
(2009) 07 AHC CK 0010
In the Allahabad High Court

State of U.P. and Others

APPELLANT

Vs

Ram Swarath Yadav and Another

RESPONDENT

Date of Decision : 08-07-2009

Acts Referred:

Citation : (2010) 4 AWC 3409

Hon'ble Judges : R.R. Awasthi, J;Pradeep Kant, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Pradeep Kant and R.R. Awasthi, JJ.—Heard the learned Counsel for the petitioners Ms. Aruna Misra and Sri Amit Gupta for the private respondent.

2. Learned Counsel for the petitioners could not point out any illegality in the order of the Tribunal, which quashes the order of stoppage of three increments permanently on the ground that no formal disciplinary proceedings were conducted in accordance with law. However, she says that once the Tribunal has set aside the order of punishment on mere technicality, liberty to hold enquiry ought to have been given and, therefore, this liberty be given by this Court.

3. Sri Amit Gupta appearing for the respondent submits that the respondent has retired from service on attaining the age of superannuation on 31.7.2006 and that there is no charge of loss of any amount or fund of the Government.

4. Be that as it may, we do not find it a fit case where after almost three years of retirement of the respondent, fresh proceedings may be directed to be initiated.

5. It would be apposite to mention here that this Court has noticed in various cases that enquiries are conducted in a manner either deliberately or in ignorance of the Rules by the enquiry officer and the orders are passed by the appointing authority, without following the due procedure prescribed. It has been pronounced time and again that the enquiry officer is not to furnish his report only after taking reply to the charge-sheet without proceeding with the enquiry

and without giving opportunity to the delinquent to defend the charges and to rebut the evidence. Instances of cases of like nature where enquiry officer after receiving the reply to the charge-sheet, proceeds to submit the enquiry report, are common feature in the Court.

6. Equal obligation lies upon the appointing authority before passing any order of punishment, to see that no procedural irregularity has been committed in the enquiry and the charges stand proved from the material on record.

7. The responsible authorities of the Government are not supposed to pass orders mechanically, without application of their own mind. In case punishment orders are not passed in accordance with law, they are open to be challenged and liable to be set aside by the Court and a public servant, who may be guilty of some misconduct is left scotfree. This cannot be the intention nor purpose of holding the departmental proceedings.

8. In the instant case also, the enquiry officer as well as the appointing authority acted illegally and carelessly either deliberately or otherwise in holding enquiry in such a sham manner against rules, resulting into the setting aside of the order of punishment by the Tribunal on technical grounds. Since no fresh enquiry can be ordered after three years of the retirement of the delinquent, the loss, if any, occasioned to the State Government, cannot be recovered now.

9. It is for the State Government to see as to what action should be taken against such erring enquiry officer and the appointing/disciplinary authority, and whether such a lapse can be treated to be a misconduct under the service rules.

10. We, under the circumstances, do not find any merit in the writ petition and dismiss the same.