Neutral Citation No. - 2024:AHC:1287

RESERVED

A.F.R.

Court No. - 7

Case :- WRIT - A No. - 14824 of 2023

Petitioner :- Sumant Kumar
Respondent :- U.P. Power Corporation Limited and others
Counsel for Petitioner :- Manu Mishra
Counsel for Respondent :- Krishna Agrawal, Abhishek Srivastava

Hon'ble J.J. Munir,J.

The petitioner, an Office Assistant-II in the employ of the Paschimanchal Vidyut Vitran Nigam Limited, is aggrieved by his dismissal from service, after disciplinary proceedings taken against him and affirmation of that order in departmental appeal and revision.

2. The petitioner was an Office Assistant-II in the Office of the Superintending Engineer, Electricity Distribution Division, Amroha, Paschimanchal Vidyut Vitran Nigam Limited, 33/11, K.V. sub-station, Collectorate, Joya Road, Amroha, District Amroha. He was suspended from service pending inquiry *vide* order dated 15.06.2018 passed by the Superintending Engineer aforesaid. The Managing Director, Paschimanchal Vidyut Vitran Nigam Limited[1] *vide* order dated 14.08.2018, appointed one V.K. Pandey as the Inquiry Officer to hold a departmental inquiry. The said order was served upon the petitioner. The Inquiry Officer issued a charge-sheet dated 24.08.2018 to the petitioner, carrying seven charges.

3. The petitioner submitted his reply to the charge-sheet dated 29.11.2018, traversing the charges. It is the petitioner's case that he was summoned by the Inquiry Officer for a personal hearing on 12.12.2018, but no witnesses were produced or examined on behalf of the Establishment to prove the charges, in compliance with Rule 7

1 'the Distribution Corporation' for short

of the U.P. Government Servants (Discipline and Appeal) Rules, 1999, nor any oral inquiry held. An inquiry report dated 28.06.2019 was submitted by the Inquiry Officer to the Managing Director of the Distribution Corporation. A copy of the inquiry report was served upon the petitioner along with a letter dated 18.02.2020. It was served on 29.02.2020. The petitioner showed cause by his reply dated 04.06.2020, disputing the findings of the inquiry report. The Superintending Engineer, Electricity Distribution Division, Amroha, by his order dated 14.08.2020, passed an order, adjudging a miscellaneous advance against the petitioner to the tune of ₹36,67,357.32 on account of causing loss to the Distribution Corporation. This sum of money adjudged was directed to be recovered from the petitioner, about which he says he was not given opportunity.

4. Subsequently, the Disciplinary Authority, as the petitioner says, without considering the petitioner's reply in the rightful perspective and without requiring the charges to be proved, according to the procedure prescribed by law, held the petitioner guilty and dismissed him from service *vide* order dated 26.08.2020. The Disciplinary Authority was the Superintending Engineer, Paschimanchal Vidyut Vitran Nigam Limited, Electricity Distribution Division, Amroha, respondent No. 4 to the writ petition. He shall hereinafter be referred to as ‘the Disciplinary Authority’.

5. Aggrieved by the order of dismissal, the petitioner preferred an appeal to the Chief Engineer of the Distribution Corporation, respondent No. 3. He shall hereinafter be referred to as ‘the Appellate Authority’. The appeal was preferred *vide* memorandum of appeal as aforesaid, dated 22.12.2020, and amended *vide* memorandum dated 06.04.2021. The Appellate Authority dismissed the appeal by his order dated 29.04.2021 made in exercise of powers under Section 11

of the Uttar Pradesh Power Corporation Limited Employees (Discipline and Appeal) Regulations, 2020[2].

6. The unsuccessful petitioner preferred a revision to the Chairman, Uttar Pradesh Power Corporation Limited against the order of the Disciplinary Authority and the Appellate Authority dated 06.04.2021 and 29.04.2021, respectively, under Regulation 13 of the Regulations of 2020. The aforesaid revision was preferred *vide* memorandum of revision dated 04.06.2021. This revision was not decided by the Chairman of the Corporation, despite lapse of more than a year and a quarter.

7. The petitioner, aggrieved by the inaction, instituted **Writ - A No. 16731 of 2022, Sumant Kumar v. U.P. Power Corporation Limited and others**, seeking a direction to the Chairman of the Uttar Pradesh Power Corporation Limited[3] to decide his revision. This Court *vide* order dated 14.11.2022 disposed of the aforesaid writ petition with a direction to the Revisional Authority to decide the petitioner's revision and pass a reasoned and speaking order, as expeditiously as possible, and within a period of three months from the date of a copy of that order was produced before the Authority.

8. The Revisional Authority, in compliance with the order dated 14.11.2022, passed in the writ petition last mentioned, proceeded to decide the petitioner's revision and rejected the same by an order dated 13.04.2023, as the petitioner says, without considering the grounds or examining the issues raised in the rightful perspective. It is the petitioner's case pleaded in the writ petition, in paragraph Nos. 9, 20, 33, 34 and 36 that the Inquiry Officer, in holding the inquiry, leading to the findings of guilt on all the seven charges, did so without requiring the Establishment to prove those charges by producing

2 'the Regulations of 2020' for short
3 'the Revisional Authority' for short

evidence in support thereof in the first instance, particularly oral evidence, that is to say, witnesses.

9. A counter affidavit has been filed on behalf of all the respondents by Mr. Abhishek Srivastava, learned Counsel. In paragraph No. 4 of the counter affidavit, there is a wholesome denial of the averments made in paragraph Nos. 11 to 47 of the writ petition in an omnibus fashion. The same paragraph then proceeds to raise specific pleas of denial or confession and avoidance in the various sub-paragraphs of Paragraph No. 4. Sub-paragraphs (vi) and (vii) are of particular importance, as these are directed at answering the allegation of the petitioner about that procedural lapse of a salutary procedure, where, according to the petitioner, the Establishment was required to produce evidence before the Inquiry Officer in support of the charges, particularly, oral evidence, that is to say, witnesses, to prove these in the first instance. Paragraph Nos. 4 (vi) and 4 (vii) read:

> vi. Further after giving due opportunity of hearing to the petitioner and on the basis of material evidence on record, the enquiry committee has submitted his report and during the course of departmental enquiry, the petitioner has not disputed about the genuineness of any of the documents provided to the petitioner during the course of enquiry nor he had shown any interest in asking the department to produce any witness for examination/cross examination, therefore, once the employee has duly participated in the departmental enquiry and has admitted the evidence on record, therefore, it cannot be said that any prejudice is caused to him in not examining any witness by the department and if we go by the plain reading of the Regulation 7 of the 2020 Regulation it only says, in Regulation 7(5) that, along with the chargesheet the copy of the documents and list of witnesses should be provided to the employee and Regulation 7(7) provides that, in case the employee refuses the charges, the enquiry committee should call the proposed witnesses to record their evidence whose names are mentioned in the chargesheet and in the present case, if names of no one are mentioned in the chargesheet then the enquiry committee cannot be said to have committed any mistake in not examining any witness. Further Regulation 7(8) provides that, an enquiry committee can ask any witness to appear before it and provide any document and Regulation 7 (9) says, the enquiry committee

> can ask any question- to the witness to find out the true facts, herefore, from the bare perusal of the Regulations, 2020 cannot be said that the enquiry committee has committed any error, which has caused prejudice to the petitioner, who has been given full opportunity of oral hearing along with option to examine any witness or dispute the admissibility of any documents, and once the employee has not disputed about the genuineness and admissibility of the documents, taking into consideration by the enquiry committee, it cannot be said that the enquiry was not proper.
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> vii. Further 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 dated 14.8.2023 has been issued wherein it has been directed to all the authorities of the Corporation and the DISCOMS holding 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.

10. Since the learned Counsel for the petitioner has waived his right to file a rejoinder affidavit, the petition was heard and judgment reserved.

11. Heard Mr. Manu Mishra, learned Counsel for the petitioner and Mr. Abhishek Srivastava, learned Counsel appearing for the respondents.

12. A perusal of the charge-sheet shows that the charges run into technical details of billing various consumers by altering their supply type, say, to Supply Type 20 from Supply Type 22, and, on that basis, recording the reading in the computer system in the KWH system, instead of the KVAH system, leading to a lesser bill for the consumer. The allegations mentioned, which are illustratively based on Charge No. 1, are that, later on, the petitioner, using his User ID “SUMANT” on 17.03.2016, changed the data fed in the computer to the

appropriate Supply Type 22 for a particular consumer, Sujit Gupta. Still later, on 29.03.2016, the data was again changed from Supply Type 22 to Supply Type 20. Once again, on 30.06.2016, it was altered back to Supply Type 22 from Supply Type 20. All this while, bills were drawn for the consumer in the KWH system, leading to a loss of revenue to the Corporation. The charge finally imputes that it appears that the petitioner did not want the customer to be billed in Supply Type 22 under the KVAH system, and, at the same time, in the master data, wanted it shown that he was being billed in Supply Type 22 (KVAH system) and therefore, the petitioner, in an organised manner, repeatedly, just before the bill was to be issued, ensured that the supply type was changed to S.T. 20 and the consumer billed under the KWH system, but before the master data could be issued, altered it back to Supply Type 22.

13. The first charge further goes on to say that the petitioner ensured that for this customer's present meter bearing No. 785615, the reading on 28.04.2018, was entered as 4601 KWH, using his User ID “SUMANT” and before this reading, the average consumption was 920 per month, but on 12.06.2018, the reading showed 10679 KWH. If the premises of the customer were not inspected and this reading taken, in the event of the meter going faulty, the earlier readings fed into the computer system would have to be accepted. An imputation has been made on the basis of these facts that the petitioner deliberately entered short meter readings for his own gain and to cause loss of revenue to the Corporation. In support of this charge, there is a printout of the computer log and the system date-wise, when the supply type was changed, using the petitioner's user ID.

14. This Court must remark that the charge itself is a big jumble up of money transactions and reads more like a statement of imputation,

regarding which, one would expect a more concise charge elsewhere. It is true that all that is required about a valid charge in disciplinary proceedings is that it must, in intelligible and clear terms, convey to the delinquent what the allegations against him are, but, at the same time, in order that the charge be intelligible, it ought to be concise, so as not to make the understanding of its terms hazy. If there are many particulars to the charge, running into minute details, the sound practice in departmental proceedings is to draw up a concise charge, not carrying all those details and supported by a separate statement of imputations. The other six charges described in the charge-sheet are far more detailed and, for instance, the second charge does not relate to just one consumer. It relates to at least five of them. It also runs into minute details and is, again, about manipulating the data in the computer to feed a negative reading relating to consumers.

15. This Court has looked into one charge not for the purpose of analysing it or pronouncing upon it, but, to fathom, by what kind of evidence, it would have to be proved by the Establishment, given the fact that the petitioner has denied all the charges and come up with specific defences, refuting them. It is not a case where the petitioner has admitted any of the charges or the documents as a true computer output of what the petitioner fed into the computer, while being in its charge. There are rather defences, again, illustratively of the kind noted below, pleaded by the petitioner in his reply (translated into English from Hindi) :

> (1) It is true that User ID “SUMANT” which was provided to me by the Executive Engineer, Vidyut Vitran Khand, Gajraula, was used in my routine billing work, but for some contingent work, the Executive Engineer, Electricity Distribution Division-I, Gajraula got my User ID “SUMANT” provided to Sri Munna Lal, Office Assistant-II/Senior Contract Clerk for the purpose of doing the left out ledgerisation work relating to electricity connections. It is to be brought to notice that the Chief Engineer of the Corporation, Moradabad Region did an inspection on 02.12.2017 in the evening

hours, by inspecting the Electricity Distribution Division, Gajraula, during which, he checked the private tubewell and industrial/commercial connection contract book. In that connection, the Chief Engineer of the Corporation for the Moradabad Region, by his letter No. 21381 मुअमु क्षेत्र/वा०/निरिक्षण दिनांक 05.12.2017 issued a warning about non-ledgerisation of electricity connections to Executive Engineer. It was for the said reason that I was required to provide my user ID to Sri Munna Lal, Office Assistant-II, Contract Clerk on the oral directions of the then Executive Engineer, provided to him in the interest of the Corporation and its work.

(2) The aforesaid ledgerisation work was to be done by Sri Munna Lal, Office Assistant-II, Contract Clerk, and for that lapse, the petitioner cannot be held guilty, because the Uttar Pradesh Power Corporation Limited, by their letter No. 87 प्रसू - 01 पाकाली/2002-20-प्र०से०/2000 dated 25.02.2002 (Annexures 2, 3 and 4) defines the duties and responsibilities of employees and officers as per annexure, where the chief responsibility about ledgerisation and first bill issue rests with the Senior Contract Clerk/Accountant (Revenue)/Assistant Engineer (Revenue)/Executive Engineer.

(3) On my counter, the billing for consumers above 10 kilowatts was done, which I was doing quite well, but on account of billing agency making a mistake, billing consumers of the rural areas, according to the urban system in the HCL system, some consumers were affected. As a result, the revenues were also being affected, due to which, the Executive Engineer, Sri Gulshan Goyal, orally directed that these consumers (rural areas) be appropriately billed in the HCL system, and for the purpose, the HCL system billing company representative be provided the user ID, so that the bill is rectified at the earliest. Acting on the aforesaid orders of the Executive Engineer, the HCL Billing Company Limited representative was provided with my user ID, who rectified the bills of these consumers, wherein, any anomalies, if committed, are not my responsibility, though the anomalies arising in the bills of these consumers (upon rectification) were corrected by me within time, details whereof are furnished in answer to the subsequent charges.

16. Now, in the face of this kind of a defence, which is very detailed in answer to each charge, it was incumbent, by salutary principle for the Corporation, to have established their charges before the Inquiry Officer by leading evidence through a Presenting Officer, both documentary and oral. It is a settled principle of salutary procedure

concerning departmental proceedings, where there is likelihood of imposition of a major penalty, which, in this case, was actually imposed, that the Establishment must prove the charges before the Inquiry Officer by leading evidence in the first instance. The Inquiry Officer is not to identify himself with the Establishment, even if an officer of the same Establishment. He must act as an impartial arbiter, distancing himself from the Establishment for the purpose of holding a departmental inquiry. It is the burden of the Establishment to prove the charges that they have brought against the delinquent in the first instance, by leading both documentary and oral evidence. It is also an imperative by principles of salutary procedure that oral evidence in support of charges must be led by the Establishment. It is after the evidence is led by the Establishment that the employee is to be given the opportunity to cross-examine witnesses, who were produced on behalf of the Establishment to prove various documents, or for any other purpose. It is to be emphasized that the documents annexed to the charges are not to be treated by the Inquiry Officer as proof of themselves. These are required to be proved by the Presenting Officer through evidence led on behalf of the Establishment; else, these documents are nothing but idle papers, on the basis of which, no inference can be drawn against an employee.

17. This Court notices the fact that in paragraph No. 4 (vii) of the counter affidavit, it has been admitted for a fact that no witness was examined by the Corporation to prove the charges during the course of departmental inquiry. It is also admitted that to remove all these anomalies, an Office Memorandum dated 04.08.2023 has been issued, wherein, all the Distribution Corporations holding inquiries have been directed to adhere strictly to the provisions of Regulation 7 of the Regulations of 2020. It is also pleaded that sub-paragraph (vii) of paragraph No. 4 of the Memorandum dated 14.08.2023 directs that in the holding of such departmental inquiries, the Corporations must

first examine officers on their own behalf to prove the charges, and only thereafter, they should provide opportunity to the employees to either cross-examine their witnesses or produce any witnesses in their defence. The Corporation, in the counter affidavit, virtually admit the procedural flaw in this inquiry, where, the Establishment/Corporation have not proved the charges by leading oral evidence in support of the same.

18. For the legal proposition, that it is imperative in a departmental inquiry, leading to the imposition of a major penalty for the Establishment to examine witnesses or lead oral evidence, reference may be made to the case of **State of U.P. and others v. Saroj Kumar Sinha**[4] where it has been held by the Supreme Court :

> **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.
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> **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.

4 (2010) 2 SCC 772

19. To like effect is the exposition of the law in **Roop Singh Negi**[5] where it has been held :

> **14.** Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled 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.

20. The necessary steps and the manner in which a departmental inquiry is to be conducted, have been authoritatively laid down in **State of Uttaranchal and others v. Kharak Singh**[6]. In **Khadak Singh** *(supra)* the following principles have been culled out :

> **15.** From the above decisions, the following principles would emerge:
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> (*i*) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.
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> (*ii*) If an officer is a witness to any of the incidents which is the subject-matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the enquiry officer. If the said position becomes known after the appointment of the enquiry officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.
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> (*iii*) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

5 (2009) 2 SCC 570
6 (2008) 8 SCC 236

> (*iv*) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.
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> **(emphasis by Court)**

21. The salutary principle, mandating the employer to prove the charges by examining witnesses was held to be mandatory in all cases, where, a major penalty was imposed, by a Division Bench of this Court **State of U.P. and another v. Kishori Lal and another**[7]. In **Kishori Lal** *(supra)* it was observed by their Lordships of the Division Bench :

> **13.** Similar view was taken in Roop Singh Negi v. Punjab National Bank, (2009) 2 SCC 570 :
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> > ''Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled 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.''
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> **14.** Now coming to the question, what is the effect of non-holding of domestic/oral inquiry, in a case where the inquiry officer is appointed, oral inquiry is mandatory. The charges are not deemed to be proved suo motu merely on account of levelling them by means of the charge-sheet unless the same are proved by the department before the inquiry officer and only thereafter it is the turn of delinquent employee to place his defence. Holding oral enquiry is mandatory before imposing a major penalty, as held by Apex Court in State of U.P. and another v. T.P.Lal Srivastava, 1997 (1) LLJ 831, as well as by a

7 2018 (9) ADJ 397 (DB) (LB)

Division Bench of this Court in Subhash Chandra Sharma v. Managing Director and another, 2000 (1) UPLBEC 541.''

15. In another case in Subhash Chandra Gupta v. State of U.P., 2012(4) ADJ 4 (NOC), the Division Bench of this Court after survey of law on this issue observed as under:

> ''It is well-settled that when the statute provides to do a thing in a particular manner that thing has to be done in that very manner. We are of the considered opinion that any punishment awarded on the basis of an enquiry not conducted in accordance with the enquiry rules meant for that very purposes is unsustainable in the eye of law. We are further of the view that the procedure prescribed under the inquiry rules for imposing major penalty is mandatory in nature and unless those procedures are followed, any out come inferred thereon will be of no avail unless the charges are so glaring and unrefutable which does not require any proof. The view taken by us find support from the judgement of the Apex Court in State of U.P. and another v. T.P.Lal Srivastava, 1997 (1) LLJ 831, as well as by a Division Bench of this Court in Subash Chandra Sharma v. Managing Director and another, 2000 (1) UPLBEC 541.''

16. A Division Bench decision of this Court in the case of Salahuddin Ansari v. State of U.P. and others, 2008(3) ESC 1667, held that non holding of oral inquiry is a serious flaw which can vitiate the order of disciplinary proceeding including the order of punishment has observed as under:

> '' 10..... Non holding of oral inquiry in such a case, is a serious matter and goes to the root of the case.
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> 11.A Division Bench of this Court in Subash Chandra Sharma v. Managing Director and another, 2000 (1) UPLBEC 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 Subash Chandra Sharma v. U.P.Cooperative Spinning Mills and others, 2001 (2) UPLBEC 1475 and Laturi Singh v. U.P.Public Service Tribunal and others, Writ Petition No. 12939 of 2001, decided on 6.5.2005.''

17. Even if the employee refuses to participate in the enquiry the employer cannot straightaway dismiss him, but he must hold and ex parte enquiry where evidence must be led vide Imperial Tobacco Co. Ltd. v. Its Workmen, AIR

1962 SC 1348, Uma Shankar v. Registrar, 1992 (65) FLR 674 (All).

18. The Division Bench of this Court in the case of Mahesh Narain Gupta v. State of U.P. and others, (2011) 2 ILR 570, had also occasion to deal with the same issue. It held:

> ''At this stage, we are to observe that in the disciplinary proceedings against a delinquent, the department is just like a plaintiff and initial burden lies on the department to prove the charges which can certainly be proved only by collecting some oral evidence or documentary evidence, in presence and notice charged employee. Even if the department is to rely its own record/document which are already available, then also the enquiry officer by looking into them and by assigning his own reason after analysis, will have to record a finding that hose documents are sufficient enough to prove the charges.
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> In no case, approach of the Enquiry Officer that as no reply has been submitted, the charge will have to be automatically proved can be approved. This will be erroneous. It has been repeatedly said that disciplinary authority has a right to proceed against delinquent employee in ex parte manner but some evidence will have to be collected and justification to sustain the charges will have to be stated in detail. The approach of the enquiry officer of automatic prove of charges on account of non filing of reply is clearly misconceived and erroneous. This is against the principle of natural justice, fair play, fair hearing and, thus, enquiry officer has to be cautioned in this respect.''

19. The principal of law which emanates from the above judgments are that initial burden is on the department to prove the charges. In case of procedure adopted for inflicting major penalty, the department must prove the charges by oral evidence also.

20. From perusal of enquiry report it is demonstrably proved that no oral evidence has been led by the department. When a major punishment is proposed to be passed the department has to prove the charges against the delinquent/employee by examining the witnesses and by documentary evidence. In the present case no witness was examined by the department neither any officer has been examined to prove the documents on the basis of which charges are levelled on the claimant in the proceedings.

21. It is trite law that the departmental proceedings are quasi judicial proceedings. The Inquiry Officer functions as quasi judicial officer. He is not merely a representative of the department. He has to act as an independent and impartial officer to find out the truth.

> The major punishment awarded to an employee visit serious civil consequences and as such the departmental proceedings ought to be in conformity with the principles of natural justice.
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> **22.** Even if, an employee prefers not to participate in enquiry the department has to establish the charges against the employee by adducing oral as well as documentary evidence. In case charges warrant major punishment then the oral evidence by producing the witnesses is necessary.

22. To like effect is the holding in three other Bench decisions of this Court, that is to say, **State of U.P. v. Aditya Prasad Srivastava and another**[8]**, Smt. Karuna Jaiswal v. State of U.P.**[9] and **Kaptan Singh v. State of U.P. and another**[10].

23. I also had occasion to consider the issue and opine to like effect in **Prem Narain Singh v. State of U.P. and another**[11]**, Pankaj Kumar Sharma v. State of U.P. and others**[12] and **Vinod Kumar v. State of U.P. and others**[13].

24. The principle is far too well settled to brook doubt that as a part of salutary procedure in holding departmental proceedings, involving imposition of a major penalty, no valid proceedings can be taken without the Establishment proving the charges by oral evidence in the first instance, that is to say, by examining witnesses, apart from leading documentary evidence. Also, the Inquiry Officer cannot function in the fashion of an ordinary departmental functionary, but must convene himself like a Inquiry Tribunal, detaching himself from his routine employment. It is then that the Establishment have to prove the charges in the manner indicated before him by their evidence in the first instance. The only exception may be those cases, where, the delinquent admits the charges or admits certain

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8 2017 (2) ADJ 554 (DB) (LB)
9 2018 (9) ADJ 107 (DB) (LB)
10 2014 (8) ADJ 16 (DB)
11 2023 (2) ADJ 580
12 2023 (12) ADJ 322
13 2023 (12) ADJ 144

documents expressly, either by endorsement made on the face of the documents or the admission being recorded in the order-sheet of the day, duly signed by the delinquent, apart from the other functionaries holding the inquiry. There is nothing of this kind here. Rather, the nature of the charges, and more than that, the nature of the defence, would show that the Establishment bear all the burden to lead evidence in the prescribed manner to establish the charges in the first instance.

25. To all this, this Court may add the remark that the seriousness or enormity of the charge does not license the employer to jump to conclusions. The more serious the charge, the more serious the consequence for the employee that are likely to ensue, in the event of its proof, and, the more strict, therefore, would be the requirement of procedural fairness in the departmental inquiry, where, the inquiry must proceed according to salutary and settled principles of holding a fair inquiry, which requires the Establishment to discharge their burden in the first instance, by leading evidence, with due opportunity to the delinquent.

26. In the circumstances, the writ petition stands **allowed in part**. The impugned orders dated 26.08.2020, 29.04.2021 and 13.04.2023 passed by the Disciplinary Authority, the Appellate Authority and the Revisional Authority, respectively, are hereby **quashed**. A *mandamus* is issued to the respondents to reinstate the petitioner in service forthwith and pay his current salary.

27. It will, however, be open to the respondents to proceed afresh against the petitioner from the stage of the charge-sheet, holding inquiry *de novo* in accordance with law and the guidance in this judgment. It will also be open to the respondents, if they so think fit, to place the petitioner under suspension pending inquiry, immediately after his reinstatement and conclude the inquiry expeditiously. If the

respondents elect to place the petitioner under suspension, they will pay the petitioner subsistence allowance regularly, and without fail. If the respondents elect to undertake the inquiry proceedings afresh, but not place the petitioner under suspension and assign him duties at whatever station they desire, the petitioner shall be paid his current salary with effect from the date of his reinstatement. In either event, the entitlement of the petitioner to consequential benefits of arrears etc. shall abide by the outcome of the disciplinary proceedings and the orders made therein.

28. There shall be no order as to costs.

Order Date :- January 04, 2024
I. Batabyal

(J.J. Munir, J.)