

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 8726/2023

Umesh Kumar Sharma S/o Late Shri Manohar Lal Sharma, Aged
About 53 Years, Resident Of C-15, Malviya Nagar, Alwar (Raj.)

-----Petitioner

Versus

1. Rajasthan Rajya Vidyut Prasaran Nigam Limited, Through
Its Chairman Cum Managing Director Having Its Office At
Vidyut Bhawan, Jyoti Nagar, Jaipur 302005
2. The Secretary (Admn.), Rajasthan Rajya Vidyut Prasaran
Nigam Limited, Registered Office At Vidyut Bhawan, Jyoti
Nagar, Jaipur 302005

-----Respondents

For Petitioner(s)	:	Mr. Tanveer Ahamad
For Respondent(s)	:	Mr. Rahul Lodha

HON'BLE MR. JUSTICE ANAND SHARMA

08/04/2025

1. In the instant writ petition, the petitioner has assailed the validity and propriety of penalty order dated 25.07.2022 passed by the Chairman cum Managing Director of Rajasthan Rajya Vidyut Prasaran Nigam Ltd., (for short, 'RRVPNL') as well as the appellate order dated 18.05.2023 passed by the Secretary (Admn.) R.V.P.N. Ltd., whereby penalty of stoppage of one Annual Grade Increment without cumulative effect has been imposed upon the petitioner and subsequently confirmed by the Appellate Authority.

2. Facts in brief are that the petitioner has filed the instant writ petition and has stated while he was holding the post of Assistant Engineer, he was served with a charge-sheet dated 18.06.2018 under Regulation No.7 of the Employees (Classification, Control and Appeal) Regulation-1962 of RRVPNL (for short, 'the CCA

Rules') levelling as many four charges in respect of his integrity and devotion of duty as well as highlighting his negligence, dereliction of duty and violations committed by him while discharging the duties. Petitioner stated that disciplinary enquiry was conducted against him pursuant to the charge-sheet dated 18.06.2018, however, copy of the enquiry report was never served upon him and without serving copy of enquiry report and without calling for any representation of the petitioner, penalty order dated 24.08.2022 has been issued by the Disciplinary Authority, which is clear cut violation of the procedure contemplated under the CCA Rules as well as is against the principles of natural justice.

3. It was further stated by the petitioner that subsequently after passing the penalty order, he obtained copy of enquiry report, which would reveal that after thorough enquiry, the Enquiry Officer has given a finding that all the charges levelled against the petitioner-delinquent were not established. The petitioner has further stated that despite the Enquiry Officer has held the petitioner not guilty, the Disciplinary Authority, although, had right to disagree with findings of enquiry officer had not drawn any points of disagreement and such points of disagreement, if any, were never conveyed to the petitioner, which is a serious lapse of part of Disciplinary Authority and without following due process, order of penalty was passed by the Disciplinary Authority.

4. The petitioner has further stated that the aforesaid penalty order was challenged by the petitioner by way of filing an appeal before the Appellate Authority and apart from other issues, the ground of not furnishing enquiry report as well as the point that

despite the enquiry report being in favour of the petitioner, points of disagreement were not communicated to the petitioner by the Disciplinary Authority were also raised in the memo of appeal for consideration of the appellate authority.

5. However, as per the petitioner, the appellate authority did not consider any of the grounds raised in the memo of appeal and without considering the material points raised by the petitioner, the appellate authority in quite mechanical manner has confirmed the penalty order. As per the petitioner, under such circumstances, the penalty order as well as the appellate authority cannot be sustained in the eye of law and are liable to be set aside.

6. Petitioner in support of his case has relied upon the judgment of the Supreme Court in the case of **Union of India (UOI) and Ors. Vs. Mohd. Ramzan Khan** reported in (1991) 1 SCC 588 and has submitted that after considering the earlier judgments and even the constitutional amendment, the Hon'ble Supreme Court has given a clear verdict that the delinquent employee is entitled for copy of enquiry report and to submit his representation against the enquiry report.

7. To oppose the petition, the respondents have filed reply to the writ petition mentioning therein that as per the Regulation there was no requirement to furnish copy of enquiry report. However, before passing the penalty order personal hearing was afforded by the Disciplinary Authority to the petitioner and after giving personal hearing impugned penalty order was passed. It was also mentioned that the appeal filed by the petitioner was devoid of any substance and therefore, has rightly been rejected by the appellate authority.

8. It has been vehemently submitted by the counsel for the respondents that scope of writ petition under Article 226 of the Constitution of India in the matter of Disciplinary Authority is very very limited, and therefore, no interference is called for in the instant writ petition which is liable to be rejected.

9. The respondents have also relied upon the judgment delivered by the Hon'ble Supreme Court in the case of **Suresh Koshy George Vs. University of Kerala and ors.** reported in AIR 1969SC 198, judgment of Delhi High Court in Writ Petition (Civil) No. 7875/2003, decided on 07.09.2009, judgment of Andhra Pradesh High Court in the case of **Anita and Ors. Vs. State of Andhra Pradesh and ors.** in Writ Appeal No. 6 and 19 of 2001 and W.P. Nos. 26348 and 26436 of 2000 as well as the judgment delivered by the Hon'ble Apex Court in the case of **D. Aher Vs. State of Maharashtra** reported in (2007) 1 SCC 445.

10. I have meticulously examined the record of the writ petition and carefully heard the arguments raised by both the parties.

11. It is well established law that the employer has the right to enforce discipline amongst the employees and for that purpose, in case, at any point of time any misconduct on the part of any employees is pointed out, the employer can initiate disciplinary proceedings and can also punish the employees suitably after enquiry, if they are guilty. However, such right is not unfettered and unbridled right. The power to punish in disciplinary enquiry can be exercised only within a framework of the disciplinary Rules and in the instant case admittedly Regulations of 1962 framed by erstwhile RSEB have been duly adopted by the respondent-Corporation and therefore, the enquiry against the petitioner was

bound to be conducted within the four corners of aforesaid Regulations.

12. Regulation 7 (viii)(a) and (ix) of the RSEB Employees Classification Control & Appeal Regulations, 1962 are being reproduced as under:

“(viii)(a) A copy of the report of the Enquiry Officer with the recommendations, if any, as to punishment in the matter of proposed punishment to be inflicted, shall be supplied to the employee to make his representation, if he likes to do so, against the conclusions and recommendations of the Enquiry Officer.

(ix) The Disciplinary Authority shall consider the record and findings of the Enquiry Officer and may agree with the report or may differ, either wholly or partially from the conclusions recorded by the Enquiry Officer in his report. The Disciplinary Authority shall record its finding on each charge, if it finds the employee guilty whether he agrees with the findings of the Enquiry Officer wholly or partially or differs from these findings.”

13. Bare perusal of Regulation 7(viii)(a) and (ix) of the Regulation, 1962, would make it clear that it is incumbent on the part of the Disciplinary Authority to furnish copy of enquiry report to the delinquent employee, in case the Disciplinary Authority proposes to punish the petitioner. In the instant case, admittedly, copy of the enquiry report has not been supplied by the Disciplinary Authority to the petitioner, which is clear cut violation of the aforesaid Regulation.

14. One of the defence put forward by the counsel for the respondents is that since enquiry report was in favour of the

petitioner, therefore, the respondents were not duty bound to supply copy of the enquiry report to the petitioner. Such argument raised by the respondents is wholly misconceived and illogical. Thus, it is not a case where on the basis of report of the enquiry officer holding the petitioner not guilty, Disciplinary Authority had decided to exonerate the petitioner from all the charges. Had it been so, in case of exoneration there would have been certainly no requirement to furnish copy of enquiry report to the petitioner. However, in the instant case, despite there being an enquiry report in favour of the petitioner, the Disciplinary Authority has inflicted the penalty upon the petitioner, therefore, it cannot be said that copy of the enquiry report was not required to be given. The stand taken by the respondents is hereby rejected.

15. One more point was raised during arguments by learned counsel for the respondents that no prejudice was likely to be caused to the petitioner due to non furnishing copy of enquiry report, hence on such ground, the penalty order cannot be questioned by the petitioner. In the instant case where enquiry officer has admittedly held the petitioner not guilty and none of the charge was held to be established and despite such an enquiry report, the Disciplinary Authority had its whims and fancies without following the procedure contemplated under the Rules had decided to punish the petitioner, it cannot be said that no prejudice was likely to be caused to the petitioner. In that case Clause (ix) of Regulation 7 of the Regulations of 1962 would make this position more clear which clearly lays down that where Disciplinary Authority after considering the findings of enquiry

officer has disagreed or dissatisfied wholly or partially from the conclusions recorded by the Enquiry Officer then in such case the Disciplinary Authority shall record its finding on each charge along with reasons for disagreement. Thus, as per aforesaid clause (ix) of Regulation 7 in the instant case it was incumbent upon the Disciplinary Authority to record reasons for disagreement against the findings and conclusions recorded by the enquiry officer, thereafter, the Disciplinary Authority was also under legal obligations to frame such points of disagreement, which should have been communicated to the petitioner along with enquiry report calling upon him to make a representation against such points of disagreement. Only after inviting representation and considering the same, if submitted, any appropriate order could have been passed by the Disciplinary Authority. Hence, under such circumstances and in view of explicitly clear Regulation, in the instant case, where neither the copy of enquiry report holding the petitioner not guilty was served upon the petitioner nor did the Disciplinary Authority proceeded to frame points of disagreement in respect of conclusion recorded by the enquiry officer, nor any such communication was ever made to the petitioner, it cannot be said that no prejudice has been caused to the petitioner. As in the aforesaid circumstance, admittedly, the petitioner has been deprived of his valuable and legitimate right to represent against such proposed points of disagreement, which ought to have been framed and communicated by the Disciplinary Authority.

16. Bare perusal of the penalty order dated 25.07.2022 would also reveal that in the entire penalty order nothing has been

mentioned by the Disciplinary Authority with regard to result and conclusion of enquiry report. The order passed by the Disciplinary Authority is totally vague and cryptic. For the reasons best known to the Disciplinary Authority, he did not even bother to mention that the enquiry officer has held the petitioner not guilty and has recorded the findings in his favour. When such an important fact was not even mentioned in the penalty order, it shows that the Disciplinary Authority was adamant to punish the petitioner without following the procedure established in the Regulation and in violation of principles of natural justice. Even the points of disagreement, if any, are not reflected in the penalty order, which may show the specific reasons on which the Disciplinary Authority did not agree with the findings of enquiry officer. Hence, it is clear that the Disciplinary Authority has passed the order of penalty dated 25.07.2022 in a quite arbitrary manner, which is liable to be quashed and set aside.

17. From bare perusal of memo of appeal placed on record, against the penalty order dated 25.07.2022, it would also reflect that the appeal was filed by the petitioner pointing out serious non compliance of Regulation by the Disciplinary Authority as well as on the ground that a copy of enquiry report was not supplied before inflicting the penalty, nor the points of disagreement if any framed by the Disciplinary Authority were communicated to the petitioner or even recorded in the penalty order. The appeal filed by the petitioner has been rejected by the appellate authority vide order dated 18.05.2023. The appellate order dated 18.05.2023 is, at its face value, totally non speaking and unreasoned apart from

being vague, as none of the ground raised by the petitioner in his memo of appeal was taken into consideration by the appellate authority. Whereas it is settled proposition law that appellate authority is under an obligation to consider and discuss each and every ground raised by the delinquent in his memo of appeal. For the aforesaid reasons, the order dated 18.05.2023 also shows despotic and callous approach on the part of the respondents and the same is also liable to be quashed and set aside.

18. During the course of arguments, it has been submitted by the counsel for the respondents that scope of writ petition under Article 226 of the Constitution of India against the orders passed in Disciplinary Authority in departmental enquiry is very limited and therefore, writ petition may not be entertained.

19. It would be suffice to observe that no law or judgment has ever absolutely prohibited the exercise of jurisdiction under Article 226 of the Constitution of India. In the instant case, where there is rampant illegality manifestly appearing from the record itself and there is clear cut violation of Regulation 7(viii)(a) and (ix) of the Regulations of 1962 and total non compliance of the procedure and principles of natural justice in passing the penalty order as well as appellate order, writ court can very well exercise its jurisdiction and can quash the patently illegal orders while entertaining the writ petition. Hence, in the instant case, writ petition filed by the petitioner was well within the scope of Article 226 of the Constitution of India.

20. After considering the earlier judgments, in the case **Mohd. Ramzan Khan (supra)**, and even after discussing the constitutional amendment, the Hon'ble Supreme Court has given a clear verdict that the delinquent employee is entitled for copy of enquiry report and to submit his representation against the enquiry report. In case copy of the enquiry report is not furnished, the same would be against the principles of natural justice and enquiry is vitiated only the ground.

21. So far as the judgment referred by the counsel for Respondents in the case of **Suresh Koshy George (supra)**, this Court finds that the aforesaid judgment is totally distinguishable on facts, since Rule prevailing in that case did not require furnishing of copy of the enquiry report and such copy was required to be furnished only if any application is submitted by the delinquent employee. In the instant case, Rule is otherwise and copy of the enquiry report is bound to be furnished to the delinquent employee by the Disciplinary Authority. The judgment of **Ranvir Singh Vs. Union of India (UOI) and Ors.** relied by the respondents deals with a case where non compliance had not caused any prejudice to the delinquent and such judgment is also not attracted in the facts and circumstances of the instant case. Moreso, in foregoing paras, it has been held that serious prejudice has been caused to the petitioner on account on non furnishing copy of enquiry report, which was rather in his favour and even without framing any point of disagreement and communicating such points of disagreement with the conclusion of enquiry report, the Disciplinary Authority without giving any opportunity of

hearing along with copy of enquiry report and points of disagreement has inflicted punishment against the petitioner.

22. In the judgment of **D. Aher Vs. State of Maharashtra** relied upon by the respondents, the points for consideration before the court was that copy of preliminary enquiry report was not furnished and it was a case of respondents that such report was not considered while inflicting punishment and the Hon'ble Apex Court held that the document which was not relied upon was not required to be supplied to the delinquent. The facts in the instant case is altogether different. Hence, the aforesaid judgment is not also applicable in the circumstances of the case.

23. As regards the judgment of **Anita and Ors.** (supra) the facts and points in issue were altogether different. Hence, the aforesaid judgment is also not attracted in the facts and circumstances of the case.

24. In view of the above, it is held that the penalty order dated 25.07.2022 and appellate order dated 18.05.2023 have been passed in utter disregard of provisions of Employees (Classification, Control and Appeal) Regulation-1962 of RRVPNL and also in violation of principles of natural justice. Hence, both the aforesaid orders are hereby quashed.

25. The petitioner is entitled for all consequential benefits for which the respondents are directed to pass separate order for re-fixation of pay and arrears of difference of pay, which are required to be given to the petitioner within a period of three months from the date of receipt of certified copy of this order.

26. Accordingly, this writ petition is allowed.

27. Stay application, all pending application(s), if any, also stands disposed of.

(ANAND SHARMA),J