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**(1995) 11 AHC CK 0099**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 3401 (S/S) of 1990**

Rama Kant Misra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 30-11-1995

**Acts Referred:**

**Citation :** (1995) 11 AHC CK 0099

**Hon'ble Judges :** K.C. Bhargava, J

**Bench :** Single Bench

**Advocate :** S.M.K. Chaudhary, R.B. Pandey and O.N. Justhi, for the Appellant;  
C.S.C., for the Respondent

**Final Decision :** Allowed

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## Judgement

K.C. Bhargava, J.—The Petitioner has prayed for quashing of the order dated 30th March, 1990, by which the Petitioner has given an adverse entry and denying full pay for the period of suspension. It is further prayed that opposite parties be directed to comply with the order dated 30th June, 1986 passed by the Tribunal and to declare the transfer order dated 10.10.90 as illegal.

2. The facts stated in brief are that the Petitioner was appointed as Junior Assistant in the office of Milk Commissioner (Dugdhshala Vikas), U.P., Lucknow on 1st September, 1977. Juniors to the Petitioner were promoted to the post of senior Assistant but the Petitioner was denied his promotion when it became due. Then he filed a claim petition before the U.P. Public Services Tribunal, which was allowed by order dated 30.6.86. In the operative portion of the order of the Tribunal, it was directed that the seniority of the Petitioner shall be counted from 1.9.77 from the date he was first appointed in ad hoc capacity with all consequential benefits. It was also directed that the Petitioner be treated senior to opposite party No. 3 Smt. Usha Srivastava.

3. Smt. Usha Srivastava was reverted, but the Petitioner was not given promotion and other benefits by the opposite parties. In the month of April 1989.

the Officer on Special Duty also issued a letter dated 28.4.89 and communicated to the opposite parties that the Petitioner should be given the benefits of the period between 3.5.79 to 30.6.82 during which period stay order remained in operation, but inspite of this State Government has not given the benefits and promotion to the Petitioner. Copy of the said order is Annexure 1 to the writ petition. The Petitioner was transferred to Pratapgarh by order dated 22nd July, 1988, but he was not allowed to join there. Thereafter, the Petitioner was suspended by order dated 11th August, 1988 and was attached to Gorakhpur Office, but no charge-sheet was given nor any inquiry was held against him.

4. The Petitioner filed a W.P. No. 7271 of 1988 against the suspension order, in which the Petitioner was allowed to remain attached at Lucknow. The said writ petition was finally decided by order dated 22.7.89 and it was provided that charge-sheet be served within a week and the enquiry be completed within three months from the date of submission of reply to the charge-sheet. The charge-sheet was given to the Petitioner but no evidence was given nor any document was furnished to the Petitioner along with the charge-sheet. Charge-sheet was also not signed by the appointing authority. The Petitioner submitted his reply to the charge-sheet. No witness was examined in the enquiry in presence of the Petitioner and the order of punishment dated 30.3.90 was passed, copy of which is Annexure 2 to the writ petition.

5. The Petitioner was thereafter re-instated and it was found that charges Nos. 1, 2, 3 and 8 were proved. It is not clear as to what materials were utilised by the punishing authority in arriving at the conclusion that these charges were proved. The first punishment awarded to the Petitioner is the adverse entry without mentioning the year to which It relates and the second punishment is that no suspension allowance be paid besides which has already been paid.

6. The Petitioner was thereafter transferred to Srinagar (Paun). The transfer order was passed by way of punishment. The Petitioner was not given any reasonable opportunity to explain the charges during the enquiry nor the Petitioner was given the report of the Inquiry Officer to meet the charges levelled against him. No such punishment could have been awarded to the Petitioner and it has been done with the intention to defy the order of the U.P. Public Services Tribunal. No show cause notice regarding payment of suspension allowance during the period of suspension was given to the Petitioner and as such no punishment could have been awarded without giving an opportunity to the Petitioner. The Petitioner was also transferred by order dated 10.10.1990 to Pratapgarh; copy of said order Is Annexure-3 to the writ petition. This order has been passed with mala fide intention and opposite party No. 2 is not implementing the order dated 22.7.1988. The impugned order of punishment dated 30.3.1990 was stayed so far as It related to the transfer of the Petitioner. Inspite of the order of the court, the Petitioner was not allowed to take charge at Lucknow. The transfer order dated 10.10.1990 contained in Annexure-3 Is Illegal and mala fide.

7. Opposite parties have filed counter-affidavit. It is alleged that Smt. Usha Srivastava has been placed Junior to the Petitioner in compliance of order of the Tribunal. The Petitioner was not given promotion and other benefits beyond the provisions of Service Rules, 1982. The transfer of the Petitioner to Shrinagar was not by way of punishment but was in pursuance of the enquiry. Suspension allowance during the period of suspension has already been paid and the order of denial for rest of the amount cannot be said to be illegal in view of the punishment order dated 30.3.1990. The Petitioner was allowed to remain at the head quarter because in whose place the Petitioner was transferred, managed to get his transfer order cancelled. Some persons senior to the Petitioner have not still been promoted. No show cause notice was necessary before awarding punishment in the disciplinary proceedings in reference to withholding of the suspension allowance. With respect to contents of para 17 to the writ petition. It is alleged that the contents are not admitted.

8. Rejoinder-affidavit has also been filed by the Petitioner in which it has been averred that the Dy. Milk Commissioner in his letter dated 21.2.1987 has said that the promotion of the deponent is under consideration. The Petitioner becomes entitled for 3/4th of suspension allowance under Fundamental Rules after he remained suspended for more than three months. The Petitioner is senior and is entitled to be promoted to the post of senior clerk in pursuance of the order passed by the Tribunal as well as by this Court. It is alleged that the preliminary report had to be furnished to the Petitioner.

9. Learned Counsel for the parties have been heard.

10. Learned Counsel for the Petitioner has argued that the charges were not proved, hence adverse entry could not have been given to the Petitioner. He has further argued that after re-instatement, the Petitioner should have been allowed full pay during the period of suspension as without hearing the Petitioner, an order adverse to him could not be passed.

11. We take up the second point first. It has been contended by the learned Counsel for the Petitioner that under Rule 54B of the Financial Hand Book Vol. II, Parts II to IV, the Petitioner should have been given full pay during the suspension period. According to the learned standing counsel, the Petitioner was rightly denied full pay during the suspension period by virtue of order of punishment. The only dispute between the parties is as to whether an opportunity should have been given to the Petitioner to show cause for not making full payment during the period of suspension. In this connection, Rule 54B of the Financial Hand Book has been referred. Sub-rule (5) of Rule 54B of the Financial Hand Book, Vol. II, Parts II to IV deals with such contingency, which may be reproduced below:

54B. (5) In cases other than those falling under Sub-rules (2) and (3), the Government servant shall, subject to the provisions of Sub-rules (8) and (9), be paid such amount (not being the whole) of the pay and allowances to which he

would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, If any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified In the notice.

12. A perusal of this rule goes to show that a Government servant, whose case does not fall under Sub-rules (2) and (3) of this rule, subject to the provisions of Sub-rules (8) and (9), such amount of pay and allowances have to be paid to a suspended employee as the competent authority may determine, but a rider has been put on the competent authority and this rider is that order denying full pay during the period of suspension has to be passed only after giving a notice to the Government servant of the quantum proposed and considering the representation, If any, submitted by him in that connection.

13. Thus a plain perusal of this Rule clearly goes to show that if the competent authority wants that the Government servant should not be paid full pay during the period of suspension, then he has to give a notice to such Government servant of the quantum proposed and when a representation is received, It has to be considered and then only an order Is to be passed. This procedure has to be followed In each and every case In which the competent authority feels that entire pay and allowance should not be paid to the Government servant during the period of suspension and if this notice is not given, it amounts to denial of an opportunity to the Government servant, which has been specifically provided under this Rule.

14. In the present case, it is an admitted fact that no notice before passing the impugned order was given to the Government servant to represent his case. If a notice would have been given to the Petitioner, he would have shown some grounds on which the entire pay and allowance should have been paid to him and not merely subsistence allowance which has already been received by him. This opportunity is a valuable right of a Government servant and it cannot be withheld by the Government. Non-compliance of mandatory provisions of this rule will vitiate the order passed by the competent authority with respect to suspension allowance. Proper course for the competent authority, if it has decided not to pay full allowances during the suspension period, was to give an opportunity to the Government servant to place his case before him for his consideration. If this opportunity Is given, only then a right accrues to the competent authority to pass an order withholding the entire allowances, etc., except which has already been paid to him.

15. The law on this point as interpreted by the court be considered. In the case of Baldev Raj Guliani Vs. The Punjab and Haryana High Court and Others, , the question was about the nature of order of suspension. Explaining the position about the suspension, Hon"ble Apex Court has observed as under:

The character of the order of dismissal and that of the order of reinstatement In a departmental enquiry is absolutely different. Suspension is a step to dismissal and may culminate in dismissal, When an officer is suspended, no work is taken from him but he does not cease to be in service. When he is dismissed, the link with the service is snapped and naturally the order of suspension merges in dismissal. Nothing remains to be done about his suspension. When, however, a suspended officer Is reinstated, an order which Is different In content and quality from that of suspension takes effect The suspended officer, on reinstatement, goes back to service. A further order may have to be passed by the authority as to in what manner the period of suspension will be treated. That will be. therefore, a distinct and separate proceeding apart from the earlier departmental proceeding, in which the order of reinstatement was passed. If, therefore, the order of reinstatement is set aside, the officer is bound to revert to him immediate anterior status of suspension.

This goes to show that when the order of re-instatement is passed, the suspended officer goes back to service and a further order has to be passed by the authority as to In what manner the period of suspension will be treated. That order will be a separate proceeding apart from the earlier departmental proceeding in which the order of re-instatement was passed. This also goes to show that these two proceedings are entirely different. The competent authority has to pass an order of re-instatement separately and thereafter complying with the provisions of Sub-rule (5) of Rule 54B, mentioned above, another order has to be passed because after re-instatement the Government employee is reverted to his Immediate position which he was enjoying at the time of suspension.

16. The next case on this point is *Om Prakash Gupta v. State of U.P.* AIR 1955 SC 800. In this case, It was held as under:

The order of suspension made against the Appellant was clearly one made pending an Inquiry. It certainly was not a penalty Imposed after an enquiry. As the result of the enquiry, an order of dismissal by way of penalty had been passed against the Appellant.

With that order, the order of suspension lapsed. The order of dismissal replaced the order of suspension which then ceased to exist. That clearly was the position between the Government of the United Provinces and the Appellant. The subsequent declaration by a civil court that the order of dismissal was illegal, could not revive an order of suspension which did not exist.

This case goes to show that If an order of dismissal is passed, then that order replaces the period of suspension which means that no separate order has to be passed In what manner the period of suspension Is to be treated, because the period of suspension is merged in the order of dismissal. It was further provided In that case that If a civil court holds that the order of dismissal Is Illegal, then it could not revive the order of suspension which did not exist.

17. The position in the present case is that when an order of reinstatement has

been passed, the Government Servant Is relegated to the position which he was enjoying at the time of suspension. The same principle was laid down by Kerala High Court in the case of K.S. Co-operative Bank Ltd. v. State of Kerala 1984 (2) SLR 210. It also considering the decision of the Supreme Court came to the conclusion that the order of suspension will not merge In the final order by which the suspended officer Is re-instated. It was further provided that in the case of re-instatement In service, the suspension order will not merge even If the re-instatement has been done on a lower post.

18. Therefore. In view of the clear provisions of Sub-rule (51 of Rule 54B of the Financial Hand Book. Vol. II. Parts II to IV, It Is held that the order of the competent authority withholding the entire amount of pay and allowances during the suspension period Is Illegal and against the provisions of law and Is liable to be set aside.

19. Now we come to the next point with regard to adverse entry which has been awarded to the Petitioner on the basis of some proved charges. Annexure-2 Is the copy of order passed by the competent authority, a perusal of which goes to show that during the preliminary enquiry, the Inquiry Officer has held that charge Nos. 2, 4, 5, 6, 7 and 8 have not been proved against the Petitioner. The competent authority in his order has held that charge Nos. 2 and 3 have been proved while differing from the opinion of the Inquiry Officer who conducted the preliminary enquiry. Thus, there was a difference of opinion with regard to charge Nos. 2 and 8 between the Inquiry Officer and the competent authority who has passed the Impugned order. Now the question which arises for consideration is as to whether an opportunity should have been given to the Petitioner by the competent authority before he could have reversed the findings of the preliminary enquiry. In the case of Narayan Misra v. State Orissa 1969 SLR 657, a Government employee was acquitted. It was held that If the competent authority wanted to take the charges, on which the civil servant was acquitted, into account and was not in a position to agree then it was necessary for the competent authority that the attention of the civil servant ought to have been drawn and his explanation, if any, called for. As this was not done and the charge on which the civil servant was acquitted, was also taken into consideration without any warning to the civil servant that he was using against him, which Is against the fair principles and natural justice. Thus, this case also supports the view taken in Judgments referred to above, passed by the Apex Court.

20. As has been seen in the earlier part of the judgment, if the competent authority wanted to differ with the findings of the Inquiry Officer, then he should have apprised the Petitioner of this fact and after he would have given his representation, then this order could have been passed. As the competent authority, who disagreed with the findings of the Inquiry Officer on charge Nos. 2 and 8, should have given an opportunity to the Petitioner and after he had submitted reply to the same an order differing from those findings should have been passed by the competent authority. As the same has not been done In the

present case, this order making adverse entry in the character roll of the Petitioner cannot be upheld.

21. Thus, in view of what has been stated above, It is clear that the Petitioner is entitled to the reliefs claimed. In the counter-affidavit it has been alleged that persons who are senior to the Petitioner have not been promoted. The Petitioner can only be promoted when persons senior to him are considered for promotion. If all persons who are senior to the Petitioner are considered for promotion, then the Petitioner has to be promoted in accordance with rules.

22. The writ petition is allowed. The order dated 30.3.1990 passed by opposite party No. 2. copy of which Is contained in Annexure-2 is quashed. The Petitioner shall get entire pay with all emoluments for the period during which he remained under suspension. Adverse entry which has been awarded to the Petitioner in view of that order is also quashed. No orders as to costs.

Let the compliance of this order be done within a period of two months from today.