



2026:AHC:169598

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 21378 of 2010

Ashok Kumar

.....Petitioner(s)

Versus

State of U.P. and Others

.....Respondent(s)

Counsel for Petitioner(s)	: Dharmendra Prasad, Madhup Narain Shukla, S. N. Yadav
Counsel for Respondent(s)	: C. S. C.

Court No. - 34
(Sl. No. 9)

HON'BLE ANISH KUMAR GUPTA, J.

1. Heard Sri Madhup Narain Shukla, learned counsel for the petitioner and Sri Rajiv Gupta, learned Addl. Chief Standing Counsel for the State.

2. The instant petition has been filed by the petitioner seeking quashing of the order dated 4.2.2009 passed by the appellate authority, whereby the punishment order removing petitioner from service was set aside, however, the appellate authority having found the Charge No. 2 proved against the petitioner, has set aside the punishment order of dismissal from service, as passed by the disciplinary authority and has altered the punishment order by passing the punishment order to the extent of stoppage of two annual increments temporarily and stoppage of salary of the petitioner of suspension period. Being aggrieved by the altered punishment awarded to the petitioner vide impugned and order dated 4.2.2009, the instant writ petition has been filed by the original petitioner. During the pendency of the instant petition, the original petitioner has died in the year 2011 and vide order dated 2.4.2006, the wife of the original petitioner was substituted as petitioner in the instant petition.

3. Briefly stated facts of the case are that the original petitioner, herein, was working as Assistant '**Vasil Waki Navis**' in Tehsil Haraiya, District Basti and he was appointed on 26.6.1987 on Class-III post as Karmchari Clerk. Thereafter he was promoted to the post of Clerk temporarily and thereafter he was absorbed as Clerk permanently on 3.7.1988. The

petitioner, herein, was transferred from the post of Peshkar to the post of Jamabandi Record Keeper on 12.5.1999 in the record room of District Basti. While he was posted as Jamabandi Record Keeper vide order dated 30.1.2006, petitioner was suspended and the disciplinary proceedings was initiated against the original petitioner. On 23.6.2006, charge-sheet was issued against the original petitioner which has been received by him on 28.6.2006. The first charge levelled against the petitioner was with regard to the fact that while he was posted as Jamabandi Record Keeper from 13.5.1999 till 2.9.2004, he has tempered with the record by over writing and forging the entries etc. in different revenue records, which are detailed in the charge-sheet. Another charge framed against the petitioner was that the petitioner was negligent in performing his duties and he has not pointed out the said tempering done in the revenue record to the authority concerned with due diligence. After receipt of the charge-sheet, petitioner has submitted his response on 3.7.2006, denying both the charges levelled against him. Thereafter, the then inquiry officer concluded the inquiry on 4.8.2006 and held that the Charge No.1 is not proved against the petitioner, however, Charge No. 2 was held to be proved partially against the petitioner.

4. Thereafter, once the inquiry report was submitted to the disciplinary authority, the disciplinary authority has further referred the matter to another inquiry officer as he was not satisfied with the inquiry report. Thereafter, another inquiry officer has submitted the inquiry report dated 28.12.2007. In the meantime, the petitioner has approached this Court by filing **Writ Petition No. 10020 of 2008 (Ashok Kumar Vs. State of U.P. and others)** which was disposed of on 26.2.2008, whereby it was directed that the documents demanded by the petitioner shall be supplied to him and thereafter the inquiry be concluded. In view of the copy of the order of this Court supplied by the petitioner, the petitioner was permitted to perused all the relevant documents and thereafter petitioner has submitted supplementary reply on 19.5.2008. The petitioner has requested that his previous reply may also be taken into consideration and the petitioner has contended that so far as the allegation of tempering, forgery, cutting and over writing in the records are

concerned, the same was done by the employees of the department working prior to the year 1995, thus, he cannot be held responsible for the same. The inquiry officer has taken into consideration the earlier reply as well as the subsequent supplementary reply submitted by the petitioner and thereafter concluded the inquiry report afresh on 27.5.2008 and held both the charges proved against the petitioner.

5. On the basis of the aforesaid inquiry report received by the disciplinary authority, a show cause notice was issued to the petitioner on 15.5.2008, whereby the petitioner was called upon to appear in person so that he should be heard in the disciplinary proceedings. In response thereto, the petitioner has replied to the disciplinary authority on 7.7.2008 that since he was not well, therefore, time be granted to him upto 21.7.2008 so that he can appear and thereupon explain his conduct. Thereafter the disciplinary authority has granted him time, however, thereafter on 15.7.2008, the punishment order was passed by the disciplinary authority and the disciplinary authority found both the charges proved against the petitioner and passed the order of punishment i.e. dismissal from service.

6. Being aggrieved by the said order, the petitioner herein, has filed an appeal before the appellate authority and the appellate authority after taking note of the fact that the disciplinary authority has not considered the request of the petitioner which were made through letters dated 22.6.2008 and 6.7.2008, whereby the petitioner has sought further time for his appearance before the disciplinary authority and no order was passed by the disciplinary authority on the said application of the petitioner and straightway on 15.7.2008, the disciplinary authority has passed the order of punishment and further the appellate authority has found that the Charge No. 1 against the petitioner as not proved and the only Charge No. 2 was held to be proved against the petitioner and consequently, the punishment order passed against the petitioner was altered and instead of dismissal from service, punishment of stoppage of two annual increments temporarily and stoppage of salary of the petitioner for the suspension period has been passed. Being aggrieved, this petition has been filed.

7. Learned counsel for the petitioner has submitted that in the disciplinary proceedings, though the petitioner was granted time to file response, however, after receipt of the response of the petitioner, the inquiry officer has failed to fix date, time and place for concluding the proceedings of the inquiry and the inquiry proceedings were concluded ex-parte, without fixing date, time and place, which is the mandatory requirement under **Rule-7 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999**. Thus the entire disciplinary proceedings against the original petitioner were initiated for the aforesaid reason. Consequently, no punishment can be awarded against the petitioner. In support of his statement, learned counsel for the petitioner has relied upon the judgment of this Court in **Kaptan Singh vs. State of U.P. and Another (Writ A No. 25240 of 2014)** judgment and order dated 14.05.2014, the Division Bench of this Court has considered in detail the Rule 7 of 1999 Rules and has observed as under:

"Even if the delinquent does not demand personal hearing or does not give the names of witnesses with brief synopsis of points on which he wishes to examine or cross-examine the witnesses, the Inquiry Officer is not absolved from fixing a date of enquiry, with intimation to the delinquent and if he does not appear on the date fixed to either adjourn the enquiry to some other date or to proceed ex parte, as he deems fit. In either eventuality, he is required to hold inquiry, if delinquent is present, in his presence, if he is absent, ex parte. If oral evidence is referred in the charge-sheet, same is required to be recorded/examined, if not, even then the documentary evidence is required to be examined in the light of the charges for ascertaining the truth in respect thereof. The delinquent is also entitled to be intimated the date for oral enquiry, wherein the Inquiry Officer should confront the delinquent with the charges and the evidence in support thereof, put relevant queries to him, elicit and record his replies/response in respect thereof. Such oral enquiry is necessary as it gives an opportunity, to the delinquent to explain his conduct and to the Inquiry Officer to have a better perspective of the controversy, as, it is not always possible to discern the truth from written replies and documents which may not necessarily convey the complete truth. Even where the delinquent does not dispute the veracity of the documentary evidence, oral enquiry is necessary as he may still have an explanation to offer."

"The Rules of 1999 also require the Inquiry Officer to hold an enquiry into the charges except where the delinquent admits the charges Rule 7(vi), in such an eventuality, he can submit a report straight away. As per Sub Rule (iv) and (x) of Rule 7 if the delinquent does not file his written statement or does not appear, the Investigating officer shall proceed exparte. Where he files the written statement and denies the charges, as in the instant case, it shall proceed as per Rule 7(vii) and the following sub rules.

The reference to "documentary evidence" in Rule 7(iii) and (v) clearly indicates that the same have to be examined, as aforesaid, on the date to be fixed for enquiry, whether in the presence of the delinquent or in absentia (exparte). This requirement though not express is implicit in the aforesaid rules, as is the requirement of holding an oral enquiry, as it is a sine qua non for providing reasonable opportunity to defend and is part of the principles of natural justice under Article 311 and 14 of the Constitution."

This court in **Writ A No. 27948 of 2010 (Ramswarup Shukla vs. State of U.P.)**, judgment dated 27.02.2026 has held as under:

"24. Thus, from the perusal of the aforesaid rules, it is apparent that in case if neither in the charge-sheet nor in the reply submitted by the delinquent employee, any witness has been proposed, there is no express requirement in the said rules for according any oral inquiry to the delinquent employee before concluding the inquiry proceedings. However, in Kaptan Singh (supra), the Division Bench of this Court while interpreting the aforesaid Rules, relying upon the general principles of law as held in Roop Singh Negi (supra) and other judgments relied upon by the Division Bench, has interpreted the aforesaid Rules so as to mean that after submission of the reply by the delinquent employee or even in the absence of reply by the delinquent employee to the charge-sheet, it is implicit in the aforesaid Rules, though not expressed, that there is requirement of holding of an oral inquiry as it is sine qua non for providing reasonable opportunity to defend and it is part of principles of natural justice under Articles 311 and 14 of the Constitution of India.

25. Admittedly, in the instant case, it is evident from the record as well as

and from the inquiry report itself that after submission of reply to the charge-sheet by the petitioner herein, no date and time has ever been fixed for any further hearing in the instant case by the Inquiry Officer, nor any opportunity of oral hearing to the petitioner has ever been granted. In view of the aforesaid binding precedent in Kaptan Singh (supra), it is an implicit duty of the Inquiry Officer to afford an opportunity of hearing to the delinquent employee before concluding the inquiry proceedings. Since, such opportunity has never been granted in the instant case to the petitioner herein, thus, the inquiry report without affording such opportunity of hearing to the delinquent employee to the petitioner cannot be relied upon for termination of service of the petitioner herein. Thus, the entire proceedings against the petitioner is vitiated. In view thereof, the orders passed by the Disciplinary Authority as well as by the Appellate Authority are not sustainable in law. "

8. Per contra, learned Addl. Chief Standing Counsel for the State submits that Rule-7 of 1999 Rules does not provide that there is any requirement of fixing the date, time and place and Rule-7 of 1999 Rules is totally silent about it and unless no witness is proposed to be examined by either side who is willing, either in the charge-sheet or in the reply submitted by the delinquent employee, there is no requirement of fixing date, time and place and once only the documents were relied upon by both the sides, then the inquiry officer can conclude the inquiry proceedings on the basis of the documents available before him. Thus, the learned counsel for the respondent seeks dismissal of the instant petition.

9. We heard rival submissions made by the learned counsel for the parties and perused the documents available on record. The facts of the case have already been stated here in above.

10. From the perusal of all the three inquiry reports, it is apparent that before concluding the inquiry proceedings, no date, time and place was fixed by the inquiry officer and after receiving the response from the petitioner, straightway has concluded the inquiry proceedings and submitted the inquiry report.

11. In view of the aforesaid settled position of law in **Kaptan Singh (supra)** and **Ramswaroop Shukla (supra)** and in terms of Rule-7 of 1999 Rules, it is mandatory for the inquiry officer to fix date, time and place before concluding the inquiry so that the delinquent employee may answer his documents in the inquiry proceedings.

12. Consequently, the punishment order, which has been partially upheld by the appellate authority cannot sustain against the petitioner. Thus, the impugned order dated 4.2.2009 passed by the Commissioner, Basti Region, Basti is hereby quashed and set aside to the extent, which has awarded the punishment against the petitioner with regard to stoppage of two annual increments temporarily and stoppage of salary of the suspension period.

13. Consequently, the instant writ petition is **allowed**. Petitioner shall be entitled for all consequential benefits, in accordance with law, which shall be provided to the petitioner by the authority concerned, within a period of eight weeks from the date of presentation of certified copy of this order.

(Anish Kumar Gupta,J.)

August 12, 2026
n.u.