

such official is retired, the amount of the interest shall be recovered from his/her post retiral benefits/pension after furnishing him/her opportunity.

iii) It will be open to the State Government to initiate proceedings against such official for taking action for misconduct in terms of the Rules, 1995, if he is in service.

50. In view of the above, respondents are directed to pay the simple interest at the rate of 9% from the one month after the death of petitioners father till the date of actual payment to them and further to pay the GPF within a month ,if it has already not been paid, along with the interest at the rate of 9% as held above."

7. The aforesaid judgment was followed by this Court in **Sanjay Upadhyay and 5 others Vs State of U.P. and 3 others (Writ-A No. 459 of 2019)**.

8. In the wake of preceding discussion and the authorities in point this Court finds that the respondents are liable to pay interest to the petitioner for the delayed payment for pension and other terminal dues of the deceased employee. The interest amount is fixed at 8 percent per annum (considering the rate of interest). The interest shall be payable from 18.08.2005 till 23.12.2019. The interest shall be calculated and released in favour of the petitioner within a period of three months from the date of receipt of a certified copy of this order. In case the amount is not released within the aforesaid period the concerned official shall be held liable for the delayed payment of interest after expiry of three months.

9. The writ petition is allowed.

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**(2024) 11 ILRA 37**

**ORIGINAL JURISDICTION  
CIVIL SIDE  
DATED: ALLAHABAD 11.11.2024**

**BEFORE**

**THE HON'BLE J.J. MUNIR, J.**

Writ A No. 16420 of 2024

**Smt. Neetu Chaudhary** ...Petitioner  
**Versus**  
**State of U.P. & Ors.** ...Respondents

**Counsel for the Petitioner:**  
R.K. Mishra

**Counsel for the Respondents:**  
Abhishek Srivastava, C.S.C.

**A. Service Law - Constitution of India,1950-Disciplinary proceedings-Natural justice-Procedural Flaws in Inquiry-Dismissal quashed-The court quashed the dismissal of the petitioner, who was an office Assistant –III in UPPCL, due to procedural irregularities in the disciplinary inquiry-The inquiry committee failed to follow principles of natural justice and procedural requirements (absence of witness examination and cross-examination opportunities and lack of evidence to prove charges beyond presumptions) under the UPPCL Employees(Discipline and Appeal) Regulations 2020-The court emphasized that in disciplinary inquiries leading to major penalties charges must be proven with documentary and oral evidence-The burden of proof lies on the establishment, and procedural safeguards cannot be waived-Thus, the dismissal and appellate orders were set aside-The petitioner was ordered to be reinstated with liberty to the respondents to conduct a fresh inquiry while ensuring adherence to proper disciplinary procedures.(Para 1 to 18)**

**The writ petition is allowed. (E-6)**

**List of Cases cited:**

1. St. of U.P. & ors. Vs Saroj Kr. Sinha (2010) 2 SCC 772
2. Roop Singh Negi Vs PNB & ors. (2009) 2 SCC 570
3. St. of Uttaranchal & ors. Vs Kharak Singh(2008) 8 SCC 236
4. St. of U.P. & anr. Vs Kishori Lal & anr. (2018) 9 ADJ 397 DB (LB)
5. Smt. Karuna Jaiswal Vs St. of U.P. (2018) 9 ADJ 107 DB (LB)
6. St. of U.P. Vs Aditya Prasad Srivastava & anr.(2017) 2 ADJ 554 DB (LB)

(Delivered by Hon'ble J.J. Munir, J.)

1. This writ petition is directed against an order of the Managing Director, U.P. Power Corporation Limited, Lucknow (for short, 'the Corporation') dated 12th October, 2023 dismissing the petitioner from service and directing recovery of a sum of Rs. 37,94,105/- from the him on account of loss caused to the Corporation. Also, under challenge is an appellate order dated 29.08.2024 passed by the Chairman of the Corporation dismissing the petitioner's departmental appeal and affirming the order of first instance passed by the Managing Director.

2. Shorn of unnecessary details, the petitioner was an Office Assistant-III in the Office of the Executive Engineer Electricity Urban Distribution Division-I, Noida. The petitioner's case is that she was given financial duties within three months of joining service contrary to the Corporation's Circular dated 05.03.1994 which provides for assignment of financial duties to employees after they have put in at least ten years of service. The petitioner was given charge of capital accounts and

also mediclaims besides G.P.F. She was also given duties of revenue collection from consumers. The petitioner was asked by the Executive Engineer to return her receipt books, which she indicated in her reply to have already been deposited. Her salary for the month of June, 2016 was stopped but later on released on 15.10.2016. The petitioner's reply was sought, apparently regarding some shortfall in deposit of monies collected. By a letter dated 17.07.2017, the Executive Engineer Electricity Urban Distribution-I, Noida directed the petitioner to deposit a sum of Rs. 37 lacs which she had allegedly collected but not deposited. The petitioner says that there is no evidence by even as much as a hint indicating that the petitioner had not deposited what she had collected. The demand was based on a presumption. The petitioner submitted a detailed reply in the matter on 19.07.2017 clearly showing that the inference was founded on presumptions. It is the petitioner's case that without considering her reply, she was placed under suspension pending inquiry by the Superintending Engineer vide order dated 18.09.2017. She was attached to the Office of the Executive Engineer, Electricity Urban Distribution, VI Noida. She was later on attached to the Office of the Chief Engineer by an order of the Executive Engineer dated 28.10.2017.

3. The grievance also is that subsistence allowance was not regularly paid to the petitioner during the period of her suspension. She was also reported to the Police vide Case Crime No.1090 of 2017, under Sections 420, 409 I.P.C., Police Station Sector 24 Noida, District Gautam Budh Nagar. She was arrested and later on enlarged on bail by this Court vide order dated 03.12.2019 passed in Criminal Misc. Bail Application No. 38507 of 2018.

The petitioner was served with a charge sheet dated 15.10.2020 carrying a charge to the effect that she had failed to deposit the sum of Rs.37,94,015/- in the Corporation's account that she had collected. Another charge that the charge sheet carried was about non maintenance of documents. The petitioner sought copies of the documents relied upon in the charge sheet that were not provided to her, as her case goes, but she was in the end permitted to inspect the original records in the Office of the Managing Director of the Corporation vide letter dated 15.12.2021. The petitioner submitted her reply, answering the charges on 10.05.2022 before the Inquiry Officer, denying the charges and putting forward her defence.

4. It is the petitioner's case that while the inquiry, on the basis of the first charge sheet, was in progress before the Paschimanchal Vidyut Vitran Nigam Limited, whereunder the petitioner was immediately serving, another charge sheet dated 03.08.2022 was served upon the petitioner by the Chief Engineer, Inquiry Committee of the Corporation on the selfsame charges as carried in the earlier charge sheet. The petitioner says that she sought time to answer the second charge sheet, praying a month for the purpose by a letter dated 13.9.2022. She was granted seven days time. The petitioner claims that she sought copies of the evidence, or in the alternate, inspection of documents vide her letter dated 04.11.2022. The case is that without giving her opportunity, the Inquiry Committee submitted their report, holding the petitioner guilty. Amongst other things, it is pleaded in paragraph nos. 20, 27, 28, 30 and 31 of the writ petition that no date, time and place of holding the inquiry was fixed and no witnesses produced by the Establishment in support of the charges.

5. When this petition came up for admission on 22.10.2024, we passed the following order:

“A short point is involved in this writ petition, which is directed against an order of dismissal from service. The point is that no date, time and venue of inquiry was fixed by the Inquiry Officer/Inquiry Committee and that no witnesses were examined by the Establishment in support of the charges.

Issue notice.

Notice on behalf of respondents Nos. 2 and 3, by Mr. Abhishek Srivastava, learned Counsel. He is granted two weeks' time to file a counter affidavit. Ms. Amrita Singh, learned Additional Chief Standing Counsel, accepts notice on behalf of respondent No. 1. She will have the same period of time to file a return, if the first respondent desires to put in one.

Since a short point is involved, let this petition come up again on 11.11.2024.

To be taken up as fresh, along with a report regarding status of pleadings.

It is, however, clarified that respondents Nos. 2 and 3, in filing their affidavits, will particularly answer paragraphs Nos. 20, 30 and 31 of the writ petition.

The Registrar (Compliance) is directed to communicate this order to the Managing Director, U.P. Power Corporation Limited, Lucknow and the Chairman, U.P. Power Corporation Limited, Lucknow, both through the learned Chief Judicial Magistrate, Lucknow within 24 hours next.”

6. Two counter affidavits have been filed by Mr. Abhishek Srivastava, Advocate, one on behalf of respondent no. 3 and the other on behalf of respondent no. 2. Both are taken on record. Let these be numbered by the office.

7. Learned counsel for the petitioner waives his right to file a rejoinder.

8. Admit.

9. Heard forthwith.

10. Heard Mr. R.K. Mishra, learned counsel for the petitioner and Mr. Abhishek Srivastava, learned counsel appearing on behalf of respondent nos. 2 and 3 and Mr. S.C. Upadhyay, learned Standing Counsel appearing on behalf of the State.

11. The counter affidavit filed by the Chairman of the Corporation, though asserts that on 18.08.2022 an opportunity of hearing was given to the petitioner fixing the date, time and place on 29.08.2022 at 12 noon for a personal hearing, we do not think that the inquiry was at all held according to the salutary principles governing the holding of inquiries where a major penalty may be imposed. When it is said that date, time and place for holding the inquiry ought be intimated to the delinquent, what is meant is that a date, time and place should be scheduled where evidence on behalf of the Establishment would be heard by the Inquiry Officer. Likewise, in answer to the averments that no witnesses were examined on behalf of the Establishment, all that is said is that Regulation 7(5) of the Uttar Pradesh Power Corporation Limited Employees (Discipline and Appeal) Regulation 2020 (for short, 'the Regulations 2020') requires that along with charge sheet, a copy of the documents and list of witnesses should be provided to the employee, and Regulation 7(7) further provides that in case, the employee denies the charges, the Inquiry Committee should call the proposed witnesses to record their evidence. It is then said that if names of no witnesses are cited

in the charge sheet, the Inquiry Committee cannot be said to have committed a mistake in not examining the Establishment's witnesses.

12. We are afraid that the stand taken by the respondents on this score also is utterly flawed. It is by now well settled that salutary principles governing the holding of a departmental inquiry into charges that may lead to imposition of a major penalty, postulate that the Inquiry Officer or Committee must convene themselves formally into an impartial tribunal. Even if they are employees of the Establishment, they must distance themselves from that role and sit as an impartial arbitrator. The Inquiry Committee or the Inquiry Officer must require the Establishment to prove the charges by evidence, produced through a presenting officer, which should include both documentary and oral evidence. It is imperative in major penalty cases that witnesses on behalf of the Establishment, who prove the charges, should be examined. The witnesses produced by the Establishment would prove the documents produced on behalf of the Establishment, and further, testify to other facts that may not be forthcoming by the mute words that the documents carry. Also, it has to be borne in mind that the charges are not true because these come on the credit of a charge sheet put in by the Establishment. Rather, the Inquiry Committee should consider the charges with a clean slate and require the Establishment to prove them in the first instance, by producing evidence, both oral and documentary, as already said. It is after the witnesses for the Establishment have been examined and offered to the delinquent for cross examination that the burden of the Establishment may be said to be over. It is after this stage that the delinquent may be

called upon to establish his defence, again following the same procedure of producing both documentary and oral evidence. Of course, witnesses produced by the delinquent would also be available for cross examination to the Establishment. It is of seminal importance that if the delinquent does not produce any evidence, it is not that the Inquiry Officer must, by that default, accept the Establishment's case proved. The burden still remains on the Establishment to prove the charges by evidence aliunde of the kind and in the manner that we have indicated hereinabove. Apart from it, the day when the Establishment is called upon to lead their evidence, the Inquiry Officer or Committee must fix a date, time and place for that purpose. It is in this sense that the requirement of fixing a date, time and place for holding the inquiry is understood. It is not in the sense in which the respondents have construed it.

13. What the respondents have done, as would appear from the order sheet, is that on 29.08.2022 they heard the petitioner personally without hearing any evidence for the Establishment. This shows that they presumed the charges to be proved. Upon the petitioner complaining that she had not received a copy of the charge sheet, they ensured provision of one to her, directing her to submit a reply within the time specified. They further recorded a statement of the employee to the effect that she did not desire a personal hearing and all that she says in her reply to the charge sheet, the inquiry may be concluded on that basis. It is further recorded that the Inquiry Committee asked the petitioner, if she wants to produce any witness or cross examine anyone; she declined. An affidavit to the same effect in a printed proforma was secured from the petitioner and is

annexed to the return. A xerox copy of the affidavit which is on record shows that it hardly conforms to the requirements of an affidavit at all. It does not appear to carry a valid statement made on oath nor does it carry the details of the deponent as required in an affidavit. It also lacks a verification clause. Most importantly, it does not show that the affidavit has been sworn before a notary public empowered by law to certify the deposition.

14. All this apart, the order sheet betrays singular lack of understanding by the respondents of the essentials of a valid inquiry into a charge, likely to lead to the imposition of a major penalty. It does not intimate if 29.08.2022 was the date fixed for hearing evidence on behalf of the Establishment that was the first requirement which the respondents were obliged to undertake. Rather, the Inquiry Committee heard the petitioner in the first instance, instead of the Establishment being required to produce evidence in support of the charges. The assertions that the remark in the order sheet that the petitioner said that she did not want to examine the witnesses, is besides the point. In the order of things it was imperative to require the Establishment to prove the charge by producing their witnesses and of course, leading documentary evidence that was not at all done. The remark that the petitioner said that she did not wish to cross examine witnesses, is again besides the point because no witnesses for Establishment was ever examined, whom she could cross examine.

15. A reading of the order sheet shows that the entire Establishment, in particular, the Inquiry Committee, were utterly ignorant of the essentials of the salutary procedure to hold an inquiry into charges of

this kind and consequence. The petitioner, who is apparently a compassionate appointee and may not be well-versed with the requirements of procedure in departmental proceedings, seems to have gullibly signed, what the respondents call an affidavit in a printed proforma and said that she did not want to cross examine, what the Inquiry Committee recorded in the order sheet. Sadly none of the proceedings, taken in a matter of this enormity where the likelihood of a major penalty loomed large over the petitioner's head, comply with the salutary requirements of holding a valid inquiry as pointed out hereinabove. Also, the inquiry is not in accordance with the Rule 7 of the Regulation 2020 framed by the Corporation themselves.

16. The question that there is a salutary principle which requires, in the case of a major penalty, the fixation of a date, time and place for holding the inquiry, and further, requiring the Establishment to prove the charges through production of oral and documentary evidence before the Inquiry Committee by a presenting officer on their behalf, is well acknowledged in view of the law laid down 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).**

17. In view of what we have said above, the inquiry being flawed, the orders

passed by the Disciplinary Authority as well as the Appellate Authority cannot be sustained. The orders would have to be quashed with liberty to the respondents to proceed afresh. Of course, in the interregnum, the petitioner would have to be reinstated in service subject to terms that we have indicated hereinafter.

18. The writ petition is **allowed**. The impugned order dated 12.10.2023 passed by the Managing Director, U.P. Power Corporation Limited, Lucknow as well as the order dated 29.08.2024 passed by the Chairman, U.P. Power Corporation Limited, Lucknow are hereby **quashed**. The respondents shall reinstate the petitioner in service but it would be open to the respondents to proceed afresh against her on the basis of the charge sheet, on the foot of which the impugned order was passed.

19. It is made clear that if the respondents elect to proceed afresh against the petitioner, it will be open to them to place the petitioner under suspension. In the event, the respondents elect to pursue fresh proceedings, the petitioner shall be entitled to her current salary but emoluments for the period during which she has remained out of service, shall abide by the final result of the disciplinary proceedings. In the event further that the respondents also elect to place the petitioner under suspension pending inquiry, the petitioner shall be entitled to subsistence allowance from the date of that order which shall be paid regularly without asking her to furnish a non alternative engagement certificate. In either case, if disciplinary proceedings are pursued afresh by the respondents, the same shall be expedited and concluded early wherein the petitioner will cooperate.

