IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty

W.P. No.28276 (W) of 2014

Dr. S.E.H. Imam Azam
versus
Maulana Azad National Urdu University & Ors.

For the Petitioner	:	*Mr. Soumya Majumder,* *Md. Taloy Masood Siddiqui,* *Md. S. S. Siddique.*
For the Respondent Nos.2 & 6	:	*Mr. S. P. Mukherjee,* *Mr. Debanjan Mukherjee,* *Ms. Debabeena Mukherjee.*
Judgment On	**:**	**10th February, 2016.**

Tapabrata Chakraborty, J.

The instant writ application has been preferred challenging, inter alia, the entire disciplinary proceeding initiated against the petitioner and the final order passed in the same on 18th September, 2014.

Records reveal that the writ application was initially heard on 26th September, 2014 and an interim order was passed and the same was extended until further orders by a subsequent

order dated 10th November, 2014 and the Court also issued direction for exchange of affidavits. Pursuant thereto affidavits have been exchanged by the parties.

Mr. Majumder, learned advocate appearing for the petitioner submits that the charges framed against the petitioner are absolutely vague and that in the enquiry proceeding the petitioner was not granted appropriate opportunity of hearing and the enquiry report dated 30th October, 2013 was also not served upon the petitioner and the entire proceedings suffers from the vice of non-compliance of the principles of natural justice. Out of the four charges alleged against the petitioner, three charges were found to have been proved in the enquiry and on the basis of the same the petitioner was imposed a punishment of stoppage of five increments with cumulative effect and non-consideration for any promotion for the next 5 years and non-conferment of any important/independent charge. Furthermore, the petitioner was also transferred to Directorate of Distance Education, MANUU Headquarters, as would be explicit from the impugned order of punishment dated 18th September, 2014.

According to him, the punishment of withholding of increments and promotion are disproportionate and that the petitioner has also been directed to be transferred on the basis of the impugned order dated 18th September, 2014 though there is no such punishment of transfer prescribed under the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as the said Rules of 1965) and that as

such the said order of transfer imposed against the petitioner is a nullity.

He further submits that the petitioner is not an officer of the said University and that as such question of application of clause 10 of the guidelines framed under the Maulana Azad National Urdu University Act, 1996 (hereinafter referred to as the said Act of 1996) does not apply to the petitioner since he is an employee and not an officer. In support of such contention he has drawn the attention of this Court to Section 9 of the said Act of 1996.

He further argues that the provisions of the said Rules of 1965 have not been appropriately followed by the respondents and the enquiry has been conducted in a slip shod manner. On 20th August, 2013, 29th August, 2013 and 2nd October, 2013 the enquiry was conducted in his absence and he was also not served the enquiry report and such infirmities in the decision making process and blatant violation of the principles of natural justice warrants interference of this Court. In support of such contention, Mr. Majumder has placed reliance upon the following judgments :

(a) **Sur Enamel and Stamping Works Ltd. –vs- The Workmen, reported in AIR 1963 SC 1914** in support of the proposition to the effect that a domestic inquiry should be held in strict consonance with the principles of the natural justice;

(b) **Union Of India –vs- H.C.Goel, reported in AIR 1964 SC 364** in support of the proposition to the effect that the enquiry officer is not required to make any

recommendation as to the punishment which may be imposed on the delinquent;

(c) **Managing Director, ECIL, Hyderabad –vs- B.Karunakar, reported in AIR 1994 SC 1074** in support of the proposition to the effect that even if the statutory rules are silent the employee has a right to receive a copy of the Inquiry Report;

(d) **Union of India & Others –vs- Prakash Kumar Tandon, reported in 2009 (2) SCC 541** in support of the proposition to the effect that the enquiry officer must perform his function reasonably and that the proceeding must be fairly conducted;

(e) **Union of India & Others –vs- S.K. Kapoor, reported in 2011 (4) SCC 589** in support of the proposition to the effect that any material which is relied upon in departmental proceedings must be supplied to the charge-sheeted employee in advance so that he may have a chance to rebut the same.

Per Contra, Mr. Mukherjee, learned advocate appearing for the respondent nos.2 and 6 submits that the charges under Articles I and II pertaining to failure on the part of the petitioner in selecting and recommending the study centre at Saharsa (SL. No.168) which had no infrastructure for conducting examination for about 300 candidates and the charge under Article IV pertaining to failure of the petitioner in selecting and recommending the study centre at Sara Mohanpur (SC. No.163) were admitted by the petitioner in course of enquiry as would be

explicit from the minutes of the hearing conducted on 27th October, 2013. The petitioner admitted that the study centre at Saharsa (SL. No.168) was recommended by him in good faith without any inspection in person and that accordingly there had been a mistake on his part in recommending for activation of the said study centre. He categorically stated that as there was no instruction from the Headquarters to inspect, he neither made any inspection nor sent any person to ascertain whether the said study centre was functioning or not as per the norms of the University or was having sufficient infrastructure for conducting the examination. He also admitted his failure to write to the University as regards any need to inspect the said study centre. As regards the charge under Article IV the petitioner categorically stated that the study centre at Sara Mohanpur, Darbhanga (SC. No.163) was recommended by him without making any inspection and in spite of knowing the fact that close by the same a study centre of the said University was functioning at a place about 15 Kms. away. The statements made by the petitioner and as recorded in course of hearing have been duly signed by him and his signature appears at every page of the said minutes.

According to Mr. Mukherjee, the admission on the part of the delinquent is the best evidence and in the backdrop of such admission appropriate punishments have been imposed upon the petitioner and that as such the allegation that the punishments as imposed are disproportionate to the charges, is absolutely unfounded.

He further contends that having admitted the charges the petitioner cannot challenge the punishments imposed, on a

purported plea that the enquiry report was not served upon him. Drawing the attention of this Court to the enquiry report dated 30th October, 2013, he submits that in the backdrop of the admissions made by the petitioner, the enquiry officer recorded his recommendations. Even assuming but not admitting that the said report has not been served upon the petitioner, the same does not cause any prejudice.

As regards the allegation to the effect that the transfer was imposed as a punishment pursuant to the disciplinary proceeding, Mr Mukherjee submits that the order of transfer is not punitive and is not an order pertaining to the disciplinary proceeding and the same has been issued only in the interest of administration and that the same is relatable to the order to the effect that no important/independent charge should be given to him. The judgments as relied upon by the petitioner are distinguishable on facts.

Drawing the attention of this Court to the provisions of the said Act of 1996 and the guidelines framed there under, Mr. Mukherjee submits that the said provisions are clearly applicable to the petitioner. Furthermore, it would also be explicit from the service contract dated 4th July, 2005 that the petitioner is of the teacher's / officer's rank and his status shall be that of Regional Director.

In reply, Mr. Majumder disputes the contention of Mr. Mukherjee and submits that for the lack of proper directives from the headquarters of the said University, the petitioner cannot be made to suffer and the said issue though raised in course of the

enquiry was not considered and the petitioner has been victimised.

I have heard the learned advocates appearing for the respective parties and I have considered the materials on record.

The undisputed facts are that the petitioner was issued a charge sheet dated 1st October, 2012 proposing to hold an inquiry under Rule 14 of the said Rules of 1965 and in annexure '2' of the said charge sheet, the enquiry report dated 10th May, 2012 was enclosed and upon consideration of the same the petitioner submitted a reply on 18th October, 2012. Thereafter an Enquiry Officer was appointed and the petitioner was asked to appear in the said enquiry and the petitioner duly participated in the same and the statements made by the petitioner in course of such enquiry on 27th October, 2013 were duly recorded and duly signed by the petitioner on the self-same date. The documents pertaining to such enquiry were thereafter placed before the Executive Council and by a resolution dated 12th February, 2014 the Pro Vice-Chancellor was asked to furnish his recommendations and upon consideration of the same the Executive Council imposed the punishment.

I do not find any substance in the argument of Mr. Majumder to the effect that the charges levelled against the petitioner are absolutely vague. A perusal of the charge sheet does not reveal any ambiguity or vagueness in the charges. The charges are categoric and the same do not, by the furthest of imagination, express that the disciplinary authority had a mindset to penalise the petitioner.

The guidelines framed under the said Act of 1996 read with the service contract as executed by the petitioner clearly reveal that the same are applicable to the petitioner and clause 10 of the said guidelines casts an obligation upon the officers of the regional centres to carry out periodic inspection of the study centres and to ensure that they are being run as per the norms. It would be an absurdity to suggest that being the Director in a Regional Centre the petitioner is not required to discharge such statutory obligation. As a Regional Director it is also otherwise incumbent upon him to keep a vigil over the study centres.

The fact of alleged non-service of the enquiry report has not been appropriately pleaded in the writ application save and except an averment in paragraph 28 of the writ application wherein the date of the enquiry report has also not been mentioned. The statements made in paragraph 28 of the writ application were categorically denied by the respondents through the averments made in paragraph 16 of the affidavit-in-opposition. Such denial has also not been dealt with by the petitioner in paragraph 16 of the reply. The minutes of the enquiry proceedings further reveal that on 20th August, 2013 the petitioner's reply to the charges was considered and certain questions were set to be put to him in course of the enquiry. On 29th August, 2013 further questions were framed on the basis of the records and guidelines and on 2nd October, 2013 it was decided that opportunity would be granted to the petitioner to produce evidence. Thus, on the said three dates no final decision was arrived at and the contents of the said minutes do not reveal any prejudice caused to the petitioner. The procedural provisions are generally meant for affording a reasonable and adequate

opportunity to the delinquent and they are conceived in his interest and violation of any such procedural provisions cannot be said to have automatically vitiated the enquiry. The principle of natural justice needs to be examined on the basic principle of "prejudice caused".

The authority of the Writ Court to interfere with the disciplinary action is limited and the Writ Court cannot, in exercise of power of judicial review, reappreciate the evidence and that the Writ Court cannot sit in appeal over the orders passed by the Disciplinary Authority. The expression 'sufficiency of evidence' postulates existence of some evidence which links the charged officer with the misconduct alleged against him and in the instant case the petitioner himself has admitted the charges.

It is also a settled proposition of law that admission is the best evidence unless the party who has admitted it proves it to have been admitted under a wrong presumption. An admission is the best evidence that an opposing party can rely upon and it is decisive of the matter, unless successfully withdrawn or proved erroneous. Records do not reveal that the admissions made by the petitioner in course of the enquiry proceeding were extracted by any force or fear. The admissions are also not contradictory in nature and the same has neither been withdrawn by the petitioner nor the same has been proved to be erroneous.

There is no dispute as regards the proposition of law as laid down in the judgments relied upon by the petitioner. In the departmental proceedings dealt with in the said judgments there is no admission on the part of the employee and thus the entire

factual scenario is different in the instant case and accordingly the said judgments have no manner of application.

It is well-settled that any interference with the order of punishment is permissible in very rare cases. In the instant case the punishment is not so disproportionate to the established charges that it would appear unconscionable and actuated with malice. The petitioner's conduct was reproachable and his understanding of responsibility and adherence to discipline was questionable as would be explicit from his admissions made in course of the enquiry proceeding.

However, the argument of Mr. Majumder to the effect that the order of transfer incorporated in the final order of punishment in the disciplinary proceeding is absolutely perverse and without jurisdiction, carries weight. The order of transfer cannot be imposed as a punishment upon the petitioner in the disciplinary proceeding since no such punishment is provided for under Rule 11 of the said Rules 1965. It is a settled proposition of law that punishment not prescribed under the rules, as a result of disciplinary proceedings, cannot be awarded. Holding departmental proceedings and recording of a finding of guilt against any delinquent and imposing the punishment for the same is a quasi-judicial function and not an administrative one. Imposing the punishment for a proved delinquency is regulated and controlled by the statutory rules. Therefore, while performing the quasi-judicial functions, the authority is not permitted to ignore the statutory rules under which punishment is to be imposed. The disciplinary authority is bound to proceed in strict adherence to the said Rules. Thus, the order of transfer as a

measure of penalty being outside the purview of the statutory rules is a nullity and cannot be enforced against the petitioner.

For the reasons discussed above, save and except the order of transfer, other punishments as imposed by the order dated 18th September, 2014 are not interfered with. The order of transfer as imposed upon the petitioner by the memorandum dated 18th September, 2014 is set aside and quashed.

The writ application is, thus, partly allowed.

There shall, however, be no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Tapabrata Chakraborty, J.)