

**Court No. - 33**

**Reserved**  
**A.F.R.**

**Case :-** WRIT - A No. - 12991 of 2023

**Petitioner :-** Suresh Babu

**Respondent :-** State of U.P. and others

**Counsel for Petitioner :-** Mr. Manu Mishra

**Counsel for Respondent :-** C.S.C, Mr. Abhishek Srivastava,  
Mr. Kartikeya Saran

**Hon'ble J.J. Munir,J.**

1. The petitioner, Suresh Babu, challenges an order of punishment dated 07.06.2023, by which he has been dismissed from service and a sum of Rs.3,46,23,208/- directed to be recovered from him.

2. The petitioner was appointed a Technician Grade-II (Vidyut) after being selected by the U.P. Electricity Service Commission, Lucknow. He was posted with the Vidyut Vitran Khand-I, Baghpat w.e.f. 11.02.2008. He worked as Technician Grade-II (Vidyut) for the period 11.02.2008 to 08.03.2019 in the establishment of the Executive Engineer, Vidyut Vitran Khand-I, Baghpat. He was promoted to the post of a Junior Engineer under orders of the Chief Engineer (Hydel), Lucknow w.e.f. 08.03.2019. The petitioner was transferred and relieved from the office of the Executive Engineer, Vidyut Vitran Khand-I, Baghpat to join his station of transfer. He joined as Junior Engineer at the Vidyut Vitran Khand-I, Loni, District Ghaziabad, where he discharged his duties on the said post up to 15.05.2019.

3. By an order of May the 16<sup>th</sup>, 2019, the petitioner was placed under suspension pending inquiry and attached to the office of the Executive Engineer, Vidyut Vitran Khand-I, Loni, District Ghaziabad during the period of his suspension. It was further stipulated in the order of suspension that the petitioner

would be entitled to subsistence allowance during the period of suspension, as admissible under rules.

**4.** It appears that relating to the charges, that are the subject matter of disciplinary proceedings, a First Information Report was also lodged against the petitioner by the Executive Engineer, Vidyut Vitran Khand-I, Baghpat and registered as Crime No.300 of 2019, under Section 409 Indian Penal Code, 1860 (for short, 'IPC'). In the said crime, the Police after investigation submitted a charge-sheet dated 13.08.2019, under Sections 409, 120B IPC against the petitioner and two other accused in the Court of the Chief Judicial Magistrate, Baghpat. The learned Chief Judicial Magistrate, Baghpat has taken cognizance on 14.08.2020, leading to the registration of Criminal Case No.2802 of 2019, State vs. Suresh Babu and others, under Section 409/ 120B IPC on the file of the learned Magistrate.

**5.** The petitioner was arrested in the said case on 16.05.2019 and remained incarcerated up to 25<sup>th</sup> of January, 2020. He was granted bail by this Court on 21<sup>st</sup> January, 2020 and released from jail on 25<sup>th</sup> January, 2020. In the meantime, the petitioner was served with a charge-sheet dated 07.09.2019 in the disciplinary proceedings carrying three charges, which relate to embezzlement and irregularities committed by him. He filed a reply to the charge-sheet on 23.03.2020. Subsequently, the petitioner filed a supplementary reply dated 05.03.2021, wherein he raised a legal issue that on identical charges and evidence, the criminal case and departmental proceedings ought not go on. He requested that the departmental proceedings be stayed.

6. This Court does not propose to go into that issue or the other issues raised, such as discrimination in the matter of award of punishment to the petitioner *vis-a-vis* seven other employees said to be involved in the same misconduct of embezzlement.

7. The petitioner remained under suspension pending inquiry for more than three years. He, therefore, filed Writ-A No.3745 of 2021, challenging the suspension order before this Court. It was disposed of *vide* order dated 07.07.2021, asking the respondents to conclude inquiry within six weeks, failing which the petitioner will be deemed to be reinstated in service and the suspension revoked automatically. It was in terms of this order that the petitioner was reinstated in service *vide* order dated 19.08.2021, passed by the Chairman, U.P. Power Corporation. An inquiry report dated 23.02.2022, drawn up by a two member inquiry committee, was submitted to the Chairman, U.P. Power Corporation. Acting on the said report, a show cause notice dated 06.04.2022 was issued to the petitioner along with a copy of the inquiry report. The inquiry report found Charge Nos.1 and 2 proved and Charge No.3 partly proved. The petitioner was required to submit his reply to the show cause within fifteen days. He submitted his reply to the show cause notice on 14.06.2022. A subsequent representation dated 21.06.2022 was also filed by the petitioner before the Managing Director, U.P. Power Corporation, raising a specific plea that the other similarly situate employees have been reinstated in service with minor punishment as per particulars set out in Paragraph No.31 of the writ petition. The Managing Director of the U.P. Power Corporation *vide* order dated 07.06.2023 dismissed the petitioner from service and ordered recovery of a sum of Rs.3,46,23,208/- from him.

8. Aggrieved, the instant writ petition has been filed.

9. Heard Mr. Uday Karan Saxena, learned Senior Advocate assisted by Mr. Manu Mishra, learned Counsel for the petitioner, Ms. Monika Arya, learned Additional Chief Standing Counsel appearing on behalf of respondent No. 1, Mr. Abhishek Srivastava, learned Counsel appearing on behalf of respondent Nos. 2, 3 and 4 and Mr. Vinayak Ranjan, Advocate holding brief of Mr. Kartikeya Saran, learned Counsel appearing on behalf of respondent Nos. 5 and 6. No one appears of on behalf of respondent No. 7.

10. The learned Counsel for the petitioner has, on the basis of pleas raised, wholesomely assailed the impugned order with reference to the fairness of procedure, as also the perversity of conclusions drawn on individual charges against him.

11. This Court does not propose to go into the various issues of challenge raised, except the one relating to a procedural lapse in the inquiry, which if true, goes to the root of the matter, at least insofar as the validity of the inquiry report, on the foot of which the impugned order has been passed, is concerned. It is averred in Paragraph No.25 of the writ petition that before the Inquiry Committee presided over by the Chairman, Pashchimanchal Vidyut Vitran Nigam Limited, Meerut, respondent No.6, neither any oral evidence was led nor any witness produced by the Establishment to prove charges against the petitioner.

12. In answer to the aforesaid averment, in Paragraph No.14 of the counter affidavit filed on behalf of respondent Nos.2 to 4, to wit, the Chairman and the Managing Director of the U.P. Power Corporation, it has not been denied for a fact that no

witness was produced by the Establishment in support of the charges. To the contrary, what is said is that the petitioner has not disputed the genuineness of any documents provided during the course of inquiry nor did he show any interest in asking the Establishment to produce any witness for examination or cross-examination.

**13.** This Court is afraid that this is not the standard by which in a domestic inquiry, particularly one on serious charges likely to lead to the imposition of a major penalty, the Establishment has proved its case. In all such matters, where the charge(s), if proved, may lead to the imposition of a major penalty, it is the bounden duty of the Establishment to prove their case before the Inquiry Officer by leading evidence, particularly, oral evidence, that is to say, by production of witnesses in support of charge/ charges. Once the Establishment discharge their burden of letting in documentary evidence and examination of relevant witnesses in support of the charges, does the burden shift upon the delinquent to produce his evidence in rebuttal, documentary as well as oral. Even if the delinquent does not produce evidence in defence, that does not absolve the Establishment of their obligation to produce evidence in support of the charges, including witnesses.

**14.** Oral testimony in an inquiry involving imposition of a major penalty is a salutary requirement, that cannot be given a go-by. Reference in this connection may be made to the decision of the Supreme Court in **Roop Singh Negi v. Punjab National Bank and others, (2009) 2 SCC 570**, 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."

**15. Likewise, in *Smt. Karuna Jaiswal v. State of U.P., 2018 (9) ADJ 107 (DB) (LB)*, it has been held by a Division Bench of this Court sitting at Lucknow:**

"15. The law in this regard is very well-settled and does not need a reiteration, however, we may refer to a judgment of Hon'ble Supreme Court in the case of *State of Uttar Pradesh and others v. Saroj Kumar Sinha, (2010) 2 SCC 772*, wherein it has clearly been held that Enquiry Officer acts as a quasi judicial authority and his position is that of an independent adjudicator and further that he cannot act as a representative of the department or disciplinary authority and further that he cannot act as a prosecutor neither he should act as a judge; his function is to examine the evidence presented by the department and even in the absence of the delinquent officer, has to see as to whether the un rebutted evidence is sufficient to bring home the charges.

16. Hon'ble Supreme Court has further held in the said judgment of *Saroj Kumar Sinha (supra)* that it is only in case when the Government servant, despite notice, fails to appear during the course of enquiry that Enquiry Officer can proceed *ex parte* and even in such circumstances it is incumbent upon the Enquiry Officer to record the statement of witness.

17. In the instant case, no oral enquiry was held, neither the petitioner was given any notice to participate in any oral enquiry by fixing date, time and place for oral enquiry. It is only that the Enquiry Officer after noticing that despite sufficient time having been given to the petitioner, she did not furnish her reply to the charge-sheet, he proceeded to submit ex parte report without conducting any oral enquiry by fixing date, time and place for such an oral enquiry. Accordingly, the Enquiry Officer, in this case, has violated the aforesaid principles, which clearly vitiates the enquiry proceedings and any punishment order based on such a vitiated enquiry, is clearly not sustainable."

**16.** Again, in **State of U.P. and another v. Kishori Lal and another, 2018 (9) ADJ 397 (DB) (LB)**, dwelling upon the necessity of holding an oral inquiry where witnesses are examined first by the establishment to prove charges, it was observed by a Division Bench of this Court sitting at Lucknow:

"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 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.

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 those documents are sufficient enough to prove the charges.

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."

B The principal (*sic*) 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."

(emphasis by Court)

**17.** To the same effect are two decisions of this Court, where I had occasion to consider the issue, to wit, **Ranveer Singh v. Union of India and others, 2021 (5) ADJ 136** and **Prem Narain Singh v. State of U.P. and another, 2023 (2) ADJ 580**. In both the aforesaid decisions, the imperative of examining witnesses in support of the charges, particularly, in a case involving the imposition of a major penalty, has been

highlighted. Since, admittedly in the present case, no witness has been examined and findings have been recorded on the basis of idle papers, the inquiry report is held to be flawed. This Court must remark that the assertion in the counter affidavit that the petitioner did not dispute the genuineness of the document during the course of inquiry, does not improve the respondents' case. It is not the respondents' case that the petitioner endorsed that he admitted the documents, on the face of those and dispensed with any kind of proof. Therefore, if the petitioner did not say anything about the documents during the course of inquiry, it would not relieve the Establishment of their burden to prove their case by examining witnesses, who would also prove the documents produced in evidence on their behalf.

**18.** Therefore, on this short point alone, in the opinion of this Court, this petition deserves to succeed. It is made clear that the other contentions raised on behalf of the petitioner, assailing the impugned order, are all left open to be examined at the appropriate stage, should the occasion arise.

**19.** In the result, this petition succeeds and is **allowed**. The impugned order dated 07.06.2023 passed by the Managing Director, U.P. Power Corporation Ltd., Lucknow is hereby **quashed**. The petitioner shall be reinstated in service forthwith and paid salary, in the first instance from the date of this judgment. If, however, the respondents choose to place the petitioner again under suspension in view of the liberty hereinafter indicated, the petitioner shall be paid his subsistence allowance regularly. The respondents shall be at liberty to undertake inquiry afresh in the matter, on the basis of the charge-sheet, already issued. The respondents in that event will proceed, bearing in mind the guidance in this judgment. If

the respondents elect to proceed against the petitioner as per liberty given, it would be open to the respondents either to reinstate the petitioner, assigning or not assigning duties to him, but paying salary regularly, or place him under suspension pending the inquiry to be held afresh. The question of payment of back-wages shall depend upon the outcome of the inquiry and the decision taken by the respondents in the proceedings, if they elect to pursue such proceedings. It is also ordered that if fresh proceedings are taken, the same shall be concluded expeditiously, wherein the petitioner shall cooperate.

**20.** There shall be no order as to costs.

**Order Date :-** 19.10.2023

Anoop