, after all these remarks, the State Government in a paragraph has said that the petitioner has not been able to show anything as to how the charge of unauthorized absence from duty for a period of 849 days, 22 hours and 40 minutes found established against him by the Authorities below, is incorrect. The Government in the last part of their order have endeavoured to discard the petitioner's case on merits.

7. Aggrieved by the order impugned dated 01.02.2022 passed by the State Government, this petition has been instituted under Article 226 of the Constitution.

8. A notice of motion was issued on 27.09.2023 and after a stop order passed on 27.10.2023, a counter affidavit on behalf the State was filed on 03.11.2023. When the matter came up before this Court on 24.01.2024, the learned Counsel for the petitioner waived his right to file a rejoinder. Accordingly, the petition was admitted to hearing, which proceeded on that day with the matter being adjourned for further hearing to 25.01.2024. On 25.01.2024, hearing concluded and judgment was reserved.

9. Heard Mr. Alok Mishra, learned Counsel for the petitioner and Mr. Jogendra Nath Verma, learned Standing Counsel appearing on behalf of the respondents.

10. Upon hearing learned Counsel for the parties, this Court is constrained to remark that while it is true that the Appellate Authority does not have powers to condone a delay beyond six months at all under sub-Rule (6) of Rule 20 of the Rules going by the proviso appended to the sub-Rule, the Division Bench of this Court *vide* judgment and order dated 21.09.2016, while disposing of Writ Petition No.4229 (S/B) of 2016, remarked and ordered:

> *"In view of the aforesaid submissions, we have examined the order dated 30 November 2012, passed by the Deputy Inspector General of Police, Lucknow Range, Lucknow and found that the appellate authority had considered the provisions of Rules as well as the limitation for filing the appeal, but definitely he did not notice the reasons for condonation of delay explained by the petitioner in para 27 of the memo of appeal, whereas we are of the view that the appellate authority was under obligation to consider the same and pass an appropriate order after considering the reasons explained by the petitioner. Therefore, we feel it appropriate to quash the order dated 30 November 2012, passed by the appellate authority as well as the order dated 22 December 2015, passed by the learned Tribunal and restore the appeal to the record of the appellate authority for his reconsideration in view of the observations made above.*

It is clarified that we have not given any finding on the merit of the case or on the explanations submitted by the petitioner before the appellate authority to explain the delay."

11. The Division Bench clearly restored the appeal to the file of the Appellate Authority after quashing its earlier order dismissing the appeal as time barred made on 30.11.2012 and the judgment of the Tribunal dated 22.12.2015 affirming it. Apparently, the Division Bench ordered the delay condonation matter to be considered on merits. May be the proviso to sub-Rule (6) of Rule 20 was not brought to their Lordships' notice, but there is no gainsaying the fact that the order dated 21.09.2016 passed by the Division Bench became final *inter partes*. Admittedly, the order of the Division Bench dated 21.09.2016 passed in Writ Petition No.4229 (S/B) of 2016 was never challenged by the respondents before the Supreme Court. Whatever be the position of the statute once the judgment has become final *inter partes*, it was the Appellate Authority's duty to have considered the explanation for the delay on merits, while deciding the delay condonation application in the appeal afresh, pursuant to the command of this Court. Nevertheless, the Appellate Authority observed as follows while rejecting the petitioner's appeal *vide* order dated 14.02.2017:

"(2) इस नियमावली के नियम 20(6) के प्रावधान में अपील अधिकारी को दर्शाये गये अच्छे कारणों से अपील अवधि को केवल छः मास तक का अधिकार प्रदान करते है तथा छः मास के उपरान्त इस अवधि को बढ़ाने का क्षेत्राधिकार अपीलीय अधिकारी को निहित नहीं है। चूँकि याची द्वारा अपनी अपील 01 वर्ष 23 दिन उपरान्त प्रस्तुत किया है अतः इस नियमावली में अपीलीय अधिकारी को इस अवधि में किसी भी स्थिति में मर्षित करने का अधिकार प्राप्त नहीं है। अतः अपीलकर्ता का यह तर्क विधिक दृष्टि से स्वीकार किये जाने योग्य नहीं है।

(3) अभिलेख से ऐसा स्पष्ट होता है कि अपीलकर्ता द्वारा मा० उच्च न्यायालय के समक्ष सही विधिक एवं तथ्यात्मक स्थिति को प्रस्तुत नहीं किया गया है। जिसके अनुसार किसी भी स्थिति में अपीलीय अधिकारी को अपील की अवधि छः मास से अधिक बढ़ाने का अधिकार प्राप्त नहीं है तथा अपील प्रस्तुत करने में हुआ विलम्ब 01 वर्ष 23 दिवस का है।"

12. Whatever be the position of the law, the Deputy Inspector General of Police, Lucknow Range, Lucknow had no business to speak or opine contrary to the orders of the Division Bench dated 21.09.2016. The only course open to him was to examine the delay condonation application on merits regarding the explanation for the delay in preferring the appeal. He could not have relied on the proviso to sub-Rule (6) of Rule 20 of the Rules and hold the appeal again to be barred by an uncondonable period of limitation. We would not have hesitated to quash the order of the Appellate Authority and ordered the Deputy Inspector General to have decided the delay condonation matter on its merits afresh in accordance with the orders of the Division Bench in Writ Petition No.4229 (S/B) of 2016, but we think that, that course of action may now not be feasible. The reason is that the State Government have not exercised their powers under Rule 25 of the Rules with some remarks on merits upholding the impugned order of the Disciplinary Authority, though again in an anomalous exercise of jurisdiction, which would be shortly pointed out. Now, if we direct the Appellate Authority to decide the delay condonation matter in the appeal afresh with a possibility where the appeal may be held competent after condonation of delay, we would be requiring the Appellate Authority to sit in judgment over the correctness of the remarks of the State Government carried in the impugned order dated 01.02.2022, or at least licensing the Appellate Authority to opine contrary to the State Government. This would not only be anomalous but illegal. It is for this reason that we refrain from going into the validity of the order passed by the Appellate Authority dated 14.02.2017.

13. So far as the order of the State Government is concerned, it is apparent that in accordance with the executive rules of

business, an Additional Chief Secretary to the Government has acted on their behalf in deciding the petitioner's statutory representation under Rule 25 of the Rules. In the first part of the order, the Additional Chief Secretary has virtually held the order of this Court dated 06.09.2018 passed in Writ Petition No.25392 (S/S) of 2018 to be suffering from an error apparent, in concluding the first part, with a remark that this Court was misguided by the petitioner in passing the order. This part of the Additional Chief Secretary's order reads:

> "6- प्रश्नगत प्रकरण में मा० उच्च न्यायालय द्वारा याची का प्रत्यावेदन नियम 25 के कम में परीक्षण करते हुये निस्तारित करने के आदेश देते हुए आदेश उल्लेख किया गया है कि याची को लघु दण्ड प्रदान किया गया। याची द्वारा उक्त दण्डादेश के विरूद्ध अपील प्रस्तुत नहीं की गयी है, जबकि जनपद लखीमपुर खीरी द्वारा उपलब्ध करायी गयी दण्ड पत्रावली एवं आख्या से स्पष्ट है कि याची को लघु दण्ड नहीं वरन दीर्घ दण्ड (सेवा से पदच्युत) किया गया है तथा उक्त दण्डादेश के विरूद्ध याची द्वारा सक्षम अधिकारियों के समक्ष अपील एवं रिवीजन प्रस्तुत किया गया है, जिसे कालबाधित/ नियमविरूद्ध होने के फलस्वरूप अस्वीकार कर निस्तारित किया गया है। याची श्री सिराज हुसैन, पदच्युत (डिसमिस) आरक्षी द्वारा मा० न्यायालय के समक्ष गलत तथ्यों को प्रस्तुत किया गया है।"

14. We must say at once that even if there was an error apparent in the orders passed by this Court, it is both beyond ken and jurisdiction of the Additional Chief Secretary to say that this Court has committed an error apparent. He also could not have at all blamed learned Counsel for the petitioner, saying that this Court had been misguided into passing the order dated 06.09.2018. There is absolutely no power or jurisdiction with the Additional Chief Secretary to comment on the record or proceedings of this Court in the slightest measure. The remarks in paragraph No.6 of the impugned order are *ex facie* contumacious, of which we could have taken cognizance. However, adopting a magnanimous view in the matter, we rest the matter here so far as the facet of contents of the order impugned are concerned. But, it does not mean that we can allow these kind of remarks to be made by the Additional Chief

Secretary regarding our record and proceedings. The proper course for the Additional Chief Secretary was to have understood the order in the best way possible within the limits of his jurisdiction and decide the matter without commenting on the worth or validity of this Court's order or saying if we were misguided into passing it. He had no business to blame the learned Counsel, who appeared in the matter earlier of misguiding this Court. If for some reason, the Additional Chief Secretary felt that he could not decide the matter without writing that our order in Writ Petition No. 25392 (S/S) of 2018 dated 06.09.2018 suffered from some kind of an error apparent, the only course of action open to him was to stay proceedings before him and make an application before the Hon'ble Judge, who passed that order, seeking clarification of the remarks about the 'minor penalty' mentioned in the order. We think that it was not at all necessary to seek any clarification because whether the penalty was minor or major, it had no bearing on the directions issued by this Court that were harmlessly limited to a command to the State Government to decide the petitioner's representation preferred under Rule 25 of the Rules. The remarks about the order incorrectly mentioning that the petitioner had been punished with a censure instead of dismissal and virtually castigating our order for an error apparent, is to say the least, the most undesirable transgression of hierarchy in jurisdiction by the Additional Chief Secretary.

15. So far as the second part of the order impugned is concerned, by which the Additional Chief Secretary has held the representation under Rule 25 of the Rules not maintainable, we find it to be utterly flawed. Rule 25 of the Rules reads:

> "**25. Power of Government.**– Not withstanding anything contained in these Rules the Government may, on its own motion or otherwise call for and examine the records of any case decided by an authority subordinate to it in the exercise of any power conferred on such authority by these rules, and against which no appeal has preferred under these rules and–
>
> (a) confirm modify or revise order passed by such authority, or
>
> (b) direct that a further inquiry be held in the case, or
>
> (c) reduce or enhance the penalty imposed by the order, or
>
> (d) make such other order in the case as it may deem fit.
>
> Provided that where it is proposed to enhance the penalty imposed by any such order the police officer concerned shall be given an opportunity of showing cause against the proposed enhancement."

16. The Additional Chief Secretary too has quoted the above rule *in extenso*. The second part of his reasoning carried in the impugned order dated 01.02.2022, we find flawed for the reason that in the Additional Chief Secretary's opinion, the petitioner's remedy under Rule 25 of the Rules was barred because he had appealed the order of punishment, which excluded the State Government's power under Rule 25 whereas in this case, there was really no appeal ever carried by the petitioner. The petitioner did attempt to lodge an appeal with the Appellate Authority praying for condonation of delay, which was twice denied. The Appellate Authority having denied the petitioner's condonation of delay in the matter of his appeal, no competent appeal on the petitioner's behalf ever came into existence. All that was dealt with by the Appellate Authority was a delay condonation application, which he rejected, in consequence whereof no appeal can be said to have ever been instituted by the petitioner against the Disciplinary Authority's

order under Rule 20 of the Rules. If there was no appeal ever competently instituted against the order of the Authority of first instance, the clause in Rule 25 excluding the State Government's jurisdiction to exercise power under Rule 25 does not come into play at all. It is here where the Additional Chief Secretary has erred in saying the petitioner's statutory representation under Rule 25 was not maintainable. For the said reason, the order of the Additional Chief Secretary on this count is held bad and vitiated.

17. The last part of the order impugned where the Additional Chief Secretary has attempted to show that he has considered the merits of the petitioner's case as well, is besides the point. Once he has held the proceedings to be incompetent before him, his remarks on merits lose all significance. Even if the remarks on merits are to be taken as valid expression of an opinion by the State Government under Rule 25, we are not at all impressed by the reasoning, in that that the conclusions are laconic, cryptic and perfunctory. We must say that the petitioner has been denied his right of appeal and revision on the technical ground of delay under Rules 20 and 23 of the Rules. The remedy under Rule 25 is of wide import casting a duty on the State Government to see that no injustice is done. In this case, virtually the State Government while exercising powers under Rule 25 would be doing a review of the order of punishment passed by the Disciplinary Authority. It has, therefore, to consider the matter almost as carefully as would be expected of the Appellate Authority, if not precisely by the same procedure. On the basis of contentions raised, the procedural fairness, the evidence appearing against the petitioner, the tenability of his defence based on documents that the petitioner has offered to justify his absence, must all be

carefully scrutinized to affirm, modify or pass any other order under Rule 25 of the Rules. It cannot be done by the State Government at least in this case by a cryptic remarks that the petitioner has shown nothing that may demonstrate his innocence as to the charge. The State Government must satisfy themselves if in this case the Establishment have discharged their burden of bringing home the charge by evidence, both documentary and oral, after fixing a date, time and place for holding an inquiry. These are the procedural aspects, which must be gone into by the State Government while deciding the petitioner's statutory representation under Rule 25 of the Rules. The quantum of punishment, and if it is disproportionate, would always be open to the State Government to consider while making their orders afresh under Rule 25.

18. In the circumstances above enumerated, this petition succeeds and is **allowed in part**. The impugned order dated 01.02.2022 passed by the State Government is hereby **quashed**. The petitioner's statutory representation under Rule 25 of the Rules is restored to the State Government's file to be decided afresh within six weeks of receipt of a copy of this order bearing in mind the guidance in this judgment.

19. There shall be no orders as to costs.

20. Let a copy of this order be communicated to the Additional Chief Secretary (Home), Government of U.P., Lucknow by the Senior Registrar.

Order Date :- 23.7.2024
Anoop/Lko

(**J.J. Munir, J.**)