

Court No. - 33**Reserved**
A.F.R.**Case :-** WRIT - A No. - 13188 of 2023**Petitioner :-** Snehlata**Respondent :-** Registrar And Commissioner, Cooperative U.P.
Lucknow And 3 Others**Counsel for Petitioner :-** Uday Pratap Singh**Counsel for Respondent :-** C.S.C,Devendra Pratap Singh,
Satyam Singh**Hon'ble J.J. Munir,J.**

1. This writ petition is directed against an order dated 17.06.2021 passed by the Secretary/ Chief Executive Officer, Zila Sahkari Bank Limited, Ghazipur, dismissing the petitioner from service and the order dated 13.06.2022 passed by the Commissioner and Registrar, Cooperative, U.P., Lucknow, rejecting the petitioner's representation against the said order.

2. The petitioner's husband was a Branch Manager at the District Cooperative Bank, Ghazipur. He died in harness on 17.09.2007. After his death, the petitioner applied for compassionate appointment and the Bank aforesaid, who are arrayed as respondent Nos.2 and 3 to this petition, considered the petitioner's case, finding her fit to be appointed. Orders in this regard were passed on 26.04.2008 by respondent No.2. The petitioner, acting on the order of appointment, joined on 29.04.2008. She was posted at the Head Office of the District Cooperative Bank, Ghazipur. Later on, the petitioner was transferred and posted as a Clerk/ Cashier in the Jangipur Branch of the District Cooperative Bank in the month of January, 2012.

3. According to the petitioner, misfortune befell her, when she was placed under suspension, pending enquiry *vide* an order dated 21.06.2018. Alongside the petitioner, the Branch

Manager of the Bank, Ashok Kumar Singh was also placed under suspension. The basis of the disciplinary proceedings against the petitioner was a preliminary enquiry report dated 12.06.2018. It was submitted by a Section Officer (Audit) to the Secretary/ Chief Executive Officer, District Cooperative Bank Ltd. The report had opined that the petitioner, in collusion with the Branch Manager, had made certain payments in dormant accounts worth Rs.5,49,934/- contrary to norms of the Reserve Bank of India. It was also found that further payment of a sum of Rs.1,24,028/- in eight accounts, which were dead accounts, had also been made, besides settlement of an overdraft of Rs.5000/- in a dormant account.

4. In consequence of whatever was found in the preliminary inquiry or the impressions formed on its basis, the petitioner was served with a charge-sheet dated 22.11.2018, laying three charges against her, to wit:

"आरोप संख्या 1-

जांच के दौरान पाया गया कि विभिन्न खातों पर विगत वर्षों में मृतक दर्ज किया गया है, जब कि आप द्वारा खाते में मृतक दर्ज होने के बावजूद जान-बूझकर बैंक की साख को प्रभावित करते हुए एक सोची समझी साजिश के तहत रु 1,35,028.00 का भुगतान कर गवन / अपहरण किया गया, जिसके आरोप से आपको आरोपित किया जाता है। जिसका विवरण संलग्न सूची के क्रमांक 3, 6, 10, 26, 31, 44, 48, 49 एवं 68 पर अंकित है।

आरोप संख्या-2 -

जांच के दौरान पाया गया कि आप द्वारा खातों में पर्याप्त अवशेष नहीं रहने पर भी बैंकिंग नियमों की अवहेलना करते हुए रु० 23,000.00 का भुगतान कर गवन / अपहरण किया गया है, जिसके कारण खातों में ओवर ड्राफ्ट (अधिविकर्ष) की स्थिति उत्पन्न हुई। जो आपके स्वेच्छाचारिता का परिचायक है। अतः

आपको इस आरोप से आरोपित किया जाता है। जिसका विवरण संलग्न सूची के क्रमांक सं० 38, 46, 75, 142, 145, 162, एवं 204 पर अंकित है ।

आरोप संख्या - 3-

जांच के दौरान पाया गया कि आप द्वारा अपरिचालित खातों से बिना के० वाई० सी० नॉम्स पूर्ण कराये अनियमित ढंग से ₹० 1127316.00 का भुगतान किया गया जो बैंकिंग नियमों के विपरीत है। इस प्रकार के भुगतान करके आप द्वारा गबन / अपहरण एवं वित्तीय अनियमितता की गयी है, जिसके आरोप से आपको आरोपित किया जाता है। जिसका विवरण संलग्न सूची के उपरोक्त (आरोप सं० 1 एवं आरोप सं० 2 में अंकित) क्रमांक के अतिरिक्त है।"

5. The petitioner submitted a reply to the charge-sheet on 14.01.2019 and in the opening part said that despite the letters dated 04.12.2018 and 08.01.2019, she was not supplied the proof of charges, which have been laid against her. It was pleaded that the payment of Rs.1,35,028/- had been done on the directions of the Branch Manager, who was authorised to check the signatures on the withdrawal form and tally these with the photographs. She was not authorised to tally the signatures and photographs of the account holders. It was also said that in the ledger account, there was no entry or note that the account holder is dead. As regards Charge No.2, the petitioner said in brief that the overdraft in the seven accounts had been made as the earlier withdrawal forms were not entered/ posted in the ledger account. Therefore, it was not clear whether there was sufficient balance in the account or not and the petitioner proceeded to make payments.

6. Answering Charge No.3, it has been said by the petitioner that carrying out the KYC exercise in accordance with norms was the duty for the Branch Manager, who failed to carry it out.

It was not remotely the petitioner's duty to verify the KYC relating to the account holder before making payments. The petitioner, accordingly, said that she deserved to be exonerated.

7. It is the petitioner's case that after she had submitted a reply, the Secretary/ Chief Executive Officer, Ghazipur issued a show cause notice dated 12.04.2019, without a copy of the enquiry report, saying that the Inquiry Officer had considered the petitioner's reply dated 14.01.2019, examined the documents and found all the charges against the petitioner to be proved. Therefore, the petitioner was asked to submit a reply within fifteen days, stating why her services may not be terminated. The petitioner submitted a reply to the show cause notice dated 12.04.2019, denying all the charges, and further said that the Inquiry Officer had held the enquiry *ex parte* without affording the petitioner any opportunity to defend herself.

8. The petitioner was then served with a further notice dated 28.02.2020, saying that her reply to the show cause notice had not been found satisfactory and it was proved that she had embezzled funds of the Bank and committed gross financial irregularities causing loss. The petitioner, therefore, was required to show cause why she should not be dismissed from the Bank's service. Fifteen days were granted to further show cause.

9. To this added notice, the petitioner submitted a reply dated 12.03.2020, categorically saying that no enquiry had been held by the Inquiry Officer. It was said in this reply that the Inquiry Officer had not fixed a date, time and place of enquiry and no witnesses were examined nor the petitioner allowed to cross-examine witnesses. It was also said that the petitioner

was not afforded opportunity to produce witnesses and, therefore, the enquiry proceedings were vitiated.

10. The petitioner was then served with a notice dated 17.08.2020 directing the petitioner to deposit a sum of Rs.6,60,436/- within fifteen days in view of a proposal of the Committee of Management to that effect dated 11.06.2020. The petitioner has asserted that no proposal by the Committee of Management was provided to her. She demanded a copy of the proposal dated 11.06.2020 passed by the Committee of Management, but it was never supplied. The petitioner, who is a widowed woman, serving on a compassionate tenure, was advised that she would be reinstated if she deposited Rs.6,60,436/-. The petitioner, therefore, encashed her entire savings and deposited these in the bank's account on 11.09.2020. Thereafter, there was a lull for a long period of time.

11. The petitioner addressed a memo to the Chief Executive Officer on 22.01.2021 followed by another one on 21.06.2021, with the prayer that she is under suspension for more than three years, but no decision had been taken as yet. It was also stated that the petitioner had not been paid subsistence allowance for sixteen months and she was unable to maintain her small children, taking care of their studies. It was also said that her husband passed away during the Covid-19 pandemic. The lockdown imposed had caused great difficulties for the petitioner. The petitioner, therefore, prayed that her subsistence allowance be released.

12. The respondents resolved to terminate the petitioner's services. They sent a proposal to the Institutional Service Board in accordance with Regulation 87 of the Uttar Pradesh

Cooperative Societies Employees Service Regulations, 1975 (for short, 'the Regulations of 1975'). Subsequently, the petitioner was served with the dismissal order dated 17.06.2021.

13. It is averred in paragraph No.17 of the writ petition that while going through the order, the petitioner came to know that a resolution to dismiss the petitioner from service had been passed by the Committee of Management of the Bank on 01.03.2019, and there was no mention of the resolution of the Committee of Management dated 11.06.2020, referred to in the notice dated 17.08.2020, requiring the petitioner to deposit a sum of Rs.6,60,436/-. It is also averred that the petitioner, thinking that she would be reinstated, deposited Rs.6,60,436/-, after encashing all her savings. There is no mention in the impugned order about the resolution of 11.06.2020 or the sum of money deposited by the petitioner.

14. The petitioner preferred an appeal before the Commissioner and Registrar, Cooperative Societies U.P. on 20.04.2022 under Section 128 of the Uttar Pradesh Cooperative Societies Act, 1965 (for short, 'the Act of 1965'), challenging the order of dismissal dated 13.06.2022. The said appeal, described by the Commissioner and Registrar, Cooperatives, as a representation, was held not maintainable against the order of dismissal under Section 128 of the Act of 1965. It was, accordingly, dismissed as not maintainable.

15. Aggrieved, the present writ petition has been instituted.

16. A counter affidavit has been filed on behalf of respondent Nos.2 and 3 in compliance with the order dated 10.08.2023 on 23.08.2023. On the said date, the learned Counsel for the

petitioner made a statement at the Bar that he did not wish to file a rejoinder.

17. Mr. Satyam Singh, learned Counsel appearing on behalf of respondent No.4 also made a statement that he does not intend to file a counter affidavit. Accordingly, on 23.08.2023, the petition was admitted and heard forthwith. Judgement was reserved.

18. Heard Mr. Uday Pratap Singh, learned Counsel for the petitioner, Mr. D.P. Singh, learned Counsel on behalf of respondent Nos.2 and 3, Mr. Satyam Singh, learned Counsel on behalf of respondent No.4 and Mr. Dinesh Kumar Singh, learned Additional Chief Standing Counsel on behalf of the State.

19. This Court has keenly considered the submissions advanced by the learned Counsel for both sides.

20. In paragraph No.20 of the writ petition, it is averred that the Inquiry Officer did not conduct a regular departmental enquiry as per rules. No date, time or place was fixed by the Inquiry Officer with intimation to the petitioner to participate in the enquiry. No oral or documentary evidence was led to prove the charges carried in the charge-sheet. It is averred that once no witnesses were examined on behalf of the establishment, there was no occasion for the petitioner to have examined or cross-examined witnesses or led evidence in support of her case. It is, therefore, said that the enquiry conducted against the petitioner is a mere formality and an eyewash. It is asserted that no departmental enquiry worth the name was ever conducted by the Inquiry Officer.

21. This Court finds in this case that the fact that the Inquiry Officer had not fixed a date, time and place of enquiry and no witness was examined by the establishment in support of the charge, was mentioned by the petitioner in her reply to the show cause notice filed before the Disciplinary Authority on 12.03.2020. There is an averment to that effect in paragraph No.13 of the writ petition. A perusal of the reply to the show cause notice, annexed as Annexure No.9 to the writ petition, shows that there is a specific assertion there that no date, time and place of enquiry was fixed, though it does not say that no witnesses were examined. It is nevertheless said that evidence was not produced in her presence, so as to enable her to cross-examine, which may mean almost the same thing.

22. In the counter affidavit filed on behalf of respondent No.3, the assertion in paragraph No.20 of the writ petition to the effect that no date, time and place of enquiry was fixed and no oral or documentary evidence was led to prove the charges, has not been denied. This is evident from a perusal of paragraph No.21 of the counter affidavit, where though the contents of paragraph No.20 of the writ petition are denied, all that is offered by way of comment in denial is that the Inquiry Officer submitted the enquiry report after considering the petitioner's reply to the charge-sheet and going through the relevant record. The said assertion clearly admits it for a fact that no date, time and place of enquiry was scheduled or intimated to the petitioner. It is also a plenary admission of the fact that at the enquiry, there was no presenting officer appointed to lead evidence on behalf of the establishment, and in any case, no witnesses were examined on behalf of the establishment to prove the charges before the Inquiry Officer.

23. In case of departmental proceedings, where the enquiry may lead to the imposition of a major penalty, salutary principles laid down by Courts, require that the date, time and place of enquiry be intimated to the charged employee. It is also imperative in such matters that witnesses be produced and not just documents sifted through by the Inquiry Officer to reach his findings. An enquiry in disciplinary proceedings, where the consequences for the employee may be the imposition of a major penalty, particularly, obliges the Inquiry Officer to function as an impartial arbiter with a considerable degree of formality. He is to distance himself from the employer, even if he is an officer in their establishment for the purpose of holding the enquiry. For the employers, it is imperative that they must lead evidence in support of the charges first, particularly, oral evidence apart from documentary evidence. This would apply even if the delinquent/ employee does not appear and the enquiry proceedings go *ex parte*. Where the employee does appear even if he / she does not produce his / her own evidence, he / she has a right to cross-examine the employers' witnesses.

24. What then must be the manner of holding an enquiry for the employer in a case where the charges are so serious that the employee may suffer a major penalty? To our understanding the Inquiry Officer on the day he holds an enquiry, cannot do so without a schedule, in the course of his duties as an official in the employer's establishment. He must set time apart for the enquiry and observe the formality of being in session as an impartial arbiter, different from his daily routine. Obviously, once he does that, he would certainly intimate the employee of the date, time and place, which are imperatives of a valid enquiry. The enquiry cannot, therefore, be a routine or a slipshod

proceeding done by the officer in the midst of his routine work in the employer's establishment. In short, the Inquiry Officer must convene a proper Inquiry Tribunal. The employers have, of course, the burden to prove the charges by producing evidence, which would include oral evidence.

25. In this case, it is admitted that neither date, time nor place of enquiry was fixed and intimated to the petitioner nor evidence produced on behalf of the establishment, particularly, witnesses/ oral evidence.

26. A perusal of the enquiry report shows that the Inquiry Officer has written out the charge, the petitioner's reply and then proceeded to record findings, considering the petitioner's reply with reference to the documents involved, on the basis of which the charge-sheet has been issued. There have indeed been no proceedings of the enquiry convened, where evidence on behalf of the establishment, documentary as well as oral, would be led by the presenting officer with opportunity to the petitioner to cross-examine witnesses on behalf of the establishment. The enquiry report is classically one that falls foul of the principles, requiring the establishment to lead evidence before the Inquiry Officer through a presenting officer, treating the Inquiry Officer as an impartial arbiter. It also falls foul of the principles that the establishment has to establish the charge, may be by preponderant probability, even if the employee does not offer defence or produce evidence. The enquiry report here is no more than an opinion written on a reading of mere papers by the Inquiry Officer, with no evidence heard in the matter. Reference in this connection may be made to the decision 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."

27. The question fell for consideration before a Division Bench of this Court in **State of U.P. and another v. Kishori Lal and another, 2018 (9) ADJ 397 (DB) (LB)**, where it was held:

"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.

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."

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 under consideration here engaged the attention of this Court in **Dukh Haran Prasad v. State of U.P. and others, 2015 (3) ADJ 677**. In **Dukh Haran Prasad (supra)**, it was observed:

"16. It is not disputed by the learned Standing Counsel that the imposition of the penalty of stoppage of three increments with cumulative effect upon the petitioners was a major penalty. If that be the admitted position, the procedure prescribed under Rule 7 was to be mandatorily followed. It has been repeatedly held by this Court that in the case of imposition of a major penalty, a failure to hold an oral inquiry is fatal. If there be any need to refer to authority for this proposition, one may only note the judgment rendered by a Division Bench of this Court in the case of *Sharad Kumar Varma v. State of U.P. and others*; 2006 (110) FLR 630."

29. Of particular relevance in the context is the guidance of the Supreme Court in **State of Uttaranchal and others v. Kharak Singh, (2008) 8 SCC 236**, where it is observed:

"17. On the other hand, one Mr P.C. Lohani, Dy. Divisional Forest Officer, Nandhaur acting as an enquiry officer after putting certain questions and securing answers submitted a report on 16-11-1985. No witnesses were examined. Apparently there was not even a presenting officer. A perusal of the report shows that the enquiry officer himself inspected the areas in the forest and after taking note of certain alleged deficiencies secured some answers from the delinquent by putting some questions. It is clear that the enquiry officer himself has acted as the investigator, prosecutor and judge. Such a

procedure is opposed to principles of natural justice and has been frowned upon by this Court."

30. In the conspectus of the law above noticed and what we have found on facts and law, the impugned orders dated 17.06.2021 13.06.2022 and the enquiry report dated 08.02.2019, cannot be sustained.

31. This Court makes it clear that we have not expressed our opinion on the merits of the charges, and if the respondents elect to proceed afresh in accordance with law, they will be free to reach a just and fair conclusion, conforming to the law after adhering to the procedure laid down for the holding of domestic enquiries in matters involving the imposition of a major penalty.

32. In the result, this petition succeeds and is **allowed**. The impugned order dated 17.06.2021 passed by the Secretary/ Chief Executive Officer, District Cooperative Bank Ltd. Ghazipur, the order dated 13.06.2022 passed by the Registrar and Commissioner, Cooperative U.P., Lucknow and the enquiry report dated 08.02.2019 submitted by the Inquiry Officer/ General Manager, District Cooperative Bank Ltd., Ghazipur (Annexure No.1 to the counter affidavit) are hereby **quashed**. A *mandamus* is issued directing the respondents to reinstate the petitioner in service forthwith. The petitioner shall be entitled to the salary from the date of this judgment. It will be open to the respondents to proceed afresh against the petitioner from the stage of charge-sheet, strictly in accordance with law, bearing in mind the guidance in this judgement. If the respondents elect to proceed afresh against the petitioner, the question of back wages shall be decided, subject to the result of proceedings. In the event, the respondents do not elect to proceed afresh against the petitioner, she would be entitled to 50% back wages. In the event, in any contingency, if the petitioner is

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reinstated finally, she would be entitled to continuity of service and seniority.

Order:- 19.10.2023
Anoop