

Court No. - 33

Case :- WRIT - A No. - 13111 of 2023

Petitioner :- Ashwani Bedi

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

Counsel for Petitioner :- Pranesh Kumar Mishra

Counsel for Respondent :- C.S.C., Abhishek Srivastava, Jitendra Sarin, Kartikeya Saran, Kaushalendra Nath Singh

Hon'ble J.J. Munir, J.

This writ petition is directed against the order dated 20.08.2022, passed by the Managing Director, Paschimanchal Vidyut Vitaran Nigam Limited, Meerut, punishing the petitioner with award of a censure entry and withholding one increment with cumulative effect. Also, under challenge is the charge-sheet dated 15.02.2021 and the inquiry report dated 02.03.2022, the inquiry report being one submitted by the Temporary Inquiry Committee, VI.

2. The facts giving rise to this writ petition are that the petitioner was appointed an Assistant Engineer in the service of the U.P. Power Corporation on 24.07.2014. He was posted as the Sub Divisional Officer, Electricity Sub-Station Division-II, Gulawathi under the Electricity Distribution Division-I, Bulandshahr on 08.08.2014. He is presently posted as the Assistant Engineer (Revenue), Electricity Distribution Division-III, Bulandshahr. A letter dated 11.09.2015 was issued by the Executive Engineer, Electricity Distribution Division-I, Bulandshahr and forwarded by the Superintending Engineer, Electricity Distribution Circle-II, Bulandshahr to the Chief Engineer (Distribution) Ghaziabad Zone, Ghaziabad. It was said that there was an illegal shifting of some electricity poles carrying the 33 KV line from the 132/33 KV Sub-Station, Gulawathi to 33/11 KV Sub-Station, Gulawathi No.1, wherein the petitioner appeared to be involved. On the basis of the said allegation, the petitioner was suspended from service pending inquiry *vide* order dated 18.09.2015. Upon condition that the inquiry would continue, the

petitioner was reinstated in service by the Chief Engineer, Ghaziabad Circle Ghaziabad *vide* order dated 01.10.2015. The petitioner was attached to the office of Electricity Distribution Circle-II, Bulandshahr.

3. There are then averments about the grievance made by the petitioner to release his salary and allowances for the period of suspension, as the disciplinary proceedings were continuing for a very long period of time and no charge-sheet was served for more than four years. In the meantime, the respondents stopped the petitioner's increment pending settlement of his entitlement to receive salary for the period of suspension from service. This led to a writ petition before this Court, being Writ Petition No. 825 of 2020. These are details and matters, which are not very relevant for the purpose of the present writ petition. The petitioner was served with a charge-sheet on 15.02.2021, that is to say, more than five years after the suspension order was passed against him. The charge against the petitioner, carried in the charge-sheet dated 15.02.2021, which is the solitary charge and issued by the Inquiry Committee with the approval of the Managing Director, reads:

“आरोप संख्या :-01

आपकी उपखण्ड अधिकारी, विद्युत वितरण उपखण्ड- गुलावठी अन्तर्गत विद्युत वितरण खण्ड - प्रथम, बुलन्दशहर के पद पर दिनांक 16.01.2015 से 04.03.2017 की अवधि के दौरान तत्कालीन आधिशासी अभियन्ता, विद्युत वितरण खण्ड- प्रथम, बुलन्दशहर द्वारा अधीक्षण अभियन्ता, विद्युत वितरण मण्डल - द्वितीय, बुलन्दशहर को सम्बोधित अपने कार्यालय पत्र सं0-3293 दिनांक 11.09.2015 के माध्यम से अवगत कराया गया कि दिनांक 06.09.2015 की रात्रि में उन्हें दूरभाष पर सूचना मिली कि 132/33 के0 वी0 उपकेन्द्र गुलावठी से निकलने वाली 33 के०वी० विद्युत लाईन जो कि 33/11 के०वी गुलावठी नं0 01 को जाती है, की लाइन के कुछ पोल शिफ्ट कर दिये गये हैं तथा उक्त कार्य दिनांक 05.09.2015 एवं 06.09.2015 में किया गया है। इस सम्बन्ध में आपसे पूछने पर आपके द्वारा कोई स्पष्ट उत्तर नहीं दिया गया। तत्पश्चात सम्बन्धित 132 के0 वी0 उपकेन्द्र पारेषण के एस 0 एस 0 ओ 0 से पूछने पर बताया गया कि उन्होंने यह कार्य उपखण्ड अधिकारी श्री अश्वनी वेदी की देख-रेख में तथा रेस्टिंग पीरियड में दूरभाष के माध्यम से पारेषण से अनाधिकृत शटडाउन लेकर कराया गया है। इस प्रकार आपके द्वारा विभागीय नियमों के विपरीत प्लॉट मालिक से मिलीभगत करके यह कार्य बिना सक्षम स्तर से स्वीकृति प्राप्त किये कराया गया है।

इस प्रकार आपको अपने दायित्वों के प्रति शिथिलता एवं लापरवाही बरतने, शिथिल कार्यप्रणाली का परिचय देने, वस्तुस्थिति से अपने उच्चाधिकारियों को अवगत न कराने, तथा उ 0 प्र 0 सरकारी कर्मचारी आचरण नियमावली 1956 की धारा-3 का उल्लंघन करने हेतु आरोपित किया जाता है।”

4. In support of the charge, the following documents were relied upon to prove it:

"उपरोक्त आरोप के समर्थन में निम्नलिखित साक्ष्य प्रस्तावित है:-

1. अधिशासी अभियन्ता, विद्युत वितरण खण्ड- प्रथम, बुलन्दशहर के पत्र सं0-3293 /वि०वि० ख०प्र० / बु०/ दिनांक 11.09.2015 की छायाप्रति ।
2. अधीक्षण अभियन्ता, विद्युत वितरण मण्डल - द्वितीय, बुलन्दशहर के पत्र सं0-8232 / वि० वि० द्व ० / बु०/ दिनांक 19.09.2015 की छायाप्रति ।
3. कर्मचारी आचरण नियमावली 1956 प्रकाशित अभिलेख के नियम 3 का संगत अंश । कमांक 01 एवं 02 पर अंकित साक्ष्य संलग्न किये जा रहे हैं तथा कमांक 03 पर अंकित साक्ष्य प्रकाशित अभिलेख है, जिसे आप अपने स्तर से प्राप्त करें।"

5. It must be remarked here that the relevant part of Rule 3 of the U.P. Government Servant's Conduct Rules, 1956, cited as a document, is by no means a document. To refer to the provision of a service rule as a document, *ex facie* betrays lack of understanding of the law by Members of the Inquiry Committee as well as the Managing Director, who issued, and approved the charge-sheet, respectively, about something as elementary as what constitutes a document or documentary evidence and what is, in fact, nothing more than the law, under which the employee was charged. Though, failure by men not trained in law, to understand the distinction between what is law and what is documentary evidence in a case, particularly, when it is a matter of a reference alone in the charge-sheet, may not be very material but it betrays that lack of understanding of something very essential, which could ultimately bear upon the soundness of judgment of the Inquiry Tribunal as well as the Disciplinary Authority. This Court expects that in future a provision in a Service Rule shall never be referred to in a charge-sheet as a document by the respondent Corporation.

6. It is the petitioner's case that he was not provided with a copy of the letters dated 11.09.2015 and 19.09.2015, the two documents annexed to the charge-sheet though shown as annexures there. The petitioner, therefore, addressed a memo dated 18.03.2021 to the respondents as well as the Inquiry Committee asking to be provided with copies of these letters. The memo dated 18.03.2021, addressed to the Superintendent

Engineer, Electricity Distribution Division-I and II, Bulandshahr, with a copy to the convener of the Inquiry Committee, and the Chief Engineer concerned was sent by registered post, receipts whereof are placed at page no. 53 of the paper book. The petitioner says that these documents were not supplied. With time running out, the petitioner submitted a reply to the charge-sheet, denying the charge and saying that it was based on no evidence besides conjecture. The circumstances appearing in favour of the petitioner are also indicated.

7. It is averred in paragraph no. 16 of the writ petition that though the petitioner was personally heard by the Inquiry Committee on 02.03.2022, through video conferencing, but, no witness was examined on behalf of the establishment in support of the charge. In short, no oral evidence was led by the employers/establishment to prove the charge against the petitioner. The Inquiry Committee submitted a report dated 02.03.2022, holding the solitary charge proved. On the basis of the said inquiry report, the petitioner was issued with a show cause notice dated 06.04.2022 by the Managing Director, Paschimanchal Vidyut Vitran Nigam Limited, Meerut, the Disciplinary Authority. The petitioner submitted a reply in response to the show cause notice on 26.04.2022 to the Managing Director. The Managing Director then proceeded to pass the order impugned dated 20.08.2022, punishing the petitioner with a censure entry and withholding of one increment with cumulative effect.

8. Aggrieved by the said order, this writ petition has been instituted.

9. It is averred in paragraph nos. 16, 25 and 28 of the writ petition that the Inquiry Committee, while holding the inquiry, did not have any witness or oral evidence produced before it by the establishment in support of the charge. There was, thus, no occasion for the petitioner to cross-examine any witness. The short counter-affidavit that has been filed in answer to this writ petition, clearly avers in paragraph no. 7 to the following effect:

"That no witnesses were examined by the department in respect of Charge-sheet dated 15.02.2021, as there was only documentary evidence against the Petitioner and the same were supplied to Petitioner along-with charge-sheet."

10. Heard Mr. Pranesh Kumar Mishra, learned Counsel for the petitioner and Mr. Vinayak Ranjan, Advocate, holding brief of Mr. Kartikeya Saran, learned Counsel for respondent no.3. The record has been perused.

11. A statement was made on behalf of respondent nos. 1, 2, 4 and 5 that they do not wish to file a return because essentially the issue arises between the petitioner and respondent no.3.

12. Upon a perusal of the aforesaid averments in the writ petition and the respondent's admission in paragraph No. 7 of the short counter affidavit, it is evident that the Inquiry Committee proceeded to record a finding of guilt, glossing through papers alone, without the establishment/employers producing any witness to prove the solitary charge, on the basis of which, the impugned order has been passed by the Managing Director.

13. A perusal of the inquiry report shows that in the first part of the report, there is a description of the origin and course of proceedings against the petitioner. In the second part, the solitary charge, numbered as Charge No. 1, has been set forth. In the third part, the petitioner's reply to the charge-sheet has been set out. In the fourth part, there is a brief discussion to hold the charge proved. The findings recorded read:

"विवेचना :-

आरोपी अधिकारी के प्रतिउत्तर, व्यक्तिगत सुनवाई एवं पत्रावली में उपलब्ध प्रारंभिक जाँच इत्यादी अभिलेखों की विवेचना एवं परिक्षोणोपरान्त यह पाया गया है कि दिनांक 06.09.2015 को तत्कालीन अधिशासी अभियन्ता विद्युत वितरण खण्ड-प्रथम, बुलन्दशहर को उनके दूरभाष पर सूचना मिली कि 33 के०वी० लाईन गुलाबी-1 के कुछ पोल शिफ्ट कर दिये गये है इस सम्बन्ध में तत्कालीन अधिशासी अभियन्ता (वितरण) द्वारा श्री अश्वनी वेदी उपखण्ड अधिकारी से पूछने पर श्री अश्वनी वेदी द्वारा कोई स्पष्ट उत्तर नहीं दिया गया व अवर अभियन्ता श्री दीपक दुबे से जब पूछा गया तो उन्होन उपरोक्त अवधि में छुट्टी पर होने के सम्बन्ध में सूचित किया तथा थोड़ी देर बाद

फोन पर बताया की उन्होंने लाईन मैन से पूछा तो पता लगा है कि लाईन शिफ्ट की गई है उन्होंने यह भी बताया की 132 के०वी० उपकेन्द्र पारेषण के एस०एस०ओ० से पूछने पर उन्होंने कार्य उपखण्ड अधिकारी श्री अश्वनी वेदी की देखरेख ने तथा रोस्टिंग पिरयड में दूरभाष के माध्यम से पारेषण से अनाधिकृत शटडाउन लेकर गलत नीयत से कराया गया है। उक्त के सम्बन्ध में विद्युत वितरण खण्ड-द्वितीय बुलन्दशहर द्वारा अपने पत्रांक 3293 दिनांक 11.09.2015 (पृष्ठ सं० 13) के माध्यम से अधीक्षण अभियन्ता, वि०वि०ग०- द्वितीय बुलन्दशहर को पूर्ण घटना क्रम से अवगत कराते हुए श्री अश्वनी वेदी के विरुद्ध कठोर कार्यवाही की संस्तुति की गयी। अधीक्षण अभियन्ता विद्युत वितरण मण्डल - द्वितीय बुलन्दशहर द्वारा अपने पत्रांक 8232 दिनांक 16.09.2015 (पृष्ठ सं० 12) द्वारा मुख्य अभियन्ता गाजियाबाद क्षेत्र गाजियाबाद को पत्र के माध्यम से श्री अश्वनी वेदी के विरुद्ध कठोर कार्यवाही के साथ जाँच की भी संस्तुति की गयी।

उपरोक्त अधिशासी अभियन्ता विद्युत वितरण खण्ड प्रथम बुलन्दशहर एवं अधीक्षण अभियन्ता विद्युत वितरण मण्डल द्वितीय बुलन्दशहर की संस्तुति के आधार पर मुख्य अभियन्ता गाजियाबाद क्षेत्र गाजियाबाद द्वारा श्री अश्वनी वेदी को कार्यालय ज्ञाप सं० 7586 दिनांक 18.09.2015 (पृष्ठ सं० 58) को निलम्बित कर दिया गया था। 33 के०वी० विद्युत लाईन के पोल शिफ्ट होने की तत्कालीन अधिशासी अभियन्ता व अधीक्षण अभियन्ता द्वारा भी पुष्टि की गयी है। अतः आरोपी पर आरोप सिद्ध होता है।"

14. It is by now well settled as a salutary principle, governing departmental inquiries, where the findings are likely to lead to the imposition of a major penalty, that it is the duty of the establishment or the employer to examine witnesses before the Inquiry Committee or the Inquiry Officer, producing them along with documentary evidence. The Inquiry Committee or the Inquiry Officer, though officers or personnel of the establishment, must act as impartial arbiters and the charge must be established before them by the establishment through a Presenting Officer, leading evidence both oral and documentary. In case of a major penalty, it is imperative that the charge be proved by examining witnesses, and not merely relying on documents that are no more than idle papers unless proved by the oral testimony of witnesses. This has certainly not been done. How vital it was in this case would be evident from a perusal of the findings recorded by the Inquiry Committee.

15. The Inquiry Committee has sustained the charge about the illegal shifting of the 33 KV electricity line, which involved shifting of some electric poles by the petitioner also, said to be without permission of the Competent Authority, relying on a statement by the Executive Engineer recorded during the preliminary inquiry, based on information gathered by

the Executive Engineer, Electricity Distribution Division-I, Bulandshahr over telephone from different persons. The statement of the Executive Engineer says that he learnt over telephone that some poles of the 33 KV line, under Gulawathi-1 have been shifted. In his statement recorded at the preliminary inquiry, it is mentioned that, in this connection, the former Executive Engineer, Electricity Distribution said that upon enquiry from Ashwani Bedi, the Sub-Station Officer, no clear answer was given. But, upon enquiry from Deepak Dubey, Junior Engineer, he said that, during the period in question, Deepak Dubey was on leave, but later on informed the Executive Engineer over telephone that, upon enquiry from the lineman, he came to know that the electricity line had been shifted. The Junior Engineer also informed that upon enquiry from the Sub-Station Officer of the 132 KV Sub-Station, he said that he had got this work done under the supervision of Aswani Bedi, Sub Divisional Officer, after effecting rostering of electricity bringing about an unauthorised shutdown with an ill-intention. It is then noted by the Inquiry Committee that the Electricity Distribution Division-II, Bulandshahr by a letter No. 3293 dated 11.09.2015, informed the Superintending Engineer, Electricity Distribution Division-II of the entire episode recommending strict action against the petitioner. The Inquiry Committee has then noticed a letter by the Superintending Engineer, Electricity Distribution Division-II, Bulandshahr, bearing No. 8232 dated 16.09.2015, addressed to the Chief Engineer, Ghaziabad Zone, Ghaziabad, recommending strict action against the petitioner and an inquiry. This is all for a finding that the Inquiry Committee have recorded in substance.

16. It is true that in a departmental enquiry, the Evidence Act does not apply but, the Evidence Act, after all, is a very systematic enunciation of the adjective law of evidence, applicable to trials before a Court of law. A domestic Tribunal need not worry about what the law of evidence says. Nevertheless, salutary procedures, governing consideration of relevant evidence and some salutary Rules about proof of facts, have to be

observed in order to ensure that a delinquent in a domestic inquiry, who would be visited with adverse civil consequences, is not punished by the ignorance of a lay Inquiry Tribunal.

17. If one were to read the findings of the Inquiry Committee, which have been extracted *verbatim* in Hindi, and then also rendered almost for the whole of it in English, it would show that the Inquiry Committee have based their findings on three communications – two telephonic calls and a letter. The first telephonic call is the one dated 06.09.2019 received by the former Executive Engineer, Electricity Distribution Division-I, Bulandshahr on his telephone, giving him information that the 33 KV line, Gulawathi-I has had a shifting of its electric poles. The former Executive Engineer inquired about the fact from Ashwani Bedi, Sub-Divisional Officer (petitioner), but did not receive a clear answer. The former Executive Engineer then inquired about the fact of Deepak Dubey, a Junior Engineer. Dubey said in the first instance that during the relevant period of time, he was on leave. But, a little later, he called over telephone to tell the former Executive Engineer that he (Dube, J.E.) had inquired of the lineman about the fact and come to know that the electric line had been shifted. Dubey also informed the Executive Engineer that the Sub-Station Officer, 132 KV Sub-Station, upon being asked about the fact, had revealed that he had done this work (shifting the electric line) under the supervision of Ashwani Bedi and carried it out during the rostering period, which was managed on telephone by an unauthorised shutdown got done with an ill-intention. The said fact was also communicated by the Electricity Distribution Division-II, Bulandshahr through their Letter No.3293 dated 11.09.2015 to the Superintending Engineer, Electricity Distribution Division-II, Bulandshahr, setting forth the entire calendar of events and recommending strong action to be taken against the petitioner. This is, more or less, the evidence on which the Inquiry Committee have founded their conclusions. Amongst the three items of evidence considered, of the two telephonic communications, one is without the

mention of its date. It is the one between the former Executive Engineer, Electricity Distribution Division-I, Bulandshahr and the Junior Engineer, Deepak Dubey. The other communication dated 06.09.2015, which triggered action against the petitioner, speaks about an information received by the former Executive Engineer, Electricity Distribution Division-I, Bulandshahr over his telephone from a caller, whose identity has not been specified at all. The third and the only documentary evidence is the letter dated 11.09.2015 from the Electricity Distribution Division-II, Bulandshahr to the Superintending Engineer, Electricity Distribution Division-II, Bulandshahr, which is said to carry the entire sequence of events leading to the unauthorised shifting of electricity line, including electric poles, by the petitioner.

18. A perusal of the charge-sheet would show that the only document relied upon to sustain the charge is the letter dated 11.09.2015 from the Executive Engineer, Electricity Distribution Division-I, Bulandshahr, addressed to whom is not mentioned there. The other is a letter dated 19.09.2015 from the Superintending Engineer, Electricity Distribution Division-II, Bulandshahr, with the addressee not being mentioned in the charge-sheet. There appears to be some inaccuracy about the authors of the letter dated 11.09.2015, in as much as, the reference number of the letter dated 11.09.2015 in the charge-sheet and the inquiry report are identical, that is to say, 3293. The date and the reference number tally in the charge-sheet and the findings in the inquiry report. What does not tally is that, in the charge-sheet, the author of the letter bearing number 3293 dated 11.09.2015, is shown as the Executive Engineer, Electricity Distribution Division-I Bulandshahr, whereas, in the findings recorded in the inquiry report, the author of the said letter with the same reference number and date is shown to be the Electricity Distribution Division,-II Bulandshahr, without mentioning even an official human for the author. These small inaccuracies have been pointed out not to pick holes in the findings of the Inquiry Committee but to notice the demonstrably casual

nature of the Inquiry Committee's approach in recording their findings. Substantially, this Court notices that the Inquiry Committee have relied upon a telephonic communication dated 06.09.2015 received by the former Executive Engineer, Electricity Distribution Division-I, Bulandshahr from some unknown quarter and then the telephonic communication between the former Executive Engineer, Electricity Distribution Division-I, Bulandshahr and Deepak Dubey, Junior Engineer, of which the date does not find mention.

19. Now, a perusal of the findings, based on the phone call dated 06.09.2015 received by the former Executive Engineer, Electricity Distribution Division-I, Bulandshahr through an unknown caller and the other phone call that the said Executive Engineer received from Deepak Dubey, Junior Engineer with no date of the call mentioned, have been relied by the Inquiry Committee as gospel truth and proof of all that is said in the two phone calls. The mention of these phone calls and the contents of the conversation have been taken note of by the Inquiry Officer on a perusal of some preliminary inquiry report, where all these facts are recorded. The former Executive Engineer, Electricity Distribution Division-I, Bulandshahr was never called as a witness before the Inquiry Committee in support of the charge to testify to all that he had heard during the telephonic conversation on 06.09.2015, and the later one of some unknown date with Deepak Dubey. Deepak Dubey too was not called as a witness, nor was the lineman, on whose information, Deepak Dubey relied to inform the Executive Engineer about the fact of the line and the electric poles being shifted.

20. The Sub-Station Officer, 132 KV Sub-Station, from whom Dubey gathered the further facts that the shifting of the electric line and poles was done under the supervision of the petitioner after managing a rostering period through a shutdown of electric supply, done maliciously, was also not produced as a witness at the inquiry. These facts have been gathered from whatever the former Executive Engineer said during the

preliminary inquiry about the telephonic conversation, the information that he received through some unknown caller, on 06.09.2015 and then again on some unspecified date from Deepak Dubey, the Junior Engineer. In the preliminary inquiry report too, the former Executive Engineer has given facts based on hearsay of remote origin.

21. The findings of the Inquiry Committee are, therefore, based on utter hearsay, recorded in a preliminary inquiry report, based on phone calls. There is a letter dated 11.09.2015 from the Electricity Distribution Division-II, addressed to the Superintending Engineer, Electricity Distribution Division-II, Bulandshahr, said to be apprising him of the entire sequence of events, but in the absence of identification of its author, can hardly be of any worth. The said letter too, by whomsoever written, seems to have depended upon the telephonic conversation that the former Executive Engineer, Electricity Distribution Division-I, Bulandshahr had with Dubey, and reported during the preliminary inquiry.

22. This Court must say, therefore, that even if these are facts that the respondents had collected through inquiries made by the former Executive Engineer, Electricity Distribution Division-I, Bulandshahr, all this had to be proved before the Inquiry Tribunal by examining witnesses, who are said to have told the Executive Engineer that the shifting of the electricity line and poles took place unauthorisedly, under the petitioner's supervision. A finding of this kind cannot be based on reports of telephonic conversation recorded during a preliminary inquiry, referring to hearsay from men, who have never made it before the Inquiry Committee to depose in favour of the charge, or whatever they are reported to have said. The findings of the Inquiry Committee are based on the statement of a man, the former Executive Engineer, Electricity Distribution Division-I, Bulandshahr, recorded during the preliminary inquiry, who heard about the fact, subject matter of the charge from Deepak Dubey, Junior Engineer, who, in turn, came to know of it from a Sub-Station Officer. Interestingly, the name of the Sub-Station Officer is

not mentioned across the entire length and breadth of the Inquiry Committee's report. The statement of the former Executive Engineer, Electricity Distribution Division-I, Bulandshahr recorded during the preliminary inquiry, upon which the Inquiry Committee have placed reliance to sustain the charge, is hearsay and irrelevant evidence, on which nothing can turn.

23. Before proceeding further in the matter, this Court must remark that the respondent Corporation are a big establishment, whom this Court believes would have a Law Department of their own. Even if the best legal brain would not go to the respondents and join their Law Department, a legally trained mind would, at least suggest laymen heading the inquiry, or the Managing Director, who is the Disciplinary Authority, also a layman, in contra-distinction to a legally trained mind, the essence of the hearsay rule and avoid acting on hearsay. It seems that the Inquiry Tribunal and the Managing Director have fallen into this error of acting on remote hearsay because they seem to think like many other educated men in fields, other than the law, that law is pure common-sense. This is an utter misconception, which must not be harboured by anyone and whenever confronted with duties that affect rights of citizens necessarily calling for legal training, those charged with that responsibility and not trained in the discipline must not hesitate to seek appropriate advice.

24. This Court has no hesitation to say that the kind of evidence, on which the Inquiry Committee have acted to hold the charge proved, is absolutely irrelevant and far from competent to bring it home. A grave miscarriage of justice has been committed by the Inquiry Committee in holding the petitioner guilty of the charge, acting on a statement of the former Executive Engineer, Electricity Distribution Division-I, Bulandshahr, recorded during the preliminary inquiry, reporting facts based on remote hearsay, that have no relevance to prove the charge. That what ought to have been done in a situation is something, which, in any

case, is the inevitable course to follow in any domestic inquiry, where charges are serious enough, if proved, to lead to the imposition of a major penalty. The requirement is that, in a case involving the imposition of a major penalty, as already said, the establishment must examine witnesses in support of the charge through a Presenting Officer before their own Inquiry Officer or Inquiry Committee, who should, in that role, act as impartial arbiters; not Officers of the establishment.

25. This issue engaged the attention of their Lordships of the Supreme Court in **State of U.P. and others vs. Saroj Kumar Sinha, (2010) 2 SCC 772**, where it has been held:

“**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.

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.”

26. Regarding the issue in hand, the Supreme Court in *Roop Singh Negi vs. Punjab National Bank and others*, (2009) 2 SCC 570, 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.”

27. A Division Bench of this Court in *State of U.P. and another vs. Kishori Lal and another*, 2018 (9) ADJ 397 (DB)(LB) had occasion to consider the issue about the procedure by which an inquiry is to be held in matters involving the imposition of a major penalty and observed:

“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.

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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 any 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.'

19. 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)

28. The issue again came up before a Division Bench of this Court in **Smt. Karuna Jaiswal vs. State of U.P, 2018 (9) ADJ 107 (DB) (LB)**, where it was held:

"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."

29. I also had occasion to consider this issue in **Ashish Kumar Tiwari vs. State of U.P. and others, 2021 (1) ADJ 420** as well as **Ranveer Singh vs. Union of India and others, 2021 (5) ADJ 136**, besides **Prem Narain Singh vs. State of U.P. and another, 2023 (2) ADJ 580**. The principle, culled out in those decisions, is also to the same effect that in domestic inquiries, involving the likelihood of imposition of a major penalty, it is imperative for the establishment/employer to produce witnesses/ oral evidence in support of the charge, which must be proved

in the first instance by the establishment. It is then that the burden shifts to the employee, if he so desires, to lead evidence in rebuttal. Nothing of the kind has been done in this case. There has been no Presenting Officer, no witness, no document produced properly in evidence and proved where the petitioner could cross-examine the witness and then produce, if required, evidence in defence. The Inquiry Committee seem to have held an oral hearing for the petitioner of the *viva-voce* kind, putting questions to him like interrogators, gleaned through the papers produced by the establishment proved by nobody and acted on the contents that were nothing more than dead letters.

30. The Disciplinary Authority, while writing the impugned order, has heavily relied upon the contents of the letter dated 11.09.2015 issued by the Executive Engineer, Electricity Distribution Division-I, Bulandshahr, which reports a story of the petitioner's involvement in the illegal shifting of the electricity line. The contents of the letter could be true but it would require, as said more than once hereinbefore, the production of relevant witnesses, including the former Executive Engineer, Electricity Distribution Division-I, Bulandshahr, who addressed the letter dated **11.09.2015** to the Higher Authority, accusing the petitioner of illegal shifting. In the absence of production of relevant witnesses, including the Executive Engineer, the respondents have fallen for a grave error in returning a finding of guilt against the petitioner, based on letters and idle papers.

31. This Court is, therefore, of opinion that the impugned order cannot be sustained and the respondents should be left free, if they so elect, to proceed afresh against the petitioner from the stage of the charge-sheet.

32. In the result, this writ petition **succeeds** and is **allowed**. The impugned order dated 20.8.2022 passed by the Managing Director, Pashchimanchal Vidyut Vitran Nigam Limited, Meerut, is hereby **quashed**. A *certiorari* is further issued, quashing the inquiry report dated 02.03.2022, submitted by the Temporary Inquiry Committee, 6th,

Paschimanchal Vidyut Vitran Nigam Limited, Meerut. It will be open to the respondents, if they so elect, to proceed afresh against the petitioner from the stage of the charge-sheet, strictly in accordance with law, and bearing in mind the guidance in this judgment. If the respondents choose to proceed afresh, they will conclude the inquiry expeditiously, wherein the petitioner shall cooperate.

33. The petitioner shall receive current emoluments, unaffected by the impugned order, since quashed, but arrears shall abide by the result of further orders that may be made, if proceedings are taken afresh against the petitioner; else, arrears, if any, shall become payable immediately.

34. There shall be no order as to cost.

Order Date :- October 19 2023

Vijay/ Anoop

(J. J. Munir)