Neutral Citation No. - 2023:AHC:232617-DB

Judgement Reserved on 06.10.2023

Judgement Delivered on 08.12.2023

A.F.R

IN CHAMBER

Case :- WRIT - A No. - 30954 of 2017

Petitioner :- Jai Mangal Ram
Respondent :- State Of U.P. And 4 Others
Counsel for Petitioner :- Satya Prakash Pandey,Ajay Yadav,Rahul Yadav,Vinod Kumar Singh,Vishwadeep Patel
Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh,J.
Hon'ble Anish Kumar Gupta,J.

(Per: Hon'ble Anish Kumar Gupta, J)

1. Heard Sri Shivam Pandey learned counsel holding brief of Sri Rahul Chaudhary learned counsel for the petitioner and Sri Piyush Srivastava learned Standing Counsel for the State.

2. The present petition has been filed challenging the impugned orders dated 07.05.2012, 25.09.2012, 29.05.2012 and also challenging the order dated 11.01.2016 passed by the U.P. State Public Service Tribunal in Claim Petition No. 1245 of 2013 and also order dated 29.05.2017 whereby the review petition filed by the petitioner has been rejected.

3. The brief facts of the instant case are that the petitioner herein was working as a constable in the Police Line, Varanasi. The allegation against the petitioner is that he misbehaved with his senior officer, Mr. Devi Dayal, being in an intoxicated condition, for which the complaint was made against him and he was placed under suspension and the following charge was framed against him.

"आप पुलिस लाईन वाराणसी में कार्यरत है। दिनांक 15.12.2010 को समय लगभग 17.30 बजे श्री देवीदयाल, प्रतिसार निरीक्षक (द्वितीय) पुलिस लाईन, वाराणसी के सामने नशे की हालत में अशोभनीय हरकत एवं अमर्यादित आचरण किये। पुलिस लाईन में आप नशीले पदार्थ का सेवन किये हुए पाये गये, जिसके फलस्वरूप आपका चिकित्सीय परीक्षण उ०नि० स०पु० श्री पंचराम कन्नौजिया, आरक्षी 1423 ना०पु० प्रमोद कुमार, आरक्षी 2213 ना०पु० दधिचन्द्र, पुलिस लाईन, वाराणसी द्वारा पं० दीनदयाल राजकीय चिकित्सालय, वाराणसी से कराया गया। चिकित्सीय परीक्षण में शराब पीने की पुष्टि हुई। आप ड्यिूटी के दौरान शराब पीने तथा पुलिस जैसे अनुशासित बल में रहते हुए पुलिस रेगुलेशन के पैरा-373 ए का पालन न करने के दोषी पाये गये, जिनके सम्बन्ध में उ०प्र० अधीनस्थ श्रेणी के पुलिस अधिकारी/कर्मचारी की (दण्ड एवं अपील) नियमावली- 1991 के नियम 14(1) के तहत विभागीय कार्यवाही का निर्णय लिया गया। उ०प्र० अधीनस्थ श्रेणी के पुलिस अधिकारी की (दण्ड एवं अपील) नियमावली- 1991 के नियम 14(1) के अन्तर्गत विभागीय कार्यवाही सम्पादित किये जाने हेतु मुझे नामित किया गया है।"

4. In reply to the said charges, the petitioner herein submitted his explanation dated 11.01.2011 and categorically submitted that on the date of alleged incident, he has not consumed the alcohol, as alleged, nor he has misbehaved with his senior. The petitioner has specifically submitted that he was sick for sometime, for which he used to consume the Ayurvedic medicines (Drakshasav) and on the date of alleged incident as well, he had consumed the baidhyanath (Drakshasav), which includes alcohol and a report was got prepared with mala fide intention against the petitioner herein. It is further submitted by the petitioner that before preparing the report with regard to his intoxication condition neither the urine test nor the blood test were conducted to arrive at the specific finding as to whether the petitioner had consumed the liquor and the medical report was prepared only by the external examination. After the explanation was submitted, the enquiry was conducted by the Circle Officer, Kotwali, Varanasi and vide enquiry report dated 27.05.2011, the Enquiry Officer found the allegations against the petitioner as true and proved and proposed for punishment of dismissal of the petitioner from service in the following terms:

"इस प्रकार उपलब्ध साक्ष्यों एवं अभिलेखों के अवलोकन से यह स्पष्ट है की दिनांक 15.12.2010 को आरोपी जो पुलिस लाईन में दलेल कर रहा था कि समय 17.30 बजे

सायंकाल प्रतिसार निरीक्षक कार्यालय के पास जोर जोर से गालियाँ दे रहा था तथा अशोभनीय हरकत एवं व्यवहार कर रहा था तथा कारण पूछने पर और भी उत्तेजित होकर गालियाँ दे रहा था तथा नशे की हालत में प्रतीत हो रहा था को एस०आई०ए०पी० श्री पंचम राम कन्नौजिया व कां० 1423 ना०पु० प्रमोद कुमार व कां० 2213 ना०पु० दधिचन्द्र के साथ पं० दीनदयाल अस्पताल वाराणसी में चिकित्सीय परीक्षण हेतु भेजा गया। चिकित्सक की रिपोर्ट से आरोपी एल्कोहल (शराब) पिये हुए पाया गया। आरोपी के चरित्र पंजिका से पाया गया कि वर्ष 2002, वर्ष 2003, वर्ष 2006 तथा वर्ष 2007 में वार्षिक मन्तव्य में शराब पीने की शिकायत/अभ्यस्त हाल अंकित है। वर्ष 2008 में पत्रावली संख्या- द-149/2008, दिनांक 19.07.2008 को तत्कालीन वरिष्ठ पुलिस अधीक्षक, वाराणसी द्वारा सेवा से आरोपी को पदच्युत किया गया था। बाद में आरोपी द्वारा सिविल मिस याचिका संख्या-53039/2009 माननीय उच्च न्यायालय, इलाहाबाद में दाखिल किया गया, जिस पर जयमंगल राम बनाम स्टेट में दिनांक 29.07.2008 के परिप्रेक्ष्य में पत्रावली संख्या- प-779/2009 दिनांक 22.05.2010 को बहाल किया गया है, जो वर्तमान में निलम्बित है।

अतः आरोप आरक्षी 742 ना०पु० जयमंगल राम (निलम्बित) को शराब का सेवन कर पुलिस लाईन परिसर में गाली गलौज कर स्वेच्छाचारिता एवं अनुशासनहीनता का दोषी पाते हुए उ०प्र० अधीनस्थ श्रेणी के पुलिस अधिकारियों की (दण्ड एवं अपील) नियमावली 1991 के नियम 4(1) क(एक) के अन्तर्गत सेवा से पदच्युत (डिसमिस) किया जाना प्रस्तावित किया जाता है।"

5. Subsequent to the enquiry report, the Deputy Inspector General of Police, Varanasi, issued a show cause notice dated 10.06.2011, against the petitioner in the following terms:

"वर्ष 2010 में जब आप इस जनपद की पुलिस लाईन में नियुक्त थे दिनांक 15.12.2010 को समय लगभग 17.30 बजे देवी दयाल प्रतिसार निरीक्षक, द्वितीय पुलिस लाईन वाराणसी के सामने नशे की हालत में अशोभनीय हरकत एवं अमर्यादित आचरण किये। पुलिस लाईन में आप नशीले पदार्थ का सेवन किये हुए पाये गये, जिसके फलस्वरूप आपका चिकित्सीय परीक्षण उ०नि० स०पु० श्री पंचम राम कन्नौजिया, आरक्षी 1423 ना०पु० प्रमोद कुमार, आरक्षी 2213 ना०पु० दधिचन्द, पुलिस लाईन वाराणसी द्वारा पंडित दीनदयाल राजकीय चिकित्सालय, वाराणसी में कराया गया। चिकित्सीय परीक्षण में आप द्वारा शराब पीने की पुष्टि हुई। आप ड्यूटी के दौरान शराब पीने तथा पुलिस जैसे अनुशासित बल में रहते हुए पुलिस रेगुलेशन के पैरा 371 ए, का पालन न करने के दोषी पाये गये"

आपके उक्त कृत्य के लिए तत्कालीन पुलिस उपमहानिरीक्षक, वाराणसी द्वारा आपके विरुद्ध उ०प्र० अधीनस्थ श्रेणी के पुलिस अधिकारियों की (दण्ड एवं अपील) नियमावली- 1991 के नियम- 14(1) के अन्तर्गत विभागीय कार्यवाही पुलिस उपाधीक्षक, श्री धर्म सिंह माछाल को

आवंटित की गयी, जिनके गैर जनपद स्थान्तरण जाने के उपरान्त प्रश्नगत विभागीय कार्यवाही श्री अरविन्द कुमार मौर्य, पुलिस उपाधीक्षक/सी०ओ० कोतवाली, वाराणसी को आवंटित हुई। पीठासीन अधिकारी द्वारा नियमानुसार विभागीय कार्यवाही प्रारम्भ कर आपका बचाव का पूरा अवसर प्रदान करते हुए विभागीय कार्यवाही पूर्ण करते हुए अपनी फाइण्डिंग दिनांकित 27.05.2011 कार्यालय को प्रेषित की गई, जिसमें आपका दोष पूर्णतया प्रमाणित पाते हुए आपको उ०प्र० अधीनस्थ श्रेणी के पुलिस अधिकारियों की (दण्ड एवं अपील) नियमावली-1991 के नियम 4(1) (क)(एक) के अन्तर्गत ***सेवा से पदच्युत (डिसमिस) करने की संस्तुति की गई है जिसमे मैं सहमत हूँ।***

अतः आप इस कारण बताओ नोटिस प्राप्ति के 15 दिवस के अन्दर अपना लिखित स्पष्टीकरण प्रेषित करें एवं कारण बतायें कि क्यों न आपके उक्त कृत्य के लिए उ०प्र० अधीनस्थ श्रेणी के पुलिस अधिकारियों की (दण्ड एवं अपील) नियमावली- 1991 के नियम 4(1)(क)(एक) के अन्तर्गत आपको सेवा से पदच्युत (डिसमिस) कर दिया जाय।

यदि आपका स्पष्टीकरण निर्धारित अवधि में प्राप्त नहीं होगा तो यह मानकर कि इस सम्बन्ध में आपको कुछ नहीं कहना है, तथा लगाये आरोप आपको स्वीकार है तथा आपके स्पष्टीकरण की और अधिक प्रतीक्षा न करके एकपक्षीय अन्तिम आदेश पारित कर दिया जायेगा। आपको आश्वस्त किया जाता है कि आपके स्पष्टीकरण के प्राप्त होने पर उस पर सहानुभूतिपूर्वक विचार करते हुए गुणदोष के आधार पर निर्णय लिया जायेगा। फाइण्डिंग (उपपत्ति) की एक प्रति संलग्न कर प्रदान की जाती है।

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10.06.2011

पुलिस उपमहानिरीक्षक,

वाराणसी।"

6. In response to the show cause notice dated 10.06.2011, the petitioner herein submitted a detailed reply to the said show cause notice wherein it was specifically pleaded by the petitioner that the said show cause notice was issued to the petitioner herein with a predetermined mind, wherein the DIG has agreed with the proposed punishment of dismissal. Therefore, the said show cause notice was a merely formality. Thereafter, the Senior Superintendent of Police, vide order dated 07.5.2012, passed the order of dismissal of the petitioner from service. Against the said order dated 07.05.2012, the petitioner herein preferred an appeal before the Deputy Inspector General of Police on 02.07.2012, wherein in the memo of appeal,

the petitioner herein has categorically stated the said show cause notice has been issued with a predetermined mind, wherein it was stated that the recommendations have been made for the termination of service of the petitioner with which he is in agreement. Vide order dated 25.09.2012. The said appeal of the petitioner herein was dismissed by the Deputy Inspector General of Police, Varanasi. Against the order of dismissal of the said appeal, the petitioner herein filed a review petition, which was also dismissed vide order dated 29.05.2013. Aggrieved by the aforesaid order of dismissal from service and the dismissal of the appeal and the review application, the petitioner herein preferred the direction Petition No. 1245 of 2013, before the State Administrative Services Tribunal, Lucknow, which was dismissed vide order dated 11.01.2016. Against the order dated 11.01.2016, the petitioner herein filed review petition no. 15 of 2016, which was also dismissed vide order dated 29.05.2017. Hence the present petition.

7. Learned counsel for the petitioner submits that in the instant case the petitioner herein has been charged and found guilty on the basis of a complaint made by the one Mr. Devi Dayal, Inspector posted in the Police Line to the effect that the petitioner has misbehaved with him in an intoxicated condition. In the instant case, to prove the fact that the petitioner herein was in an intoxicated condition, a medical report was obtained from the Medical Officer only on the external examination of the petitioner herein. However, neither the blood test nor the urine test was conducted before giving such report by the concerned Medical Officer and the Medical Officer has also not been examined by the Department during the entire proceedings against the petitioner herein. Therefore, the said medical report cannot be relied upon to establish the fact that the petitioner was in an intoxicated condition. To substantiate his arguments on the aforesaid point, the learned counsel for the petitioner has relied upon the judgement of the apex court in ***Delhi Judicial Service Association vs. state of Gujarat : Supreme Court's Cr. L.J. 1991, Page No. 3086***. In the entire proceedings against the petitioner the enquiry officer as well as the superior officer acted in a predetermined mind against the petitioner herein.

8. Learned counsel for the petitioner has further submitted that during the investigation against the petitioner herein, none of the witnesses have supported the incident except the complainant, Mr. Devi Dayal. Rather from the statements of the witnesses during the enquiry, it is apparent that the incident has not at all taken place at Police Line as has been alleged during the investigation. He has referred to the statements of Sri Panchram Kanaujiya, Pramod Kumar, Dadhichandra etc. Therefore, the entire proceedings were conducted in predetermined mind and the enquiry report is not sustainable in law. Learned counsel for the petitioner has further submitted that while issuing notice for showing cause as to why the penalty of dismissal from service may not be imposed against the petitioner herein, the Deputy Inspector General of Police has stated that *"सेवा से पदच्युत (डिसमिस) करने की संस्तुति की गई है जिसमे मैं सहमत हूँ।"*. The aforesaid averments in the show cause notice clearly demonstrates the predetermined mind of the DIG, Police, Varanasi. Therefore, the entire proceedings against the petitioner was vitiated and was conducted in a predetermined mind. Therefore, the same is illegal and is liable to be quashed.

9. Learned counsel for the petitioner further submitted that while passing the punishment order the Senior Superintendent of Police has taken into consideration the conduct of previous entries made in the character roll of the petitioner herein, for which no notice has been issued to the petitioner herein. Had the notice with regard to the previous conduct of the petitioner or the entries in the character roll of the petitioner would have been indicated in the show cause notice, the petitioner could have replied the same appropriately. However, while passing the dismissal order, the previous entries in the Character Roll of the petitioner have been considered but no opportunity has been afforded to the petitioner to counter the same. Learned counsel for the petitioner further submits that the punishment of dismissal is disproportionate to the misconduct alleged to have been committed by the petitioner herein.

10. Learned counsel for the State submitted that the police forces are the disciplined force. Therefore, any misbehaviour by the police personnel against their superior officer is not permitted. The petitioner has been found in an intoxicated condition and was misbehaving with his superior officers due to intoxication and the charges were proved against him in a detailed enquiry conducted by the Enquiry Officer, giving full opportunity of hearing to the petitioner herein. So far as the non-examination of Medical Officer is concerned, the learned counsel for the State submitted that the petitioner was apparently in intoxicated condition, which is supported by the witnesses and the medical report as well. In the disciplinary proceedings, the doctors are not required to be examined as the same was not a criminal trial where the allegations are required to be proved beyond reasonable doubt. In the disciplinary proceedings, the probability and preponderance of the allegations are sufficient to prove the charges against the delinquent officer.

11. Learned counsel for the State submitted that alongwith show cause notice the enquiry report was given to the petitioner herein while calling for his response on the enquiry report wherein there is reference to the previous conduct of the petitioner herein. Therefore, merely because the previous conduct has not been mentioned in the show cause notice the same cannot be faulted because of the fact that the previous conduct of the petitioner was already mentioned in the enquiry report, which was in due notice of the petitioner herein.

12. Looking at the previous conduct coupled with the conduct of the petitioner in the instant case, the punishment of dismissal from service has been awarded in the instant case, which cannot be said to be disproportionate punishment. Therefore, the learned counsel for the State has prayed for dismissal of the instant petition.

13. We have considered the rival submissions made by the learned counsels for the parties and have carefully perused the record of the case.

14. We proceed to consider the first submission made by the learned counsel for the petitioner with regard to the intoxication of the petitioner herein at the time of incident, without the urine test or the blood test, for which the finding has been recorded against the petitioner, only because of the smell of the alcohol found by the doctor, which is not sufficient to prove the intoxication of the petitioner herein.

15. In ***Bachubhai Hassanalli Karyani v. State of Maharashtra : (1971) 3 SCC 930***, the Apex Court, on the facts that the doctor had admitted that a person could smell of alcohol without being under the influence of drinking and without the urine test or the blood test, held that it cannot be concluded that the appellant was intoxicated at the time of incident.

16. In ***Munna Lal v. Union of India, (2010) 15 SCC 399***, where the person was suspected of being in a drunken condition due to the smell of alcohol, he was taken for the medical check-up and the doctor on duty examined and there was suspicion of mild smell of alcohol on the medical examination. On such facts, it was held by the Apex Court that in the absence of any positive evidence, the charges levelled against the applicant of consuming the alcohol was not proved satisfactorily.

17. In ***Writ A No. 2230 of 2014 (Shiv Raj Singh vs. State of U.P.,and 6 Others)*** a Division Bench of this Court vide judgement dated 28.3.2018 has held that without the blood and urine sample of the person, it cannot be concluded that he has consumed alcohol and in the absence of such report of blood or urine sample, merely on the basis of the external examination of a person, such medical report cannot be relied upon and no major punishment could be awarded.

18. In the instant case the petitioner herein was taken to the medical officer who has only externally examined the petitioner and having found the smell of alcohol concluded that the petitioner herein had consumed the alcohol. Therefore, mere external examination is not sufficient proof to hold a person

guilty of consuming alcohol and it cannot be concluded that he was in intoxicated condition. Therefore, the charge against the petitioner with regard to the consumption of alcohol during the duty hours, is in the considered opinion of this Court, has not been proved by the department, therefore, it cannot be held that the petitioner was guilty of the charge of consuming the alcohol during the duty hours.

19. So far as the other charge with regard to misbehaviour by the petitioner with his superior officer is concerned, the witness Yogendra Nath in his cross-examination during the inquiry has admitted that he has not heard the petitioner using abusive language or misbehaviour by the petitioner herein. The other witness, Sri Pancham Lal Kanujia, in his cross-examination has admitted that the petitioner was shouting and hurling abuses below the Banyan tree, adjoining the office of R.I.-II. However, on further cross-examination, he has admitted the fact that on 01.01.2011 when counting was going on the nephew of the petitioner, namely, Anil Kumar Anchal, who was a constable, was abused by the Counting Clerk, namely Akhilesh Kumar, when Anil Kumar Anchal said that he don't know with regard to the Dak duty then Counting Clerk asked him to go to the Banglow of DIG and to bring the Dak. On this, he showed indiscipline. Thereafter, the petitioner came there and argued in favour of his nephew, namely Anil Kumar Anchal. In further cross-examination, Sri Pancham Kumar Ram, Kanaujia has admitted that he has not not made any entry with regard to any abuses hurled by the petitioner herein. Another constable-witness, namely Promod Kumar has admitted in cross-examination that there was no resistance on the part of the petitioner while he was asked to sit on the vehicle for medical test, he did not resist the same and he has also shown his ignorance as to what has happened inside the Hospital during his medical examination. Another witness- constable, Dadhichand has admitted in the cross-examination that no abuses were hurled by the petitioner in front of him. Shri Devi Dayal, the Inspector, in his cross-examination has admitted that he was alone in the evening and was sitting in his office and has not heard any abuses hurled by the petitioner rather, he has said that there was adjoining store and the G.D.

Office, therefore some persons might have heard but none of such witness has been produced who has admitted that any abuses were hurled by the petitioner herein to Devi Dayal, Inspector, in presence of anyone inside the office. Therefore, from the aforesaid evidence, it is apparent that the fact of abusing to the superior officer has not been conclusively proved during the departmental inquiry conducted against the petitioner herein. Therefore, from the aforesaid inquiry report it is apparent that neither the charge of consuming alcohol nor the misbehaviour is proved during the departmental inquiry and he has been held guilty only on the statement of the Inspector, Mr. Devi Dayal. The petitioner has explained the fact that since he was taking the Ayurvedic medicines, therefore, there is possibility of smell of alcohol. However, he had not consumed the alcohol and from the story as emerged from the cross-examination of the witnesses, it has emerged that there was some dispute between the Counting Clerk, namely Akhilesh Kumar and the nephew of the petitioner-constable, Anil Kumar, with regard to assigning some duty, for which the petitioner herein has intervened and this may be a reason of false dismissal of the petitioner from service, without there being any proof of misbehaviour or abusive language used by the petitioner. It has been further argued that after the inquiry report, the DIG has issued a show cause notice with predetermined mind that there is a recommendation for dismissal of his service to which the DIG has already been agreed. Therefore, the show cause notice was mere a formality. After the conclusion of the inquiry report, it was obligatory on the part of the Disciplinary Authority to give a show cause notice before making up his mind with regard to the punishment proposed by the Enquiry Officer. In ***Himachal Pradesh State Electricity Board Ltd. vs. Mahesh Dahiya : (2017) 1 SCC 768***, the abuse has held as under :

> *"**23.** The basis of coming to the conclusion by both the learned Single Judge and the Division Bench that disciplinary authority has violated the principle of natural justice is based on the fact that although the enquiry report was sent to the writ petitioner by the letter dated 2-4-2008, the disciplinary authority-cum-whole-time members have already come to the opinion on 25-2-2008 that the writ petitioner be punished with major penalty. The Division Bench of the High Court has placed reliance on Union of India v. R.P. Singh [Union of India v. R.P. Singh, (2014) 7 SCC 340 : (2014) 2 SCC (L&S) 494] .*

24. *In the above case the issue was as to whether non-supply of the copy of advice of UPSC to the delinquent officer at pre-decision stage violates the principle of natural justice. This Court placed reliance on the Constitution Bench judgment in ECIL v. B. Karunakar [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] and laid down the following in para 21 : (R.P. Singh case [Union of India v. R.P. Singh, (2014) 7 SCC 340 : (2014) 2 SCC (L&S) 494] , SCC p. 349)*

> *"21. At this juncture, we would like to give our reasons for our respectful concurrence with S.K. Kapoor [Union of India v. S.K. Kapoor, (2011) 4 SCC 589 : (2011) 1 SCC (L&S) 725] . There is no cavil over the proposition that the language engrafted in Article 320(3)(c) does not make the said article mandatory. As we find, in T.V. Patel case [Union of India v. T.V. Patel, (2007) 4 SCC 785 : (2007) 2 SCC (L&S) 98] , the Court has based its finding on the language employed in Rule 32 of the Rules. It is not in dispute that the said Rule from the very inception is a part of the 1965 Rules. With the efflux of time, there has been a change of perception as regards the applicability of the principles of natural justice. An enquiry report in a disciplinary proceeding is required to be furnished to the delinquent employee so that he can make an adequate representation explaining his own stand/stance. That is precisely what has been laid down in B. Karunakar case [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] . We may reproduce the relevant passage with profit : (B. Karunakar case [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] , SCC p. 756, para 29)*
>
> *'29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.'"*

There can be no dispute to the above proposition.

25. *The Constitution Bench in ECIL v. B. Karunakar [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] after elaborately considering the principle of natural justice in the context of the disciplinary inquiry laid down the following in paras 29, 30(iv) and (v) : (SCC pp. 756-58)*

> *"29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.*
>
> *30. … (iv) In the view that we have taken viz. that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan case [Union of India v. Mohd. Ramzan Khan, (1991) 1 SCC 588 :*

1991 SCC (L&S) 612] should apply to employees in all establishments whether Government or non-government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.

(v) The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

26. *Present is not a case of not serving the enquiry report before awarding the punishment rather the complaint has been made that before sending the enquiry report to the delinquent officer, the disciplinary authority has already made up its mind to accept the findings of the enquiry report and decided to award punishment of dismissal. Both the learned Single Judge and the Division Bench on the aforesaid premise came to the conclusion that the principle of natural justice has been violated by the disciplinary authority. The Division Bench itself was conscious of the issue, as to whether, inquiry is to be quashed from the stage where the inquiry officer/disciplinary authority has committed fault i.e. from the stage of Rule 15 of the CCS (CCA) Rules as non-supply of the report. Following observations have been made in the impugned judgment [H.P. SEB v. Mahesh Dahiya, 2015 SCC OnLine HP 818] by the Division Bench in para 21 : (Mahesh Dahiya case [H.P. SEB v. Mahesh Dahiya, 2015 SCC OnLine HP 818] , SCC OnLine HP)*

"21. Having said so, the core question is — whether the inquiry is to be quashed from the stage where the inquiry officer/disciplinary authority has committed fault i.e. from the stage of Rule 15 of the CCS (CCA) Rules i.e. non-supply of enquiry report, findings and other material relied upon by the inquiry officer/disciplinary authority to the writ petitioner-respondent herein to explain the circumstances, which were made basis for making foundation of enquiry report or is it a case for closure of the inquiry in view of the fact that there is not even a single iota of evidence, prima facie, not to speak of proving by preponderance of probabilities, that the writ

> *petitioner has absented himself wilfully and he has disobeyed the directions?"*
>
> ***31.*** *Both the learned Single Judge and the Division Bench have heavily relied on the fact that before forwarding the copy of the report by the letter dated 2-4-2008 the disciplinary authority-cum-whole-time members have already formed an opinion on 25-2-2008 to punish the writ petitioner with major penalty which is a clear violation of the principles of natural justice. We are of the view that before making opinion with regard to punishment which is to be imposed on a delinquent, the delinquent has to be given an opportunity to submit the representation/reply on the enquiry report which finds a charge proved against the delinquent. The opinion formed by the disciplinary authority-cum-whole-time members on 25-2-2008 was formed without there being benefit of comments of the writ petitioner on the enquiry report. The writ petitioner in his representation to the enquiry report is entitled to point out any defect in the procedure, a defect of substantial nature in appreciation of evidence, any misleading of evidence both oral or documentary. In his representation any inputs and explanation given by the delinquent are also entitled to be considered by the disciplinary authority before it embarks with further proceedings as per statutory rules. We are, thus, of the view that there was violation of principle of natural justice at the level of disciplinary authority when opinion was formed to punish the writ petitioner with dismissal without forwarding the enquiry report to the delinquent and before obtaining his comments on the enquiry report. We are, thus, of the view that the order of the High Court setting aside the punishment order as well as the appellate order has to be maintained.*
>
> ***32.*** *In view of the above discussion, we are of the view that present is the case where the High Court while quashing the punishment order as well as appellate order ought to have permitted the disciplinary authority to have proceeded with the inquiry from the stage in which fault was noticed i.e. the stage under Rule 15 of the Rules. We are conscious that sufficient time has elapsed during the pendency of the writ petition before the learned Single Judge, the Division Bench and before this Court, however, in view of the interim order passed by this Court dated 31-8-2015 [H.P. SEB v. Mahesh Dahiya, SLP (C) CC No. 15656 of 2015, order dated 31-8-2015 (SC), wherein it was directed:"Delay condoned. Issue notice. In the meanwhile, there shall be stay of operation of the impugned order dated 9-4-2015 passed by the High Court of Himachal Pradesh in LPA No. 340 of 2012 (H.P. SEB v. Mahesh Dahiya, 2015 SCC OnLine HP 818). Mr Aditya Singh, learned counsel accepts notice and seeks some time to file reply. List the matter immediately after the pleadings are complete."] no further steps have been taken regarding implementation of the order of the High Court. The ends of justice would be served in disposing of this appeal by fixing a time-frame for completing the proceeding from the stage of Rule 15."*

20. In the aforesaid judgement, it has been categorically held that while issuing the show cause notice, the Disciplinary Authority has already made up his mind to accept the finding of inquiry report and award of the punishment for dismissal. Therefore, the very purpose of giving such show cause notice is frustrated and such show cause notice is vitiated and is in clear violation of principles of natural justice. We are of the view that before making opinion with regard to the punishment, which is proposed to be

imposed on a delinquent officer, the delinquent has to be given opportunity to submit his representation/reply to inquiry the report.

21. In the instant case, while issuing show cause notice, the DIG, Varanasi, has not only informed about the recommendation for dismissal but had also given his conclusion to such recommendation that he is in agreement with such recommendation for dismissal of the delinquent. Therefore, the instant show cause notice dated 10.06.2011, issued by DIG, Varanasi, is violative of the principles of natural justice. With such determination and following the such determination by the DIG, Police, the Sr. Superintendent of Police, Varanasi, vide order dated 07.05.2012, has passed the order for dismissal of service of the petitioner, having taking into consideration the previous conduct of the petitioner herein, for which no show cause notice was ever issued to the petitioner. Therefore, the order dated 07.05.2012 also suffers from the extraneous considerations made by the Sr. Superintendent of Police, with regard to the previous conduct for which no opportunity was given to the petitioner herein to show cause. The submission made by the learned counsel for the State that since the previous conduct was already referred in the inquiry report, therefore, in the show cause notice, it was not required to be mentioned, is not a convincing argument on behalf of the State. A delinquent must be given sufficient opportunity to answer all the material, on which the severe punishment of dismissal is being proposed by the department. Therefore, the show cause notice issued by DIG, was in violation of the principles of natural justice not only because of his predetermined mind expressed in the show cause notice but also for want of the material to be considered against the petitioner for such dismissal, which has been taken into consideration while passing the dismissal order.

22. The further argument, which has been advanced on behalf of the petitioner is that the punishment of dismissal is disproportionate to the charge of consumption of alcohol and misbehaviour. It has been held in catena of cases that punishment must be proportionate to the misconduct established against a delinquent employee. In the considered opinion of this

Court, the punishment imposed on the petitioner herein on the basis of the allegations which are not proved, as has been analysed above, is disproportionate to the charges levelled against the petitioner herein. Ordinarily, where the enquiry and the disciplinary proceedings has been held in violation of principles of natural justice, the inquiry or the disciplinary proceedings would be vitiated and the order of dismissal passed on such vitiated disciplinary proceedings would be quashed by issuance of writ of Certiorari. It is well settled that in such a situation, normally, it would be open to the Disciplinary Authority to hold inquiry afresh.

23. In the judgement and order dated ***28.09.2010*** in ***Civil Appeal No...../2010 (arising out of SLP (C) No. 19318/2007) Mohd. Yunus Khan vs. State of U.P. & Ors***, the Apex Court has under:

> *33. The courts below and the statutory authorities failed to appreciate that if the disciplinary authority wants to consider the past conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge-sheet should contain such an article or at least he should be informed of the same at the stage of the show cause notice, before imposing the punishment.*

24. In ***State of Mysore vs. K. Manche Gowda : (1964) 4 SCR 540,*** on the facts that the Government servant was misled by the show cause notice issued by the Government but for the previous record, the punishment of dismissal could not have been passed, it was held by the Apex Court as under:

> *"In the present case the second show cause notice does not mention that the Government intended to take his previous punishments into consideration in proposing to dismiss him from service. On the contrary, the said notice put him, on the wrong scent, for it told him that it was proposed to dismiss him from service as the charges proved against him were grave., But, a comparison of Paragraphs 3 and 4 of the order of dismissal shows that but for the previous record of the,Government servant, the Government might not have imposed the penalty of dismissal on him and might have accepted the recommendations of, the Enquiry officer and, the public . Service Commission. This order, therefore indicates that the show cause notice did not give the only reason which influenced the Government to dismiss the respondent from service." (P. 549)*

25. In ***Bhagat Ram v. State of H.P., (1983) 2 SCC 442,*** the similar question was answered by the Apex Court in following terms:

> *13. That conclusion poses another question as to what relief we should give in this appeal. Ordinarily where the disciplinary enquiry is shown to have been held in violation of principle of natural justice, the enquiry would be vitiated and the order based on such enquiry would be quashed by issuance of a writ of certiorari. It is well settled that in such a situation, it would be open to the Disciplinary Authority to hold the enquiry afresh. That would be the normal consequence.*
>
> *14. We invited Mr Talukdar, learned counsel for the respondent State to address us on the question whether the game of holding the fresh enquiry is worth the battle. Moreso looking to the fact that there is a very minor infraction of duty leading to a trivial charge of negligence in performance of duty which has caused no loss to the Government, we are of the opinion that it would not be fair to this low-paid Class IV government servant to face the hazards of a fresh enquiry.*
>
> *15. The question is once we quash the order, is it open to us to give any direction which would not permit a fresh enquiry to be held? After all what is the purpose of holding a fresh enquiry? Obviously, it must be to impose some penalty. It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution. Having been influenced by all these relevant considerations, we are of the opinion that no useful purpose would be served by a fresh enquiry. What option is open to us in exercise of our jurisdiction under Article 136 to make an appropriate order. We believe that justice and fairplay demand that we make an order of minor penalty here and now without being unduly technical apart jurisdiction, we are fortified in this view by the decision of this Court in Hindustan Steels Ltd., Rourkela v.A.K. Roy [(1969) 3 SCC 513 : AIR 1970 SC 1401 : (1970) 3 SCR 343 : (1970) 1 LLJ 228] where this Court after quashing the order of reinstatement proceeded to examine whether the party should be left to pursue further remedy. Other alternative was to remand the matter that being a case of an industrial dispute to the Tribunal. It is possible that on such a remand, this Court further observed, that the Tribunal may pass an appropriate order but that would mean prolonging the dispute which would hardly be fair to or conducive to the interest of the parties. This Court in such circumstances proceeded to make an appropriate order by awarding compensation. We may adopt the same approach. Keeping in view the nature of misconduct, gravity of charge and no consequential loss, a penalty of withholding his increments with future effect will meet the ends of justice. Accordingly, two increments with future effect of the appellant be withheld and he must be paid 50 percent of the arrears from the date of termination till the date of reinstatement.*

26. In view of the above, we are of the considered opinion that the show cause notice which was issued by the DIG has mentioned that severe punishment of termination is proposed against the petitioner on the basis of the previous conduct of the petitioner herein and the said notice was sent with a predetermined mind, which clearly shows bias against the petitioner herein. The aforesaid predetermined notice of termination sent by the DIG and the subsequent termination by the S.S.P. was influenced on the basis of the opinion already expressed by the DIG in the show cause notice. Therefore the said show cause notice in the considered opinion of the court

is illegal notice and on the basis of previous conduct, severe punishment of termination cannot be awarded. We are of the considered opinion that no charge of misbehaviour with seniors/colleagues due to intoxication was proved against the petitioner during enquiry as no urine or blood test of the petitioner herein was conducted. Since the punishment order had been passed in violation of the statutory rules and the principles of natural justice, it is rendered null and void.

27. For all the reasons, as afore stated the instant writ petition is ***allowed*.** and the impugned orders dated 7.5.2012, 25.9.2012, 29.5.2012, 11.1.2016 and 29.5.2017 are hereby set aside. The petitioner herein shall be reinstated in service with continuity in service alongwith 50% back wages for the period he was out of service. The respondents are directed to reinstate the petitioner in service forthwith and shall make payment of his back wages, as above, within two months from the date of receipt of a certified copy of this order.

28. No cost.

Order Date :- 08.12.2023

Shubham Arya