

**Court No. - 20**

**Case :-** WRIT - A No. - 8685 of 2023

**Petitioner :-** Smt. Renu Mishra

**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Food And Civil Supplies, Govt. U.P.. Lucknow And Another

**Counsel for Petitioner :-** Anand Mani Tripathi, Samanvya Dhar Dwivedi, Sikandar Yadav

**Counsel for Respondent :-** C.S.C.

**Hon'ble Manish Mathur, J.**

1. Counter affidavit filed today on behalf of opposite parties is taken on record.
2. Heard learned counsel for petitioner and learned State Counsel for opposite parties.
3. Petition has been filed challenging order dated 27.02.2023 whereby petitioner has been dismissed from service. Also under challenge is the order dated 26.07.2023 whereby petitioner's appeal against the punishment order has been rejected. It has been submitted that earlier petitioner was suspended from service on the post of Marketing Inspector vide order dated 01.08.2022 in contemplation of departmental inquiry and along with the aforesaid order, a charge sheet containing six charges was also served upon petitioner.
4. Subsequently an amended charge sheet dated 06.08.2022 was also issued to petitioner. The suspension order was challenged by petitioner in Writ-A No. 5302 of 2022 which was disposed of vide order dated 26.08.2022 directing the inquiry proceedings be concluded within four and half months from the date necessary orders were passed on petitioner's application for change of inquiry officer. It was also directed that in case inquiry proceedings are not concluded within the time frame, the suspension order would stand revoked.
5. It is in pursuance of directions issued by this Court that inquiry proceedings were concluded by passing of the punishment order. It is submitted that after passing of directions by this Court, petitioner had intimated the opposite parties regarding death of her husband and her own medical condition due to fracture and seeking a short time to file response but the proceedings have been conducted ex parte without any opportunity of hearing to petitioner.
6. It has been submitted that a bare perusal of inquiry report will make it evident that all the charges against petitioner have been found to be established only on the ground that petitioner

did not submit her reply within the prescribed time limit. It is submitted that the inquiry officer has not at all adverted to the evidence particularly when such evidence indicated in the charge sheet in support of allegations levelled against petitioner pertained to audio and video clippings as well. It is submitted that as has been held in the case of **Roop Singh Negi versus Punjab National bank and others** reported in MANU/SC/8456/2008:(2009) 1 SCC (L & S) 398 and **State of Uttar Pradesh and others versus Saroj Kumar Sinha** reported in (2010) 2 SCC 772 that inquiry proceedings are quasi judicial in nature in which it is the duty of inquiry officer to record his subjective satisfaction with regard to charges levelled against delinquent employee and such procedure having not been followed in the inquiry proceedings, the same are vitiated. It is submitted that since impugned dismissal and appellate order have also been passed without considering the aforesaid aspects, they are also liable to be set aside.

7. Learned State Counsel on behalf of opposite parties has refuted submissions advanced by learned counsel for petitioner with submission that as would be evident from the inquiry report, ample opportunity has been provided to petitioner not only to supply her reply to the charge sheet but also to participate in the inquiry proceedings and it is in fact the petitioner herself who declined to avail herself of such facility. It is also submitted that since specific time period had been indicated by this Court for conclusion of inquiry proceedings, such directions were strictly required to be adhered to due to which inquiry was concluded within aforesaid time frame.

8. Learned State Counsel has also submitted that after passing of specific directions by this Court on 26.08.2022, it was incumbent upon the inquiry officer to conclude proceedings expeditiously within the time frame prescribed but delay was caused by petitioner herself who refused to submit reply to charge sheet or even to participate in the inquiry proceedings and therefore benefit of her own wrong cannot be granted to her.

9. Although a copy of the inquiry report is not on record either in the petition or even in the counter affidavit but since the same has been reproduced in the impugned punishment order, the same is being adverted to considering it being on record.

10. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, particularly inquiry report, it is evident that six charges were levelled against petitioner in the charge sheet issued to her. The inquiry report has found petitioner guilty of all six charges but

such finding is based only on the aspect that petitioner failed to submit her reply within the stipulated time period. There is no finding or appreciation of evidence recorded in the inquiry report.

11. With regard to procedure required to be followed in inquiry proceedings, Hon'ble Supreme Court in the cases of Roop Singh Negi (supra) and Saroj Kumar Sinha (supra) has held as follows:-

12. The relevant portion of Roop Singh Negi (supra) is as follows:

*"Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled 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."*

13. The relevant portion of Saroj Kumar Sinha (surpa) is as follows :-

*"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."*

14. Since there is no dispute pertaining to facts and since the order impugned is required to be examined on the basis of reasoning given in the impugned order itself which can not be supplemented by any affidavit as held in the case of **Mohinder Singh Gill versus Chief Election Commissioner, New Delhi and others** reported in **A.I.R. 1978 SC 851**, the petition is being adjudicated upon at the admission stage itself.

15. Upon applicability of aforesaid judgments in the present facts and circumstances of the case, it is quite evident that the aforesaid procedure as enunciated by Hon'ble Supreme Court has not been followed at all. Even if the delinquent employee was not participating in the inquiry proceedings, it was incumbent upon the inquiry officer to have considered evidence which was relied upon in the charge sheet against petitioner and to have arrived at a subjective satisfaction regarding complicity of petitioner to the charges levelled against her. The inquiry report does not indicate any appreciation of evidence at all. Although charge sheet has clearly indicated audio and video clippings as evidence against petitioner but the same has also been ignored while establishing guilt of petitioner.

16. Once audio and video clippings were indicated as evidence against petitioner, it was incumbent upon inquiry officer to have ascertained the genuineness of such audio and video clippings and the veracity of same could not have been presumed as has been done in this particular case.

17. Although, material on record indicates deliberate non-participation by petitioner in the inquiry proceedings but as has been held by Hon'ble Supreme Court in the judgments indicated hereinabove that an inquiry officer conducts inquiry proceedings in quasi-judicial capacity and therefore even if petitioner had refused to participate in the said proceedings, it was incumbent upon inquiry officer to have adverted to material and evidence on record in order to verify the truth of charges levelled against petitioner and that having been done vitiates the inquiry proceedings.

18. The impugned dismissal and appellate orders have also not adverted to any evidence to establish guilt of petitioner as were required to be seen by them in the light of judgments of constitutional courts.

19. In view of aforesaid, the entire inquiry proceedings against petitioner are clearly vitiated as are the impugned dismissal and appellate orders.

20. In view of aforesaid, the orders dated 27th February, 2023 and 13th September, 2023 are quashed by issuance of writ in the nature of Certiorari. Since there is only procedural defect in the inquiry proceedings, opposite parties are directed to hold a fresh enquiry from the stage of submission of reply by petitioner.

21. Considering the casual manner in which inquiry proceedings have been held, the opposite party No.2 i.e. Commissioner, Food and Civil Supplies Department, U.P., Lucknow is directed to nominate some other inquiry officer within a period of one week from the date a certified copy of this order is produced before the concerned authority.

22. Petitioner is directed to furnish her reply to the charge sheet within a period of 15 days from the date new inquiry officer is nominated. The inquiry officer is thereafter directed to submit an inquiry report within a period of three months from the date time for filing of reply expires. Final decision with regard to petitioner shall be taken within a period of one month thereafter. It is made clear that even if petitioner chooses not to participate in the inquiry proceedings, it shall be incumbent upon the inquiry officer to adhere to directions issued by Hon'ble Supreme Court and follow the same as has been held in the cases of **Roop Singh Negi (supra)** and **Saroj Kumar Sinha (supra)**.

23. With the aforesaid directions, the petition succeeds and is **allowed** at the admission stage itself. Parties to bear their own cost.

24. Learned counsel for petitioner has submitted that despite petitioner being under suspension from 01.08.2022, no subsistence allowance has been paid to her. In such circumstances, the concerned authority shall ensure payment of subsistence allowance to petitioner during the period of suspension in case not so paid.

**Order Date :- 30.11.2023**  
Satish