

Court No. - 4

AFR

Case :- WRIT - A No. - 36916 of 2016

Petitioner :- Veeresh Kumar

Respondent :- State Of U.P. And 6 Ors.

Counsel for Petitioner :- Akhilesh Kumar
Sinha, Javed Husain Khan, Nand Lal Pandey, Nirbhay
Singh, Rajesh Kumar, Randhir Jain, Somendra
Singh, Vageesh Pandey, Yogesh Kumar Saxena

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar, J.

1. Heard Sri Aklank Kumar Jain, learned counsel for the petitioner and learned Additional Chief Standing Counsel for the State.

2. Petitioner who was working as Driver in the office of the District Magistrate was subjected to disciplinary proceedings pursuant to the chargesheet dated 15.09.2014 in which two charges were levelled regarding filing of petrol in the official vehicle by making forged signatures of the OSD concerned and thereby embezzeling the amount and then further not reporting for duty in the office of the Chief Development Officer, Firozabad despite the order issued from the office of District Magistrate dated 27.06.2014.

3. It transpires from the record that the petitioner while was served with the chargesheet through the enquiry officer, he submitted his reply to the same denying the charges on 30.09.2014 and thereafter the enquiry officer proceeded to hold enquiry. It further transpires from the enquiry report brought on record as Annexure 17 to the writ petition that petitioner was issued with the chargesheet that resulted initiation of disciplinary proceedings on the basis of some preliminary fact finding enquiry report submitted by the City Magistrate, Firozabad on 21.07.2014. The Enquiry Officer submitted the report

relying upon the preliminary fact finding enquiry report of the City Magistrate on 09.01.2015 on the basis of which show cause notice was issued to the petitioner and the disciplinary authority being not satisfied with the reply of the petitioner, held him guilty of embezzlement of public money and serious neglect in discharge of duty and further for misconduct in violating the directions of the higher authorities. Resultantly, petitioner was awarded maximum punishment of termination from service. This order was unsuccessfully appealed against and hence both the order of disciplinary authority as well as the appellate authority are under challenge.

4. Two fold argument have been advanced by learned counsel for the petitioner which are as follows:

i) Petitioner was not supplied with the requisite document that were relied upon more especially the preliminary fact finding report of the City Magistrate, Firozabad on the basis of which charges were levelled against him, inasmuch as chargesheet was not issued by the authorised officer but by the enquiry officer and hence the entire disciplinary proceeding was vitiated in law and;

ii) No oral enquiry was held by the enquiry officer inasmuch as the provisions contained under the U.P. Government Servant (Discipline and Appeal) Rules, 1999 were not complied with to be more specific Rule 7 thereof and hence the procedure prescribed being not followed the procedure followed by the enquiry officer was flawed one which resulted in an order that would renderas void ab initio.

In support learned counsel appearing for the petitioner has relied upon the judgment of this Court in the case of Ashok Kumar v. State of U.P. and Others (Writ A No.486 of 2025 decided on 13.05.2025).

5. Per contra, learned Standing Counsel has sought to defend the order for the reasons assigned therein. He further submitted that the enquiry officer did

provide adequate opportunity to the petitioner to participate in the enquiry but he refused to participate inasmuch as he refused to name any person to whom he wanted to be examined as his witness. It is thus sought to be contended on behalf of the State-respondents by learned Additional Chief Standing Counsel that if the delinquent employee did not deliberately participate in the enquiry, the enquiry officer was not left with any other option but to proceed with the enquiry in *ex parte* manner. In so far as the documents that are claimed to have not been supplied by the petitioner to put up a defense, he submits that there are certain documents, copies of which could not have been supplied and there are authorities of the Court to the effect that if proper opportunity is given to the delinquent employee to participate in an enquiry such an opportunity can be exploited by the employee by perusing the documents that are relied upon in the chargesheet.

6. Having heard learned counsel for the respective parties and having perused the records, the only point I find that emerges for consideration before this court as to whether the disciplinary proceedings initiated and concluded against the petitioner that resulted in maximum penalty of termination from service was a result of flawed procedure and therefore, resulted in an unsustainable order of punishment.

7. In order to appreciate the above legal point, it is necessary here to reproduce Rule 7 of the Discipline and Appeal Rules, 1999:

"7. Procedure for imposing major penalties. -

Before imposing any major penalty on a Government servant, an inquiry shall be held in the following manner :

(i)The disciplinary authority may himself inquire into the charges or appoint an authority subordinate to him as Inquiry Officer to inquire into the charges.

(ii)The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge-sheet. The charge-sheet shall be approved by the disciplinary authority :

Provided that where the appointing authority is Governor, the charge-sheet may be approved by the Principal Secretary or the Secretary; as the case may be, of the concerned department.

(iii)The charges framed shall be so precise and clear as to give sufficient indication to the charged Government servant of the facts and circumstances against him. The proposed documentary evidence and the name of the witnesses proposed to prove the same alongwith oral evidence, if any, shall be mentioned in the charge-sheet.

(iv)The charged Government servant shall be required to put in a written statement of his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge-sheet and to state whether he desires to cross-examine any witness mentioned in the charge-sheet and whether desires to give or produce evidence in his defence. He shall also be informed that in case he does not appear or file the written statement on the specified date, it will be presumed that he has none to furnish and Inquiry Officer shall proceed to complete the inquiry ex parte.

(v)The charge-sheet, alongwith the copy of the documentary evidences mentioned therein and list of witnesses and their statements, if any shall be served on the charged Government servant personally or by registered post at the address mentioned in the official records. In case the charge-sheet could not be served in aforesaid manner, the charge-sheet shall be served by publication in a daily newspaper having wide circulation :

Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge-sheet, the charged Government servant shall be permitted to inspect the same before the Inquiry Officer.

(vi)Where the charged Government servant appears and admits the charges, the Inquiry Officer shall submit his report to the disciplinary authority on the basis of such admission.

(vii)Where the charged Government servant denies the charges, the Inquiry Officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charged Government servant who shall be given opportunity to cross-examine such witnesses. After recording the aforesaid evidence, the Inquiry Officer shall call and record the oral evidence which the charged Government servant desired in his written statement to be produced in his defence :

Provided that the Inquiry Officer may for reasons to be recorded in writing refuse to call a witness.

(viii)The Inquiry Officer may summon any witness to give evidence or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1976.

(ix)The Inquiry Officer may ask any question he pleases, at any time of any witness or from person charged with a view to discover the truth or to obtain proper proof of facts relevant to charges.

(x)Where the charged Government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding inspite of the service of the notice on him or having knowledge of the date, the Inquiry Officer shall proceed with the inquiry ex parte. In such a case the Inquiry Officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged Government servant.

(xi)The disciplinary authority, if it considers it necessary to do so, may, by an order appoint a Government servant or a legal practitioner, to be known as "Presenting Officer" to present on its behalf the case in support of the charge.

(xii)The Government servant may take the assistance of any other Government servant to present the case on his behalf but not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner of the disciplinary authority having regard to the circumstances of the case so permits :

Provided that this rule shall not apply in following cases :

(i)Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge; or

(ii)Where the disciplinary authority is satisfied that for reason to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii)Where the Governor is satisfied that, in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules."

(Emphasis added)

8. Going by the relevant provisions as quoted and highlighted above it is clear that even if the delinquent employee fails to participate in the enquiry but he denies the charges at the same time, then it is incumbent upon the enquiry officer to call for departmental witness to prove the material placed before it. It is well settled principle of the service jurisprudence in the matter of disciplinary proceedings that the disciplinary proceedings are quasi judicial in nature and the enquiry officer therefore, acquires the position of an adjudicatory authority *qua* charges.

9. In the circumstances therefore whatever the material is placed before the enquiry officer, the enquiry officer is hide bound in law to get the enquiry concluded as per procedure. It is true that so far the preponderance and probability principle is concerned the guilt is not to be proved to the hilt but whatever the material and evidence is before the enquiry officer unless and until the same is corroborated by a departmental witness the enquiry officer is not justified in accepting the same.

10. Applying this above principle which have been laid down in catena of decisions by this Court and by Supreme Court in the case of Kishor Kumar v. State of U.P. and Others (Writ A No. 10177 of 2019 decided on 09.10.2023), this Court vide paragraph 12 of it held as under:

"12. In my above view, I find support in the division bench judgment of this Court in the case of Salahuddin Ansari vs. State of UP & ors; 2008 (4) ADJ 58, wherein the Bench has relied upon an earlier division bench judgment in the case of Subhash Chandra Sharma vs. Managing Director & anr, MANU/UP/0757/1999 in which it was held that imposition of penalty in the nature of major penalty without holding inquiry was bad. The said judgment came to be affirmed by Supreme Court in SLP as the SLP against the judgment stood dismissed on 16.08.2000. Citing the aforesaid judgment and another judgment of the Supreme Court in the case of State of UP & anr vs. T.P. Lal Srivastava; 1997 (1) LLJ 831, the Division Bench in the case of Salahuddin Ansari (supra) vide paragraphs 11, 13 and 14, held thus:

"11. A Division Bench of this Court in Subhash Chandra

Sharma Vs. Managing Director & another, 2000 (1) U.P.L.B.E.C. 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 Subhash Chandra Sharma Vs. U.P. Cooperative Spinning Mills & others, 2001 (2) UPLBEC 1475 and Laturi Singh Vs. U.P. Public Service Tribunal & others, Writ Petition No. 12939 of 2001, decided on 06.05.2005."

11. Now applying the above principles of law to the facts of the present case more especially the enquiry report, I find that the enquiry officer notices that petitioner had been given adequate opportunity to participate and yet he did not come forward but at the same time he does not refer to any date fixed ever during the enquiry for a departmental witness to be examined. It is apparent on the face of record that the charges were levelled against the petitioner of embezzled of money for filling up petrol in the official car by forging signatures and therefore, it was incumbent upon the enquiry officer to have called for the witnesses who had deposed before the preliminary fact finding enquiry committee to prove those facts. But I find that the enquiry officer has simply discussed the preliminary fact finding enquiry report submitted by the City Magistrate, Firozabad dated 31.07.2014 and arrived at a conclusion that there was sufficient material and evidence available to bring home the charge against the petitioner. In my considered view applying the principles of statutory procedure of enquiry as discussed above, this approach of the enquiry officer cannot be approved of and hence the enquiry report is liable to be held as a result of a flawed procedure for there being no oral enquiry whatsoever. It is also equally settled that if the result arrived by the authority is as a consequence of the flawed procedure then such resultant action can also not be sustained in law.

12. It is well settled legal position that inquiry officer is in the robe of the adjudicatory authority to evaluate and appreciate the evidence produced before it either in the form of preliminary fact finding enquiry report or otherwise as against charges upon which enquiry report is to be submitted, such an

enquiry officer is duty bound to invite evidence orally and may at times documentary as well in the event there is a sustained denial of the charges. Even in cases where the delinquent employee has failed to submit reply to the chargesheet but has not submitted to the chargesheet, his conduct should not result in *ipso facto* admission of charges and the enquiry officer cannot get absolved from his duty to perform the role of adjudicatory authority to appreciate and assist the evidence placed before it by the department *qua* the charges before he comes to conclude that delinquent employee is guilty of the charges in case of **Satyendra Singh v. State of U.P. and another:2024 SCC Online SC 3325.**

13. Very recently Supreme Court has very exhaustively dealt with this issue and having considered a catena of its previous decisions has held that the procedure where oral evidence is not recorded by the enquiry officer is liable to be held as a flawed one and so also the resultant action deserves to be set aside.

14. In view of the above therefore, neither the enquiry report dated 19.01.2015 is sustainable in law nor the action taken by the disciplinary authority is sustainable. The question therefore now arises to remand the matter in view of the decision of the Supreme Court in the case of **Managing Director Ecil Hyderabad Etc. Etc. vs B. Karunakar Etc. Etc.:1993 (4) SCC 727.** However, I find that the charges were of the year 2014. The relevant Government Order and the rules provide for investigation into charges not more than 4 years back from the date of an employee attaining age of superannuation and that too after seeking prior approval from the Governor invoking provisions as contained under Regulation 351-A of the Civil Service Regulation. The petitioner in this case has already attained the age of superannuation on 01.04.2023.

15. In the circumstances therefore, I do not find any justification to reopen the matter after a lapse of more than 12 years as this petition is now being decided in the year 2025.

16. In view of the above the writ petition succeeds and is **allowed**. The order dated 08.05.2025 terminating the services of the petitioner passed by the disciplinary authority/District Magistrate, Firozabad as well as the order passed by the appellate authority dated 18.04.2016 passed by the Commissioner, Agra Division, Agra are hereby quashed.

17. Petitioner shall be taken to have continued in employment as if there was no order of punishment and shall be benefitted with all service benefits including post retirement dues. The consequential order shall be passed by the authorities within a maximum period of two months of production of certified copy of this order.

Order Date :- 14.7.2025/Deepika