

Court No. - 5

Case :- WRIT - A No. - 17729 of 2024

Petitioner :- Surya Mohan Vatsal

Respondent :- UP Power Corporation Ltd. and others

Counsel for Petitioner :- Manu Mishra

Counsel for Respondent :- Abhishek Srivastava, Brajesh Pratap Singh, Krishna Agarawal

Hon'ble J.J. Munir,J.

1. This writ petition is directed against an order dated 30.08.2024, passed by the Managing Director, Uttar Pradesh Power Corporation Limited, Lucknow, dismissing the petitioner from service after disciplinary proceedings and further directing recovery of a sum of Rs.49,37,313/- from him.
2. In compliance with the order dated 13.11.2024, a counter affidavit has been filed on behalf of respondent Nos.1 and 2 by Mr. Abhishek Srivastava, Advocate.
3. A counter affidavit has been filed by Mr. Krishna Agarwal, learned Counsel appearing on behalf of respondent No.5 through Civil Misc. Application No.2 of 2024 in Court today.
4. The application is allowed. The said affidavit is taken on record. Let the affidavit be numbered by the office.
5. Mr. Abhishek Srivastava and Mr. Krishna Agarwal do not propose to file any further affidavits.
6. Learned Counsel for the petitioner, Mr. Manu Mishra, waives his right to file a rejoinder affidavit.
7. Admit.
8. Heard forthwith.
9. Heard Mr. Manu Mishra, learned Counsel for the petitioner, Mr. Abhishek Srivastava, learned Counsel appearing

on behalf of respondent Nos.1 and 2, Mr. Krishna Agarwal, learned Counsel appearing on behalf of respondent No. 5 and Mr. Brijesh Pratap Singh, learned Counsel appearing on behalf of respondent Nos.3 and 4.

10. The petitioner was appointed on 14.09.1996 as a *Coolie*, a Class-IV employee, in the service of the late Uttar Pradesh State Electricity Board. Upon the dissolution of the Board, his services stand transferred to the Uttar Pradesh Power Corporation Limited (for short, 'the Corporation'). The petitioner was posted in the office of the Sub-Divisional Officer, Electricity Distribution Division-IV, Thakurdwara, Moradabad. He was promoted to the post of a patrolman w.e.f. 31.03.2005. The petitioner was further promoted to the post of a lineman (Technician Grade-II) w.e.f. 25.05.2009 *vide* office memo dated 20.07.2009 issued by the Executive Engineer, Electricity Distribution Division, Sambhal, Moradabad.

11. It is the petitioner's case that, though a Class-IV employee, *vide* a memo dated 09.08.2002 issued by the Sub-Divisional Officer, Electricity Distribution Sub-Division, Moradabad, he was detailed to assist in revenue collection, as the order dated 09.08.2002 would show, according to the oral instructions of the Executive Engineer, Electricity Distribution Division-I, Moradabad, due to shortage of hands. In consequence, he had been assisting in revenue collection for the Corporation without complaint, as the petitioner says, until 13.06.2022. On the last mentioned date, the petitioner was served with a charge-sheet issued by the Chairman, Inquiry Committee, Pashchimanchal Vidyut Vitran Nigam Limited, carrying a solitary charge, which blames the petitioner for non-deposit of revenue collected from consumers during the period 18.08.2014 to 21.04.2015, while posted and working as a

patrolman and then as a Technician Grade-II (Lineman) at the Electricity Distribution Sub-Division-II, Thakurdwara, Moradabad.

12. The petitioner submitted his reply dated 29.07.2022, denying the charge. He pleaded in defence that he had deposited the revenues collected in the account of the Corporation maintained with the ICICI Bank, Kashipur, near Thakurdwara. He further said that the balance was deposited with the Chief Cashier (Revenue) at the Divisional Office along with a *challan*, corresponding entries whereof were made by the Chief Cashier (Revenue) in the register maintained for the purpose. The petitioner also urged that he was assured that a receipt would be furnished to him, but unfortunately despite request, receipts of deposit made by the petitioner were not issued by the Chief Cashier. There are other pertinent pleas that the petitioner has raised, but it might not be necessary to advert to each one of them, considering that a short point is involved in this case.

13. A notice of motion was issued on 13.11.2024 in terms of the following orders:

“The submission of the learned Counsel for the petitioner is that no witnesses have been examined in support of the charges which is a violation of Regulation 7 of the U.P.P.C.L. Employees (Discipline and Appeal) Regulations, 2020. The relevant averments find place in paragraph nos. 18, 19 and 20 of the writ petition.

Issue notice.

Notice on behalf of respondent nos. 1 and 2 is accepted by Mr. Abhishek Srivastava, learned Counsel, whereas that on behalf of respondent nos. 3 and 4 is accepted by Mr. Brajesh Pratap Singh, Advocate. Notice on behalf of respondent no. 5 is accepted by Mr. Krishna Agarawal, learned Counsel. Each of the learned Counsel for the respondents is granted two weeks' time to file a counter affidavit.

*Since, a short point is involved, lay this matter as **fresh** on*

27.11.2024 along with a report regarding status of pleadings.

Let this order be communicated to the Managing Director, Paschimanchal Vidyut Vitran Nigam Limited, Meerut and the Chairman, Inquiry Committee, Paschimanchal Vidyut Vitran Nigam Limited, Meerut through the Chief Judicial Magistrate, Meerut and the Executive Engineer-cum-Convener/Organizer Committee No. 2, Paschimanchal Vidyut Vitran Nigam Limited, Vidyut Vitran Khand, Sambhal, Moradabad through the Chief Judicial Magistrate, Moradabad by the Registrar (Compliance) within 24 hours."

14. It is in compliance with the said orders that affidavits have been put in by the respondents, spoken of earlier in this judgment. The only issue, therefore, that merits consideration is if the proceedings of inquiry and the resultant orders of the Disciplinary Authority, punishing the petitioner, are vitiated on ground that no witnesses were examined in support of the charges by the establishment in violation of Regulation 7 of the Uttar Pradesh State Power Corporation Employees (Discipline and Appeal) Regulations, 2020 (for short, 'the Regulations of 2020'). The relevant averments, that no witnesses were examined by the establishment to prove the charges at the inquiry, find place in paragraph Nos.18, 19 and 20 of the writ petition. In the counter affidavit, that has been filed on behalf of the Corporation, it is averred in paragraph Nos. 4. D. and 4. I.:

"4. That the contents of Paragraph Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 29(i), 29(ii), 29(iii), 29(iv), 29(v), 29(vi), 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45 of the writ petition are not admitted as stated hence denied. A. In reply thereto it is submitted as follows:-

D. That vide letter dated 03.08.2022 an opportunity of hearing was given to the petitioner fixing date, time and place as 05.08.2022 at 12:05 p.m. through CISCO-WEBEX Online for personal hearing in pursuance whereof the petitioner had appeared before the enquiry committee on 05.08.2022 through video conferencing and had submitted his statement wherein he has stated that he did not wish to

examine/cross examine any witness in said regard and had also stated that his enquiry should be concluded on the basis of his reply and he does not wish any further opportunity of hearing. A copy of copy of the letter dated 03.08.2022 are being collectively annexed herewith and marked as **Annexure-CA-1** to this counter affidavit.

I. That from perusal of the record it is evident that no witness was proposed either in the charge sheet or any witness was named by the petitioner to examine during the departmental enquiry, therefore, no witness was examined by the Corporation to prove the charges during the course of departmental enquiry in the present case. Further to remove all these anomalies an Office Memorandum has been issued wherein it has been directed to all the authorities of the Corporation and the DISCOMS enquiry that they should strictly adhere to the provisions of Rule 7 of the Regulations 2020 and during the departmental enquiry they must first examine the officers on behalf of the Corporation to prove the charges and only thereafter they should provide opportunity to the employees to either cross examine them or to produce any witness on behalf of his defense."

15. Apart from what Regulation 7 of the Regulations of 2020 provides, it is a salutary principle to be followed steadfastly in all departmental inquiries, involving the imposition of a major penalty, that the Inquiry Committee or officer must formally convene themselves into an Inquiry Tribunal and distance themselves from the establishment, even if there are officers of the same establishment. It is then imperative for the Inquiry Committee or officer to call upon the establishment to prove the charges by producing evidence, both documentary and oral, through a Presenting Officer. It is the burden of the establishment to prove the charges by producing not only documentary evidence, but witnesses before the Inquiry Committee. Once all the evidence, including witnesses, have been produced, they have to be offered to the delinquent for cross-examination. It is after this stage is over that the delinquent can be called upon by the Inquiry Officer to produce

evidence in his defence. He too can produce both documentary evidence and witnesses. If he produces witnesses, those witnesses would be available to the establishment for the cross-examination in like fashion. It is of seminal importance that if the delinquent does not appear at the inquiry or does not lead evidence, that does not absolve the establishment of their burden to prove the charges by evidence *aliunde*, both documentary and oral.

16. A perusal of paragraph No.4. D. would show that the personal hearing that was given to the petitioner before the Inquiry Committee on 05.08.2022, was one where he alone was heard and he said that he did not wish to examine, cross-examine any witness. It was also recorded by the Inquiry Committee that the petitioner said that the inquiry should be concluded on the basis of his reply and he does not want any further opportunity of hearing. This course of action is utterly flawed. It is premised on the great fallacy that the charge carried in the charge-sheet was proof of itself and it was for the petitioner, as the delinquent, to dispel the charges by producing evidence, examining witnesses. The mention that the petitioner said that he did not want to cross-examine any witness shows utter lack of legal acumen on the respondents' part. No party can be imputed the stand that he/ she said that he/ she would not like to cross-examine any witness. Cross-examination is a process, which is a sequel to the examination-in-chief. If the establishment had examined witnesses on 05.08.2022, when the Inquiry Committee sat and after their examination-in-chief was over, had offered those witnesses to the petitioner for cross-examination, perhaps it could be legitimately said that the petitioner declined to cross-examine witnesses. Once no witnesses were examined by the establishment, there was no

occasion for the petitioner to say that he did not want to cross-examine witnesses. The employment of the expression “did not wish to examine/ cross-examine any witnesses” shows not only the utter lack of understanding on the respondents' part as to what the process of examination-in-chief and cross-examination mean, but also displays their nonchalance towards the fundamentals of the law as something so unimportant that it is never to be learnt or attempted to be understood. The personal hearing described in paragraph No. 4. D. was, therefore, not the hearing that is envisaged by salutary procedure at the inquiry, but virtually a *viva voce* or interrogation for the petitioner to prove his innocence before the Inquiry Committee, who shuffled through the charge-sheet and the reply to reach their conclusions sans any evidence being led by the establishment.

17. Paragraph No. 4. I. candidly admits the fact that no witnesses were examined by the Corporation to prove the charge during the course of the departmental inquiry. In any inquiry, involving the possible imposition of a major penalty, no charge can be held proved unless the witnesses in support thereof have been produced by the establishment and they testify before the Inquiry Committee. It is also acknowledged in paragraph No. 4. I. that necessary instructions have been issued to Authorities of the Corporation and the Distribution Corporation to adhere to the provisions of Regulation 7 of the Regulations of 2020, where in the inquiry the establishment must first examine officers on behalf of the Corporation to prove the charges and thereafter provide opportunity to the employee to cross-examine them or produce their witnesses in defence. This virtually admits the fact that the Corporation has followed a flawed procedure in conducting the inquiry, on the foot of which the impugned order has been passed.

18. The salutary principle, which requires, in the case of a major penalty, the minimum requirement of fixing a date, time and place for holding the inquiry, and further, requiring the establishment to prove the charges through production of oral and documentary evidence before the Inquiry Committee by a Presenting Officer on their behalf is well-acknowledged, in view of the law laid down by the Supreme Court in **State of Uttar Pradesh and others v. Saroj Kumar Sinha, (2010) 2 SCC 772, Roop Singh Negi v. Punjab National Bank and others, (2009) 2 SCC 570, State of Uttaranchal and others v. Kharak Singh, (2008) 8 SCC 236** and the Bench decisions of this Court in **State of U.P. and another v. Kishori Lal and another, 2018 (9) ADJ 397 (DB) (LB), Smt. Karuna Jaiswal v. State of U.P., 2018 (9) ADJ 107 (DB) (LB)** and **State of U.P. v. Aditya Prasad Srivastava and another, 2017 (2) ADJ 554 (DB) (LB)**.

19. The position of the law in this regard that has withstood the test of time has been recently endorsed by the Supreme Court in **Satyendra Singh v. State of U.P. and another, 2024 SCC OnLine SC 3325**, where it has been held:

"**12.** Learned counsel for the State was *ad idem* to the submissions of the appellant's counsel that no witness whatsoever was examined during the course of the inquiry proceedings. On a minute appraisal of the Inquiry Report, it is evident that other than referring to the documents pursuant to the so-called irregular transactions constituting the basis of the inquiry, the Inquiry Officer failed to record the evidence of even a single witness in order to establish the charges against the appellant.

13. This Court in a catena of judgments has held that the recording of evidence in a disciplinary proceeding proposing charges of a major punishment is mandatory. Reference in this regard may be held to *Roop Singh Negi v. Punjab National Bank, (2009) 2 SCC 570* and *Nirmala J. Jhala v. State of Gujarat, (2013) 4 SCC 301*.

20. The sequitur of all that we have said above is that the impugned order cannot be sustained and must be quashed, subject of course to a liberty to the respondents to proceed afresh in the matter from the stage of charge-sheet.

21. In the result, this petition succeeds and is **allowed**. The impugned order dated 30.08.2024 passed by the Managing Director of the Corporation is hereby **quashed**. The petitioner shall be reinstated in service forthwith in the first instance. The respondents shall be at liberty to proceed afresh against the petitioner on the basis of the charge-sheet and the petitioner's reply afresh, if they so elect. If the respondents elect to pursue fresh proceedings, they will do so in accordance with the guidance in this judgment. If the respondents pursue fresh proceedings against the petitioner, he would not be entitled to any emoluments for the period that he remained out of service, which shall abide by the result of the inquiry. Should the respondents elect not to pursue fresh proceedings, the petitioner would be entitled to 50% of his emoluments. It is also provided that after reinstatement if the respondents think that the petitioner ought be placed under suspension pending inquiry, they would be at liberty to do so. In that event, the petitioner would be entitled to his subsistence allowance for the period of time that he remains under suspension, which shall be paid to him regularly, without asking him to produce a non-alternative engagement certificate. In the event the petitioner is suspended from service, the inquiry proceedings shall be expedited, wherein the petitioner shall cooperate.

22. There shall be no order as to costs.

23. Let a copy of this order be communicated to the Managing Director, Uttar Pradesh Power Corporation Limited,

Lucknow through the learned Civil Judge (Sr. Div.), Lucknow by the Registrar (Compliance).

Order Date :- 3.12.2024
Anoop/ Deepak

(J.J. Munir)
Judge