

Court No. - 33**Reserved****Case :-** WRIT - A No. - 10999 of 2023**Petitioner :-** Rajeev Kumar**Respondent :-** State of U.P. and others**Counsel for Petitioner :-** Rama Nand Shukla, Mani Shanker Pandey**Counsel for Respondent :-** C.S.C., Abhishek Srivastava, Brajesh Pratap Singh**Hon'ble J.J. Munir, J.**

1. Heard Mr. Mani Shanker Pandey, learned Counsel for the petitioner, Mr. Abhishek Srivastava, learned Counsel appearing on behalf of respondent Nos. 2 and 3, Mr. Ram Bahadur Singh, Advocate holding brief of Mr. Brajesh Pratap Singh, learned Counsel for respondent Nos. 4, 5 and 6 and Ms. Monica Arya, learned Additional Chief Standing Counsel appearing on behalf of respondent No. 1.

2. This writ petition is directed against the order dated 07.06.2023 passed by the Managing Director, Uttar Pradesh Power Corporation Limited, dismissing the petitioner from the Corporation's service.

3. A counter affidavit was filed on behalf of the U.P. Power Corporation on 27.07.2023 by Mr. Abhishek Srivastava, learned Counsel appearing on behalf of respondent Nos. 2 and 3 and original records of the inquiry also produced before the Court on the date last mentioned. These records have been retained and perused. A statement was made on behalf of learned Counsel for the parties on 27.07.2023 that they do not intend to file any further affidavits. Accordingly, the writ petition was admitted to hearing and heard forthwith on the said date. Judgment was reserved.

4. The petitioner was an Executive Agent and functioning as the Head Cashier (Revenue) at the Vidyut Vitran Khand-I, Baghpat. At the relevant time, one Suresh Babu, who held the post of a Technician (Grade-II) with the Pashchimanchal Vidyut Vitran Nigam Limited, was assigned duties of the cashier. He was later on promoted in the month of March, 2019 to the post of a Junior Engineer, going by his cadre. According to the petitioner, after Suresh Babu's promotion, the Managing Director, Pashchimanchal Vidyut Vitran Nigam Ltd., on account of some suspicion relating to accounts, directed reconciliation to be made. It was discovered that there was embezzlement committed by Suresh Babu to the tune of Rs.3,68,25,552/- out of the revenues collected on behalf of the Corporation. A First Information Report was lodged by the Executive Engineer, Vidyut Vitran Khand-I, Baghpat with the Police, that came to be registered as Crime No.300 of 2019, under Section 409 IPC, Police Station Baghpat, District Baghpat. In the FIR, Suresh Babu was nominated as the main accused and besides him, four other persons, to wit, the petitioner (Rajeev Kumar), Vikalp Mahesh, Ishpal Singh and Rajveer Singh. The Police after investigation submitted a charge-sheet dated 13.11.2019 against Narendra alias Pintu and Fakhruddin for offences punishable under Sections 408/120-B IPC and exculpated the petitioner with the remark that his implication in the case was found false upon investigation.

5. It is the petitioner's case that he was suspended pending enquiry on 16.05.2019 and during his suspension on 07.09.2019, he was served with a charge-sheet dated 07.09.2019. He submitted his reply dated 20.09.2019, denying the charges. The petitioner, amongst other things, said that he was neither working with the Vidyut Vitran Khand-I, Baghpat

since 01.05.2015 to 16.05.2019, nor during the period 01.05.2015 to 16.05.2019 and 08.11.2013 to 13.12.2014.

6. It is the petitioner's case that he has, therefore, no concern about the embezzlement, which happened in a different period of time between the years 2013 – 14. The petitioner has asserted that he was working with the Vidyut Vitran Khand-I, Baghpat for a short time in the year 2014-15. It is next made out that the two charges framed against the petitioner in the charge-sheet allege no embezzlement by him, but negligence as the Chief Cashier, leading to embezzlement by Suresh Babu, who is at the centre stage of the charge, subject matter of this enquiry. It is also said that the petitioner had informed his superior Authorities about the embezzlement, but no action was taken. It is also pleaded that due to lack of training in handling the online billing system, nor the provision of an ID to do online billing work, or supervise the same, the petitioner faced hardship in discharging his duties, so far as Charge No.1 goes. Charge No.2 is an amalgam of about five different lapses committed by the petitioner in his supervisory duties, which led to the embezzlement by Suresh Babu.

7. The petitioner offered defences on each of these lapses that he has pleaded in the writ petition also. A copy of the inquiry report has not been annexed to the writ petition. It is averred in paragraph No.30 of the writ petition that the petitioner appeared before the Inquiry Committee while the inquiry was in progress. But, there is nothing said about a copy of the inquiry report being given to him. It is averred that he submitted a reply to the Managing Director on 31.12.2021, that would show that he was given a show cause post inquiry, to which he replied. In the absence of the inquiry report and,

particularly, in view of the fact that this Court wanted to know if the employers had examined any witnesses during the inquiry to find the petitioner guilty on a charge, which led to the imposition of a major penalty, the records of the inquiry were summoned.

8. Our observations about the inquiry report, which we have looked into in the records, will be alluded to later in this judgment. At this stage about the facts being noticed, suffice it to say that the inquiry report is a document dated nil, which is available on the original records between pages 161-167. Acting on this inquiry report, the Managing Director, Pashchimanchal Vidyut Vitran Nigam Ltd. issued a show cause notice dated 04.12.2021, a fact gathered from the reply submitted to it by the petitioner, a copy whereof is annexed as Annexure No.11 to the writ petition. The show cause notice being one dated 04.12.2021, and the date of the enquiry report being 25.10.2021, is also corroborated from an averment to that effect, and some annexed record in paragraph No.7 of the counter affidavit, filed on behalf of respondent Nos.2 and 3.

9. The petitioner's reply also shows that in the show cause notice, the date of the inquiry report, which is not mentioned on the original, has been indicated to be a document dated 25.10.2021. The best that can be made of it, is that the inquiry report, bearing no date, was submitted to the Managing Director along with a cover memo dated 25.10.2021, and that has been regarded by the petitioner, and, may be by the respondents also, as the date of the inquiry report. The petitioner has submitted a reply to the show cause notice on 31.12.2021. Thereafter, in due course, the impugned order

dated 07.06.2023 has been passed by the Managing Director, U.P. Power Corporation.

10. Aggrieved, this petition has been instituted under Article 226 of the Constitution.

11. A perusal of the enquiry report, as also the entire record of the inquiry, does not indicate at all that the Inquiry Committee held proceedings according to the salutary principles governing procedure for holding such proceedings, where charges are serious enough to lead to the possible imposition of a major penalty. The record of the inquiry or the Inquiry report itself does not indicate that a date, time and place was fixed for the inquiry with notice to both the charge sheeted employee and the establishment. The essentials of a domestic enquiry into grave charges requires that the Inquiry Committee should sit as a detached Tribunal, before whom the establishment/ employer ought to lead evidence, both documentary and oral in support of the charges through a presenting officer duly appointed. The Inquiry Committee in this case do to not appear to have sat as independent arbiters, before whom the employers/ establishment led evidence, both oral and documentary, through a presenting officer. Contrary to this, the members of the Inquiry Committee, who are otherwise officers of the same establishment, did not forsake their role as part of the establishment and virtually sat to hold the disciplinary inquiry in the manner of an investigation or a fact-finding inquiry, glossing through papers offered by the establishment and hearing the petitioner orally about his defence. This is not what the salutary principles about the procedure of a domestic enquiry contemplate.

12. The namesake of an inquiry that has been undertaken by the Committee, has held the petitioner guilty of Charge No.1 and partly guilty of Charge No.2. This Court has strained hard to see through the records produced, if there were any proceedings of the inquiry, recorded on daily order-sheets. We did not find any schedule for the inquiry, where the Inquiry Committee, comprising two officers of the establishment, sitting as impartial arbiters, would have intimated any date, time and place of the inquiry, both to the establishment and the petitioner. We also did not find that any witness was examined in support of the two charges, which in this case was all the more important, given the nature of the charges against the petitioner. The charge against the petitioner is not about committing the embezzlement himself, but slackness in supervision.

13. There are a few letters written by the petitioner to the higher officers regarding the delay in submission of *challans* by Cashiers. About two of these letters dated 28.08.2018 and 21.11.2018, it is remarked in whatever kind of a finding is recorded by the Inquiry Committee that these letters are self attested by the petitioner, whereas the attestation should have been secured from the Electricity Distribution Division, Baghpat. We think that in the matter of a charge of this kind, where slackness in performance of duties etc. is the substance, it was incumbent upon the establishment, in the first instance, to examine witnesses and prove the charges against the petitioner, with opportunity to the petitioner to cross-examine such witnesses. No finding could have been recorded against the petitioner by an Inquiry Committee sitting behind a bureau and flipping through papers made available by the establishment and considering themselves to be no more than

officers of the establishment, rather than independent arbiters. We are convinced upon looking through the records that the Inquiry Committee did not follow the essentials of the established procedure to hold a disciplinary inquiry in the matter involving the imposition of a major penalty. And, it has certainly prejudiced the petition in the outcome.

14. Mr. Abhishek Srivastava, learned Counsel was at pains to show that in fact an oral inquiry took place. He has drawn the Court's attention to paragraph No.6 of the counter affidavit, to say that it is evident from a perusal of the letter dated 21.01.2020, asking the petitioner to appear before the Inquiry Committee for personal hearing, and, the fact, that in response the petitioner appeared on 01.02.2020 before the Inquiry Committee, that oral inquiry was held, where he supported the contents of his reply dated 20.09.2019, in answer to the charge-sheet.

15. We are afraid that an oral hearing of this kind does not at all fulfil the requirements of holding what is called an oral inquiry. By oral inquiry, is meant that the establishment examines witnesses on their behalf, in the first instance, to prove the charges before the Inquiry Committee through a presenting officer. It has nothing to do with orally hearing the delinquent employee. This misconception about the procedure ought to be taken note of by the respondents once and for all, so that fundamental flaws of procedure that vitiate the inquiry, may be eschewed.

16. About the requirements of the law relating to the manner of holding a departmental enquiry, reference may be made to the authority of the Supreme Court in **Roop Singh Negi v. Punjab**

National Bank and others, (2009) 2 SCC 570, where it has been observed:

"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."

17. Again, in Smt. Karuna Jaiswal v. State of U.P., 2018 (9) ADJ 107 (DB) (LB), it has been held by a Division Bench of this Court:

"15. The law in this regard is very well-settled and does not need a reiteration, however, we may refer to a judgment of Hon'ble Supreme Court in the case of State of Uttar Pradesh and others v. Saroj Kumar Sinha, (2010) 2 SCC 772, wherein it has clearly been held that Enquiry Officer acts as a quasi judicial authority and his position is that of an independent adjudicator and further that he cannot act as a representative of the department or disciplinary authority and further that he cannot act as a prosecutor neither he should act as a judge; his function is to examine the evidence presented by the department and even in the absence of the delinquent officer, has to see as to whether the un rebutted evidence is sufficient to bring home the charges.

16. Hon'ble Supreme Court has further held in the said judgment of Saroj Kumar Sinha (supra) that it is only in case when the Government servant, despite notice, fails to appear during the course of enquiry that Enquiry Officer can proceed ex parte and even in such circumstances it is incumbent upon the Enquiry Officer to record the statement of witness.

17. In the instant case, no oral enquiry was held, neither the petitioner was given any notice to participate in any oral enquiry by fixing date, time and place for oral enquiry. It is only that the Enquiry Officer after noticing that despite sufficient time having been given to the petitioner, she did not furnish her reply to the charge-sheet, he proceeded to submit ex parte report without conducting any oral enquiry by fixing date, time and place for such an oral enquiry. Accordingly, the Enquiry Officer, in this case, has violated the aforesaid principles, which clearly vitiates the enquiry proceedings and any punishment order based on such a vitiated enquiry, is clearly not sustainable."

18. Also, in **State of U.P. and another v. Kishori Lal and another, 2018 (9) ADJ 397 (DB) (LB)**, the importance of holding an oral inquiry, where witnesses are examined first by the establishment to prove charges, was emphasised by a Division Bench of this Court at Lucknow in terms of the following remarks:

"**14.** Now coming to the question, what is the effect of non-holding of domestic/oral inquiry, in a case where the inquiry officer is appointed, oral inquiry is mandatory. The charges are not deemed to be proved suo motu merely on account of levelling them by means of the charge-sheet unless the same are proved by the department before the inquiry officer and only thereafter it is the turn of delinquent employee to place his defence. Holding oral enquiry is mandatory before imposing a major penalty, as held by Apex Court in *State of U.P. and another v. T.P.Lal Srivastava*, 1997 (1) LLJ 831, as well as by a Division Bench of this Court in *Subhash Chandra Sharma v. Managing Director and another*, 2000 (1) UPLBEC 541.'"

15. In another case in *Subhash Chandra Gupta v. State of U.P.*, **2012 (4) ADJ 4 (NOC)**, the Division Bench of this Court after survey of law on this issue observed as under:

"It is well-settled that when the statute provides to do a thing in a particular manner that thing has to be done in that very manner. We are of the considered opinion that any punishment awarded on the basis of an enquiry

not conducted in accordance with the enquiry rules meant for that very purposes is unsustainable in the eye of law. We are further of the view that the procedure prescribed under the inquiry rules for imposing major penalty is mandatory in nature and unless those procedures are followed, any out come inferred thereon will be of no avail unless the charges are so glaring and unrefutable which does not require any proof. The view taken by us find support from the judgement of the Apex Court in State of U.P. and another v. T.P.Lal Srivastava, 1997 (1) LLJ 831, as well as by a Division Bench of this Court in Subash Chandra Sharma v. Managing Director and another, 2000 (1) UPLBEC 541."

16. A Division Bench decision of this Court in the case of Salahuddin Ansari v. State of U.P. and others, **2008(3) ESC 1667**, held that non holding of oral inquiry is a serious flaw which can vitiate the order of disciplinary proceeding including the order of punishment has observed as under:

"10..... Non holding of oral inquiry in such a case, is a serious matter and goes to the root of the case.

11.A Division Bench of this Court in Subash Chandra Sharma v. Managing Director and another, 2000 (1) UPLBEC 541, considering the question as to whether holding of an oral inquiry is necessary or not, held that if no oral inquiry is held, it amounts to denial of principles of natural justice to the delinquent employee. The aforesaid view was reiterated in Subash Chandra Sharma v. U.P.Cooperative Spinning Mills and others, 2001 (2) UPLBEC 1475 and Laturi Singh v. U.P.Public Service Tribunal and others, Writ Petition No. 12939 of 2001, decided on 6.5.2005."

17. Even if the employee refuses to participate in the enquiry the employer cannot straightaway dismiss him, but he must hold and ex parte enquiry where evidence must be led vide Imperial Tobacco Co. Ltd. v. Its Workmen, AIR 1962 SC 1348, Uma Shankar v. Registrar, 1992 (65) FLR 674 (All).

18. The Division Bench of this Court in the case of Mahesh Narain Gupta v. State of U.P. and

others, (2011) 2 ILR 570, had also occasion to deal with the same issue. It held:

"At this stage, we are to observe that in the disciplinary proceedings against a delinquent, the department is just like a plaintiff and initial burden lies on the department to prove the charges which can certainly be proved only by collecting some oral evidence or documentary evidence, in presence and notice charged employee. Even if the department is to rely its own record/document which are already available, then also the enquiry officer by looking into them and by assigning his own reason after analysis, will have to record a finding that those documents are sufficient enough to prove the charges.

In no case, approach of the Enquiry Officer that as no reply has been submitted, the charge will have to be automatically proved can be approved. This will be erroneous. It has been repeatedly said that disciplinary authority has a right to proceed against delinquent employee in ex parte manner but some evidence will have to be collected and justification to sustain the charges will have to be stated in detail. The approach of the enquiry officer of automatic prove of charges on account of non filing of reply is clearly misconceived and erroneous. This is against the principle of natural justice, fair play, fair hearing and, thus, enquiry officer has to be cautioned in this respect."

B The principal of law which emanates from the above judgments are that initial burden is on the department to prove the charges. In case of procedure adopted for inflicting major penalty, the department must prove the charges by oral evidence also."

(emphasis by Court)

19. I also had occasion to consider the issue in **Ranveer Singh v. Union of India and others, 2021 (5) ADJ 136** and **Prem Narain Singh v. State of U.P. and another, 2023 (2) ADJ 580**. In both the aforesaid decisions, the necessity of examining witnesses in support of the charges, in a case involving the imposition of a major penalty has been explained. In the present case, as already said, no witness has been

examined by the establishment and findings recorded acting on idle papers. The enquiry is, therefore, *ex facie* flawed. All proceedings taken on its basis are, therefore, vitiated.

20. This Court may add that the impugned order dated 07.06.2023 passed by the Managing Director, on its own terms also, hardly qualifies for a valid order by the Disciplinary Authority. A perusal of the said order shows that after a brief reference to facts, there is a reference to the two charges against the petitioner. In the next part, the petitioner's defence to the two charges has been set out. There is then a brief reference to the fact of oral hearing before the Inquiry Committee on 01.02.2020, to which we have already made allusion hereinbefore. In the next part of the order impugned, there is an elaborate reference to the findings on the two charges by the Inquiry Committee, setting forth all that they have said. In the following part, the petitioner's answer to the show cause notice has been set forth with reference to the two charges on the findings of the Inquiry Committee. Doing all this, the Managing Director has consumed ten of the ten pages and a quarter of the total length of his order. For his finding, after a reproduction of all the material indicated hereinbefore, the Managing Director has expressed himself very cryptically in a few lines, that read:

"अभ्यावेदन का परीक्षण :-

श्री राजीव कुमार द्वारा आरोप सं0 - 01 एवं 02 के सम्बन्ध में किया गया कथन स्वीकार योग्य नहीं है क्योंकि श्री राजीव कुमार उक्त खण्ड में मुख्य रोकड़िया के महत्वपूर्ण पद पर तैनात थे एवं खण्ड के विभिन्न रोकड़ियों द्वारा राजस्व के मद में प्रतिदिन कितनी धनराशि प्राप्त की जा रही है व उसके सापेक्ष कितनी धनराशि बैंक में अथवा मुख्य रोकड़िया को आर0आर0 स्टेटमेंट

के साथ जमा की जा रही है इसका अनुश्रवण करना उनका मुख्य दायित्व था । यदि उनके द्वारा (Counterwise Daily Revenue Collection Report) का अनुश्रवण किया गया होता तो राजस्व गबन न होता। उनके द्वारा एच०सी०एल० की कोई आई०डी० न होने का उल्लेख किया गया है, किन्तु उनके द्वारा आई०डी० बनवाने हेतु क्या प्रयास किये गये के सम्बन्ध में कोई उल्लेख नहीं किया गया है। वे राजस्व गबन जैसे गम्भीर मामले में कार्यवाही न करने एवं अपने कर्तव्यों में उत्तरदायित्वों में शिथिलता बरतने हेतु उत्तरदायी है। उन पर लगाया गया आरोप सं0-01 सिद्ध तथा आरोप सं0-02 आंशिक रूप से सिद्ध होता है।"

21. It is, indeed, appalling that the Disciplinary Authority should condemn the petitioner, holding him guilty on a charge leading to the imposition of the major penalty, and record his findings in so cryptic an expression that it is difficult to understand how the Disciplinary Authority has reasoned to reach the conclusion that the petitioner is guilty. In this connection, reference may be made to the authority of the Supreme Court in **Allahabad Bank and others v. Krishna Narayan Tewari, (2017) 2 SCC 308**, where it is observed:

"7. We have given our anxious consideration to the submissions at the Bar. It is true that a writ court is very slow in interfering with the findings of facts recorded by a departmental authority on the basis of evidence available on record. But it is equally true that in a case where the disciplinary authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty-bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the enquiry officer or the disciplinary authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts

are justified in interfering with the orders of punishment. The High Court has, in the case at hand, found all these infirmities in the order passed by the disciplinary authority and the appellate authority. The respondent's case that the enquiry was conducted without giving a fair and reasonable opportunity for leading evidence in defence has not been effectively rebutted by the appellant. More importantly the disciplinary authority does not appear to have properly appreciated the evidence nor recorded reasons in support of his conclusion. To add insult to injury the appellate authority instead of recording its own reasons and independently appreciating the material on record, simply reproduced the findings of the disciplinary authority. All told, the enquiry officer, the disciplinary authority and the appellate authority have faltered in the discharge of their duties resulting in miscarriage of justice. The High Court was in that view right in interfering with the orders passed by the disciplinary authority and the appellate authority."

(emphasis by Court)

22. Since this Court is minded to send back the matter to the respondents, if they elect to pursue proceedings afresh against the petitioner, it is imperative that all that has been said hereinbefore about the proceedings of the inquiry and the obligations of the Disciplinary Authority while writing his order, shall be borne in mind.

23. In the result, this petition **succeeds** and is **allowed**. The impugned order dated 07.06.2023 passed by the Managing Director, Uttar Pradesh Power Corporation Limited, Lucknow is hereby **quashed**. The respondents are ordered to reinstate the petitioner in service forthwith, and pay him current salary from the date of this judgment. If, however, the respondents choose to place the petitioner again under suspension in view of the liberty hereinafter indicated, the petitioner shall be paid his subsistence allowance regularly. The respondents shall be at liberty to undertake inquiry afresh in the matter, on the basis of

the charge-sheet, already issued. The respondents in that event will proceed, bearing in mind the guidance in this judgment. If the respondents elect to proceed against the petitioner as per liberty given, it would be open to the respondents either to reinstate the petitioner, assigning him duties or not, but paying salary to him, or place him under suspension pending the inquiry to be held afresh. The question of payment of back-wages shall depend upon the outcome of the inquiry and the decision taken by the respondents in the proceedings, if they elect to pursue such proceedings. It is also ordered that if fresh proceedings are taken, the same shall be concluded expeditiously, wherein the petitioner shall cooperate. There shall be no order as to costs.

24. Let the original records be handed over to Mr. Abhishek Srivastava, learned Counsel appearing on behalf of the U.P. Power Corporation for their onward transmission to the respondents.

Order Date :- 19.10.2023
Anoop