

A.F.R.**Court No. - 66**

Case :- WRIT - C No. - 21339 of 2020

Petitioner :- Prakhar Nagar

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

Counsel for Petitioner :- Siddharth Khare, Sr. Advocate Ashok Khare

Counsel for Respondent :- C.S.C., Rahul Chaudhary, Rahul Chaubey

Hon'ble Ajay Bhanot, J.

1. The petitioner has assailed the punishment of rustication imposed by the respondents-University for a period of six months by order dated 25.02.2020, and the order dated 16.03.2020 in appeal reducing the punishment of rustication for a period of three months. The petitioner has also prayed for issuance of fresh marks-sheet reflecting the evaluation of the petitioner's performance out of 100 marks, and to delete the endorsement marks "Reappearance September 2020" and to remove the B Cap on the marks secured by the petitioner. Further, the prayer is that the marks-sheet should not reference the rustication of the petitioner.

2. The petitioner is a student of B.Tech (CSE) in the respondent-University. The petitioner was charged by the university for various acts of indiscipline. The substance of the charges against the petitioner as disclosed in the impugned order 25.02.2020 are extracted hereunder:

"The Students Disciplinary Committee (SDC) in its meeting held on 11th February, 2020 discussed the case of student Mr. Prakhar Nagar student of B.Tech (CSE), Batch 2016-20, Enrollment No.A2305216644, Institute-Amity School of Engineering & Technology, who was alleged to have committed an act of indiscipline during earlier and current academic years.

The SDC examined all the available information with respect to the case

and after due deliberation concluded that he had committed the following act of indiscipline-

Violation of student code of conduct - para ii, xiv, xviii.

R4/3/6/(g) Indulging in or encouraging in a conduct which involves moral turpitude.

R4/3/6/(m) Any attempt at bribing or corruption of any manner or description.

R4/3/6/(q) Causing disruption of any manner of the academic functioning of the University system.

R4/3/6/(r) Indulging in or encouraging any form of disruptive activity connected with tests, examinations or any other activity of the University or the college or the institution, as the case may be."

3. Shri Siddharth Khare, learned counsel assisted by Shri Jigar Khare, learned counsel for the petitioner makes the following submissions:

I. The charges against the petitioner are vague and of a general nature.

II. The impugned orders were passed in violation of the principles of natural justice.

III. There is no material in the record to justify the imposition of the aforesaid punishment.

IV. The punishment is disproportionate.

4. Per contra, Shri Rahul Chaudhary, learned counsel for the respondents-University submits that the charges constitute a grave act of indiscipline. An inquiry was duly conducted into the matter. The punishment is proportionate and has been imposed with a view to deter others from wrong doings. The charges are supported by material in the record.

5. Heard learned counsel for the respective parties.
6. The petitioner has specifically asserted that the petitioner was never served a charge-sheet containing a statement of charges along with the adverse material which was relied upon by the respondents-authorities while passing the impugned order.
7. The specific pleadings in the writ petition in this regard are not traversed by the respondents in their counter affidavits. Failure to serve a charge-sheet disclosing charges with material particulars upon the petitioner disabled him from tendering an effective defence of his case. The omission constitutes a grave violation of principles of natural justice. The vague nature of the charges vitiates the disciplinary proceedings.
8. The second faultline in the impugned orders is that they were passed on the foot of an ex parte enquiry. The pleadings in the writ petition in regard to the enquiry being conducted in violation of principles of natural justice too have not been traversed in the counter affidavit. The enquiry against the petitioner which culminated in the impugned orders was passed by adopting a procedure not known to law.
9. Attention has been called by the respondents to the certain proceedings chart appended to the counter affidavit to contend that the petitioner participated in the enquiry proceedings. However, in absence of pleadings in the counter affidavit in regard to the participation of the petitioner in the enquiry proceedings, the document

is of no avail to the respondents.

10. Even if the aforesaid documents are taken in the face value, the pleadings of the respondents-university do not disclose that the said documents were served upon the petitioner or that the petitioner was noticed on the aforesaid adverse material at any point in time. The said adverse material including the report appended to the writ petition became the basis of punitive action against the petitioner. The prejudice caused to the petitioner by the said procedure followed by the respondents is beyond recall.

11. The submission that the enquiry report too was not served upon the petitioner precluding him from refuting the same shall now be considered. The counter affidavit baldly asserts that the said enquiry report was sent to the petitioner along with the suspension order. There is no proof of service upon the petitioner. However, in the interest of justice, the Court has perused the report. The said report merely references some students who had mentioned the name of the petitioner. It is noteworthy that the enquiry report does not discuss the nature of the statements and the manner in which they indicted the petitioner. Indictment of the petitioner on the basis of the enquiry report is perverse.

12. In this wake in the absence of such consideration the enquiry report is vitiated by violation of principles of natural justice and non application of mind.

13. The impugned orders of punishment passed on the

foot of the said enquiry report are consequently perverse and illegal.

14. There is another aspect of the matter.

15. The scheme of punitive action in an institution of higher learning is an indispensable feature of its administration. The penal regime in a system has to amalgamate essential elements to maintain discipline in the University which is conducive to its academic atmosphere and a reformative approach which is critical to transformation of the students. The key to an effective system of disciplinary action is the balance between deterrent effect and reformative possibilities.

16. This Court in **Anant Narayan Mishra v. The Union of India and 4 others**¹ set its face against adoption of solely punitive regime to deal with the indiscipline or aberrant behaviour by the students to the complete exclusion of a reformist approach. **Anant Narayan Mishra (supra)** directed a composite scheme to deal with matters relating to indiscipline or aberrant behaviour by young scholars wherein a penal system is duly integrated with a reformative approach. The UGC in compliance of the directions of this Court issued appropriate guidelines on 13.04.2023 to all University for creating a scheme for reformation and self development for students accused of misconduct to supplement the penal regime for correcting misconduct.

17. The Court is informed that the University is

¹ 2020 (3) ADJ 466

implementing the guidelines of UGC dated 13.04.2023. The University is developing a comprehensive reform and self development program to deal with such matters in compliance of UGC guidelines dated 13.04.2023.

18. The petitioner passed B.Tech course in the year 2020. The marks-sheet issued to him evaluated his performance out of 70 marks instead of 100 marks for all other students while applying the B Cap. Secondly the mark-sheet also references the rustication of the petitioner.

19. The said action visits the petitioner with enduring penal consequences and will blight his future no end. The petitioner had undergone the punishment of rustication. There was no occasion to disable him perpetually by making the assailed endorsements in the marks-sheet and marking him on 70 marks instead of 100 while applying B Cap formulae.

20. The petitioner it is stated that the petitioner is a young adult person with a bright future. The university-authorities failed to leaven the punitive action with a reformative programme which would have enabled the petitioner to turn a new leaf and make amends for his errors if any.

21. Purely punitive action was taken by the University against the petitioner, to the exclusion of opportunities to reform his conduct, explore possibilities of excellence and redeem his reputation. In matters pertaining to errant behaviour by students such approach may make the

action vulnerable to judicial review on grounds of disproportionality.

22. Disproportionality vitiates punitive action. [**See: Ranjit Thakur v. Union of India and others²**]

23. The punishment is disproportionate and is liable to be set aside on this count as well.

24. The impugned order dated 25.02.2020 as well as the impugned appellate order dated 16.03.2020 rustivating for various periods are arbitrary and illegal. The impugned orders dated 25.02.2020 and 16.03.2020 are unsustainable in law and are liable to be set aside.

25. In this wake, the application of the B Cap is unsustainable in law and is set aside.

26. The respondent-university is directed to issue a fresh mark-sheet to the petitioner treating him as a regular student. The fresh marksheet shall evaluate the applicant out of the 100 marks. The respondent-University shall remove the B cap and shall also refrain from making any reference to the disciplinary action against the petitioner and delete the endorsement "reappearance in September, 2020" in the fresh mark-sheet. The disciplinary action against the petitioner shall not be disclosed by the university to any other authority.

27. The writ petition is allowed.

Order Date :- 2.8.2023
Ashish Tripathi