

Court No. - 5

Case :- WRIT - A No. - 19466 of 2024

Petitioner :- Sheesh Pal Singh

Respondent :- State of U.P. and Another

Counsel for Petitioner :- R.K. Mishra

Counsel for Respondent :- Abhishek Srivastava,C.S.C.

Hon'ble J.J. Munir,J.

1. This writ petition is directed against the order dated 31.05.2023 passed by the Managing Director, Uttar Pradesh Power Corporation Limited, Lucknow (for short, 'the Corporation'), punishing the petitioner after disciplinary proceedings with the withholding of three increments with cumulative effect. There is a further direction that in the future he will not be posted on a sensitive position.

2. The petitioner is a Junior Engineer in the employ of the Corporation. He was initially appointed on the post of a Technician Grade-II on 11.03.2008 and promoted as a Junior Engineer on 08.03.2019. He was posted with the Electricity Urban Distribution Division-III, NOIDA and then transferred to the Electricity Urban Distribution Division-V, NOIDA and posted at the 33/11 K.V. Electricity Sub-Station, Sector 132 and 135, NOIDA, Gautam Buddh Nagar on 21.08.2024. The petitioner says that he has been discharging his duties to the best of his abilities and has an unblemished service record. The petitioner was served with a charge-sheet dated 28.08.2021, carrying two charges in the year 2017-18. The two charges against the petitioner read:

"आरोप संख्या-01

श्री लखमी चन्द्र पुत्र श्री बिहारी निवासी पचौता पोस्ट सिखैडा, परगना व तहसील बरन जिला बुलन्दशहर द्वारा आपके विरुद्ध यह शिकायत की गयी थी कि उनके द्वारा ट्यूबवैल का संयोजन लेने हेतु दिनांक 31.07.2017 में आवेदन शुल्क रु0 100.00

जमा करके आवेदन किया गया था। उक्त संयोजन को निर्गत करने हेतु आपके द्वारा रु0 15000/- की रिश्त की मांग की गयी थी। उक्त अवैध धनराशि के सम्बन्ध में श्री लखमी चन्द्र द्वारा प्रमुख सचिव ऊर्जा, उ०प्र० सरकार लखनऊ द्वारा दिनांक 23.08.2017 में शिकायत करने के उपरान्त दिनांक 26.08.2017 में श्री लखमी चन्द्र की रुपये 9800/- रसीद काटी गयी, लेकिन दिनांक 24.06.2018 तक श्री लखमी चन्द्र के यहाँ न तो संयोजन सामग्री और न ही जॉब कार्ड बनाया गया, जबकि श्री लखमी चन्द्र के साथ तथा बाद में किये गये आवेदनों पर रिश्त लेकर कार्यवाही करते हुये विद्युत संयोजन चालू कर ट्यूबल को चालू कर दिया गया।

आरोप संख्या-02

श्री लखमी चन्द्र पुत्र श्री बिहारी निवासी पचौता पोस्ट सिखैडा परगना व तहसील बरन जिला बुलन्दशहर द्वारा ट्यूबल का संयोजन लेने हेतु दिनांक 31.07.2017 शिकायत पर कार्यालय प्रबन्ध निदेशक, पश्चिमांचल विद्युत वितरण निगम लि०, मेरठ के कार्यालय ज्ञाप सं० 1341/ पविनिनि/ मेरठ / शिकायत प्रकोष्ठ / माह-07/2018 दिनांक 13.07.2018 के अनुपालन में गठित जांच समिति द्वारा विवेचना में यह इंगित किया गया है कि श्री सीटू यादव पुत्र श्री शीशपाल सिंह ने जांच समिति के समक्ष तथा बाद में शपथ पत्र पर यह बयान दिया कि "मेरे पिता जी के द्वारा विभाग में अपने नलकूप के लिये आवेदन किया गया था उपरोक्त विद्युत संयोजन को देने के लिये श्री शीशपाल सिंह के द्वारा रु0 35000/- विद्युत संयोजन देने के एवज में एवं रु0 5000/- सामग्री उठवाने के एवज में कुल रु0 40000/- दिये तथा रसीद मात्र 9800/- की ही दी गयी" श्री सीटू यादव के लिखित बयान के आधार पर शिकायतकर्ता से अवैध धनराशि मांगने हेतु आरोपित किया जाता है।"

3. The petitioner submitted his reply dated 01.10.2021 along with documents, denying the charges. He raised pleas in his defence. When this petition came up for admission on 06.12.2024, this Court issued a notice of motion in terms of the following orders:

"By the impugned order, the Managing Director, Uttar Pradesh Power Corporation Limited, Lucknow has punished the petitioner, a Technician Gr.-II (Draftsman) with the award of a censure and withholding of three increments with cumulative effect. In addition, there is a direction that the petitioner will not be assigned any sensitive posting.

The submission of the learned Counsel for the petitioner is that no date, time and place for holding the inquiry was fixed by the Inquiry Committee and witnesses were not examined in support of the charges by the Corporation/Establishment.

Issue notice.

Notice on behalf of respondent No. 1 is accepted by Mr. Girijesh Kumar Tripathi, learned Additional Chief Standing Counsel, whereas that on behalf of respondent No. 2, by Mr. Abhishek Srivastava, Advocate. Both the learned Counsel are granted ten days' time to file a counter affidavit. There are relevant averments in paragraphs Nos. 9, 10 and 12, which must be particularly answered.

Adjourned to 17.12.2024.

*To be taken up as **fresh**.*

*The Registrar (Compliance) is directed to communicate this order to the Managing Director, Uttar Pradesh Power Corporation Limited, Lucknow through the learned Chief Judicial Magistrate, Lucknow **by Monday i.e. December 9, 2024.***

4. A counter affidavit has been filed on behalf of the Managing Director, U.P. Power Corporation Limited, Lucknow by Mr. Abhishek Srivastava, learned Counsel. It is taken on record. Let it be numbered by the Office.
5. Learned Counsel for the petitioner waives his right to file a rejoinder affidavit.
6. Admit.
7. Heard forthwith.
8. Heard Mr. R. K. Mishra, learned Counsel for the petitioner and Mr. Ujjwal Srivastava, learned Counsel holding brief of Mr. Abhishek Srivastava, learned Counsel for respondent No.2 and Ms. Amrita Singh, learned Additional Chief Standing Counsel on behalf of respondent No.1.
9. Shorn of the details of allegations carried in the two charges and the evidence in support, if any, the short point that has been urged by the learned Counsel for the petitioner is that no date, time and place for holding the inquiry was fixed by the Inquiry Committee, vitiating the Committee's report. The other limb of the submission is that no witnesses were examined in support of the charges by the establishment. It is argued that both these flaws go to the root of the matter and vitiate the inquiry report, because this was a matter where a major penalty was imposed, without following the salutary procedure, for holding a departmental inquiry in a matter involving the

imposition of a major penalty.

10. It is also argued that these lapses also constitute a breach of Regulation 7 of the Uttar Pradesh State Power Corporation Employees (Discipline and Appeal) Regulations, 2020 (for short, 'the Regulations of 2020'). Learned Counsel for the petitioner has invited the attention of this Court to paragraph Nos.10 and 12 of the writ petition, where pleas in support of the point urged find place. The pleas raised in paragraph Nos.10 and 12 of the writ petition have been answered in paragraph Nos.5, 5(v), 5(vi) and 5(ix) of the counter affidavit:

“5. That the contents of paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 of the writ petition are not admitted as stated hence denied and in reply thereto it is submitted that as follows:

(v). That the enquiry committee had afforded an opportunity of hearing to the petitioner through Videoconferencing vide letter dated 10.3.2022 fixing date, time and place as 11.3.2022 at 11:00 a.m. Copy of the letter dated 10.3.2022 is being annexed herewith and marked as **Annexure-CA-1** to this affidavit.

(vi). That the enquiry committee after going through the material available on record had submitted its enquiry report on 21.03.2022 wherein both the charges were found to be proved against the petitioner, who was posted as TG-II, (Draftsman) at EDD-I, Bulandshahar.

(ix). That from perusal of the record it is evident that no witness was proposed either in the chargesheet 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. Since the petitioner in his reply to the chargesheet has not given names of any witness for examination/cross examination, therefore, no witness was examined by the Corporation.”

11. Now, the salutary procedure for holding an inquiry in a major penalty matter is well settled. It requires that the Inquiry Committee or officer must distance themselves from the

establishment and convene themselves into an impartial Tribunal. They must not regard the charges in the charge-sheet proved at the commencement of the inquiry. The Inquiry Committee must call upon the establishment, which bears the burden to prove the charges to produce their evidence through a Presenting Officer, comprising both documentary and oral evidence. The Presenting Officer must introduce the documentary evidence and prove it by production of suitable witnesses on behalf of the establishment, who would testify to other relevant facts, constituting the charges as well. Once, the witnesses have been examined on behalf of the establishment, they have to be offered to the delinquent for cross-examination. In the next lap of proceedings, the Inquiry Committee would be obliged to call upon the delinquent to produce evidence in his defence. This too would comprise of documentary evidence as also witnesses. If witnesses on behalf of the delinquent are produced, they would be similarly offered by the Inquiry Committee to the establishment for cross-examination.

12. It has to be observed that if the delinquent does not produce any evidence or does not appear at all, this would not lead to the charges being established by any kind of a default on the delinquent's part. The charges have to be established by production of evidence *aliunde*, both documentary and oral, by the establishment. It is of particular significance to note that witnesses have to be examined by the establishment in support of the charges in any matter, where a major penalty may be imposed. This is a well established salutary procedure governing all departmental inquiries, involving the possible imposition of a major penalty.

13. The other requirement about the fixing of a date, time and place for holding the inquiry is also part of the salutary

procedure. It does not mean that a date, time and place has to be fixed, where the delinquent is summoned before the Inquiry Officer and asked to explain his position with regard to the charges, dispelling the allegations as if they come with proof of themselves. The fixing of a date, time and place of inquiry means that the inquiry is scheduled for a particular date and time at the specified venue, of which both the establishment and the delinquent are conveyed due information. At the appointed date, time and venue of inquiry, it is the establishment, who have to be heard in the first place, obliging them to produce evidence in support of the charges. We have detailed this procedure hereinabove and need not say it again.

14. Nothing of this kind appears to have been done in the present case. It is admitted in paragraph Nos.5 and 5(v) of the counter affidavit that the Inquiry Committee intimated the petitioner of the date, time and place for hearing him and did hear him through videoconferencing. They never fixed a date, time and place for hearing the establishment's witnesses. Therefore, they were apparently in breach of salutary procedure. Paragraph No.5(vi) of the counter affidavit says that after going through the material on record, the Committee submitted its inquiry report. This shows that the Inquiry Committee went through the charge-sheet and the petitioner's reply and idle papers annexed to these. The documents, that were annexed, were never led in evidence on behalf of the establishment, or for that matter, by the petitioner and proved by the production of relevant witnesses. The documents were, therefore, as already remarked, just idle papers, but not evidence of any kind, on which the Inquiry Committee could have acted. It is admitted in paragraph No.5(ix) that no witnesses were examined on behalf of the establishment,

because none were named in the charge-sheet. Not naming the witnesses does not relieve the respondents of their obligation to examine witnesses in a matter involving the possible imposition of a major penalty. It is virtually admitted on behalf of the Corporation in paragraph No.5(ix) of the counter affidavit that directions have been issued by the Corporation to their Authorities and those of the Distribution Corporations that they should strictly adhere to the provisions of Regulation 7 of the Regulations of 2020 and must first examine officers of the Corporation to prove the charges. Then they should give opportunity to the charge-sheeted employee to cross-examine witnesses, examined-in-chief for them. Also, the charge-sheeted employee has then to be given opportunity to produce witnesses in his defence. This virtually shows that the respondents admit the fact that they have been in breach of Regulation 7 of the Regulations of 2020 and also the salutary procedure for holding an inquiry in a major penalty matter. While this may take care of future disasters, it would not save the conclusions of the present Inquiry Committee and the order impugned passed on its basis.

15. This law in this regard is firmly settled 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. In the nature of things and what we have held hereinabove, the impugned order would have to be quashed with liberty to the respondents to proceed afresh, if they so elect, from the stage of the charge-sheet and the petitioner's reply, bearing in mind the guidance in this judgment.

18. In the result, this petition succeeds and is **allowed**. The impugned order dated 21.05.2023 passed by the Managing Director, U.P. Power Corporation Limited, Lucknow is hereby **quashed**. The respondents shall be at liberty to proceed afresh against the petitioner from the stage of the charge-sheet, bearing in mind the guidance in this judgment. In the event, fresh proceedings are elected to be pursued, the arrears on account of the withheld increment shall abide by the final outcome of the disciplinary proceedings. If, however, no fresh proceedings are taken, all increments affected by the impugned order shall be restored and arrears paid forthwith.

19. In any case, the respondents will not impose a punishment higher than that imposed by the impugned order, since quashed by this judgment.

20. There shall be no order as to costs.

Order Date :- 19.12.2024

Anoop/ Vijay

(J.J. Munir)
Judge