
(2010) 12 AHC CK 0034

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13984 of 2007

Girija Shanker Dubey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)
Uttar Pradesh Government Servants (Discipline and Appeal) Rules, 1999 — Rule 16,
3, 7, 9, 9(4)

Citation : (2011) 2 ADJ 647 : (2011) 128 FLR 696

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Aggrieved by the order of punishment dated 13.3.2006 (Annexure-9 to the writ petition) passed by Respondent No. 2 imposing major penalty of withholding of two increments with cumulative effect, minor penalty, a censure and further withholding of integrity as a well as a direction that independent charge not to be given to the Petitioner in future; the order dated 28.11.2006 (Annexure 15 to the writ petition), passed by Respondent No. 1 rejecting Petitioner's appeal, the present writ petition has been filed under Article 226 of the Constitution seeking a writ of certiorari for quashing the same.

2. Learned Counsel for the Petitioner submits that after receiving enquiry report, the disciplinary authority has proceeded in utter violation of Rule 9(4) of the U.P. Government Servant (Discipline and Appeal) Rules, 1999 (hereinafter referred to as "1999 Rules"), hence the entire proceedings subsequent thereto are illegal, without jurisdiction and in utter violation of principles of natural justice. He drew my attention to the averment made in para 36 of the writ petition that copy of the enquiry report was never served upon the Petitioner and on the contrary, the disciplinary authority after receiving enquiry report, straight way proceeded to pass the impugned punishment order, hence, violated the procedure prescribed

in Rule 9(4) of 1999 Rules.

3. Respondents have filed counter-affidavit. In a general and vague manner, they have replied the aforesaid averments. In para 30 of the counter-affidavit, the only averment made is that the procedure prescribed in the 1999 Rules has been followed. There is no specific reply despite specific averment made by the Petitioner that copy of enquiry report was never served upon the Petitioner. It has not been stated whether the copy of enquiry report was supplied or not.

4. The facts in brief giving rise to the present case are that a charge-sheet was issued to the Petitioner on 7.11.2003. After holding departmental enquiry, an enquiry report was submitted. Thereafter the order of punishment was passed on 13.3.2006. The Petitioner's appeal was rejected on 28.11.2006.

5. Rule 9, Sub-rule (4) of 1999 Rules 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 finding thereon for reasons to be recorded.

(3) In case the charges are not proved, the charged Government servant shall be exonerated the Disciplinary Authority of the charges and informed 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 on or more penalties mentioned in Rule 3 of these rules and communicate the same to the charged Government servant.

6. The aforesaid Rule provides for action to be taken by disciplinary authority after receiving enquiry report under Rule 9 of 1999 Rules. One of the two options available to the disciplinary authority is to remit the matter for further enquiry if he so finds necessary as provided under sub-rule 1. In case some findings of enquiry officer are disagreed by the disciplinary authority, Sub-rule (2) provides that disciplinary authority shall record its reason and conclusion as well as findings thereon. Sub-rule (3) provides that if the charges are not proved by the enquiry officer, and the disciplinary authority agreed with the same, the official concerned shall be exonerated and informed accordingly. Sub-rule 4, however,

comes into play when the charges have been found proved by the enquiry officer and 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 employee or if some charges are not proved by the enquiry officer, but the disciplinary authority decides to record its own findings holding charges proved, then after following the procedure prescribed under Sub-rule (2) in both the contingencies, a copy of enquiry report shall be furnished to the employee concerned giving him opportunity to submit his reply within a reasonable specified time. The disciplinary authority, thereafter, shall proceed to pass a final order considering the entire record of the enquiry as well as the representation of the charged Government servant, if any.

7. The words "representation of the charged Government servant, if any" refers to the representation or objection, if any, filed by the charged Government servant after receiving copy of the enquiry report. In case of disagreement, the findings of the disciplinary authority, if any, under Sub-rule (2) and not any earlier one. It is only thereafter the disciplinary authority may pass an order of punishment imposing any punishment contemplated under Rule 3.

8. As is evident from the record, I am satisfied that the copy of enquiry report having not been supplied to the Petitioner in the case in hand before passing the order of punishment, the procedure prescribed in Rule 9(4) has been breached by the disciplinary authority vitiating the entire subsequent proceedings. The procedure prescribed in Rule 9 is an integral part of "reasonable opportunity" to which a Government servant is entitled having a constitutional right under Article 311(2) of the Constitution of India before any punishment can be imposed upon him. In any case, once a particular procedure is prescribed in the Rule that has to be followed. When a particular thing is to be done in a particular manner, it cannot be done otherwise.

9. Learned Standing Counsel, however, submits that Apex Court in *Union of India and Ors. v. Mohd. Ramzan Khan* 1990 (61) FLR 736 has held that mere non-supply of enquiry report shall not vitiate the proceedings unless it is shown that some prejudice has caused to the charged employee. It is appropriate to refer at this stage that, the Apex Court was considering a situation where service rules were silent as to whether a copy of enquiry report has to be furnished to a charged officer before an order of punishment is passed and in such circumstances, laid down the aforesaid law. But where the rules particularly lay down a particular procedure, which specifically provides for furnishing copy of enquiry report upon the charged Government servant before passing the punishment order, it would not be appropriate for this Court to look into any other authority and ignore the express and unambiguous language of the statute which lay down such a procedure.

10. Once it is admitted that the procedure prescribed in the statute has not been followed in words and spirit, the order violating thereto will be illegal and nothing further is required to be shown.

11. In view of the above discussions, the writ petition is allowed. The impugned orders dated 13.3.2006 (Annexure-9 to the writ petition) and dated 28.11.2006 (Annexure 15 to the writ petition) are hereby quashed. The Petitioner shall be entitled for all consequential benefits.

12. However, this order shall not preclude the Respondents to pass a fresh order against the Petitioner in accordance with law.