

Court No. - 4

Case :- WRIT - A No. - 10159 of 2025

Petitioner :- Tofeek Ahmad

Respondent :- The State Of U.P. And 4 Others

Counsel for Petitioner :- Anura Singh

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard Ms. Anura Singh, learned Counsel for the petitioner and learned Standing Counsel.

2. By means of this petition filed under Article 226 of the Constitution of India, petitioner has assailed the order of dismissal from service passed by disciplinary authority chiefly on the ground that inquiry officer was not competent authority to make recommendation of punishment which has been ultimately imposed by way of disciplinary action against the petitioner.

3. Learned counsel for the petitioner submits that this controversy is no more *res integra* in light of the judgment of this Court in the case of Balbir Singh Vs. State of U.P. And 3 Others being Writ-A No.14933 of 2019, wherein, the Court has considered Rule 14(1) of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 as well as the Appendix - I thereof which does not permit the inquiry officer to make any recommendation for a particular penalty while in the conclusion part of the inquiry

report, in which he holds the delinquent employee guilty of the charges.

4. Upon perusal of the inquiry report submitted by the inquiry officer, I find that while inquiry officer has arrived in its ultimate conclusion that the charges were liable to be brought home and, thus, brought home but also at the same time also make recommendation for termination from service of the petitioner in view of the fact that petitioner has been found guilty of the charges. Thus, the inquiry report falls within the mischief of Appending - I of Rule 14(1) of the 1991 Rules and, therefore, the disciplinary authority should have rejected the inquiry report itself for this technical flaw. However, I find that disciplinary authority proceeded to issue show cause notice to the petitioner referring to the proposed punishment and also ultimately in the order of termination from service, he relied upon the recommendation made by the inquiry officer and hence there is no independent application of mind.

5. Learned Standing Counsel was directed to obtain instructions in the matter as to the legal position and today, learned Standing Counsel is not in a position to defend the order on the sound principle of administrative law that, when a thing is required to be done in a particular manner by the authority, it should be done in

that manner alone. In the cases of **Krishna Rai (Dead) through Legal Representatives vs. Banaras Hindu University Through Registrar and Others (2022) 8 SCC 713** and **Tata Chemical Ltd. vs. Commissioner of Customs (Preventive), Jamnagar (2015) 11 SCC 628**, the Supreme Court has very categorically held that if the provision mandates for a particular exercise of power by a particular authority then such exercise of power should be by that very authority and in the manner prescribed under the Rules.

6. The Supreme Court in the case of **Vijay Singh vs. State of U.P. and Others (2012) 5 SCC 242**, vide paragraph 21, 22 and 23 has held thus:

"21. Undoubtedly, in a civilised society governed by the Rule of Law, the punishment not prescribed under the statutory rules cannot be imposed. Principle enshrined in criminal jurisprudence to this effect is prescribed in the legal maxim nulla poena sine lege which means that a person should not be made to suffer penalty except for a clear breach of existing law.

22. In S. Khushboo v. Kanniammal [(2010) 5 SCC 600 : (2010) 2 SCC (Cri) 1299 : AIR 2010 SC 3196] this Court has held that a person cannot be tried for an alleged offence unless the legislature has made it punishable by law and it falls within the offence as defined under Sections 40, 41 and 42 of the Penal Code, 1860, Section 2(n) of the Code of Criminal Procedure, 1973, or Section 3(38) of the General Clauses Act, 1897. The same analogy can be drawn in the instant case though the matter is not criminal in nature.

23. Thus, in view of the above, the punishment order is not maintainable in the eye of the law. In the result, the appeal succeeds and is allowed. The impugned order dated 8-7-2010 withholding the integrity certificate for the year 2010 and all subsequent orders in this regard are quashed. The respondents are directed to consider the case of the appellant for all consequential benefits including promotion, etc. if any, afresh taking into consideration the service record of the appellant in accordance with law."

7. In view of the above, therefore, order impugned terminating the services of the petitioner on the basis of inquiry report is liable to go and inquiry report is also liable to be held bad in law for want

of necessary compliance of the procedure laid down under the relevant rules.

8. This writ petition thus, succeeds and is allowed.

9. The inquiry report dated 14.04.2023 and order of the disciplinary authority dated 11.12.2023 are hereby quashed.

10. Petitioner shall enjoy the same status as he had at the time of passing of the order of termination by the disciplinary authority in the event, disciplinary authority proposes to hold inquiry afresh by appointing an inquiry office and if it does so, it will do so expeditiously to complete the same withing the next three months from the date of production of certified copy of this order.

Order Date :- 31.7.2025

S.A.