Neutral Citation No. - 2023:AHC:203614

RESERVED

A.F.R.

Court No. - 33

Case :- WRIT - A No. - 10552 of 2023

Petitioner :- Vinod Kumar
Respondent :- State of U.P. and others
Counsel for Petitioner :- Siddharth Khare, Sr. Advocate
Counsel for Respondent :- C.S.C., Abhishek Srivastava, Adarsh Bhushan, Suyash Agarwal

Hon'ble J.J. Munir,J.

This writ petition is directed against the order dated 22.06.2023 passed by the Managing Director, Purvanchal Vidyut Vitran Nigam Limited, Varanasi, reducing the petitioner in rank to the post of a Junior Engineer from an Assistant Engineer, as a measure of penalty, after holding disciplinary proceedings.

2. The facts giving rise to this petition are that the Uttar Pradesh Power Corporation Limited[1] is a government company under the administrative and financial control of the State Government. The Purvanchal Vidyut Vitran Nigam Limited[2] is a subsidiary company of the Power Corporation incorporated to discharge the functions of electricity supply and distribution to consumers. The petitioner was appointed as a Junior Engineer (Electrical) *vide* appointment order dated 05.11.2007 in the employ of the Power Corporation. He has rendered continuous service since then. The petitioner was promoted to the post of an Assistant Engineer *vide* order dated 16.02.2018. During the period of his service, the petitioner has been posted at different stations and was last posted from 07.12.2021 at the Electricity Distribution Sub-Division-I, Phulpur, Azamgarh, falling under Electricity Distribution Division-IV, Azamgarh. According to the petitioner, he was posted from March, 2018 to

1 'Power Corporation' for short
2 'Distribution Corporation' for short

December, 2021 at the Electricity Distribution Sub-Division-I, Atraulia, Azamgarh. While posted there, the petitioner received confidential information on 18.02.2020 and 19.02.2020 on the basis of a reconnaissance done on the premises of a certain M/s. S. Milan Agro Industries, Village Saraiya Nebuadeeh, Post Usraith, Police Station Atraulia, District Azamgarh to the effect that an electricity transformer was found near the rice mill aforesaid, leading to a strong suspicion of electricity theft. On the basis of information aforesaid, that was conveyed to the higher authorities, an enforcement team was constituted by the Chief Engineer, Azamgarh, with the petitioner as a member of the team, to conduct an enforcement raid on the premises of M/s. S. Milan Agro Industries. In the night intervening 19/20.02.2020, the premises of the rice mill was raided, leading to detection of theft of electricity. A checking report No. 139 dated 19/20.02.2020 was drawn up.

3. In consequence of the above raid, two first information reports were lodged at Police Station - Anti Power Theft, Azamgarh, to wit, Crime No. 294 of 2020 under Section 135 of the Electricity Act, 2003 lodged by the petitioner on 20.02.2020 and Crime No. 562 of 2020, under Section 136 of the Act last mentioned, lodged on 21.03.2020.

4. A provisional assessment order was passed by the Executive Engineer, Electricity Distribution Division-VI on 20.02.2020, levying a penalty of ₹2,33,65,028/- against one Sanjay Rai *alias* Guddu. After issue of the provisional assessment order, the Executive Engineer, by a letter dated 18.01.2021, made certain inquiries from the petitioner and the Secretary, Krishi Utpadan Mandi Samiti. The petitioner submitted a reply dated 19.01.2021.

5. The provisional assessment order was challenged by the consumer before this Court, where directions were issued, in consequence of which, the District Magistrate, Azamgarh, *vide* memorandum dated 22.08.2022,

returned the recovery certificate unrealized. Subsequently, a fresh recovery certificate was issued against the partners of M/s. S. Milan Agro Industries, to wit, Smt. Madhuri Rai and Smt. Kanchan Rai dated 08.06.2023, directing recovery of a sum of ₹80,21,904/-.

6. On the basis of these facts, disciplinary proceedings were instituted against the petitioner and a charge-sheeet dated 27.04.2020 issued against him, carrying a charge to the effect that the petitioner did not make requisite inspection or take timely steps for removing the 400 KVA transformer, on account of which, theft of electricity took place. The petitioner submitted a reply to the charge-sheet dated 03.09.2020.

7. Post submission of the charge-sheet, it is the petitioner's case that no steps were taken in the inquiry. After the lapse of more than a year, a notice dated 13.12.2021 was issued to the petitioner by the Chief Engineer (Distribution)/Convener, Temporary Enquiry Committee-VI, requiring the petitioner to be present in his office on 04.01.2022 for a personal hearing. In compliance, the petitioner appeared before the said Inquiry Committee on 04.01.2022, and reiterated the stand in his reply to the charge-sheet. It is the petitioner's case that the Inquiry Committee held no inquiry, in the sense that no evidence of any kind was led during the course of proceedings. No testimony or evidence was recorded for proving any of the documents relied upon by the establishment. The further case of the petitioner is that without conducting any inquiry, the Committee proceeded to submit a report dated 27/28.01.2022, holding the petitioner guilty of negligence in discharging his supervisory duties. A copy of the inquiry report was made available to the petitioner along with a show-cause notice dated 22.07.2022 issued by the Director (Personnel Management and Distribution) of the Distribution Corporation. The petitioner was required to file objections to the inquiry report within a period of 15 days. The petitioner submitted his objections before the

Director (Personnel Management and Distribution) of the Distribution Corporation in the month of July, 2022. The Managing Director, Distribution Corporation, passed the impugned order dated 22.06.2023, imposing the penalty of reduction in rank.

8. Aggrieved, the petitioner has instituted this writ petition under Article 226 of the Constitution.

9. It is the petitioner's case that he is an employee of the Power Corporation, and the Managing Director of the said Corporation is the appointing authority. The power exercisable by the Managing Director, Power Corporation to inflict a major penalty has not been delegated to the Managing Director of the Distribution Corporation. There is no decision of the Board of Directors of the Power Corporation resolving to delegate the said powers to the Director of the Distribution Corporation or even an order of delegation passed by the Managing Director of the Power Corporation, delegating that authority. It is also pleaded that under the Rules that make for the service conditions, the appointing authority functions as the disciplinary authority. The petitioner says that he has not been appointed by the Managing Director of the Distribution Corporation, and, consequently, the said officer had no jurisdiction to pass the impugned order. It is also the petitioner's case that departmental proceedings can be initiated on the basis of a departmental charge-sheet issued or approved by the competent authority. Here, the charge-sheet has been issued by the Managing Director of the Distribution Corporation, who is not the petitioner's appointing authority. The proceedings, therefore, taken on the basis of a charge-sheet issued without jurisdiction are all *ultra vires*.

10. It is next pleaded that no major penalty can be inflicted without holding an oral inquiry, fixing a date, time and place for the purpose. It is averred in paragraph No. 41 that the Inquiry Committee did not record

any oral evidence. No evidence was led by the employers to establish the charges against the petitioner. It is specifically urged that the inquiry report does not conform to the requirements of a valid report.

11. In the counter affidavit, in answer to the plea that the Managing Director of the Distribution Corporation is not the petitioner's appointing authority and *a fortiori* the disciplinary authority, in the absence of delegation of power by the Power Corporation, it is averred in paragraph No. 11 of the counter affidavit that *vide* an office memo dated 08.08.2018 issued pursuant to the resolution of the Board of Directors of the Power Corporation, disciplinary and administrative powers vested in the Power Corporation stand delegated to the Managing Director of the Distribution Corporation, except the power to impose the penalty of dismissal. A copy of the memo dated 08.08.2018 issued by order of the Board of Directors of the Power Corporation is annexed as Annexure C.A.-1 to the counter affidavit.

12. In answer to the plea that before the Inquiry Committee, the establishment did not examine any witness or recorded oral testimony fixing a date, time and place for the inquiry, though imperative in the case of imposition of a major penalty, it is pleaded in paragraph No. 13 of the counter affidavit, after entering a plea of denial to the averments in paragraph Nos. 38 and 41 of the writ petition, amongst others, that an opportunity for oral inquiry has been provided *vide* order dated 30.12.2021 in response whereto, the petitioner appeared before the Inquiry Committee on 04.01.2022 and participated in the oral inquiry.

13. In the rejoinder affidavit, it is stated that in view of the Uttar Pradesh Power Corporation Limited Personnel (Discipline and Appeal) Regulations, 2020[3] being there to govern the service conditions of the petitioner, the office order dated 08.08.2018, that was issued at a time when the Uttar Pradesh Government Servants (Discipline and Appeal)

3 'Regulations of 2020' for short

Rules, 1999[4] applied to the Power Corporation, stands nullified. It is also averred that there does not exist any order of delegation in exercise of powers under the Rules of 2020, delegating the disciplinary jurisdiction of the Power Corporation to the Managing Director of the Distribution Corporation. The order dated 08.08.2018 is of no effect and cannot be relied upon to support the impugned order.

14. Heard Mr. Siddharth Khare, learned Counsel for the petitioner, Mr. Adarsh Bhushan, learned Counsel appearing on behalf of respondent Nos. 3, 4, 5 and 6, Mr. Ujjawal Srivastava, Advocate holding brief of Mr. Abhishek Srivastava, learned Counsel for respondent No. 2 and Mr. Yashwant Singh, learned Standing Counsel appearing on behalf of respondent No. 1.

15. It is submitted by Mr. Siddharth Khare, learned Counsel for the petitioner that the impugned order is without jurisdiction, because the office memo dated 08.08.2018, by which, the disciplinary jurisdiction otherwise vesting in the Managing Director of the Power Corporation was delegated to the Managing Director of the Distribution Corporation, stands nullified, in view of the supervening enforcement of the Rules of 2020. He next submits that the penalty imposed in this case being one of reversion, is a major penalty. The principle is salutary, according to Mr. Khare, that in any disciplinary proceedings, where the charges are such that a major penalty may be imposed, it is imperative for the establishment to examine witnesses in support of the charges. The Inquiry Officer has to conduct formal proceedings, where the establishment have to discharge their burden by leading oral and documentary evidence. It is thereafter that that the burden shifts upon the delinquent/employee. In this case, it is emphasized that the Inquiry Committee did not undertake any inquiry. They perused the papers and heard the petitioner; nothing else.

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4 Rules of 1999

16. Learned Counsel appearing for the respondents have supported the impugned order and say that there is no issue of jurisdiction involved as the Regulations of 2020, on their own terms, would show. About the necessity to hold an oral inquiry, it is said that the petitioner was given an opportunity to appear before the Inquiry Committee and was heard by them, which constitutes compliance with the requirement to hold an oral inquiry. There is no need to examine witnesses in support of the charge.

17. This Court has carefully heard the submissions advanced by learned Counsel for parties and perused the record.

18. So far as the question of jurisdiction is concerned, it is evident, from a perusal of the office memo dated 08.08.2018, that the powers of the Power Corporation to take disciplinary action against their officers employed with a Distribution Corporation, including the imposition of penalties, have been delegated to the Managing Directors of the respective Distribution Corporations, except the power to dismiss from service. It is also true that the order dated 08.08.2018, which, in fact, is a formal order giving effect to the resolution of the Board of Directors of the Power Corporation, was issued at a time before the enforcement of the Regulations of 2020. Regulation 6 provides that the appointing authority shall be the disciplinary authority in case of a person whose service conditions are governed by the Regulations of 2020, and further that it is such authority which can impose any of the penalties envisaged under Regulation 3.

19. The second proviso envisages a delegation by the appointing authority of powers to impose penalties, other than the power to dismiss from service. Now, certainly, the Regulations of 2020 introduce a new regime governing conditions of service and the Regulations being statutory in character, that is to say, being regulations framed in exercise of powers under the Companies Act, 2013 and Articles 47 and 48 of the

Power Corporation's memorandum of association, would, in usual course, efface the office memo dated 08.08.2018 delegating powers by the Power Corporation to take disciplinary action upon the Managing Director of the Distribution Corporation. But, a perusal of the 'Rescisison and Savings' clause under the Regulations of 2020 shows that *vide* Regulation 16(2)(a), it is provided that any order under the Rules of 1999, delegating powers by an authority to impose any of the penalties envisaged under Regulation 3 or to suspend from service, would be deemed to have been issued under the Regulation of 2020, and such order issued under the Rules of 1999 would remain in force, until cancelled or revoked. There is no material placed on record by the petitioner to show that the office memorandum dated 08.08.2018, delegating powers of the Power Corporation to exercise disciplinary authority and impose all punishments upon its employees serving with the Distribution Corporations, upon the Managing Directors of the Distribution Corporations, has been cancelled or revoked by an order subsequent to the enforcement of the Regulations of 2020.

20. In the opinion of this Court, therefore, the office memo dated 08.08.2018 continues to remain in force and invests the Managing Director of the Power Corporation with jurisdiction to pass the impugned order, the introduction of the Regulations of 2020, notwithstanding. The contention of the learned Counsel for the petitioner, therefore, that the impugned order has been passed without jurisdiction, cannot be accepted.

21. Now, considering the other submission that proceedings before the Inquiry Committee fall foul of the fundamental principle regarding holding of disciplinary proceedings, inasmuch as no witness was examined by the establishment in support of the charge, this Court must remark that the contention appears to be well-founded.

22. We have carefully perused the inquiry report dated 28.01.2022, which can be divided into three parts. In the first part, the background of

the charge laid against the petitioner, the charge itself, the manner of submission of the charge-sheet and the fact of a reply to it being submitted, have been enumerated. In the second part, the petitioner's reply has been set out *verbatim*. In addition, it is recorded by the Inquiry Committee that *vide* their memorandum dated 30.12.2011, the petitioner was given an oral hearing on 04.01.2022 in the Office of the Chief Engineer/Convener, Temporary Enquiry Committee-VIII. In compliance with the aforesaid opportunity, the petitioner appeared on 04.01.2022 before the Committee, where he disclosed his defence to the Committee. He presented an affidavit to the Committee, saying that he had been given ample opportunity to defend, and apart from his written statement, he did not want to examine/cross-examine witnesses.

23. In the third part, which is the concluding part of inquiry report, there is manifest a sudden arrival at their conclusions by the Inquiry Committee, indeed very cryptically. There is nothing indicated by the Inquiry Committee to show what evidence they have considered and by what process of reasoning they have arrived at those conclusions. This Court is of opinion that the laconic approach of the Inquiry Committee in arriving at their conclusions can be best understood by quoting the third or the concluding paragraph of the inquiry report, which reads :

अस्थायी जाँच समिति-षष्ठम् का अभिमत

उपरोक्त प्रकरण पर अस्थायी जाँच समिति-षष्ठम् द्वारा परीक्षण एवं व्यक्तिगत सुनवाई के उपरान्त अभिमत निम्नलिखित है :-

1. आरोपी उपखण्ड अधिकारी द्वारा अपने बचाव में यह कहा गया कि उनके पास 05 उपकेंद्र है, जिनपर कुल 21 पोषक (लगभग 524 सर्किट किलोमीटर) एवं लगभग 1300 परिवर्तक स्थापित है।

2. आरोपी उपखण्ड अधिकारी द्वारा अपने बचाव में यह कहा गया कि वहाँ स्थापित 400 के0 वी0 ए 0 के परिवर्तक (जिसके द्वारा चोरी की जा रही थी) की कोई सूचना न तो किसी अवर अभियन्ता द्वारा और न ही वहाँ नियोजित संविदाकर्मियों द्वारा दी गयी।

3. आरोपी उपखण्ड अधिकारी द्वारा अपने बचाव में यह कहा गया कि वह स्वयं इस रेड टीम में शामिल थे तथा छोरी की इस घटना में दर्ज की गयी प्राथमिकी के वादी है।

आरोपी उपखण्ड अधिकारी के उपरोक्त कथन उनके विरूद्ध लगाये गये विभागीय पर्यवेक्षण में लापरवाही, शिथिलता एवं उदासीनता के आरोप से उन्हें मुक्त नहीं करता।

अतः अस्थायी जाँच समिति-षष्ठम् इस प्रकरण पर आरोपित श्री विनोद कुमार, उपखण्ड अधिकारी (2017465) उपखण्ड अधिकारी— अतरौलिया अन्तर्गत विद्युत वितरण खण्ड-पषष्ठम्, आजमगढ़ को उनके क्षेत्रान्तर्गत मध्यम क्षमता के वितरण परिवर्तकों का अनुश्रवण समुचित रूप से न करने एवं विभागीय पर्यवेक्षण में लापरवाही, शिथिलता एवं उदासीनता बरतने के दृष्टिगत दोषी पाती है।

उपरोक्त प्रकरण पर अस्थायी जाँच समिति-षष्ठम् द्वारा कृत कार्यवाही की जाँच आख्या सादर प्रेषित ।

24. The findings recorded by the Inquiry Committee, to say the least, are outrageous. In the conclusion, after noticing the three points of defence raised by the petitioner to the charge of being remiss and negligent in the discharge of his duties, all that the Inquiry Committee say is that the charged Sub-Divisional Officer's aforesaid statement (to be understood as points of defence) cannot serve to exonerate the petitioner of the charge of being negligent and remiss in the discharge of his duties. Thereafter, it is formally held that the Temporary Inquiry Committee-VIII finds the charged officer, Vinod Kumar, Sub-Divisional Officer, Atraulia guilty in not appropriately monitoring the medium capacity transformers in his circle, leading to the charge of being negligent and remiss in the discharge of his duties proved. There is not a word said by way of reason or reference to any evidence recorded by the Inquiry Committee. The Inquiry Committee's findings are, therefore, no more than an *ipse dixit* of the two members constituting it. Even if the issue of the establishment not examining any witness in support of the charge is kept aside for a moment, an inquiry report of this kind, which is the foundation of order of reversion ultimately made, cannot be sustained as also the order founded upon it.

25. A perusal of the impugned order dated 22.06.2023 passed by the Managing Director of the Corporation betrays the same mechanical approach that the Inquiry Officer's report shows. In the first paragraph, there is a narration of facts leading to the charge being laid against the

petitioner, the particulars how the charge-sheet was served, and when and how the reply was submitted.

26. In the next part, there is a detailed reference to the petitioner's reply, setting it out *verbatim*, which is nothing more than a reproduction of the contents of the petitioner's reply.

27. The conclusions of the Inquiry Committee have been reproduced in the third part. There is then a reference how the proceedings went beyond receipt of the inquiry report, asking the petitioner to show cause through objection to the Inquiry Report, which, again, have all been reproduced *verbatim*.

28. In the fourth part, there is a reference to the opinion of the office submitted in the matter, where issues relating to recovery and the legal opinion received by the Corporation from their learned Counsel, have all been reproduced, also *verbatim*.

29. In the concluding part, there is just a reference to the circumstance that theft of electricity was detected, leading to a loss of revenue, but, for what period of time it was committed, is not known. After the said remark, the petitioner was held responsible for negligence in the performance of his duties and the charge of being negligent and remiss in that regard, held proved. Nothing more, in substance, has been said.

30. There is no evidence considered as such that may show that the petitioner was, indeed, negligent. For a fact, there is no consideration of evidence to the effect that there was occasion for the petitioner to have discovered the existence of the transformer, employing which, the theft was committed, which he did not do. *Prima facie*, the petitioner, as soon as he received information, reported the matter to the higher authorities, organized a raid, held the offender and abated the theft. This Court does not mean to say, in the least, either that the charge against the petitioner is not well-founded, or that it is established. This is so because for one, there

is hardly any evidence offered by the establishment to support the charge, and, for a second, there is no consideration of evidence, direct or circumstantial, to establish it.

31. In the considered opinion of the Court, the Inquiry Report as well as the impugned order are manifestly illegal in the sense that these do not proceed to hold the petitioner guilty on any evidence or material worth the name.

32. The other part of the submission, which Mr. Siddharth Khare canvasses, is, in fact that, that has given rise to the infirmity hereinabove noticed. It is, indeed, a salutary principle of law that in the case of charges in a domestic inquiry that are serious enough to merit the imposition of a major penalty, if proved, the establishment/employer must prove by leading evidence in support, both documentary and oral. The inquiry has to be a formal affair, with the Inquiry Officer or the Committee sitting as impartial arbiters, and not as representatives of the department. The establishment or the department must be represented by a Presenting Officer, who ought to present evidence on behalf of the establishment to prove the charges, including oral evidence by examining witnesses. This burden has to be discharged by the establishment/employers irrespective of the fact whether the employee stays *ex-parte* or he appears and does not elect to lead evidence in his defence, or even, cross-examine witnesses that the establishment would examine. Merely because an employee does not choose to lead evidence in support of his case or cross-examine the establishment's witnesses, does not absolve the establishment of their burden to prove the charges by leading evidence, again, both documentary and oral.

33. Here, the respondents have thought that since the petitioner has taken a stand that he does not wish to produce evidence in his defence, examine or cross-examine witnesses, the Inquiry Committee and on that

basis, the disciplinary authority could proceed to hold the charge proved merely by looking into the charge-sheet and the petitioner's reply, besides a few circumstances, sans any evidence offered by the establishment. This approach, this Court must say, is utterly flawed. The findings of the Inquiry Committee hardly qualify for a valid inquiry report regarding a charge, on the basis of which, a major penalty can be imposed. Reference in this regard may be made to the decision of the Supreme Court in **Roop Singh Negi v. Punjab National Bank and others**[5] where it was held :

> **14.** Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

34. In **State of U.P. and others v. Saroj Kumar Sinha**[6] it was, again, held by the Supreme Court :

> **27.** A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.

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5 (2009) 2 SCC 570

6 (2010) 2 SCC 772

> **28.** An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

35. The issue about the necessity for the employer to discharge their burden before the Inquiry Officer by leading documentary as well as oral evidence arose for consideration before a Division Bench of this Court in **Kaptan Singh v. State of U.P.**[7]. In **Kaptan Singh** *(supra)* it was held :

> **9.** We are unable to accept the contention of the learned Additional Chief Standing Counsel. Even if the delinquent employee does not request for personal hearing the burden of proving the charges normally being upon the department, the enquiry officer was under obligation to fix a date for such enquiry, with information to the delinquent and to conduct enquiry wherein he was required to examine documentary as well as oral evidence, if any, in support of the charges. Even if the delinquent employee did not participate in the enquiry, the enquiry officer was duty bound to discharge his obligation as an enquiry officer of ascertaining the truth in respect of the charges levelled against him, on the basis of evidence, as to whether the same are proved against him or not.
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> **10.** Even if the delinquent does not demand personal hearing or does not give the names of witnesses with brief synopsis of points on which he wishes to examine or cross-examine the witnesses, the Inquiry Officer is not absolved from fixing a date of enquiry, with intimation to the delinquent and if he does not appear on the date fixed to either adjourn the enquiry to some other date or to proceed ex parte, as he deems fit. In either eventuality, he is required to hold inquiry, if delinquent is present, in his presence, if he is absent, ex parte. If oral evidence is referred in the charge-sheet, same is required to be recorded/examined, if not, even then the documentary evidence is required to be examined in the light of the charges for ascertaining the truth in respect thereof. The delinquent is also entitled to be intimated the date for oral enquiry, wherein the Inquiry Officer should confront the delinquent with the charges and the evidence in support thereof, put relevant queries to him, elicit and record his replies/response in respect thereof. Such oral

7 2014 (8) ADJ 16 (DB)

> enquiry is necessary as it gives an opportunity, to the delinquent to explain his conduct and to the Inquiry Officer to have a better perspective of the controversy, as, it is not always possible to discern the truth from written replies and documents which may not necessarily convey the complete truth. Even where the delinquent does not dispute the veracity of the documentary evidence, oral enquiry is necessary as he may still have an explanation to offer.
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> **11.** ….
>
> **12.** ….
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> **13.** The reference to ''documentary evidence'' in Rule 7(iii) and (v) clearly indicates that the same have to be examined, as aforesaid, on the date to be fixed for enquiry, whether in the presence of the delinquent or in absentia (ex parte). This requirement though not express is implicit in the aforesaid rules, as is the requirement of holding an oral enquiry,as it is a sine qua non for providing reasonable opportunity to defend and is part of the principles of natural justice under Article 311 and 14 of the Constitution. Reference may be made in this regard to the judgments of the Apex Court in State of Uttar Pradesh and others v. Saroj Kumar Sinha, (2010) 2 SCC 772, Roop Singh Negi v. Punjab National Bank, (2009) 2 SCC 570, State of U.P. v. T.P. Lal Srivastava, (1996) 10 SCC 702, and The Imperial Tobacco Company of India Ltd. v. Its Workmen, AIR 1962 SC 1348, and the judgements of this Court in R.K. Singh v. Director/Appointing Authority, Govind Ballabh Pant Social Science Institute, Jhunsi, Allahabad and another, (2001) 2 UPLBEC 1282 and Subhash Chandra Sharma v. U.P. Co-operative Spinning Mills and others, (2001) 2 UPLBEC 1475. The aforesaid requirement of law has not been followed in the instant case.

36. I had occasion to consider the question in **Ranveer Singh v. Union of India and others**[8] and **Prem Narain Singh v. State of U.P. another**[9] where the same principle was followed to hold that it is imperative for the establishment to lead evidence, particularly oral evidence, to prove the charges before the Inquiry Officer in a case where the charge is likely to lead to the imposition of a major penalty. The employer or the establishment cannot capitalize upon the employee's failure to examine evidence in his defence or presume the charge proved by its own terms, and by reference to a few circumstances here and there.

37. This Court, therefore, is of opinion that the impugned order and the inquiry report are manifestly illegal and deserve to be quashed. Of course,

8 2021 (5) ADJ 136

9 2023 (2) ADJ 580

the respondents would have opportunity to proceed afresh in the matter from the stage of charge-sheet, in accordance with law.

38. In the result, this writ petition **succeeds** and shall stand **allowed**. The impugned order dated 22.06.2023 passed by the Managing Director, Purvanchal Vidyut Vitran Nigam Limited, Varanasi is hereby **quashed**. A *mandamus* is issued to the respondents to permit the petitioner to continue on his post as an Assistant Engineer and pay him emoluments attached to the said post from the date of this judgment. It shall, however, be open to the respondents to proceed afresh against the petitioner from the stage of the charge-sheet, strictly in accordance with law and the guidance in this judgment. It shall also be open to the respondents to pass fresh orders, again in accordance with law. The entitlement of the petitioner to receive his emoluments attached to the post of an Assistant Engineer for the period between the date of the impugned order and this judgment shall be decided, subject to event in proceedings, if elected to be taken afresh. In the event, the respondents do not propose to take fresh proceedings, the petitioner would be entitled to all his emoluments attached to the post of Assistant Engineer between the date of the order impugned and this judgment.

40. There shall be no order as to costs.

Order Date :- October 19, 2023
I. Batabyal

(J.J. Munir, J.)

Digitally signed by :-
ISHAN BATABYAL
High Court of Judicature at Allahabad