
(2005) 10 AHC CK 0051

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 42329 of 2004

Ashok Kumar Yadav

APPELLANT

Vs

State of U.P. and Commissioner, Azamgarh Division

RESPONDENT

Date of Decision : 20-10-2005

Acts Referred:

Uttar Pradesh Government Servants (Discipline and Appeal) Rules, 1999 — Rule 16, 3, 7, 8, 9(2)

Citation : (2006) 5 AWC 4741 : (2006) 108 FLR 541 : (2006) 1 UPLBEC 223

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : S.S.P. Gupta, for the Appellant;

Final Decision : Allowed

Judgement

Arun Tandon, J.—Petitioner Ashok Kumar Yadav, who was employed as Collection Amin in Tehsil Phoolpur, district Azamgarh, was served with a charge sheet dated 16th February, 2003. Petitioner submitted his reply to the same vide letter dated 28.4.2003. The enquiry officer is alleged to have submitted its report dated 20.5.2003, where under he found, the charges levelled against the petitioner to be proved. On the basis of the enquiry report so submitted, the District Magistrate, Azamgarh proceeded to pass the impugned order of punishment dated 10th July, 2003, whereby following punishments have been imposed:

- (a) Petitioner is reinstated at the initial of the pay scale,
- (b) for the period of suspension petitioner may not be paid anything over and above the subsistence allowance, and
- (c) censer entry is awarded to petitioner.

2. On behalf of the petitioner it is contended that reduction to the initial of the pay scale is a major penalty in view of the provisions of Rule 3 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999. Therefore, it is but

necessary for the respondents to have forwarded the enquiry report to petitioner and to have afforded an opportunity to controvert the findings recorded therein by the enquiry officer. Therefore, the impugned order cannot be legally sustained.

3. Standing Counsel on the other hand submits that under the impugned order only minor penalty has been imposed and therefore it is not necessary to forward the enquiry report to petitioner and to have afforded opportunity in that regard.

4. For appreciating the controversy raised in the present writ petition, Rule 3, which provides for the major penalties which could be imposed upon the government servant, be notified. Rule 3 is being quoted herein below:

3. Penalties.-- The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon the Government Servants :-

Minor Penalties:

(i)

(ii)

(iii)

(iv)

(v)

Major Penalties:

(i)

(ii) Reduction to a lower post or grade or time scale or to a lower stage in a tie scale;

(iii)

(iv)

5. Rule 7 of the aforesaid Rules provides for the procedure to be followed for imposition of major penalty. Rule 8 provides for submission of enquiry report and Rule 9 provides for the action to be taken on the said enquiry report. So far as the major penalty is concerned, it is worthwhile to reproduce Rule 9(4), which reads as follows:

9(4).If the Disciplinary Authority, having regard to its findings on all or any of charges 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.

6. From the aforesaid rules, it is apparently clear the reduction to the initial of the pay scale would amount to a major penalty. In such circumstances, it is but necessary that the employer concerned should have been proceeded with strictly in accordance with the procedure prescribed for imposition of major penalty. The procedure prescribed under Rule 7 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999 makes it obligatory for the disciplinary authority to forward the enquiry report to the delinquent employee and to afford an opportunity to meet the findings recorded therein, before proceeding to impose the penalty.

7. In the Constitutional Bench Judgment, reported in (1993) 6 SC Judgment Today 1 it has been held that principles of natural justice require that the report of the enquiry officer should be forwarded to the delinquent employee before imposition of major penalty.

8. Since, admittedly, the said procedure has not been followed before passing of the impugned order by the disciplinary authority, the same cannot be legally sustained. The appeal filed by the petitioner against the said order has also been dismissed without appreciating the correct legal position, as has been noticed herein above by the Court.

9. In view of the aforesaid, the order dated 30.9.2003 passed by the District Magistrate, Azamgarh as well as the order passed by the Commissioner, Azamgarh Division, Azamgarh dated 20th august, 2004 are hereby quashed.

10. It is however, open to the respondents to proceed against the petitioner afresh from the stage the proceedings have run contrary to the law referred to hereinabove.

11. Writ petition stands allowed.