

State Of U.P. Thru Addl. Chief Secy. ... vs Kanhaiya Singh on 30 April, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2025:AHC-LK0:27530-DB

Court No. - 1

Case :- SPECIAL APPEAL DEFECTIVE No. - 176 of 2025

Appellant :- State Of U.P. Thru Addl. Chief Secy. Environment Forest And Climate Change

Respondent :- Kanhaiya Singh

Counsel for Appellant :- C.S.C.

Counsel for Respondent :- Om Prakash Misra

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Ajai Kumar Srivastava-I,J.

Order on C.M. Application No. IA/1 of 2025

1. This intra court appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 is delayed by 68 days. The appeal is filed along-with an application for condonation of delay duly supported with an affidavit.

2. Cause shown is sufficient.

3. In absence of any objection, the application for condonation of delay is allowed. Delay condoned.

Order on appeal

4. Heard learned counsel for the appellant-State and learned counsel for the respondent.

5. The present intra-court appeal filed by the appellant-State under Chapter VIII Rule 5 of the High Court Rules is directed against the judgment/order rendered by the writ court in Writ A No. 6226 of 2023 on 16.1.2025, whereby, the writ petition was allowed and the punishment order dated 12.07.2022 was set aside.

6. While the respondent-employee was working as Van Daroga, a plantation drive was carried out during the period 2010 to 2013 and allegedly, several trees planted during the plantation drive were found dead. Consequently, on initiation of disciplinary proceedings, a charge-sheet dated 20.12.2013 was served on the petitioner. In order to give proper reply, the respondent-employee moved representation on 24.01.2014 demanding copies of certain documents but the same were not provided to him. In absence of the relevant documents, respondent chose not to file a reply to the charge-sheet. The enquiry officer submitted inquiry report on 26.3.2015 holding respondent guilty of the charges. When the enquiry report was submitted to the Disciplinary Authority, he issued a show cause notice to the respondent on 31.3.2015 along-with a copy of the enquiry report to which respondent submitted his reply on 9.4.2015. After considering the relevant material available with the Disciplinary Authority, he passed the order of punishment on 28.11.2015 whereby three increments were withheld in addition to recovery of Rs. 1,99,333.00 together with a censure entry. When the departmental appeal was filed against the punishment order dated 28.11.2015, it was dismissed by the Appellate Authority on 4.5.2016.

7. Being aggrieved, the respondent employee preferred a claim petition being Claim Petition no. 953 of 2017 against the punishment order imposing major penalty as also the order of the Appellate Authority dated 04.05.2015 before the U.P. Public Services Tribunal. The Tribunal quashed the orders impugned in the Claim Petition with all consequential benefits. However, it was left open for the Disciplinary Authority to initiate departmental enquiry afresh against the appellant from the stage of oral enquiry within a period of two months. Further, it was directed that in case the Disciplinary Authority decides to imitate enquiry afresh, it should be completed within a period of next three months.

8. Since the inquiry proceedings could not be concluded within the period as stipulated by the tribunal, the same were concluded with the fresh punishment order dated 12.7.2023 which was not different than the earlier order of punishment passed on 31.3.2015. In the meantime, the respondent-employee is stated to have retired from service on 31.7.2022.

9. The respondent-employee challenged the punishment order dated 12.7.2022 before this Court by filing a writ petition i.e. Writ A No. 6226 of 2023 which was allowed and the punishment order dated 12.7.2022 was set aside. The State-appellant feeling aggrieved against the order passed by the writ court had filed Special Appeal Defective No. 457 of 2024 which was allowed by restoring the writ petition to its original number observing that while allowing the writ petition, the Writ Court has not considered the judgment of the Hon'ble Supreme Court passed in the case of Union of India and others versus Sharvan Kumar reported in 2022 SCC Online SC 2032. So the Writ Court was directed to be decided afresh keeping in view the above judgment as also the provisions of Rule 7 of the U.P. Government Servant(discipline and Appeal) Rules, 1999.

10. On restoring the writ petition, the writ court reconsidered the matter in the light of judgment passed by a Division Bench of this Court in Special Appeal Defective No. 457 of 2024 and allowed the writ petition vide impugned judgment and order dated 16.01.2025 observing that there was gross violation of principles of natural justice as the procedure prescribed under Rule 7 of the U.P. Government Servant(Discipline and Appeal) Rules, 1999 had not been followed. The Court also opined that the punishment order itself was erroneous inasmuch as the same was an amalgamation of minor and major penalties.

11. Learned counsel for the appellant-State has stated that the writ court has committed an error in holding that the inquiry against the respondent was conducted in gross violation of principle of natural justice.

12. On the other hand, learned counsel for the respondent has submitted that the report of the inquiry officer, as has been noticed in the order passed by the tribunal shows that that neither any date, time and place was fixed by the inquiry officer nor any oral evidence was led to prove the charges. It is also recorded that only on the basis of the certain documentary evidence, the employee was held guilty of the charges and therefore it was a clear case of denial of reasonable opportunity to the respondent to place his defence. The tribunal has referred to Rule 7 of the Rules, 1999 and also the legal position that even in a situation where the delinquent employee does not submit any reply to the charge-sheet, the inquiry officer is not absolved of his duty to record oral evidence and to provide an opportunity to the delinquent employee to adduce evidence in his defence.

13. Considered the submissions made by the learned counsel for the parties. In the present case, the enquiry officer failed to fix any date, place or time in the conduct of inquiry and no witness having been examined to support the charges levelled against the respondent employee makes it amply clear that the respondent has been condemned unheard. The entire proceedings, carried out in violation of principles of natural justice and total disregard of procedural fairness have rightly been held by the writ court to be vitiated.

14. Since the punishment order had been passed in contravention of the relevant rules and the procedure prescribed, the questions as to whether the disciplinary proceedings as directed by the tribunal have been concluded within the stipulated period or not becomes irrelevant. It is a basic requirement that an employee should be given a reasonable opportunity of being heard in any proceeding which may culminate into a minor or major punishment. The object of rules of natural justice is to ensure that an employee is given a reasonable opportunity to put his defence in the disciplinary proceedings which may entail imposition of major punishment.

15. It has been consistently held that a departmental inquiry against government servant is not to be treated as a casual exercise and the principles of natural justice are required to be served so as to ensure not only that justice is done but is manifestly seen to have been done. The object being to ensure that the delinquent is treated fairly in the proceedings which may culminate in imposition of a major penalty against him.

16. It is well settled that reasonable opportunity to a delinquent employee to put forth his defence is an essential concomitant of principles of natural justice as well as due procedure of law. Since the departmental proceedings were culminated in gross violation of procedure prescribed under the Rules, 1999 and, therefore, the order of punishment has rightly been held to be legally unsustainable by the writ court.

17. For all these reasons, we do not find any good ground to entertain this intra-court appeal.

18. The Special Appeal lacks merit and is accordingly rejected.

[Ajai Kumar Srivastava-I,J.] [Attan Rahman Masoodi, J.] Order Date :- 30.4.2025 A. Dewal