2024 INSC 873

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 29758 of 2018)

SATYENDRA SINGH ....APPELLANT(S)

VERSUS

STATE OF UTTAR PRADESH & ANR. ...RESPONDENT(S)

J U D G M E N T

Mehta, J.

1. Leave granted.

2. The instant appeal arises from the judgment dated 30th July, 2018 passed by the High Court of Judicature at Allahabad, Lucknow Bench, allowing the Writ Petition preferred by the respondents and setting aside the judgment dated 5th June, 2015 passed by the State Public Services Tribunal, Lucknow[1], whereby, the Tribunal had allowed the Claim Petition[2] preferred by the appellant.

[1] Hereinafter being referred to as 'Tribunal'
[2] Claim Petition No. 1931 of 2014

Brief facts:-

3. The appellant, while being posted as Assistant Commissioner, Commercial Tax, Khand-13, Ghaziabad faced disciplinary proceedings in furtherance of a charge sheet dated 5th March, 2012. The Inquiry Officer conducted the inquiry and submitted an Inquiry Report dated 29th November, 2012. The Disciplinary Authority being the Principal Secretary, Tax Registration Department, Lucknow, U.P., issued a Show Cause Notice accompanied with the Inquiry Report to the appellant. The appellant submitted his reply/objections to the said Show Cause Notice. The Disciplinary Authority, considered the reply of the appellant and issued the Order dated 5th November, 2014, whereby it awarded the punishment of Censure Entry as well as stoppage of two grade increments with cumulative effect to the appellant.

4. The appellant challenged the order imposing penalty by filing the Claim Petition[3] before the Tribunal which allowed the same *vide* order dated 5th June, 2015; thereby, quashing the order dated 5th November, 2014 and directed that the appellant shall be entitled to all consequential benefits. While allowing the Claim Petition, the Tribunal came to the following conclusions: -

[3] *Supra* note 2.

> " While going through the record available on the file it becomes clear that the **Inquiry Officer proved the charges against the petitioner merely, on the basis of conclusion of the verification report prepared under Deputy Collector and the Additional Commissioner, Grade-1, Commercial Tax, Agra Zone, Agra.** The delinquent officer was not involved in the inquiry. The petitioner submitted detailed explanation to the show cause notice but when we go through the punishment order and the explanation submitted by the petitioner against the show cause notice, we find that **proper analysis and deliberation was not done by the opp.***(sic)* **parties to assess the role of the petitioner in the episode.**
>
> The finding recorded by the Inquiry Officer on the relevant charges can be safely termed as irrational. **No reasons have been given for recording those findings. The Inquiry Officer has recorded cryptic findings and concluded that the charges are proved without rationalizing those conclusions. Hence it is a fit case where the Tribunal should interfere.**
>
> We may also add here that this is not a case of procedural irregularity, and we do not propose to interfere with the order of the disciplinary authority on the ground of procedural irregularity.
>
> ....
>
> **On the basis of the discussion attempted in the preceding para we are fully convinced that the Inquiry Officer and the Disciplinary have recorded irrational findings on relevant charges.**"
>
> (emphasis supplied)

5. The State/disciplinary authority assailed the order[4] passed by the Tribunal by filing Writ Petition[5] which was allowed *vide* judgment dated 30th July, 2018 and the order passed by the Tribunal was set aside thereby reaffirming the order issued by the disciplinary authority which had imposed penalty. The appellant

[4] Dated 5th June, 2015.
[5] Writ Petition No. 6850(S/B) of 2015

herein has assailed the judgment dated 30th July, 2018 passed by the High Court in exercise of its writ jurisdiction by preferring this appeal by special leave.

Submission on behalf the appellant: -

6. Learned counsel representing the appellant urged that the inquiry proceedings conducted against the appellant were in gross dereliction of Rule 7(3) of the Uttar Pradesh Government Servant(Discipline and Appeal) Rules, 1999[6]. The disciplinary proceedings were initiated and allegations constituting major penalty were proposed by Inquiry Officer. Since the appellant had emphatically denied the charges, it was incumbent upon the Inquiry Officer to have recorded evidence to establish the charges attributed to the appellant. However, admittedly, not a single witness was examined by the Inquiry Officer to bring home the charges, and thus, the inquiry report is *non est* in the eyes of law. He, therefore, urged that the Tribunal was perfectly justified in quashing the inquiry proceedings and the order imposing penalty *vide* order dated 5th June, 2015 and that the High Court fell in grave error of law whilst allowing the writ petition and reversing the order passed by the Tribunal. He, therefore, implored the

[6] Hereinafter being referred to as the 'Rules of 1999'

Court to accept the appeal, set aside the judgment passed by the High Court and restore the order passed by the Tribunal.

Submissions on behalf of the respondent-State:-

7. *Per contra,* learned standing counsel appearing for the State vehemently and fervently opposed the submissions advanced by learned counsel for the appellant. He contended that the appellant did not seriously challenge the findings of the Inquiry Officer in the Inquiry Report. The reply submitted by the appellant was considered by the Disciplinary Authority and after due application of mind, the Disciplinary Authority passed a well-reasoned Order dated 5th November, 2014 imposing the penalty afore-stated against the appellant. He submitted that the High Court exercised the jurisdiction conferred upon it by virtue of Article 226 of the Constitution of India by proper consideration of the material available on record and hence, this Court should not interfere with the impugned judgment rendered by the High Court.

8. We have given our thoughtful consideration to the submissions advanced at bar and have carefully gone through the impugned judgments and the material available on record.

Discussion and Conclusion:-

9. There is no dispute amongst the parties that penalty which has been imposed upon the appellant is a major penalty as defined in the Rules of 1999. In Rule 3[7] of the Rules of 1999, under the head of major penalty, the first Sub-Rule refers to withholding of increments with cumulative effect.

10. Therefore, Rule 7 of the Rules of 1999 which prescribes the procedure for imposing major penalty would be applicable in the inquiry to be conducted against the appellant to bring home the charges imputed to him.

11. Rule 7 (vii)[8] of the Rules of 1999, clearly stipulates that where a Government servant denies the charge, the Inquiry Officer shall

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[7] **3. Penalties**

....

Major Penalties

(i) Withholding of increments with cumulative effect;
(ii) Reduction to a lower post or grade time scale or to a lower stage in a time scale;
(iii) Removal from the service which does not disqualify form future employment;
(iv) Dismissal from the service which disqualify from future employment.

Explanation- The following shall not amount to penalty within the meaning of this rule, namely:

(i) Withholding of increment of a Government Servant for failure to pass a departmental examination or for failure to fulfil any other condition in accordance with the rules or orders governing the service;
(ii) Stoppage at the efficiency bar in the time scale of pay on account of ones not being found fit to cross the efficiency bar;
(iii) Reversion of a person appointed to probation to the service during or at the end of the period of probation in accordance with the terms of appointment or the rules and orders governing such probation.
(iv) Termination of the service of a person appointed on probation during or at the end of period of probation in accordance with the term of the service or the rules and order governing such probation.

[8] **7-Procedure for imposing major penalties-** Before imposing any major penalty on a Government Servant, an inquiry shall be held in the following manner:

...

proceed to call the witness proposed in the charge sheet and record their oral evidence in the presence of the charged Government servant who shall be given opportunity to cross-examine such witness. After recording the aforesaid evidence, the Inquiry Officer shall call and record the oral evidence which the charged Government servant desires in his written statement to be produced in his defence. Hence, recording of oral evidence in support of charges against Government servant is a mandate under of Sub-rule (vii) of Rule 7 of the Rules of 1999, when the inquiry being conducted proposes imposition of a major penalty.

12. Learned counsel for the State was *ad idem* to the submissions of the appellant's counsel that no witness whatsoever was examined during the course of the inquiry proceedings. On a minute appraisal of the Inquiry Report, it is evident that other than referring to the documents pursuant to the so-called irregular transactions constituting the basis of the inquiry, the Inquiry Officer failed to record the evidence of even a single witness in order to establish the charges against the appellant.

(vii) Where the charged Government Servant denies the charge the Inquiry Officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charge Government Servant who shall be given opportunity to cross-examine such witnesses. After recording the aforesaid evidences, the Inquiry Officer shall call and record the oral evidence which the charged Government Servant desired in his written statement to be produced in his defence.

13. This Court in a catena of judgments has held that the recording of evidence in a disciplinary proceeding proposing charges of a major punishment is mandatory. Reference in this regard may be held to ***Roop Singh Negi v. Punjab National Bank and Others***[9] and ***Nirmala J. Jhala v. State of Gujarat and Another***.[10]

14. In the case of ***Roop Singh Negi***[11], this Court held that mere production of documents is not enough, contents of documentary evidence have to be proved by examining witnesses. Relevant extract thereof reads as under: -

> **"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled 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.
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> **15.** 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. The appellant being an employee of the Bank, the said confession should have been proved. **Some evidence should have been**

[9] (2009) 2 SCC 570
[10] (2013) 4 SCC 301
[11] *Supra* note 9.

> **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.
> …
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> **19.** The judgment and decree passed against the respondent in *Narinder Mohan Arya case* [(2006) 4 SCC 713 : 2006 SCC (L&S) 840] had attained finality. In the said suit, the enquiry report in the disciplinary proceeding was considered, the same was held to have been based on no evidence. The appellant therein in the aforementioned situation filed a writ petition questioning the validity of the disciplinary proceeding, the same was dismissed. This Court held that when a crucial finding like forgery was arrived at on evidence which is *non est* in the eye of the law, the civil court would have jurisdiction to interfere in the matter. **This Court emphasised that a finding can be arrived at by the enquiry officer if there is some evidence on record. …"**
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> (emphasis supplied)

15. Same view was reiterated in ***State of Uttar Pradesh v. Saroj Kumar Sinha***,[12] wherein, this Court held that even in an *ex-parte* inquiry, it is the duty of the Inquiry Officer to examine the evidence presented by the Department to find out whether the unrebutted evidence is sufficient to hold that the charges are proved. The relevant observations made in ***Saroj Kumar Sinha***[13] are as follows: -

> **"28.** 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**

[12] (2010) 2 SCC 772
[13] *Ibid.*

> **evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted 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.**
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> ....
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> **33.** As noticed earlier in the present case not only the respondent has been denied access to documents sought to be relied upon against him, but he has been condemned unheard as the inquiry officer failed to fix any date for conduct of the enquiry. **In other words, not a single witness has been examined in support of the charges levelled against the respondent. The High Court, therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of the principles of natural justice and total disregard of fair play.** The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge-sheet.**"**
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> (emphasis supplied)

16. In the case of ***Nirmala J. Jhala***[14], this Court held that evidence recorded in a preliminary inquiry cannot be used for a regular inquiry as the delinquent is not associated with it and the opportunity to cross-examine persons examined in preliminary inquiry is not given. Relevant extract thereof reads as under: -

> **"42.** A Constitution Bench of this Court in *Amalendu Ghosh* v. *North Eastern Railway* [AIR 1960 SC 992] , held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.

[14] *Supra* note 10.

43. Similarly in *Champaklal Chimanlal Shah* v. *Union of India* [AIR 1964 SC 1854] a Constitution Bench of this Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. Preliminary inquiry may be held ex parte, for it is merely for the satisfaction of the Government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the Government as to whether a regular inquiry must be held. The Court further held as under : (AIR p. 1862, para 12)

> "*12.* … There must therefore be *no confusion between the two enquiries* and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of that article [, nor prior to that]."

44. In *Narayan Dattatraya Ramteerthakhar* v. *State of Maharashtra* [(1997) 1 SCC 299 : 1997 SCC (L&S) 152 : AIR 1997 SC 2148] this Court dealt with the issue and held as under:

> "… *a preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet.* The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the *preliminary enquiry loses its importance* and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice of (*sic*) nor, remains of no consequence."

45. <u>In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice</u>.

(emphasis supplied)

17. Thus, even in an *ex-parte* inquiry, it is *sine qua non* to record the evidence of the witnesses for proving the charges. Having tested the facts of the case at hand on the touchstone of the Rules of 1999, and the law as expounded by this Court in the cases of ***Roop Singh Negi***[15] and ***Nirmala J. Jhala***[16], we are of the firm view that the inquiry proceedings conducted against the appellant pertaining to charges punishable with major penalty, were totally vitiated and *non-est* in the eyes of law since no oral evidence whatsoever was recorded by the department in support of the charges.

18. As a consequence, thereof, the High Court fell into grave error of law while interfering in the well-reasoned judgment rendered by the Tribunal whereby, the Tribunal had quashed the order imposing penalty upon the appellant.

19. Resultantly, the impugned judgment dated 30th July, 2018 is hereby quashed and set aside and the order dated 5th June, 2015 rendered by the Public Service Tribunal, Uttar Pradesh is restored. The appellant is entitled to all consequential benefits.

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[15] *Supra* note 9.
[16] *Supra* note 10.

20. The monetary benefit flowing from this order shall be paid to the appellant within a period of two months from today, failing which, the said amount shall carry interest @ 6% per annum.

21. The appeal is allowed accordingly. No order as to costs.

22. Pending application(s), if any, shall stand disposed of.

.....J.
(PAMIDIGHANTAM SRI NARASIMHA)

.....J.
(SANDEEP MEHTA)

New Delhi;
November 18, 2024