

A THE STATE OF UTTAR PRADESH AND ORS.

v.

RAJIT SINGH

(Civil Appeal Nos. 2049-2050 of 2022)

B MARCH 22, 2022

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Service law: Misconduct – Financial irregularity – Disciplinary proceedings – Doctrine of equality – Applicability of

- C *– In the instant case, the Enquiry Officer held the delinquent officer (respondent) guilty for misconduct alleged and charges levelled against him of causing monetary loss to the extent of Rs. 22,48,964.42/- and other charges, which were held to be proved – Disciplinary Authority imposed punishment after giving respondent opportunity to meet the findings recorded by Enquiry Officer – Tribunal set aside order of punishment by mainly applying the Doctrine of Equality and observing that as other officers involved in the incident were exonerated and/or no action was taken against them, therefore, no action was warranted against respondent also – Tribunal also observed that even otherwise, enquiry proceedings were in breach of principles of natural justice in as much as relevant documents mentioned in charge sheet were not at all supplied to the respondent – High Court upheld the order of Tribunal – On appeal, held: The Doctrine of Equality ought not to have been applied when the Enquiry Officer and the Disciplinary Authority held the charges proved against the respondent – The role of the each individual officer even with respect to the same misconduct is required to be considered in light of their duties of office – Merely because some other officers involved in the incident were exonerated and/or no action is taken against other officers cannot be a ground to set aside the order of punishment when the charges against respondent were held to be proved in departmental enquiry – There cannot be any claim of negative equality in such case – Further, once it is found that the enquiry was not conducted properly and/or the same was in violation of the principles of natural justice, the Court ought to remand the matter to the Enquiry Officer/Disciplinary Authority to proceed further with the enquiry from the stage of violation of*
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*principles of natural justice and not reinstate the employee – A
Therefore, in the facts of instant case, Tribunal and High Court
ought to have remanded the matter to Disciplinary Authority to
conduct the enquiry from the stage it stood vitiated – Matter
remanded to Disciplinary Authority to conduct fresh enquiry from
the stage it stood vitiated i.e. after the issuance of the charge sheet
and to proceed further with the enquiry after furnishing all the
necessary documents mentioned in the chargesheet and after
following due principles of natural justice.*

Allowing the appeals and remitting the matter to Disciplinary Authority, the Court C

HELD: 1. The Doctrine of Equality ought not to have been applied when the Enquiry Officer and the Disciplinary Authority held the charges proved against the delinquent officer. The role of the each individual officer even with respect to the same misconduct is required to be considered in light of their duties of office. Even otherwise, merely because some other officers involved in the incident are exonerated and/or no action is taken against other officers cannot be a ground to set aside the order of punishment when the charges against the individual concerned - delinquent officer are held to be proved in a departmental enquiry. There cannot be any claim of negative equality in such cases. [Para 7][795-F-G] E

2. The Tribunal also observed that the enquiry proceedings were against the principles of natural justice in as much as the documents mentioned in the charge sheet were not at all supplied to the delinquent officer. As per the settled proposition of law, in a case where it is found that the enquiry is not conducted properly and/or the same is in violation of the principles of natural justice, in that case, the Court cannot reinstate the employee as such and the matter is to be remanded to the Enquiry Officer/ Disciplinary Authority to proceed further with the enquiry from the stage of violation of principles of natural justice is noticed and the enquiry has to be proceeded further after furnishing the necessary documents mentioned in the charge sheet, which are alleged to have not been given to the delinquent officer. [Para 8][796-A-C]

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- A *Chairman Life Insurance Corporation of India and Ors. vs. A. Masilamani* (2013) 6 SCC 530 : [2012] 11 SCR 35 – relied on.

Case Law Reference

	[2012] 11 SCR 35	relied on	Para 8
B	CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2049-2050 of 2022.		

- From the Judgment and Order dated 27.02.2020 of the High Court of Judicature at Allahabad, Lucknow Bench in Service Bench No.5554 of 2020 and Order dated 03.09.2021 in Civil Misc. Review Application Defective No.138 of 2021.

V. K. Shukla, Sr. Adv., Tanmaya Agarwal, Wrick Chatterjee, Shantanu Singh, Advs. for the Appellants.

- Utkarsh Srivastava, Ms. Ila Shikhar Sheel, Advs. for the Respondent.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment E and order passed by the High Court of Judicature at Allahabad, Lucknow Bench in Service Bench No. 5554 of 2020 by which the High Court has dismissed the said writ petition and has refused to set aside the order passed by the U.P. State Public Service Tribunal (hereinafter referred to as “Tribunal”) passed in Claim Petition No.2226 of 2017 whereby the claim petition of the respondent employee came to be allowed and the F order passed by the Disciplinary Authority imposing the penalty/ punishment came to be set aside, the State of Uttar Pradesh has preferred the present appeals.

2. That the respondent employee was serving as a Junior Engineer G at Balia. An enquiry was conducted by a Departmental Task Force where it was found that he had committed financial irregularities causing loss to the Government. Disciplinary proceedings were initiated against the respondent and others. The respondent was served with charge sheet. That thereafter the Enquiry Officer held the charges alleged against the respondent employee as proved and consequently also held the H misconduct proved. The Disciplinary Authority concurred with the findings

recorded by the Enquiry Officer and passed an order of recovery of Government loss of Rs. 22,48,964.42/- as per the rules from the salary; temporarily stopping two salary increments and the remarks given for the year 2017-2018.

2.1 The respondent filed a representation against the said order before the State Government, which came to be rejected. That thereafter the respondent filed a Claim Petition No.2226 of 2017 before the Tribunal challenging the order of punishment imposed by the Disciplinary Authority. The Tribunal allowed the said petition and quashed the punishment mainly on the ground of Doctrine of Equality and also on the ground that the enquiry conducted was in breach of principles of natural justice in as much as the relevant documents mentioned in the charge sheet were not supplied to the delinquent officer.

2.2 Feeling aggrieved and dissatisfied with the order passed by the Tribunal quashing and setting aside the punishment, the State preferred the writ petition before the High court. By the impugned judgment and order, the High Court has dismissed the said writ petition and has refused to interfere with the order passed by the Tribunal. That thereafter the State preferred Review ApplicationNo.138 of 2021 before the High Court. The High Court has dismissed the said review application also.

2.3 Feeling aggrieved and dissatisfied with the impugned judgment and order dated 27.02.2020 passed by the High Court in Service Bench No.5554 of 2020 as well as the order passed by the High Court rejecting the review application, the State has preferred the present appeals.

3. Shri V.K. Shukla, learned Senior Advocate appearing on behalf of the State has vehemently submitted that in the present case fullest opportunity was given to the respondent – delinquent officer by the Disciplinary Authority. It is submitted that the respondent was served with the Enquiry Report and thereafter was given the opportunity by the Disciplinary Authority and after considering the detailed representation by the respondent employee against the findings recorded by the Enquiry Officer, the Disciplinary Authority imposed the punishment, which ought not to have been set aside by the Tribunal.

3.1 It is further submitted that assuming that the Enquiry Proceedings were vitiated on the ground of violation of principles of natural justice, in that case also as per the settled proposition of law, the matter ought to have been remanded to the Enquiry Officer and the

- A Disciplinary Authority to proceed further with the enquiry from the stage of violation of the principles of natural justice. It is submitted that however, when it is a case of loss to the extent of Rs. 22,48,964.42/-, that too, by the Junior Engineer, the respondent employee cannot be permitted to let off.
- B 3.2 It is further submitted by Shri Shukla, learned Senior Advocate appearing on behalf of the State that another ground given by the Tribunal as well as the High Court that other employees involved in respect of the same incident were exonerated and/or no action was taken against them, is concerned, it is submitted that on the aforesaid ground, the
- C Enquiry Report and the order of punishment imposed by the Disciplinary Authority cannot be set aside. It is submitted that it depends upon the individual role played by the concerned employee. It is submitted that even otherwise merely because some other employees involved in respect of the alleged misconduct might have been exonerated and/or no action was taken against them, cannot be a ground to set aside the order of
- D punishment imposed in case of an employee, who is found to be guilty of misconduct.

4. Shri Utkarsh Srivastava, learned Advocate appearing on behalf of the respondent has supported the order passed by the Tribunal as well as the High Court.

- E 4.1 It is submitted that considering the fact that all other officers, who were also involved in respect of the same incident, namely, Assistant Engineer and Executive Engineer were exonerated and therefore applying the Doctrine of Equality, both, the Tribunal as well as the High Court have rightly set aside the order of punishment imposed by the
- F Disciplinary Authority with respect to the alleged misconduct for which other employees came to be exonerated.

- G 4.2 It is further submitted that even otherwise, the enquiry conducted was in total breach of principles of natural justice in as much as the documents mentioned in the charge sheet were not at all supplied to the respondent – delinquent officer and therefore the entire departmental enquiry proceedings were vitiated. It is submitted that therefore the Tribunal has rightly set aside the order of punishment imposed by the Disciplinary Authority which is rightly not interfered by the High Court.

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5. We have heard the learned counsel for the respective parties A at length.

6. At the outset, it is required to be noted that the Enquiry Officer held the respondent – delinquent officer guilty for the misconduct alleged and the charges levelled against him of causing monetary loss to the extent of Rs. 22,48,964.42/- and other charges, which are held to be proved. Thereafter, the Disciplinary Authority imposed the punishment after giving the respondent opportunity to meet the findings recorded by the Enquiry Officer and thereafter imposed the punishment. The Tribunal set aside the order of punishment imposed by the Disciplinary Authority by mainly applying the Doctrine of Equality and by observing that as other officers involved in the incident were exonerated and/or no action was taken against them, therefore, no action was warranted against respondent also. The Tribunal has also observed and held that even otherwise, the enquiry proceedings were in breach of the principles of natural justice in as much as the relevant documents mentioned in the charge sheet were not at all supplied to the delinquent officer. The order passed by the Tribunal has been confirmed by the High Court by the impugned judgment and order.

7. Now, so far as the quashing and setting aside the order of punishment imposed by the Disciplinary Authority applying the Doctrine of Equality on the ground that other officers involved in the incident have been exonerated and/or no action has been taken against them, is concerned, we are of the firm view that on the aforesaid ground, the order of punishment could not have been set aside by the Tribunal and the High court. The Doctrine of Equality ought not to have been applied when the Enquiry Officer and the Disciplinary Authority held the charges proved against the delinquent officer. The role of each individual officer even with respect to the same misconduct is required to be considered in light of their duties of office. Even otherwise, merely because some other officers involved in the incident are exonerated and/or no action is taken against other officers cannot be a ground to set aside the order of punishment when the charges against the individual concerned - delinquent officer are held to be proved in a departmental enquiry. There cannot be any claim of negative equality in such cases. Therefore, both the Tribunal as well as the High Court have committed a grave error in quashing and setting aside the order of punishment imposed by the Disciplinary Authority by applying the Doctrine of Equality.

- A 8. It appears from the order passed by the Tribunal that the Tribunal also observed that the enquiry proceedings were against the principles of natural justice in as much as the documents mentioned in the charge sheet were not at all supplied to the delinquent officer. As per the settled proposition of law, in a case where it is found that the enquiry is not conducted properly and/or the same is in violation of the principles of natural justice, in that case, the Court cannot reinstate the employee as such and the matter is to be remanded to the Enquiry Officer/Disciplinary Authority to proceed further with the enquiry from the stage of violation of principles of natural justice is noticed and the enquiry has to be proceeded further after furnishing the necessary documents mentioned
- B C in the charge sheet, which are alleged to have not been given to the delinquent officer in the instant case. In the case of **Chairman, Life Insurance Corporation of India and Ors. Vs. A. Masilamani, (2013) 6 SCC 530**, which was also pressed into service on behalf of the appellants before the High Court, it is observed in paragraph 16 as under:-
- D “**16.** It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide *ECIL v. B. Karunakar* [(1993) 4 SCC 727], *HiranMayee Bhattacharyya v. S.M. School for Girls* [(2002) 10 SCC 293], *U.P. State Spg. Co. Ltd. v. R.S. Pandey* [(2005) 8 SCC 264] and *Union of India v. Y.S. Sadhu* [(2008) 12 SCC 30].)”
- E F 9. From the impugned judgment and order passed by the High Court, it appears that when the aforesaid submission and the aforesaid decision was pressed into service, the High Court has not considered the same on the ground that the other officers involved in respect of the same incident are exonerated and/or no action is taken against them. Applying the law laid down in the case of **A. Masilamani (supra)** to
- G the facts of the case on hand, we are of the opinion that the Tribunal as well as the High Court ought to have remanded the matter to the Disciplinary Authority to conduct the enquiry from the stage it stood vitiated. Therefore, the order passed by the High Court in not allowing further proceedings from the stage it stood vitiated, i.e., after the issuance of the charge sheet, is unsustainable.
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10. In view of the above discussion and for the reasons stated above, the findings recorded by the Tribunal as well as the High Court quashing and setting aside the order of punishment imposed by the Disciplinary Authority by applying the Doctrine of Equality is hereby quashed and set aside. However, as the enquiry is found to be vitiated and is found to be in violation of the principles of natural justice in as much as it is alleged that the relevant documents mentioned in the charge sheet were not supplied to the delinquent officer, we remand the matter to the Disciplinary Authority to conduct a fresh enquiry from the stage it stood vitiated, i.e., after the issuance of the charge sheet and to proceed further with the enquiry after furnishing all the necessary documents mentioned in the charge sheet and after following due principles of natural justice. The aforesaid exercise shall be completed within a period of six months from today.

Present appeals are allowed accordingly to the aforesaid extent. However, in the facts and circumstances of the case, there shall be no order as to costs.

Pending applications, if any, also stand disposed of.

Devika Gujral

Appeals allowed.