

(2011) 02 AHC CK 0381

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 1638 (S/B) of 2008

State of U.P.

APPELLANT

Vs

R.K. Sonwani

RESPONDENT

Date of Decision: Feb. 15, 2011**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227
- Uttar Pradesh Government Servants (Discipline and Appeal) Rules, 1999 - Rule 10(2), 2, 3

Citation: (2011) 3 ADJ 469**Hon'ble Judges:** S.C. Chaurasia, J; Devi Prasad Singh, J**Bench:** Division Bench**Final Decision:** Dismissed

Judgement

1. Heard learned Counsel for the parties and perused the record.
2. This writ petition under Articles 226/227 of the Constitution of India has been preferred against the impugned judgment and order dated 13-5-2008 passed by the learned State Public Services Tribunal, Lucknow, in Claim Petition No. 21 of 2006, R.K. Sonwani v. State of U.P.
3. While assailing the impugned order, learned Counsel for the Petitioner has submitted that learned Tribunal has allowed the claim petition of the claimant-Respondent No. 1 on unfounded grounds, hence, it is not sustainable under law.
4. A perusal of the impugned order passed by the learned Tribunal shows that the controversy relates to the period from 12th June 2001 to 25th February, 2002, when the claimant-Respondent No. 1 was posted as Executive Engineer at Sant Kabir Nagar. A show-cause notice dated 7th August, 2001, was served on the claimant-Respondent No. 1 and in response thereof, the claimant-Respondent No. 1

has sent a letter dated 20th September, 2001 alongwith some information to the T.A.C. However, being not satisfied with the reply, another letter was sent to the claimant-Respondent No. 1 to furnish the certain information. By that time, the claimant-Respondent No. 1 was transferred to another place on 25th February, 2002 and even after transfer of claimant-Respondent No. 1 to other place, another letter dated 21st June, 2002, was served on the claimant-Respondent No. 1 requiring him to send certain information with regard to Sant Kabir Nagar. In response thereof, the claimant-Respondent No. 1 has submitted that he was not posted there. By the office memorandum dated 18th September, 2002, a notice was served on the claimant-Respondent under Rule 10(2) of the U.P. Government Servant (Discipline and Appeal) Rules 1999.

5. It has been submitted by learned Counsel for the Respondents that in response to the notice dated 18th September, 2002, the claimant-Respondent No. 1 has submitted reply to the Petitioner that since he was not posted at Sant Kabir Nagar, no further information could be provided by him. However, after service of the impugned notice dated 18th February, 2002, the claimant-Respondent No. 1 was punished with censure entry, which is the subject matter of dispute before the Tribunal.

6. The Tribunal has set aside the order of punishment mainly on two grounds. Firstly, when the notice dated 21st June, 2002, was served on the claimant-Respondent No. 1 requiring him to furnish certain information, he had already been transferred from that place, hence, it was not possible for him to give information with regard to earlier jurisdiction and being transferred on 25th February, 2002, the Petitioner should not have sent another notice on the claimant-Respondent No. 1 on 21st June, 2002. The second ground for setting aside the order of punishment by the Tribunal seems to be that the substance of imputations or charges is not borne out from the notice dated 18th September, 2002 which is on record. From the perusal of the impugned notice dated 18th September, 2002, it appears that at the face of record, it indicates reference of earlier notice dated 21st June, 2002, on which the Petitioner has relied upon and by that time, the claimant-Respondent No. 1 was transferred from the place in question and it does not disclose the substance of imputations or charges.

7. Rule 10(2) of the U.P. Government Servant (Discipline and Appeal) Rules 1999, in short referred as Rules, provides procedure for imposing minor penalty. Rule 10(2) is reproduced as under:

10. Procedure for imposing minor penalties.-(1) Where the Disciplinary Authority is satisfied that good and sufficient reasons exist for adopting such a course, it may, subject to the provisions of Sub-rule (2) impose one or more of the minor penalties mentioned in Rule 3.

(2) The Government Servant shall be informed of the substance of the imputations against him and called upon to submit the explanation within a reasonable time. The Disciplinary Authority shall, after considering the said explanation, if any, and the relevant records, pass such orders as he considers proper and where a penalty is imposed, reasons thereof shall be given. The order shall be communicated to the concerned Government Servant.

8. A plain reading of Rule 10 shows that where the Disciplinary Authority is satisfied that good and sufficient reasons exist for adopting such a course, it may, subject to the provisions of Sub-rule (2) impose one or more of the minor penalties mentioned in Rule 3.

9. Rule 2 of the said Rules provides that the Government servant shall be informed of the substance of the imputations against him and called upon to submit the explanation within a reasonable time.

10. A plain reading of the office memorandum dated 18th September, 2002, at the face of record, shows that no charge or substance of charges has been disclosed while serving the notice dated 18th September, 2002. Moreover, it co-relates the notice dated 21st June, 2002, requiring the claimant-Respondent No. 1 to furnish the information though the claimant-Respondent No. 1 was already transferred from the place in question.

11. Needless to say that the claimant-Respondent No. 1 was transferred on 25th February, 2002 from Sant Kabir Nagar. In case, the claimant-Respondent No. 1 was transferred from Sant Kabir Nagar, then it was open to the State Government to seek required information from his successor who had taken over the charge of office, which seems to have not been done.

12. Before imparting with the case, we would like to observe that the alleged show-cause notice is of dated 18th September, 2002, and the impugned order of punishment was passed by the Petitioner in the year 2005 i.e. after lapse of almost three years. The Petitioner-state has kept the matter pending for almost three years. What prompted to the Petitioner-state to keep the matter pending and in not taking any decision in pursuance to the impugned notice on an early date, is not borne out from the record. In such matters where the punishment has been awarded, may be the minor punishment, the decision should have been taken immediately after service of notice. In the present case, it appears that after service of alleged notice, the Petitioner-state has kept the matter pending and has passed the order after lapse of almost three years i.e. on 5th October, 2005.

13. Though, learned Standing counsel submits that a fresh opportunity may be permitted to the Petitioner, but, we are of the view that since the Petitioner-state has kept the matter pending for three years after service of notice in the year 2002, it shall be too hard to give fresh opportunity to the Petitioner to proceed afresh.

14. In view of above, the impugned order passed by the learned Tribunal does not seem to suffer from any impropriety or illegality. The writ petition is devoid of merits. It is dismissed accordingly.