Amar Singh vs State Of U.P. Thru. Addl. Chief ... on 2 January, 2025

Author: Alok Mathur

Bench: Alok Mathur

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2025:AHC-LKO:75

Court No. - 6

Case :- WRIT - A No. - 9071 of 2024

Petitioner :- Amar Singh

Respondent :- State Of U.P. Thru. Addl. Chief Secy./Prin. Secy. Administration Deptt. Lk

Counsel for Petitioner :- Gaurav Mehrotra,Akber Ahmad,Alina Masoodi,Ravindra Singh

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Akbar Ahmad, learned counsel for the petitioner, and Sri Neeraj Tripathi, learned Standing Counsel for the State respondents. The court has perused the material available on record.

2. Learned counsel for the petitioner has submitted that the petitioner had previously filed a writ petition before the Allahabad High Court, being Writ-A No. 11040 of 2020, which was allowed by the judgment and order dated 21st August 2023. In said judgment, the punishment order was set aside. The State Government preferred a special appeal, being Special Appeal No. 135 of 2024,

against the judgment of the learned Single Judge. The appeal was allowed solely on the ground of territorial jurisdiction, resulting in the setting aside of the learned Single Judge's judgment dated 21st August 2023. Consequently, the petitioner was granted liberty to file a writ petition before the Lucknow Bench of this Court. Pursuant to this liberty, the present writ petition has been filed challenging the termination order dated 7th September 2020 passed by respondent no. 2.

3. The petitioner, who was serving as Additional Private Secretary in the State Secretariat of Uttar Pradesh, has sought the issuance of a writ of certiorari to quash the order dated 7th September 2020, passed by respondent no. 2, terminating his services.

4. The facts of the case, in brief, are as follows: The petitioner, acting as an administrator of a WhatsApp group linked to his mobile number 9454410505, allegedly received a message on July 6, 2018, stating:

> "UGC
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> ¢ "
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> "As per UGC regulations, opportunities for the OBC and Scheduled Caste communities have effectively been closed. In this era of Ramrajya, Chief Minister Thakur Ajay Singh Yogi and Deputy Chief Minister Pandit Dinesh Sharma, while purportedly eradicating casteism, have appointed 52 individuals from their own caste as Assistant Professors out of a total of 71 positions in Gorakhpur University."

(The above is the English translation of the original text, provided by the Court.)

5. The message was deemed objectionable and critical of the State Government. The petitioner attempted to delete the message but inadvertently pressed the 'forward' button, resulting in the message being shared with the WhatsApp group. Upon realizing the error, the petitioner requested the group members to delete the message. Although no complaint was lodged with the State Government by any group member, the petitioner voluntarily expressed regret through a letter addressed to the Chief Secretary of Uttar Pradesh on July 9, 2018, which stated:

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(-II) "

"To The Chief Secretary, Government of Uttar Pradesh, Sir, I respectfully submit that on July 6, 2018, I received an objectionable message on my mobile number 9454410505, which was critical of the government. Considering the message to be inappropriate, I attempted to delete it. However, due to an inadvertent error, the message was forwarded to a WhatsApp group instead of being deleted. Subsequently, I personally requested the group members to delete the message.

The aforementioned act occurred unintentionally, and I sincerely regret the incident. I assure you of my vigilance in the future.

Dated: July 9, 2018 Yours sincerely, [Signed: Amar Singh-II] Additional Private Secretary."

6. Based on the petitioner's letter, the State Government initiated a departmental inquiry and issued a chargesheet on July 24, 2018, containing the following allegations:

(a) The petitioner had forwarded objectionable remarks concerning the Chief Minister and Deputy Chief Minister using his CUG mobile number 9454410505 on July 6, 2018.

(b) The objectionable message, being a serious allegation, tarnished the reputation of the State Government in public perception and undermined its trust. These actions were in violation of the Uttar Pradesh Government Servant's Conduct Rules, 1956 (hereinafter referred to as "Conduct Rules, 1956").

7. To substantiate these charges, the State Government presented four pieces of evidence, including provisions under Rules 3, 7, and 9 of the Conduct Rules, 1956, and the forwarded message itself. On September 6, 2018, the petitioner requested the Inquiry Officer to ascertain whether the forwarded message had been received and read by any recipient and whether it had caused reputational damage to the Government. The petitioner sought an opportunity to examine relevant reports to adequately respond to the charges.

8. On November 12, 2018, the petitioner sent a reminder for his earlier request but, receiving no response, submitted a detailed reply refuting the charges. He maintained that the forwarding of the message was accidental and that it had been deleted promptly. He argued that he had no intent to cause reputational harm to the Government and claimed the second charge to be unfounded.

9. On July 29, 2019, the Inquiry Officer informed the petitioner that the Special Secretary had confirmed via correspondence dated July 19, 2019, that no information regarding the receipt or reading of the forwarded message by group members was available. Consequently, no witnesses were available for cross-examination. The petitioner was instructed to appear for oral inquiry and hearing on July 30, 2019. During this appearance, the petitioner reiterated his plea for leniency and submitted a written statement. The Inquiry Officer's report, dated August 13, 2019, concluded that neither of the charges was substantiated. However, the Inquiry Officer noted the petitioner's admission of forwarding the message.

10. On September 17, 2019, the petitioner was provided with the inquiry report and invited to submit an explanation, which he furnished on October 4, 2019, denying any intentional wrongdoing. He emphasized that the message was deleted promptly and that the act of forwarding was purely accidental.

11. Despite the inquiry findings, the State Government sought further clarification from the Inquiry Officer regarding the date and time of message deletion and whether the "delete for everyone" feature had been used.

12. The Inquiry Officer clarified that the petitioner's WhatsApp version at the time only supported the "delete" option and that the petitioner, not being technologically proficient, had used this feature.

13. The Inquiry Officer reaffirmed in the final report that no group member had acknowledged receiving or reading the message, as confirmed by the Secretariat's records. The evidence suggested that the message was deleted before it could be disseminated further.

14. The State Government, rather than issuing any further order based on the inquiry report, initially constituted a two-member Technical Committee through its order dated 29th January 2020. The Committee was comprised of Sri Amrit Tripathi, Special Secretary, Secretariat (Administration), U.P., and Sri Raj Kumar Gupta, Technical Director (NIC) and Technical Advisor, Technical U.P. Secretariat, Lucknow. The Technical Inquiry Committee was tasked with submitting a report.

15. The Deputy Secretary, Government of U.P. wrote a letter to the Technical Director, NIC, a member of the Committee to submit report on four points:

> (i). In the matter concerned when the objectionable message was forwarded on 16th July, 2018 at around 11:26 pm in the night what was the time available within which the matter could have been deleted;
>
> (ii). At what time the delinquent employee had deleted the message;
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> (iii). Once the message has been forwarded in the chat group from a mobile then whether such a person can delete such message for himself or for the entire group;

and

(iv). What option was exercised by the petitioner for deleting the message whether delete for him or delete for everyone.

16. The technical team submitted its report on 6th February 2020, addressing the four points outlined, stating that the message could have been deleted within one hour, eight minutes, and sixteen seconds (1 hour 8 minutes 16 seconds) after being forwarded. It was noted that it is the responsibility of the delinquent employee to specify the exact time when the message was deleted. Furthermore, a message can be deleted from the handset from which it was sent. In a WhatsApp group, a message can only be deleted by selecting the 'delete for everyone' option.

17. Upon receipt of the aforementioned report, the respondents proceeded to issue an order on 7th September 2020, finding the petitioner guilty of serious misconduct for forwarding an objectionable message against the Government. This was deemed to sufficiently demonstrate indiscipline, misconduct, and despotism, warranting the imposition of the maximum punishment. As a result, the order of termination from service was issued.

18. The arguments put forth by the learned counsel for the petitioner are as follows:

(i) The second inquiry conducted by the Technical Committee was conducted in contravention of the procedure prescribed under the U.P. Government Servant (Discipline and Appeal) Rules, 1999 (hereinafter referred to as the 'Rules, 1999'), as the petitioner was not provided with a copy of the inquiry report. Therefore, the respondents were unjustified in relying on the ex parte inquiry report.

(ii) The petitioner was not made aware of the proposed inquiry by the two-member Committee under the State Government's order dated 29th January 2020. No copy of the order was provided to the petitioner, nor was the petitioner afforded the opportunity to participate in the inquiry, as no notice was issued to him by the Technical Committee. Consequently, the principles of natural justice were completely violated, rendering the impugned order unsustainable on this ground alone.

(iii) The serious charges of misconduct, specifically the circulation of an objectionable message with the deliberate intention to harm the prestige and respect of the State Government, were found not to be substantiated by the Inquiry Officer due to insufficient evidence. The mere allegation that the petitioner forwarded the message from his mobile number was not grave enough to warrant the maximum penalty of termination from service. Therefore, the argument is that the punishment is disproportionate to the charge proved.

19. To support the above arguments, learned counsel for the petitioner has submitted the following documents before this Court: the Inquiry Officer's report dated 13th August 2019 (Annexure-11 to the writ petition), the clarification sought from the Inquiry Officer by the State Government via

letter dated 18th November 2019 (Annexure-13 to the writ petition), the Inquiry Officer's reply dated 16th December 2019 (Annexure-14 to the writ petition), the inquiry correspondence with the petitioner and his response under letter dated 2nd December 2019 and 12th December 2019 (part of Annexure-14 to the writ petition), the letter dated 29th January 2020 (Annexure-15 to the writ petition) by the Deputy Secretary of the Government of U.P. constituting the two-member Technical Inquiry Committee, a letter dated 5th February 2020 from the State Secretariat requesting a report on four points, and the Technical Advisor's reply dated 6th July 2020 (Annexure-16 to the writ petition).

20. Learned counsel for the petitioner has relied upon the judgment of England and Wales Court of Appeal (Civil Division) in the case of Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation: (1947) 2 All ER 680, judgment of Supreme Court in the case of Union of India and others v. J. Ahmed: (1979) 2 SCC 286, Ram Kishan v. Union of India and others: (1995) 6 SCC 157, Gohil Vishvaraj Hanubhai and others v. State of Gujarat and others: (2017) 13 SCC 621, judgment of Allahabad High Court in the case of Pushpak Jyoti v. State of U.P. and others: (2004) 1 UPLBEC 547, Deen Dayal Shukla v. State of U.P. and others: 2005 (3) ESC 1814 (All) & Kisan Sahkari Chini Mills Ltd. and others v. Presiding Officer, Labour Court, Lucknow and others: 2019 (8) ADJ 92.

21. In response to the submissions made by the learned counsel for the petitioner, the learned Standing Counsel representing the State argued that an admission is the most reliable piece of evidence. Since the petitioner himself admitted to forwarding the objectionable message to the WhatsApp group, in his capacity as the group administrator, no further evidence was required to prove whether the message was circulated. He further contended that even if a message was deleted within the group, the petitioner failed to prove that the message was deleted for all group members or that they had not seen it. Thus, a presumption arises that the petitioner circulated the message and, as a result, caused damage to the prestige and respect of the Government.

22. On the matter of the constitution of the Technical Committee and the subsequent clarification sought from the Inquiry Officer who had submitted the inquiry report, the learned Standing Counsel asserted that it is within the discretion of the disciplinary authority to disagree with the Inquiry Officer's findings or to seek clarifications on specific points. He emphasized that the Technical Committee's report did not necessitate further clarification or involvement of the petitioner. The report primarily supported the findings of the Inquiry Officer concerning charge No. 1, specifically that the petitioner had forwarded the message. The technical issue was whether the petitioner had deleted the message and, if so, whether it was deleted for himself or for all members of the WhatsApp group.

23. The learned Standing Counsel sought to justify the termination order based on the reasons provided therein and submitted that the order of termination does not disqualify the petitioner from seeking future employment elsewhere. He further submitted that this Court should not sit in appeal over the findings of the Inquiry Officer or the decision made by the disciplinary authority, except in the event that the Court concludes that the procedure followed was in violation of the prescribed service rules.

24. Learned Standing Counsel has relied upon the judgment of Supreme Court in the case of Union of India v. Sardar Bahadur: (1972) 4 SCC 618, Narinder Mohan Arya v. United India Insurance Company Ltd. and others: AIR 2006 SC 1748, Government of India and another v. George Philip: AIR 2007 SC 705, Deputy Commissioner, KVS and others v. J. Hussain: (2013) 10 SCC 106, State of Karnataka v. N. Gangaraj: (2020) 3 SCC 423, Muzaffar Husain v. State of U.P. and others: AIR 2022 SC 2216, Managing Director, ECIL, Hyderabad and others v. B. Karunakar and others, (1993) 4 SCC 727.

25. After hearing the learned counsel for the respective parties and considering the arguments presented, along with a thorough review of the record and the cited authorities, I find that two key issues arise for determination before this Court:

> (a) Whether the procedure adopted for conducting the inquiry by constituting a technical team was inconsistent with the regular inquiry process as prescribed under the Rules, 1999, and, as such, whether holding such an inquiry was contrary to the procedure established therein; and
>
> (b) Whether the punishment imposed upon the petitioner is disproportionate to the misconduct that was proven.

26. Coming to the first issue, it is necessary to go through the procedure prescribed under the Rules, 1999. Rule 7 of Rules, 1999 contemplate regular inquiry for the purposes of major penalty including the penalty of dismissal/ termination from service. Rule 7 of Rules, 1999 is reproduced hereunder:

> "7. Procedure for imposing major penalties. - Before imposing any major penalty on a Government servant, an inquiry shall be held in the following manner:
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> (i) The disciplinary authority may himself inquire into the charges or appoint an authority subordinate to him as Inquiry Officer to inquire into the charges.
>
> (ii) The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge-sheet. The charge-sheet shall be approved by the disciplinary authority:
>
> Provided that where the appointing authority is Governor, the charge- sheet may be approved by the Principal Secretary or the Secretary; as the case may be, of the concerned department.
>
> (iii) The charges framed shall be so precise and clear as to give sufficient indication to the charged Government servant of the facts and circumstances against him. The proposed documentary evidence and the name of the witnesses proposed to prove the same alongwith oral evidence, if any, shall be mentioned in the charge-sheet.

(iv) The charged Government servant shall be required to put in a written statement of his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge-sheet and to state whether he desires to cross-examine any witness mentioned in the charge-sheet and whether desires to give or produce evidence in his defence. He shall also be in- formed that in case he does not appear or file the written statement on the specified date, it will be presumed that he has none to furnish and Inquiry Officer shall proceed to complete the inquiry ex parte.

(v) The charge-sheet, alongwith the copy of the documentary evidences mentioned therein and list of witnesses and their statements, if any shall be served on the charged Government servant personally or by registered post at the address mentioned in the official records. In case the charge-sheet could not be served in aforesaid manner, the charge-sheet shall be served by publication in a daily newspaper having wide circulation:

Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge-sheet, the charged Government servant shall be permitted to inspect the same before the Inquiry Officer.

(vi) Where the charged Government servant appears and admits the charges, the Inquiry Officer shall submit his report to the disciplinary authority on the basis of such admission.

(vii) Where the charged Government servant denies the charges, the Inquiry Officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charged Government servant who shall be given opportunity to cross-examine such witnesses. After recording the aforesaid evidence, the Inquiry Officer shall call and record the oral evidence which the charged Government servant desired in his written statement to be produced in his defence:

Provided that the Inquiry Officer may for reasons to be recorded in writing refuse to call a witness.

(viii) The Inquiry Officer may summon any witness to give evidence or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1976.

(ix) The Inquiry Officer may ask any question he pleases, at any time of any witness or from person charged with a view to dis- cover the truth or to obtain proper proof of facts relevant to charges.

(x) Where the charged Government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding in- spite of the service of the notice on him

or having knowledge of the date, the Inquiry Officer shall proceed with the inquiry ex parte. In such a case the Inquiry Officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged Government servant.

(xi) The disciplinary authority, if it considers it necessary to do so, may, by an order appoint a Government servant or a legal practitioner, to be known as "Presenting Officer" to present on its behalf the case in support of the charge.

(xii) The Government servant may take the assistance of any other Government servant to present the case on his behalf but not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner of the disciplinary authority having regard to the circumstances of the case so permits:

Provided that this rule shall not apply in following cases:

(i) Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) Where the disciplinary authority is satisfied that for reason to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii) Where the Governor is satisfied that, in the interest of the security of the State, it is not expedient to hold an manner provided in these rules."

27. A plain reading of the aforementioned rules clearly indicates that a chargesheet containing specific charges, approved by the disciplinary authority, must be served upon the delinquent employee. Subsequently, the charged government servant is to be given an opportunity to submit a reply. An inquiry shall be conducted by the Inquiry Officer if the government servant denies the charges. The Inquiry Officer is required to record the oral evidence of the witnesses named in the chargesheet in the presence of the charged government servant, who is entitled to cross-examine the witnesses. The Inquiry Officer must also consider and record the oral evidence of any witnesses the charged government servant wishes to present in his defense, as outlined in his written statement. Furthermore, the Inquiry Officer is empowered to summon witnesses and demand the production of documents, as necessary, under the provisions of the U.P. Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1976. After the completion of the inquiry, including the recording of evidence, reviewing the documents, and hearing the testimonies of both departmental and defense witnesses, the disciplinary authority shall prepare the final report.

28. After the inquiry report is submitted as per Rule 9 of Rules, 1999, the disciplinary authority shall proceed to take action on the report. For its better appreciation Rule 9 is reproduced hereunder:

"9. Action on Inquiry Report.-

> (1) The disciplinary authority may, for reasons to be recorded in writing, remit the case for re-inquiry to the same or any other Inquiry Officer under intimation to the charged Government servant. The Inquiry Officer shall thereupon proceed to hold the inquiry from such stage as directed by the disciplinary authority, according to the provisions of Rule 7.
>
> (2) 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.
>
> (3) In case the charges are not proved, the charged Government servant shall be exonerated by the disciplinary authority of the charges and inform him accordingly;

1. (4) If the disciplinary authority having regard to its findings on all or any of charges is of the opinion that any penalty specified in Rule 3 should be imposed on the charged Government servant, he shall give a copy of the inquiry report and his findings recorded under sub-rule (2) to the charged Government servant and require him to submit his representation if he so desires, within a reasonable specified time. The disciplinary authority shall, having regard to all the relevant records relating to the inquiry and representation of the charged Government servant, if any, and subject to the provisions of Rule 16 of these rules, pass a reasoned order imposing one or more penalties mentioned in Rule 3 of these rules and communicate the same to the charged Government servant." (Emphasis added)

29. A plain reading of Rule 9(1) makes it clear that the disciplinary authority, for reasons to be recorded in writing, has the discretion to remit the case for re-inquiry, either by the same Inquiry Officer or by a different one, with due intimation to the charged government servant. The Inquiry Officer shall then proceed to continue the inquiry from the stage directed by the disciplinary authority. Sub-rule 2 of Rule 9 allows the disciplinary authority to disagree with the findings of the Inquiry Officer on any charge and to record its own findings, with reasons. Sub-rule 3 of Rule 9 provides that if the charges are not proven, the charged government servant shall be exonerated by the disciplinary authority, which shall inform the government servant accordingly. Sub-rule 4 of Rule 9 stipulates that if the disciplinary authority concludes that a penalty as proposed under Rule 3 of the Rules, 1999 is warranted, it must provide the charged government servant with a copy of the inquiry report and its findings, recorded under sub-rule (4), and allow the government servant a specified time to submit a representation before proceeding to impose the punishment as prescribed under Rule 3.

30. From the discussions as made above qua Rule 7, 8 & 9 three stages are clearly postulated under the Rules:

> (i). Setting up a regular inquiry in the event of major penalty with the issuance of chargesheet and appointment of Inquiry Officer and issuance of an approved chargesheet by the disciplinary authority calling for reply;

(ii) Disciplinary Inquiry Officer is to hold inquiry in detail both oral as well as requiring documentary evidence and then to submit report;

(iii) With the submission of report it is open for the disciplinary authority to order inquiry de novo, or disagree with the Inquiry Officer for the reason on the findings by assigning reasons and in the event decides to propose major penalty under Rule 3, shall cause service to the inquiry report or his decision of the proposed punishment upon the delinquent employee requiring his representation within specified period; and then if charges are not proved, charged Government servant shall be exonerated by disciplinary authority.

31. Upon reviewing the inquiry report in the present case, I find that the Inquiry Officer concluded that Charge No. 1, relating to the circulation of an objectionable message criticizing the Government as per Rule 9 of the Rules, 1956, was not proven. Since the intention to circulate the objectionable message--amounting to criticism of the Government via unauthorized communication--was not substantiated, the act and conduct of the petitioner, which was alleged to be misconduct for failing to maintain disciplined behavior as required under Rules 3 and 7 of the Rules, 1956, was also not established. The Inquiry Officer, however, found that the charge of forwarding the message in question in the WhatsApp group was proven, based solely on the petitioner's admission.

32. Notably, the department had no witnesses to present before the Inquiry Officer to provide oral testimony, nor did it have any documentary evidence to demonstrate that the objectionable message was circulated within the WhatsApp group or that the members of the group had read or otherwise disseminated it.

33. Upon receipt of the inquiry report, the disciplinary authority sought to verify the petitioner's defense, which claimed that although he intended to delete the message, he inadvertently forwarded it and later deleted it. To clarify this, the disciplinary authority made certain inquiries of the Inquiry Officer via a letter dated 18th November 2019. In turn, on 26th November 2019, the Inquiry Officer posed further queries to the petitioner, to which the petitioner responded on 2nd and 12th December 2019. The Inquiry Officer subsequently submitted a supplementary report on 16th December 2019. This report reiterated that, according to the petitioner's statement, he was using an older version of WhatsApp, where only a 'delete' option was available, which the petitioner had pressed. Despite requests for supporting evidence, the department failed to provide any proof that the message was indeed deleted.

34. The supplementary report also referenced a letter from the Inquiry Officer to the petitioner on 29th July 2019 during the inquiry, which stated that despite contacting the office of the Chief Minister regarding the availability of any evidence supporting the charge, the response received on 9th July 2019 indicated that no such documents existed. After submission of the supplementary report--although not explicitly labeled as a "supplementary" report--the disciplinary authority decided to form a new two-member 'Technical Committee' to seek clarification on four points.

35. The letters dated 29th January 2020 and 5th February 2020 from the Deputy Secretary do not reflect any disagreement with the findings of the Inquiry Officer, who had exonerated the petitioner of two charges. Instead, the only clarification sought was whether the message was deleted in time. The Technical Committee's report, however, indicated that it was only the delinquent employee who could clarify whether the message had been deleted for everyone or not, or if the message was deleted at all.

36. The formation of the inquiry committee without showing any disagreement with the Inquiry Officer's specific findings--which had exonerated the petitioner on the charges--was not in line with Rule 9(2) of the Rules, 1999. The defense argument presented by the learned Standing Counsel, suggesting that the formation of the Technical Committee was merely for clarification purposes, cannot be accepted. This is because the disciplinary authority had already sought clarification from the Inquiry Officer in its letter dated 18th November 2019, which was sufficient. The Inquiry Officer had submitted a supplementary report on 16th December 2019, containing the petitioner's statement about the deletion of the message. In the absence of any disagreement with this report, the decision to form a Technical Committee to further investigate the matter was entirely unnecessary.

37. This administrative action is contrary to the authority vested in the disciplinary authority, as per Rule 9(2) of the Rules, 1999. There is no provision in the Rules for conducting a second inquiry de novo by appointing a new Inquiry Officer. Therefore, the petitioner's argument that the second inquiry, which can be termed as a 'Technical Inquiry Committee,' was conducted in violation of the prescribed procedure is valid. Moreover, the show cause notice issued to the petitioner on 17th November 2019, which requested a representation, did not mention any proposed punishment other than acknowledging that the petitioner had forwarded the objectionable message. Only after the petitioner submitted his reply did the disciplinary authority seek a supplementary inquiry report. Hence, in these circumstances, the second technical inquiry conducted under the letter dated 29th January 2020 should have involved the petitioner's participation, but he was not notified of this inquiry.

38. Paragraph 42 of the inquiry report explicitly states that the technical inquiry was conducted ex parte. In response to this, paragraph 42 of the counter affidavit remarks that "it need no comments, being a matter of record, and can be verified from the same."

39. Therefore, it is evident that the inquiry was conducted in gross violation of the principles of natural justice. The respondents' admission that the procedure adopted was contrary to the prescribed rules renders the action arbitrary and illegal, making the resultant decision void. When a process is required to be followed in a particular manner, it must be adhered to. (Taylor v. Taylor (L.R.) 1 Ch. 426).

40. The above principle is grounded in the legal maxim "Expressio unius est exclusio alterius," which implies that when a statute prescribes a specific method for performing an act, that method must be strictly followed, and no other course of action is permissible. This maxim has been consistently upheld in various decisions, such as in Chandra Kishore Jha v. Mahavir Prasad (1999),

Haresh Dayaram Thakur v. State of Maharashtra (2000), Delhi Administration v. Gurdip Singh Uban (2000), Dhanajaya Reddy v. State of Karnataka (2001), Commissioner of Income Tax, Mumbai v. Anjum M.H. Ghaswala (2002), Prabha Shankar Dubey v. State of Madhya Pradesh (2004), and Ram Phal Kundu v. Kamal Sharma (2004).

41. The Supreme Court, in Sirsi Municipality v. Cecelia Kom Francis Tellis (1973), affirmed that "rules and regulations are binding on the authorities," and in Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi (1975), it stated that "statutory authorities cannot deviate from the conditions of service." Such deviations would be invalidated by the courts. In Krishna Rai v. Banaras Hindu University (2022), the Court reiterated the principle that "if the law requires something to be done in a particular manner, then it must be done in that manner, and if it is not done, it would have no legal existence."

42. The first argument put forth by the petitioner's counsel is thus valid, and the impugned order should be quashed on this basis alone.

43. Regarding the second argument about the disproportionate punishment, it is clear that the only evidence against the petitioner is his own admission in writing to the Government and during the inquiry that he had forwarded the message in the WhatsApp group by mistake and deleted it once he realized his error. There was no substantial evidence from the State Government presented before the Inquiry Officer or the Technical Committee to support the claim that the petitioner intentionally circulated the message to damage the Government's reputation.

44. Both the inquiry and technical committee reports indicate that the petitioner deleted the message. Since the department failed to provide evidence that the message was read or circulated widely among people, it is speculative to conclude that the circulation caused harm to the Government's reputation.

45. In J. Ahmed (supra), the Supreme Court emphasized the importance of distinguishing between intentional misconduct and acts of negligence or innocent mistakes. The Court ruled that acts of negligence or errors in judgment do not amount to misconduct. This principle is applicable in the petitioner's case, as there is no evidence of malice or ill intent behind the act of forwarding the message.

46. In misconduct cases, it must first be determined whether the action was deliberate and whether it was serious enough to warrant severe punishment. The disciplinary authority's decision to terminate the petitioner's service was based on the report of the Inquiry Officer and the Technical Committee, which found that the petitioner forwarded the message but did not establish that he did so deliberately with the intent to damage the Government's reputation. The disciplinary authority assumed that since the petitioner deleted the message after realizing the severity of his action, this constituted an act of misconduct.

47. However, this finding of the disciplinary authority is flawed due to a lack of evidence. The message was forwarded at 11:26 PM on 6th July 2018 and was allegedly deleted within 2-3 minutes.

Given the timing, there was no opportunity for the message to be read by everyone in the WhatsApp group, let alone be circulated to other groups. In fact, the Government only became aware of the message after the petitioner expressed his regret. Therefore, the disciplinary authority's conclusions are based on insufficient material and are liable to be considered perverse.

48. The disciplinary authority's finding would have been valid had the department presented evidence showing that the message was read by other members of the WhatsApp group and circulated further. However, no such evidence was provided, and the department did not investigate mobile phone records or call/message logs that could have corroborated the circulation of the message.

49. Given the lack of evidence, it is unreasonable to impose the maximum penalty of termination from service when no charge has been definitively proven.

50. Therefore, based on the lack of substantial evidence and the improper procedure followed, it is clear that the imposition of termination from service is unjustified.

51. In the case of Ram Kishan (supra) the Court dealt with an issue of nature of punishment imposed and whether it was commensurate to the gravity of the charge or too harsh to be approved of. Vide paragraphs 11 and 12 the Court has observed thus:

> "11. It is next to be seen whether imposition of the punishment of dismissal from service is proportionate to the gravity of the imputation. When abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of the abusive language. No staight jacket formula could be evolved in adjudging whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts. What was the nature of the abusive language used by the appellant was not stated.
>
> 12. On the facts and circumstances of the case, we are of the considered view that the imposition of punishment of dismissal from service is harsh and disproportionate to the gravity of charge imputed to the delinquent constable. Accordingly, we set aside the dismissal order. We hold that imposition of stoppage of two increments with cumulative effect would be an appropriate punishment. So, we direct the disciplinary authority to impose that punishment. However, since the appellant himself is responsible for the initiation of the proceedings, we find that he is not entitled to back wages; but, all other consequential benefits would be available to him."

52. The petitioner's admission that he inadvertently forwarded the message is a significant factor. In my opinion, the punishment should have been more lenient, such as an adverse entry in his service records or a censure. As a government servant, he should have exercised caution when dealing with such objectionable content, but his actions were not malicious. A more proportionate response would have been appropriate given the circumstances.

53. The petitioner further raised an important point in paragraph 67 of his petition, claiming that the proposed punishment, as considered by the U.P. Public Service Commission, was contrary to the findings, and the State Government failed to provide him with a copy of this proposed punishment for his comments. This omission deprived the petitioner of the opportunity to contest the proposed action.

54. In response, the respondents argued that a detailed reply had already been provided in the counter affidavit, but upon review, I find that no such reply was specifically addressed to paragraph 67 of the petition. This omission is significant as the petitioner's claim regarding lack of opportunity to contest the proposed punishment remains unaddressed.

55. Another point raised by the petitioner pertains to a similar case involving Jagdish Prasad Yadav, a Commercial Inspector, who faced disciplinary action for comments made about the Chief Minister on social media. The suspension was overturned by the Lucknow Bench of the High Court, and disciplinary proceedings were dropped with only a warning issued to Yadav. The petitioner argues that this situation is discriminatory, as similar actions were treated differently in his case. While the two cases are not identical, it is worth noting that, like the petitioner, Yadav's misconduct was not proven by any substantial evidence but rather was based on his own admission. Thus, the punishment in the petitioner's case appears disproportionate to the actual charge.

56. While the cases are not identical, the similarities are worth noting, especially given that in both instances, the misconduct was not proven beyond the individuals' own admissions. The fact that the petitioner's conduct was addressed by him voluntarily, with regret, further highlights that a more lenient punishment could have been appropriate, rather than termination.

57. The discretion to impose punishment lies with the employer, but this discretion must be exercised with care and in line with established principles. The judicial review of such decisions is based on three grounds: illegality, irrationality, and procedural impropriety, as articulated in the case of Indian Railway Company Ltd. v. Ajay Kumar (2003). The Supreme Court also referred to Lord Diplock's observations in Council of Civil Service Unions v. Minister for the Civil Service (1984), where "irrationality" or "Wednesbury unreasonableness" is described as a decision so outrageous that no reasonable person could have arrived at it. In this case, the termination of the petitioner's service appears disproportionate and unreasonable, failing to align with logical standards of fairness.

58. On the question of proportionality of punishment as to the charge in the case of Deen Dayal Shukla (supra) a coordinate Bench of this Court referred to the judgment of Supreme Court in the case of State Bank of India and others v. Samarendra Kishore Endow and another: (1994) ILLJ 872 SC, wherein it was held that punishment awarded to an employee should be commensurate with an offence and, therefore, while exercising power under Article 226 of the Constitution, the High Court will ensure that an individual receives fair treatment. Vide paragraph 16 the Court has held thus:

> "16. In the case of State Bank of India and others v. Samarendra Kishore Endwo and another (supra) it has been held by Hon'ble Supreme Court that the punishment

awarded to an employee should be commensurate with the offence and accordingly held while exercising power under Article 226 of the Constitution of India High Court have to ensure that individual receives fair treatment and not to ensure that authority after according fair treatment reaches on a matter which it is authorised by law to decide for itself. Relevant portion from the said judgment is reproduced as under :

"10. On the question of punishment, learned Counsel for the respondents submitted that the punishment awarded is excessive and that lesser punishment would meet the ends of justice. It may be noticed that the imposition of appropriate punishment is within the discretion and judgment of the. disciplinary authority. It may be open to the appellate authority to interfere with it but not to the High Court or to the Administrative Tribunal for the reason that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226. The power under Article 226 is one of judicial review. It "is not an appeal from a decision, but a review of the manner in which the decision was made." [Per Lord Brightman in Chief Constable of the North Wales Police v. Evans and H.B. Gandhi Excise and Taxation Officer-cum-Assessing Authority v. Gopinath and Sons]. In other words the power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment, reaches on a matter which it is authorised by law to decide for itself, a conclusion which is correct in the eyes of the Court."

Hon'ble Supreme Court after considering the other judgments of Apex Court arrived to the conclusion that punishment awarded to the delinquent employee was too harsh and remitted the matter again to disciplinary authority to reconsider for imposition of appropriate punishment."

59. The Court also referred to the various authorities on the principle of applying Wednesbury test to an administrative order vide paragraph 67 thus:

"67. But where as administrative action is challenged as "arbitrary" under Article 14 on the basis of Royappa (as in cases where punishments in disciplinary cases are challenged), the question will be whether the administrative order is "rational" or "reasonable" and the test then is the Wednesbury test. The Courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which a reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary. In G.B. Mahajan v. Jalqaon Municipal Council, SCC at p. 111. Venkatachaliah, J. (as he then was) pointed out that "reasonableness" of the administrator under Article 14 in the context of administrative law has to be judged from the stand point of Wednesbury rules. In Tata Cellular v. Union of India, SCC at pp. 679-80; Indian Express Newspapers Bombay (P) Ltd. v. Union of India, SCC at p. 6910 ; Supreme Court Employees' Welfare Assn. v. Union of India, SCC at p. 2410 and U.P. Financial Corporation v.

> Gem Cap (India; (P) Ltd., SCC at p. 307, while judging whether the administrative action is "arbitrary" under Article 14 (i.e. otherwise than being discriminatory), this Court has confined itself to a Wednesbury review always.

60. The petitioner's counsel also referred to the Supreme Court judgment in Mithilesh Singh v. Union of India (2003) 2 SCR 377, where the Court held that it would intervene if the punishment is shockingly disproportionate to the gravity of the offense. The principle established in this case emphasizes that punishment must not be excessively harsh relative to the proven misconduct. This judgment is cited here to argue that the punishment in this case--termination--is shockingly disproportionate to the admitted guilt of the petitioner.

61. The petitioner also referred to the case of Kisan Sahkari Chini Mills (supra), where the Court observed that while the quantum of punishment is generally within the discretion of the employer, the Court would interfere when the penalty is found to be shockingly disproportionate. The principle from this case aligns with the petitioner's argument that the punishment here is excessive considering the nature and circumstances of the alleged misconduct.

62. On the other hand, the Standing Counsel, Sri Neeraj Tripathi, relied on several judgments, including Rajendra Upadhyay v. State of U.P. and others (Writ - A No. 30927 of 2009), decided on 9th May 2018. In this case, the Court refused to interfere with the order of punishment, relying on the judgments in Narinder Mohan Arya and George Philip. In Narinder Mohan Arya (supra), the Supreme Court held that the High Court should not interfere with the findings of fact made by the disciplinary authority or the appellate authority. These authorities are empowered to determine the facts, and the High Court, acting as a judicial review body, cannot act as an appellate forum to reassess the findings of fact.

63. This legal position emphasizes that while the High Court has the power to review procedural fairness and the proportionality of punishment, it generally does not reassess factual findings made by disciplinary authorities unless there is a clear miscarriage of justice or an error of law.

64. Paragraph 9 of the George Philip's case (supra) has been cited to demonstrate that the Court would normally be not intending to interfere in the matters of domestic inquiry and resultant punishment if awarded holding that it was the sole domain of administrative authority as an primary authority to decide as to the nature of punishment to be awarded. Paragraph 9 of the judgment is reproduced hereunder:

> "9. It is trite that the Tribunal or the High Court exercising jurisdiction under Article 226 of the Constitution are not hearing an appeal against the decision of the disciplinary authority imposing punishment upon the delinquent employee. The jurisdiction exercised by the Tribunal or the High Court is a limited one and while exercising the power of judicial review, they cannot set aside the punishment altogether or impose some other penalty unless they find that there has been a substantial noncompliance of the rules of procedure or a gross violation of rules of natural justice which has caused prejudice to the employee and has resulted in

> miscarriage of justice or the punishment is shockingly disproportionate to the gravamen of the charge. The scope of judicial review in matters relating to disciplinary action against employees has been settled by a catena of decisions of this Court and reference to only some of them will suffice. In B.C. Chaturvedi v. Union of India (1995) 6 SCC 749, it was observed as under in para 18 of the reports :-
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> "18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

65. In Om Kumar v. Union of India (2001) 2 SCC 386, after considering large number of cases, the principle was summarized as under in para 71 of the reports:-

> "71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and in such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

66. In Damoh Panna Sagar Rural Regional Bank & Anr. v. Munna Lal Jain (2005) 10 SCC 84, it was observed that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. The Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

67. In Mahindra and Mahindra Ltd. v. N.B. Narawade (2005) 3 SCC 134, the respondent was dismissed from service on the charge of having used abusive and filthy language against his

supervisor. The labour Court on the finding that the punishment of dismissal was harsh and improper, directed his reinstatement with continuity of service and two-third back wages. The writ petition filed by the employer was dismissed both by the learned Single Judge and also by the Division Bench of the High Court. In appeal a three Judge Bench of this Court set aside the judgments of the High Court and also the award of the labour Court and upheld the order of the disciplinary authority dismissing the respondent from service. In Bharat Forge Co. Ltd. v. Uttam Manohar Nakate (2005) 2 SCC 489, the respondent workman was found sleeping at about 11.40 a.m. while he was on duty in the first shift. On some earlier occasions also he was found guilty of similar misconduct. After domestic enquiry wherein he was found guilty, he was dismissed from service. The labour Court held that the punishment of dismissal was harsh and disproportionate and no reasonable employer could impose such punishment for the proved misconduct and accordingly directed reinstatement with fifty per cent back wages. There was a revision to the Industrial Tribunal and then a writ petition and finally in letters patent appeal the Division Bench of the High Court modified the award of the labour Court by directing the employer to pay a sum of Rs.2,50,000/- to the workman. In appeal this Court, after referring to large number of earlier decisions, set aside the judgment of the Division Bench and restored the order passed by the employer.

68. On above principle another authority cited is of State of Karnataka and another v. N. Gangaraj: (2020) 3 SCC 423 to demonstrate that certain discrepancies in evidence would not render the case to be of no evidence. Citing the judgment of Supreme Court in the case of State of A.P. v. S. Sree Rama Rao: AIR 1963 SC 1723 vide paragraph 9 the Court held thus:

> "8. In State of A.P. v. S. Sree Rama Rao: AIR 1963 SC 1723, a three Judge Bench of this Court has held that the High Court is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. The Court held as under:
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> "7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence."

69. Supreme Court also cited its earlier decision with approval in the case of Union of India v. P. Gunasekaran: (2015) 2 SCC 610, wherein vide paragraph 13 the Court laid down the guiding principle for interference in exercise of power by the High Court under Article 226/ 227 of the

Constitution. The Court dealt with the argument of the respondent in the case of N. Gangaraj (supra) vide paragraph 14 to conclude that it was not a case of no evidence rather it was a case where discrepancies in the evidence was cited to vitiate the conclusion drawn in the departmental inquiry and decision taken by the disciplinary authority. The Court observed that once the Inquiry Officer has appreciated the evidence it was beyond the scope of the authority of High Court to have re-appreciated the same. The Court further observed vide paragraph 15 that once the evidence had been accepted by the departmental authority the Tribunal or the High Court could not interfere with the findings of the fact. Vide paragraph 14 and 15 the Court held thus:

> "14. On the other hand learned counsel for the respondent relies upon the judgment reported as Allahabad Bank v. Krishna Narayan Tewari: (2017) 2 SCC 308, wherein this Court held that if the disciplinary authority records a finding that is not supported by any evidence whatsoever or a finding which is unreasonably arrived at, the Writ Court could interfere with the finding of the disciplinary proceedings. We do not find that even on touchstone of that test, the Tribunal or the High Court could interfere with the findings recorded by the disciplinary authority. It is not the case of no evidence or that the findings are perverse. The finding that the respondent is guilty of misconduct has been interfered with only on the ground that there are discrepancies in the evidence of the Department. The discrepancies in the evidence will not make it a case of no evidence. The Inquiry Officer has appreciated the evidence and returned a finding that the respondent is guilty of misconduct.
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> 15. The disciplinary authority agreed with the findings of the enquiry officer and had passed an order of punishment. An appeal before the State Government was also dismissed. Once the evidence has been accepted by the departmental authority, in exercise of power of judicial review, the Tribunal or the High Court could not interfere with the findings of facts recorded by re-appreciating evidence as if the Courts are the Appellate Authority. We may notice that the said judgment has not noticed larger bench judgments in S. Sree Rama Rao and B.C. Chaturvedi as mentioned above. Therefore, the orders passed by the Tribunal and the High Court suffer from patent illegality and thus cannot be sustained in law."

70. Upon reviewing the authorities cited by both parties, the Court concludes that the principles discussed in the judgments are not contradictory but complementary. The Court emphasized that its role is not to re-evaluate the evidence and arrive at a different conclusion, but rather to assess whether the decision-making process was rational and legally sound. In this case, the department failed to present sufficient evidence to support the charge that the petitioner deliberately circulated the message to defame the Government.

71. Referring to the case of Union of India v. Sardar Bahadur (1972) 4 SCC 618, the Court noted that if the department had failed to produce the relevant witnesses before the Inquiry Officer for cross-examination, the department could not later claim that the Inquiry Officer had failed to appreciate the statements made by those witnesses.

72. The Court also discussed the principle of Wednesbury unreasonableness in the case of Wednesbury Corporation (supra), which allows judicial review of decisions that are irrational or not based on logical reasoning. It further cited the case of Gohil Vishvaraj Hanubhai where the Court reiterated that decisions should not defy logic or accepted moral standards, and if a decision is so unreasonable that no reasonable person could have arrived at it, the Court would intervene.

73. The Court observes that in this case, the second charge against the petitioner was not proved at all, and the first charge was partially substantiated based on the petitioner's admission that he had forwarded the message inadvertently. The message was deleted before anyone could have read it, and the department failed to provide evidence that the message had been circulated or read. Thus, the dismissal was found to be shockingly disproportionate to the actual proven misconduct.

74. The Court considered the petitioner's admission as being made in the context of an honest mistake, where he had tried to delete the message and asked others to do the same. The admission was not an acknowledgment of an intentional attempt to harm the Government's reputation.

75. The Court, therefore, finds that the dismissal was disproportionate to the nature of the offense, especially in light of the lack of evidence regarding the circulation of the message. It emphasizes that the department should have acknowledged the petitioner's fairness in admitting the mistake and could have issued a warning instead of imposing a harsh penalty.

76. While the admission of forwarding the message inadvertently was considered strong evidence, the Court highlights that the admission did not indicate an intention to defame the Government. It was simply an acknowledgment of an error, and the petitioner had taken steps to mitigate any potential damage by deleting the message and informing others.

77. After considering both the arguments from the petitioner and the State, the Court concludes that the dismissal order was disproportionate and warranted judicial intervention.

78. Consequently, the writ petition is allowed and therefore the dismissal order dated 7th September, 2020 is quashed. The Court orders the petitioner's reinstatement with all consequential benefits. The State Government is directed to impose a minor punishment, such as a warning, taking into account the petitioner's admission of the mistake and lack of evidence of any damage caused by the message.

79. The Court further directs the State Government to issue the appropriate order within 30 days of receiving a certified copy of this judgment.

80. The case was remitted for a decision on a lesser punishment, acknowledging the petitioner's fairness in dealing with the situation.

81. Costs would be easy, implying no heavy costs would be imposed.

(Alok Mathur, J.) Order Date :- 2.1.2025 Virendra