

Rameshwar Dayal Sharma vs The State Of U.P.And 3 Others on 3 March, 2025

Author: Ajit Kumar

Bench: Ajit Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:29505

Court No. - 4

Case :- WRIT - A No. - 1899 of 2025

Petitioner :- Rameshwar Dayal Sharma

Respondent :- The State Of U.P.And 3 Others

Counsel for Petitioner :- Ambuj Maurya,Atipriya Gautam,Devesh Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard Sri Vijay Gautam, learned Senior Advocate assisted by Ms. Atipriya Gautam, learned counsel for the petitioner and learned Standing Counsel.

2. Petitioner is aggrieved by the order passed by Senior Superintendent of Police, Bulandshahr, the disciplinary authority dated 1st August, 2024 in a disciplinary proceeding, whereby, petitioner's integrity is directed to be withheld for one year. Being aggrieved, petitioner filed an appeal against the punishment order which was rejected on 16th September, 2024. Thereafter, he filed a revision against appellate order, however, the same has also been rejected on 18th October, 2024.

3. It is argued on behalf of the petitioner that this punishment order which has been passed described as is not punishment as such under the order impugned but it is directed at the same time that it may be considered for the purpose of determination of satisfactory service. He submits that either in a disciplinary proceeding, disciplinary authority after due inquiry can either hold the petitioner guilty of the charges and impose punishment of any nature major or minor prescribed under the rules or shall absolve the petitioner from the charges. The disciplinary authority, it is argued, is not empowered to make out a third case to impose punishment which is not prescribed under the Rules.

4. Learned counsel for the petitioner submits that this controversy of the power of disciplinary authority to impose a punishment not prescribed under the Rules is no more res integra. He submits that in the matter of *Surendra Kumar Singh v. State of U.P. & Ors*, 2013 (11) ADJ 346 followed by a concurrent bench of this Court in *Writ - A No. 10597 of 2021, Rajiv Kumar Tomar v. State of U.P. & 2 Others* decided on 26.08.2021 it has been held that a punishment that is not prescribed as such, cannot be imposed. The relevant paragraph is reproduced hereunder:

"Learned counsels for parties are ad idem that the impugned order would not sustain in light of the decision rendered in *Surendra Kumar Singh Vs. State of U.P. And Others* [2013 (11) ADJ 346]. That decision was dealing with an issue of whether withholding of integrity was a punishment which was contemplated under the relevant rules. Dealing with the aforesaid issue, the learned Judge held thus:

6. It is not in dispute that disciplinary proceeding of a police officer of subordinate rank is now regulated by Rules, 1991, which have been framed in exercise of power conferred under Section 46(2) and (3) read with Sections 2 and 7 of Police Act, 1861 (hereinafter referred to as the "Act, 1861"). It thus also cannot be disputed that, if, as a result of disciplinary proceeding, a punishment is to be awarded, such punishment must be prescribed in Rules, 1991 and then only can validly be imposed upon a police officer of subordinate rank. The various kinds of punishments which can be imposed are prescribed in Rule 4. It is admitted between the parties that withholding of integrity is not one of the punishment prescribed in Rule 4 of Rules, 1991.

7. The question, whether a punishment, which is not prescribed in Rules, can be imposed, came to be considered by Apex Court in *Vijay Singh* (supra) and returning in negative, in para 11 thereof, the Court said: "11. The issue involved herein is required to be examined from another angle also. Holding departmental proceedings and recording a finding of guilt against any delinquent and imposing the punishment for the same is a quasi-judicial function and not administrative one. (Vide: *Bachhittar Singh v. State of Punjab & Anr.*, AIR 1963 SC 395; *Union of India v. H.C. Goel*, AIR 1964 SC 364; *Mohd. Yunus Khan v. State of U.P. & Ors.*, (2010) 10 SCC 539; and *Chairman-cum-Managing Director, Coal India Ltd. & Ors. v. Ananta Saha & Ors.*, (2011) 5 SCC 142).

Imposing the punishment for a proved delinquency is regulated and controlled by the statutory rules. Therefore, while performing the quasi-judicial functions, the authority is not permitted to ignore the statutory rules under which punishment is to be imposed. The disciplinary authority is bound to give strict adherence to the said rules.

Thus, the order of punishment being outside the purview of the statutory rules is a nullity and cannot be enforced against the appellant."

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9. In view of above noticed overwhelming authorities, it leaves no scope for this Court but to hold the impugned order patently illegal and without jurisdiction, being a punishment, not prescribed in Rules.

10. However, before parting I would also like to notice the stand taken by respondents with respect to various Government orders dealing with the matter of "withholding of integrity".

11. In administrative matters an employee is supposed to be watched by superior officers regularly and his work and performance is annually assessed and put on record by superior officers every year, which process, normally is called as recording of Annual Character Roll or Annual Confidential Report (hereinafter referred to as the 'ACR'). The normal hierarchy for recording of ACR at initial level is the just superior officer termed as "Reporting Officer", who assess the work and performance of officer concerned and the aforesaid assessment recorded by "Reporting Officer" is subject to acceptance and review by "Accepting Authority", who is the next in hierarchy to the "Reporting Officer" and then to the another next officer in hierarchy called Reviewing Officer. In a very few matters the process of recording of ACR is two tier level consists of Reporting Officer and Accepting Officer. Besides, other traits, certification of integrity is one of the part, integrally connected, with the assessment of work, performance and conduct of officer concerned and, therefore, it is a regular feature of ACR. This aspect is fortified from the various Government orders referred to in the counter affidavit as noticed above, copies whereof have been filed collectively as Annexure-1 to the counter affidavit.

12. The Government Order dated 28.12.1959 would clearly demonstrate that initial certification of integrity has to be made by "Reporting Officer". The guidelines have been laid down in para 2 for the benefit of Reporting Officer as to how he should deal with the matter of certification of integrity of subordinate officers in respect of whose work and performance he has to record ACR. The consequence of non-certification of integrity or withholding of integrity is provided in para 5. It says that the officer concerned shall stand held up at the stage of crossing of efficiency bar or even his annual increment would stand deferred until he gets integrity certified again.

13. In the Government Order dated 07.10.1966 one of the important aspect stated in para 3 is that the certification of integrity when denied by Reporting Officer, such Government servant should be posted elsewhere and should not be continued under/with the same Reporting Officer.

14. The next Government Order dated 03.07.1979 clarify that withholding of integrity being part of ACR would relate back to the year for which it was to be certified and for different year it has to be dealt with separately, without being influenced by previous year.

15. The Government Order dated 15.12.1980 only gives few illustrations for the guidance of officers telling them the manner in which they should record their views regarding certification of integrity of a subordinate officer.

16. The Government Orders dated 16.05.1981 and 21.12.1993 only reiterate that in cases where conduct of Government servant is suspicious or under inquiry, it should be closely watched and in case of inquiry, this fact should be mentioned and certification of integrity should be deferred till inquiry is concluded.

17. These Government orders, therefore, only deal with the manner of certification/withholding of integrity in ACR but by no means upgrade "withholding of integrity" to the status or extent of punishment, minor or major, as the case may be. It leaves no doubt that whenever the question of punishment would arise as a result of disciplinary proceeding, the competent authority will have to look into and abide to the relevant rules prescribing punishment and cannot invent/ discover a new punishment by itself which has not been prescribed in the statute by rule framing authority. The reference to aforesaid Government orders, therefore, in the context of present case, is wholly misconceived and it appears that either the respondents do not understand the nature of certification of integrity or have no idea of difference between a punishment and recording of ACR. The defence taken by respondents, therefore, is wholly out of context and does not them.

18. In view of above, the writ petition is allowed. The impugned order dated 14.03.2011 is hereby quashed. However, this order shall not preclude the disciplinary authority from passing any fresh order in accordance with law after giving due opportunity of hearing to all concerned parties.

In view of the aforesaid, writ petition is allowed. The impugned order dated 21 October 2019 is hereby quashed. The petitioner shall be entitled to all consequential reliefs."

(emphasis added)

5. Upon perusal of Rule 4 of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 only following punishment has been prescribed as major punishment and minor punishment. The rules are reproduced hereunder:

"4. PUNISHMENT - (1) The following punishments may, for good and sufficient reasons and as hereinafter provided, be imposed upon Police Officer, namely --

a) Major Penalties ---

(i) Dismissal from service.

(ii) Removal from service.

(iii) Reduction in rank including reduction to a lower - scale or to a lower stage in a time scale.

(b) Minor penalties:

(i) Withholding of promotion

(ii) Fine not exceeding one months pay.

(iii) Withholding of increment, including stoppage at an efficiency bar.

(iv) Censure.

(2) In addition to the punishments mentioned in sub-rule (1) Head Constable and Constables may also be inflicted with the following punishments --

(i) Confinement to quarters (this term includes confinement to Quarter Guard for a term not exceeding fifteen days extra guard or other duty).

(ii) Punishment Drill not exceeding fifteen days.

(iii) Extra guard duty not exceeding seven days.

(iv) Deprivation of good conduct pay.

(3) In addition to the punishments mentioned in sub rules (1) and (2) Constables may also be punished with Fatigue duty, which shall be restricted to the following tasks.:

(i) Tent pitching;

(ii) Drain digging;

(iii) Cutting grass, cleaning jungle and picking stones from parade grounds;

(iv) Repairing huts and butts and similar work in the lines;

(v) Cleaning Arms."

6. Upon a pointed query being made to learned Standing Counsel as to how the order impugned passed by the disciplinary authority can be justified, he submits that the competent disciplinary authority can be directed to pass order afresh in the light of law laid down by this Court.

7. In view of the above, the order passed by disciplinary authority dated 1st August, 2024, order passed by the appellate authority dated 16th September, 2024 & the order of revisional authority dated 18th October, 2024 are hereby quashed with all consequential benefits. The matter is remitted to the authority to take decision afresh. The order of consequential benefits shall abide by the final order to be passed by the authority concerned.

8. Petition stands allowed as indicated above.

Order Date :- 3.3.2025 Atmesh