

Court No. - 5

Case :- WRIT - A No. - 18287 of 2024

Petitioner :- Anup Kumar Verma

Respondent :- U.P. Power Corporation Ltd. And 3 Others

Counsel for Petitioner :- Manu Mishra

Counsel for Respondent :- Abhishek Srivastava, Brajesh Pratap Singh

Hon'ble J.J. Munir, J.

1. This writ petition is directed against an order of the Chairman, Uttar Pradesh Power Corporation Limited, Lucknow dated 06.03.2024 (signed on 20.02.2024), punishing the petitioner with the withholding of one increment with cumulative effect, after holding disciplinary proceedings.

2. The petitioner was a Chief Engineer in the employ of the Uttar Pradesh Power Corporation Limited, Lucknow (for short, 'the Corporation'). He retired from service as the Chief Engineer (Technical) on 31.07.2024. He has served the late Uttar Pradesh State Electricity Board and thereafter the Corporation. The petitioner was served with a charge-sheet dated 07.03.2022 by an Inquiry Committee, appointed by the Corporation. It carried a solitary charge relating to the period of time from 28.10.2014 to 16.06.2015, when the petitioner was posted as the Executive Engineer, Electricity Distribution Division, Hapur. The charge against the petitioner carried in the charge-sheet dated 07.03.2022 reads:

"आरोप संख्या-1

आपकी अधिशासी अभियन्ता विद्युत वितरण खण्ड, हापुड के पद पर दिनांक 28.10.2014 से 16.06.2015 तक की तैनाती से पूर्व दिनांक 01.07.2013 को केन्द्रीय विद्यालय, स्टाफ क्वार्टर मेन रोड बाबूगढ़ छावनी, जनपद हापुड के संयोजन सं० 2212/ 22398 स्वीकृत भार 20 कि० वा० विधा-एल० एम० वी०-01 का मुख्य मीटर खराब होने के कारण नवीन मीटर संख्या UMV 73837 स्थापित किया गया था जिसका एम० एफ० 40 था किन्तु उक्त संयोजन का एम० एफ० 01 फीड होने के कारण मीटर लगने की दिनांक 01.07.2013 से दिनांक 06.01.2018 तक निरन्तर

बिलिंग 01 फीड होने के कारण मीटर लगने की दिनांक 01.07.2013 से दिनांक 06.01.2018 तक निरन्तर बिलिंग 01 एम 0 एफ 0 से होती रही। उक्त संयोजन पर परिसर में 11 घरेलू क्वाटर एवं एक ट्यूबवैल स्थापित है। निरन्तर मासिक खपत कम होने के कारण जब सहायक अभियन्ता (मीटर) विद्युत परीक्षणशाला, हापुड़ द्वारा संयोजन पर लगे मीटर की जांच की गयी तो पाया गया कि परिसर पर लगे मीटर का एम 0 एफ 0 40 है। दिनांक 01.07.2013 से दिनांक 06.01.2018 तक कम जमा बिलों की धनराशि को माह 01/ 2018 में एम 0 एफ 0 40 सही करते हुए उपभोक्ता के बिल में जोड़ दिया गया जिसका उपभोक्ता द्वारा भुगतान न करने के कारण माह 11/ 2019 से स्थायी विच्छेदित करते हुए कार्यालय ज्ञाप सं0 1163 दिनांक 17.06.2021 द्वारा स्थायी रूप से विच्छेदित कर दिया।

चूंकि आप इस अवधि में दिनांक 28.10.2014 से 16.06.2015 तक अधिशासी अभियन्ता के पद पर विद्युत वितरण खण्ड, हापुड़ तैनात थे। अतः कॉरपोरेशन के आदेश सं0, 87-प्र 0 सु0-01/पाकालि/ 2002-20- प्र 0 से0/ 2000 दिनांक 25.02.2002 के अनुसार 20 कि0 वा0 स्वीकृत भार के संयोजन की मीटर रीडिंग एवं निरीक्षण का प्रशासकीय उत्तरदायित्व आपका था। यदि आपके द्वारा इस उपभोक्ता के संयोजन की मीटर रीडिंग/ खपत का अनुश्रवण किया गया होता तो निगम को वित्तीय हानि नहीं होती एवं निगम की छवि भी धूमिल नहीं होती।

अपनी तैनाती अवधि में इस संयोजन के बदले गये मीटर का सही एम 0 एफ 0 ससमय लेजर में अंकित न कराना एवं अपनी अधीनस्थों पर प्रभावी नियंत्रण न रखना आपकी प्रशासकीय उत्तरदायित्वों व अधीनस्थों के नियंत्रण में शिथिलता का द्योतक है।

इस प्रकार आप अपने उत्तरदायित्वों के निर्वहन में शिथिलता बरतने विभागीय राजस्व की क्षति एवं विभाग की छवि धूमिल करने तथा कर्मचारी आचरण नियमावली 1956 की धारा-03 का उल्लंघन करने के दोषी है।"

3. The petitioner submitted a reply dated 29.03.2022 in answer to the charge-sheet, denying the charge. It was, amongst other things, pleaded by the petitioner that according to the circular dated 29.06.2018 issued by the Managing Director of the Corporation, addressed to the Managing Directors of the various Distribution Corporations, the Executive Engineer is not liable for supervisory duty regarding electricity connections of LMV-1. It was also said that the Executive Engineer has not been assigned any specific duty regarding meter reading or inspection of meters and meter seals. The Inquiry Committee proceeded to submit their report dated 04.04.2022, exonerating the petitioner of the solitary charge.

4. It is the petitioner's case, however, that during the course of inquiry, no witness was produced to prove the charges, that

is to say, no oral inquiry was held as dictated by salutary procedure, where a major penalty may be imposed. Relevant averments in this regard find place in paragraph Nos.10, 11 and 12 of the writ petition. It appears that the Chairman of the Corporation, to whom the inquiry report was submitted, did not agree with the same and issued a show cause notice dated 14.03.2023, proposing to punish the petitioner. The petitioner submitted his reply dated 25.03.2023 to the show cause notice, clearly denying his liability in the matter. The Chairman of the Corporation proceeded to pass the impugned order dated 06.03.2024, which was curiously signed by him on 20.02.2024, punishing the petitioner with the withholding of one increment with cumulative effect.

5. Aggrieved by the impugned order, this petition has been instituted under Article 226 of the Constitution.

6. On 28.11.2024, when this petition came up for admission, we issued a notice of motion to the respondents in terms of the following orders:

“By means of the impugned order passed by the Chairman, U.P. Power Corporation Ltd. the petitioner, who is a retired Chief Engineer (Technical), has been punished with reduction of one increment with cumulative effect relating to an incident when the petitioner was serving as an Executive Engineer. It is stated that in the disciplinary proceedings, no date, time and place of inquiry was fixed nor witnesses examined on behalf of the establishment. The averments in this regard figured in paragraph Nos. 10,12 and 32 of the writ petition.

Issue notice.

Notice on behalf of respondent Nos. 1, 2, and 4 is accepted by Mr. Abhishek Srivastava, whereas that on behalf of respondent No. 3 is accepted by Mr. Brijesh Pratap Singh. Both the learned counsel for the respondents are granted ten days time to file a counter affidavit.

Let the Chairman, U.P. Power Corporation Ltd., 14, Ashok Marg, Shakti Bhawan, Lucknow show-cause by his own affidavit, why the impugned order dated 20.02.2024 be not quashed.

*Since a short point is involved, lay as fresh on **9th December, 2024.**"*

7. A counter affidavit has been filed on behalf of respondent Nos.2 and 4 by Mr. Abhishek Srivastava, Advocate. It is taken on record. Let it be numbered by the office.

8. Learned Counsel for the petitioner waives his right to file a rejoinder.

9. Admit.

10. Heard forthwith.

11. Heard Mr. Manu Mishra, learned Counsel for the petitioner and Mr. Abhishek Srivastava, learned Counsel appearing on behalf of respondent Nos.1, 2 and 4. No one appears on behalf of respondent No.3.

12. The short point involved in this case is if in case of disciplinary proceedings involving the imposition of a major penalty, the Inquiry Committee or the Inquiry Officer can proceed with the inquiry without fixing a date, time and place or hold the charges proved without the establishment producing evidence, both documentary and oral, in support of the charge/charges. In paragraph Nos.10, 12 and 32 of the writ petition, it is averred:

"10. That it is pertinent to mention here that no witness was produced and examined during the course of Departmental Inquiry by the respondent department before the inquiry committee to prove charge leveled against the petition nor any oral inquiry was conducted during the course of inquiry as contemplated under regulation-7(7) of

U.P. Power Corporation Ltd. Employees' (Discipline and Appeal) Regulation, 2020.

12. *That without examining any witness or conducting oral inquiry in compliance of Regulation-7 of U.P. Power Corporation Ltd. Employees' (Discipline and Appeal) Regulation, 2020, in support of the charge-sheet or the material relied upon for framing charge against the petition for proving the documents, the enquiry committee has proceeded to submit inquiry report dated 04.04.2022, without considering the reply of the petitioner against the charge-sheet in correct perspective.*

32. *That neither the enquiry committee nor the disciplinary authority has fixed any time, place or venue for conducting enquiry in the matter of the petitioner and as such has proceeded with the matter in complete violation of principles of natural justice and law laid down on the subject."*

13. In paragraph No.6 of the counter affidavit and paragraph No.8, it is averred in answer to paragraph Nos.10, 12 and 32 of the writ petition as follows:

"6. That the contents of Paragraph Nos.10, 11 and 12 of the writ petition are not admitted as stated hence denied. In reply it is submitted 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.

8. That the contents of Paragraph No.32 of the writ petition are not admitted as stated hence denied. In reply it is submitted that no opportunity of personal hearing was given by the enquiry committee however the disciplinary authority vide letter dated 31.01.2023 fixed 02.02.2023 for personal hearing."

14. So far as facts are concerned, it is not at all in dispute that neither date, time and place for holding the inquiry was fixed by the Inquiry Committee nor witnesses examined in support of the charges by the establishment. The law, going by salutary principles, is well settled that in any departmental inquiry involving the imposition of a major penalty, the Inquiry Committee or Officer have to fix a date, time and place to hold the inquiry with notice both to the delinquent and the establishment. At the hearing, it is the duty of the Inquiry Committee to convene themselves into a formal Tribunal and require the establishment to prove the charges by producing evidence, both documentary and oral. The Inquiry Committee cannot assume the charges to be proved on the basis of idle papers annexed to the charge-sheet or the delinquent's reply. They have to require the establishment to lead evidence by introducing the documentary evidence through a Presenting Officer, who would also have to produce witnesses to prove the charge/ charges. The witnesses would not only prove the documents, but speak on other relevant facts as well. This salutary principle applies to the Corporation all the more, because that is the mandate of Regulation 7 of the U.P. Power Corporation Ltd. Employees' (Discipline and Appeal) Regulation, 2020 (for short, 'the Regulations of 2020'). In the

present case, this procedure has been observed in utter breach. It is admitted in paragraph No.6 of the counter affidavit that no witness was produced because none was named by the petitioner during the departmental inquiry. It is a stand that is almost ridiculous. It could not have been for the petitioner to name witnesses for the establishment against himself. It is the establishment, who would have to produce witnesses in support of the charges. The fact that they did not do so is not in dispute. It is also admitted in paragraph No.6 that an office memorandum has been issued to the Authorities of the Corporation and the Distribution Corporations to strictly adhere to the provisions of Regulation 7 of the Regulations of 2020 in order to remove anomalies. This places the matter beyond cavil that the respondents themselves are aware that they have faltered in adhering to their own Rules in holding the impugned departmental inquiry. The fact that no date, time and place was fixed is also admitted.

15. The law in this regard is well settled as observed 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).**

16. 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.

17. The result would be that the impugned order would have to be quashed with liberty to the respondents to proceed afresh from the stage of the charge-sheet.

18. This petition **succeeds** and is **allowed**. The impugned order dated 06.03.2024 (signed on 20.02.2024) passed by the Chairman of the Corporation is hereby **quashed**. The respondents shall be at liberty to proceed against the petitioner afresh from the stage of the charge-sheet. In case the respondents elect to pursue fresh proceedings, the question of revision of salary and post retiral benefits together with arrears will abide by the result of the disciplinary proceedings to be taken afresh. If it is decided not to hold any fresh proceedings by the respondents, the petitioner shall be entitled to all consequential benefits flowing from the restoration of his full increments. If fresh proceedings are held, the same shall be undertaken in accordance with the guidance in this judgment. In any event, if fresh proceedings are taken, a punishment higher than that imposed by the impugned order dated 06.03.2024 (signed on 20.02.2024), since quashed, shall not be imposed.

19. There shall be no order as to costs.

Order Date :- 9.12.2024
Anoop/ Brijesh

(J.J. Munir)
Judge