

(2025) 07 AHC CK 0814
In the Allahabad High Court, Lucknow Bench
Case No : Writ Petition A No. 583 Of 2024

Ram Prakash Mishra

APPELLANT

Vs

State Of U.P. Thru. Prin. Secy. Transport Lko And Another

RESPONDENT

Date of Decision : 24-07-2025

Acts Referred:

Code of Criminal Procedure Act, 1973 — Section 320, 482
Indian Penal Code, 1860 — Section 304B, 307, 498A
Dowry Prohibition Act, 1961 — Section 3, 4

Citation : (2025) 07 AHC CK 0814

Hon'ble Judges : Subhash Vidyarthi, J

Bench : Single Bench

Advocate : Anuruddh Prasad, Dharmendra Nath Verma

Final Decision : Dismissed

Judgement

Manish Mathur, J

1. Heard Mr. Hari Prasad Gupta, learned counsel for petitioner and Ms Parul Bajpai, learned Additional Chief Standing Counsel for the opposite parties.

2. Petition has been filed challenging order dated 18.05.2022 along with the endorsement letter dated 02.08.2023 whereby petitioner has been visited with major penalty of withholding of two increments with cumulative effect. Further prayer for a direction to concerned authorities to extend all the incidental and consequential service benefits withheld due to impugned punishment order has also been sought.

3. It has been submitted that an accident occurred on 19.07.2020 between a private vehicle and a private bus bearing registration no.UP17-AT4782. In pursuance of such an accident, petitioner was issued a charge sheet dated 21.06.2021 containing five charges with the primary charge that the aforesaid private bus had been inspected by petitioner in the course of his duties as Assistant Regional Transport Officer (Administration) in the year 2018 and a

certificate of fitness was also issued by him which was valid from 24.02.2018 to 23. 02.2020 and there were certain omissions on the part of petitioner due to which fitness certificate should not have been issued. Charge No.1 pertained to the offending bus having 12 more seats than were permissible; Charge no.2 pertained to excess length of the bus by 1000 m.m; Charge no.3 pertained to discrepancy in overhang of bus by 1080 m.m; Charge no.4 pertained to rear screen mirror being hidden by steel body and Charge no.5 pertained generally to petitioner issuing a certificate against provisions.

4. It is submitted that petitioner replied to the aforesaid charge sheet in letter dated 07.03.2022 denying charges levelled against him with the submission that discrepancies indicated in the charges were not present at the time of inspection and may have occurred subsequently with the connivance of bus owner. It is also submitted that after inquiry proceedings, inquiry report dated 24.05.2022 was submitted exonerating petitioner from all the charges whereafter a show cause notice dated 27.07.2022 was issued by the disciplinary authority indicating his disagreement with the inquiry report. It is submitted that aforesaid show cause notice was also replied to whereafter impugned punishment order has been passed.

5. Learned counsel for petitioner submits that the proceedings subsequent to submission of inquiry report are in violation of settled law as well as Rule 9 of U.P. Government Servant (Discipline and Appeal) Rules, 1999 (hereinafter referred to as 'Rules, 1999') inasmuch as show cause notice clearly indicates the disciplinary authority having made up its mind with regard to alleged misconduct of petitioner and also does not indicate any reasoning for disagreeing with the inquiry report.

6. It is further submitted that a perusal of aforesaid show cause notice would indicate that on the pretext of disagreeing with inquiry report, the disciplinary authority in fact has merely reiterated charges levelled against petitioner. It is also submitted that even in the punishment order, aspects on which petitioner was exonerated in inquiry proceedings have not been considered. It is, therefore, submitted that for all practical purposes, impugned order is non speaking and indicates non application of mind by the disciplinary authority. Learned counsel for petitioner has placed reliance on judgments rendered in the cases of *Yoginath D. Bagde vs. State of Maharastra and another*, (1999) 7 SCC 739, *Punjab National Bank and others vs. Kunj Bihari Misra* (1998) 7 SCC 84, *Baldev Singh Gandhi vs State of Punjab and others*, AIR 2002 SC 1124, *Noratanmal Chouraria vs. M.R. Murli & another* (2004) 5 SCC 689 and *State of U.P. and others vs. Raj Mani Singh and another* (2018) 36 LCD 644.

7. Learned State counsel on the basis of counter affidavit has refuted submissions advanced by learned counsel for petitioner with the submission that petitioner has been found responsible for not duly inspecting the bus and not conducting its fitness as per standards and due to his negligent discharge of duties, resulted in an accident leading to death of several persons apart from

injuring others.

8. It is submitted that procedure as required to be followed in terms of Rule 9 of Rules 1999 has clearly been followed by the disciplinary authority in the show cause notice where he has expressly indicated reasons for disagreeing with the inquiry report whereafter a show cause notice has been issued to petitioner and his reply has also been duly considered in the punishment order.

9. It is therefore submitted that since procedure as required has been followed and ample opportunity of hearing has also been provided to petitioner, the impugned punishment order does not warrant any interference.

10. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident that petitioner was charge sheeted with regard to five charges as indicated hereinabove but inquiry report dated 25.05.2022 has clearly exonerated petitioner from all the charges primarily on the ground that alterations made in the offending vehicle may have taken place subsequent to grant of fitness certificate particularly since two years had elapsed from issuance of fitness certificate and the date of accident. The inquiry report specifically indicates that there is no material on record whereby petitioner can be held guilty of deliberately issuing the fitness certificate against provisions.

11. It is also evident that upon receipt of inquiry report, a show cause notice dated 27.07.2022 has been issued by disciplinary authority indicating disagreement with the inquiry report. However, a perusal of aforesaid show cause notice indicates that under the pretext of disagreeing with the inquiry report, the disciplinary authority has mainly quoted charges which had been levelled against petitioner in the charge sheet. There is absolutely no discussion with regard to findings of Enquiry Officer and as to reasons by the disciplinary authority for not agreeing with them. Show cause notice also does not indicate any factor that inquiry report is not based on any material evidence or ignores any material evidence.

12. Ex facie the show cause notice appears to be a result of non-application of mind. It is also evident that although the letter dated 27. 07.2022 indicates it to be a show cause notice but the disciplinary authority clearly while disagreeing with inquiry report holds the petitioner guilty of charges levelled against him.

13. In considered opinion of this Court, once the disciplinary authority was disagreeing with inquiry report and in pursuance thereof was issuing a show cause notice, there was no occasion for the authority to have recorded a subjective satisfaction with regard to guilt of petitioner at that stage. The disciplinary authority having made up its mind at the stage of issuance of show cause notice itself, renders subsequent proceedings negatory.

14. It is also evident from record that while passing impugned order of punishment, the disciplinary authority while quoting reply submitted by petitioner has not adverted to the same at all and has mainly rejected it on the ground that

it is not worthy of acceptance. Here again, the disciplinary authority has indicated a laconic reasoning without indicating any aspect as to why reply submitted by petitioner was unworthy of acceptance. The disciplinary authority thereafter has again reiterated charges levelled against petitioner without adverting to any evidence to hold him guilty of charges levelled against him.

15. Rule 9 (2) of Rules, 1999 prescribes procedure for action to be taken on inquiry report and stipulated that the disciplinary authority 'shall, if it disagrees with the findings of the Inquiry Officer on any charge, record its own findings thereon for reasons to be recorded.

16. The aforesaid provision is clearly salutary in nature and is meant for protection of a delinquent employee in case the disciplinary authority disagrees with inquiry report. It is, therefore, incumbent upon a disciplinary authority to specifically record reasons for disagreeing with the inquiry report.

17. In the considered opinion of this Court, recording of reasons cannot be a empty formality whereunder the disciplinary authority merely re-quotes charges levelled as indicated in the charge sheet.

18. In such circumstances, it would be incumbent upon a disciplinary authority to advert to findings recorded in the inquiry report, material evidence, documentary or otherwise and to indicate how the reasons and findings recorded by the Enquiry Officer does not fulfill the relevant aspects required to be seen by the Enquiry Officer.

19. It is only thereafter that the disciplinary authority can specifically indicate his reasons for disagreeing with the inquiry report and for issuing a show cause notice as prescribed under Rule 9 (2) of Rules 1999.

20. The aforesaid aspect has clearly been dealt with by Hon'ble Supreme Court in the case of Yoginath D. Bagde vs. State of Maharashtra and another, (1999) 7 SCC 739 in the following manner:-

30. Recently, a three-Judge Bench of this Court in Punjab National Bank & Ors. vs. Kunj Behari Mishra (1998) 7 SCC 84 = AIR 1998 SC 2713, relying upon the earlier decisions of this Court in State of Assam vs. Bimal Kumar Pandit (1964) 2 SCR 1 = AIR 1963 SC 1612; Institute of Chartered Accountants of India vs. L.K. Ratna & Ors. (1986) 4 SCC 537 as also the Constitution Bench decision in Managing Director, ECIL, Hyderabad & Ors. vs. B. Karunakar & Ors. (1993) 4 SCC 727 and the decision in Ram Kishan vs. Union of India (1995) 6 SCC 157, has held that :

"It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the

charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority."

The Court further observed as under :

"When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer.

Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and inequitable that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed." The Court further held that the contrary view expressed by this Court in *State Bank of India vs. S.S. Koshal* 1994 Supp.(2) SCC 468 and *State of Rajasthan vs. M.C. Saxena* (1998) 3 SCC 385 was not correct.

31. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the

charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution".

21. It is therefore evident that Hon'ble Supreme Court has clearly enunciated that at the time of issuance of show cause notice issued by the disciplinary authority after submission of inquiry report that formation of opinion pertaining to the delinquent employee and charges levelled against him should be tentative and not final and it is at this stage that an opportunity of hearing is required to be given after informing such employee of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of Enquiry Officer.

22. The said aspect has again been considered by Hon'ble Supreme Court in the case of Punjab National Bank and others vs. Kunj Bihari Misra (1998) 7 SCC 84 in the following manner:-

"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

23. In the case of Baldev Singh Gandhi vs State of Punjab and others, AIR 2002 SC 1124, Hon'ble Supreme Court has held as under:-

" 'Misconduct' has not been defined in the Act. The word 'misconduct' is antithesis of the word 'conduct.' Thus, ordinarily the expression 'misconduct' means wrong or improper conduct, unlawful behaviour, misfeasance, wrong conduct, misdemeanour etc."

24. It is also relevant that aspect of misconduct has been defined by Hon'ble

Supreme Court in the case of Noratanmal Chouraria vs. M.R. Murli & another (2004) 5 SCC 689 in the following manner:-

Misconduct, inter alia, envisages breach of discipline, although it would not be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which, however, is wide enough to include wrongful omission or commission whether done or omitted to be done intentionally or unintentionally. It means, "improper behaviour, intentional wrongdoing or deliberate violation of a rule or standard of behaviour".

Misconduct is said to be a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand, it is a violation of definite law."

25. The aforesaid judgements have been considered by a Division Bench of this Court in the case of State of U.P. and others vs. Raj Mani Singh and another (2018) 36 LCD 644 in the following manner:-

"15. The allegations at the best show that the petitioner is a non serious or less efficient employee. He was not very alert or careful. It shows that he is less capable official but in the absence of anything further, mere carelessness or lack of seriousness of an employee or failure to show better efficiency upto desired level, ipso facto, would not amount to 'misconduct' warranting punishment under Rules. In J. Ahmed (supra) Court held that Lack of efficiency or failure to attain highest standards in discharge of duties attached to public office would not constitute 'misconduct', unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high, which is not the case in hand."

26. Upon applicability of said judgements in the facts and circumstances of the case, it is evident that the inquiry report has clearly adverted to the fact that there is no deliberate or intentional dereliction of duty on the part of petitioner in issuing the fitness certificate and specifically adverts to the time lapse between issuance of such a fitness certificate and the accident happening almost two years thereafter.

27. In view of aforesaid judgements rendered by Hon'ble Supreme Court as considered by a Division Bench of this Court in the case of Raj Mani Singh (supra), no aspect of misconduct can be attributed against petitioner.

28. In view of discussions made hereinabove, the impugned order dated 18.05.2022 along with the endorsement letter dated 02.08.2023 is hereby quashed by issuing a writ in the nature of certiorari. A further writ in the nature of mandamus is issued commanding opposite parties to provide benefit of withheld service benefits to petitioner. The relevant orders with regard to same shall be passed within a period of eight weeks from the date a certified copy of this order is produced before the authority concerned.

29. Resultantly, the writ petition succeeds and is allowed. Parties to bear their own costs.