

(2025) 02 AHC CK 1090
In the Allahabad High Court, Lucknow Bench
Case No : Writ Petition A No. 2211 Of 2025

Dineshwar Mishra

APPELLANT

Vs

State Of U.P. Thru. Chief Secy. Govt. Lko. And 4 Others

RESPONDENT

Date of Decision : 24-02-2025

Acts Referred:

Constitution of India, 1950 — Article 20, 227

Code of Criminal Procedure Act, 1973 — Section 156(3), 173, 200, 202, 203, 204, 482

Indian Penal Code, 1860 — Section 406, 420, 465, 468, 471, 476, 506

Citation : (2025) 02 AHC CK 1090

Hon'ble Judges : Anish Kumar Gupta, J

Bench : Single Bench

Advocate : Abhilasha Singh, Ashutosh Yadav, Manoj Kumar Rajvanshi, Shyam Lal, Yadvesh Yadav, Lallan Prasad Yadav, Nagesh Kumar, Vimlendu Tripathi

Final Decision : Dismissed

Judgement

Alok Mathur, J

1. Heard Sri Surya Mani, learned counsel for the petitioner as well as Standing counsel for the respondent.
2. With the consent of the parties, the petition is being decided at the admission itself.
3. The petitioner has approached this court being aggrieved by the order dated 23.9.2024 passed by Principal Secretary, Sugar Cane Department thereby inflicting punishment of stoppage of two increments permanent, and also giving a censure entry to the petitioner.
4. Learned counsel for the petitioner has vehemently urged that the procedure adopted by the respondents while inflicting punishment on the petitioner is in gross violation of Uttar Pradesh Government Servants (Discipline and Appeal) Rules, 1999 (hereinafter referred to as the Rules of 1999) specifically rule 9 where after submission of the inquiry report the inquiry officer had exonerated

the petitioner of all the charges. The inquiry officer sought opinion of the Controlling Authority of the petitioner and without affording any opportunity inflicted the aforesaid punishment. He submits that apart from being violative of Articles 14 and 16 of the Constitution, the said punishment is alien to the provisions of Rule 9 of the Rules of 1999 and, therefore, deserves to be set aside.

5. Brief facts of the case as stated in the writ petition are that the petitioner was posted on the post of Deputy Cane Commissioner, Saharanpur when certain allegations were levelled against him for not effectively complying with the tagging orders which are issued by the District Magistrate against the product of Sugar Mills to ensure payment of cane price and the inquiry proceedings commenced by issuance of charge sheet on 13.9.2023 to the petitioner containing four charges of similar nature.

6. It has been submitted that though the order of the District Magistrate directing that all the revenue collected by the Cane Officer from the sale of sugar cane and molasses etc. should be so utilized so as that 85 percent of the cane price is paid to the farmers was not effectively supervised and accordingly for the said negligence the petitioner was charged.

7. The petitioner had filed his reply to the charge sheet on 26.5.2022 and denied the said allegations. The inquiry officer submitted his report on 9.1.2023 exonerating the petitioner of all the charges and dealt with all the materials which were led in this regard and found that it is District Cane Officer, Shamli, who has not complied with the directions of the District Magistrate due to which there was no effective realization of the payments of cane price to the farmers.

8. The disciplinary authority of the petitioner issued a show cause notice on 7.6.2023 indicating that though according to the inquiry officer the petitioner has been exonerated of all the four charges but further recorded that the petitioner did not led sufficient evidence and accordingly he is guilty of negligence and has asked the petitioner to submit his reply to the same. It is clear that the petitioner had been exonerated of all the charges by the inquiry office and there is no mention that the disciplinary authority at the stage of issuance of show cause notice has disagreed with the findings of the inquiry officer had directed the petitioner to submit his reply as to why he should not be held to be guilty of negligence.

9. The petitioner submitted his reply on 8.1.2023 denying all the allegations and by means of the impugned order dated 23.9.2024 punishment has been inflicted upon the petitioner which has been assailed in the present writ petition.

10. In the impugned order, it is noticed that the inquiry report was further sent to the controlling authority of the petitioner which is Cane Commissioner and his opinion was also sought in the matter a copy of the said opinion was never given to the petitioner and the said opinion was sought after submission of the inquiry report. It seems that the Cane Commissioner gave opinion against the petitioner stating that, in fact, it is the petitioner who is guilty of the charges levelled

against him and merely relying upon the opinion of the Cane Commissioner that the present punishment has been inflicted upon the petitioner.

11. From the entire material we find that there is no mention of the opinion of the Cane Commissioner in his order of the inquiry report clearly indicating that during the inquiry proceedings no other opinion was available on record. It is the disciplinary authority, who has obtained opinion after submission of the inquiry report and the petitioner was never confronted with by the material. Accordingly, learned counsel for the petitioner submits that entire inquiry stands vitiated and deserves to be set aside.

12. Learned Standing counsel, on the other hand, has submitted that full opportunity of hearing was given to the petitioner. He had submitted response to the charge sheet and the inquiry officer has given full opportunity to cross examine the witness who had deposed in the said inquiry. He does not dispute the fact that the inquiry officer had exonerated the petitioner of all the charges but submits that the disciplinary authority was within his competence as per rule 9 sub clause 2 to disagree with the findings of the disciplinary authority and take another view in the matter. He submits that merely because the inquiry proceedings exonerated the petitioner does not mean that the disciplinary authority has also exonerated him and accordingly submits that there was sufficient material on record which indicated that the petitioner was guilty of the charges framed against him and prays for dismissal of the writ petition.

13. Having heard the rival contentions, the only point for consideration which falls in the present petition is as to whether the disciplinary authority after submission of the inquiry report, could have called for any independent report in the form of an opinion from the Cane Commissioner. In the present case, it seems that the Cane Commissioner has given his opinion to the disciplinary authority wherein according to him the petitioner was guilty of the charges leveled against him relying solely on the findings recorded by the Cane Commissioner, the petitioner has been held to be guilty.

14. It is noticed that in the inquiry proceedings the charges against the delinquent government servant are sought to be proved by adducing material during the inquiry proceeding itself. It is the duty of the prosecution to place all the documents and evidence before the inquiry officer which may lead toward proving the charges leveled against the government servant while, on the other hand, the government servant is afforded full opportunity to rebut all the charges and allegations leveled against him. He further submits that right to cross examine all the witnesses who have deposed in favour of the prosecution and it is only after detailed considerations of the material which is available during the inquiry the inquiry officer submits his report to the disciplinary authority. The disciplinary authority while exercising the power under Rule 9 of the Rules of 1999 has to take the evidence and material which has come forth during the said inquiry i.e. the material which has been adduced before the inquiry officer. Accordingly, under Rule 9 he has right to disagree with the findings recorded by

the inquiry officer in which case he is bound to issue a fresh show cause notice indicating his disagreement or the reasons for his disagreement and it is only after submission of the response from the government servant he would take a decision which is different from the report of the inquiry officer if he feels that the inquiry officer has not dealt with certain aspects or recorded certain evidence, the disciplinary authority would be within his competence to remit the matter back for fresh inquiry or any further report is given by the inquiry officer and accordingly he may accept the inquiry report where the delinquent government servant has been exonerated of the charges and adopt the inquiry proceedings.

15. In the present case, considering that a procedure has been followed by the inquiry officer to seek opinion of the Cane Commissioner. Seeking of such an opinion is alien to the provisions of Rule 9 and the disciplinary is bound to consider only the material which has been adduced during the inquiry proceedings. If on perusal of the material which has been adduced during the inquiry proceeding, lead him to take a different stand what has been recorded by the inquiry officer, he is within his competence to issue a notice to the petitioner disagreeing with the findings of the inquiry officer but at this stage he cannot enlarge the scope of inquiry and take the opinion from a third person and relying on the said material imposed punishment upon the government servant.

16. Accordingly, in the present case, Rule 9 of the Rules of 1999 has been grossly violated in as much as a fresh material which was not on record before the inquiry officer has been considered by the disciplinary authority to inflict punishment on the petitioner which cannot be done and, therefore, this Court is of the opinion that such exercise of powers by the appointing authority is illegal and arbitrary and deserves to be set aside.

17. Apart from the above, we find that the said procedure adopted by him is in gross violation of the principles of natural justice which provides full opportunity being given to the servant during the disciplinary proceedings the opinion which, at the outset, could not have been taken on record, was considered without affording any opportunity of hearing to the petitioner.

18. The petitioner not being afforded the said opinion and merely relying on the same by the inquiry authority is clearly in violation of the principles of natural justice and accordingly, the procedure being violative of Rule 9 of the rules of 1999 is also against the provision of principles of natural justice and consequently set aside.

19. In the aforesaid circumstances, the order dated 23.9.2024, as contained in Annexure No.1 to the writ petition, is quashed. The matter is remitted back to the disciplinary authority to proceed from the stage of submission of reply of the petitioner to the show cause notice issued to him and pass fresh order in accordance with law.

20. It is further made clear that the disciplinary authority shall not be influenced

by the impugned order while passing fresh order.

21. Considering that much time has lapsed, he is directed to pass fresh order, expeditiously, preferably within six weeks from the date a certified copy of this order is placed before him in accordance with law.

22. In light of the above, the writ petition stands allowed.