(2025) 5 ILRA 913
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 12.05.2025

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.

Writ - A No. 2000885 of 2005

Naipal Singh ...Petitioner
Versus
U.P. Housing & Development Board & Anr. ...Respondents

Counsel for the Petitioner:
Ravindra Kumar, Gaurav Mehrotra, K.N. Vishwakarma, Rani Singh, Ravindra Kumar

Counsel for the Respondents:
R.K. Mehrotra, Anurag Srivastava, Mahesh Chandra, Manoj Singh, O P Srivastava, Puneet Chandra

Service Law – Disciplinary Proceedings – Principles of Natural Justice – Enquiry vitiated for non-supply of documents, non-holding of oral enquiry, and ignoring reply of delinquent – Punishment of dismissal at fag end of retirement – Disproportionate.

Held: Departmental enquiry must be conducted strictly in accordance with prescribed procedure under Regulation 27 of the 1966 Regulations. Non-supply of relied upon documents, non-fixing of date for oral enquiry, and failure to allow cross-examination vitiates proceedings. Where enquiry officer exonerated the delinquent from 6 of 8 charges, yet disciplinary authority imposed major penalty of dismissal without dealing with explanation to the two partially proved charges, the punishment order is illegal and disproportionate. Since the employee died during pendency of writ petition, no purpose would be served by remand. Dismissal order quashed. Widow of petitioner entitled to all service and retiral benefits with 8% interest, rising to 12% penal interest in case of default.

Writ Petition Allowed.

Case Law Discussed:

1. Bhagat Ram Vs St. of H.P., (1983) 2 SCC 442.

2. Ranjit Thakur Vs U.O.i., (1987) 4 SCC 611.

3. U.O.I. Vs Giriraj Sharma, 1994 Supp (3) SCC 755.

4. S.K. Giri Vs Home Secretary, Ministry of Home Affairs, 1995 Supp (3) SCC 519.

5. B.C. Chaturvedi Vs Union of India, (1995) 6 SCC 749.

6. Bishan Singh Vs St. of Pun., (1996) 10 SCC 461.

7. Bhaskar Parashari Vs Board of Directors, Aligarh Gramin Bank, (2005) 5 AWC 4845 (All).

8. Roop Singh Negi Vs Punjab National Bank, (2009) 2 SCC 570.

9. St. of U.P. Vs Saroj Kumar Sinha, (2010) 2 SCC 772.

10. Nirmala J. Jhala Vs St. of Gujarat, (2013) 4 SCC 301.

11. Satyendra Singh Vs St. of U.P., 2024 SCC OnLine SC 3325.

(Delivered by Hon'ble Rajesh Singh Chauhan, J.)

1. Heard Sri Gaurav Mehrotra assisted by Ms. Rani Singh, learned counsel for the petitioner and Sri Puneet Chandra, learned counsel for the opposite parties.

2. The order under challenge is a dismissal order dated 29.7.2004 (contained as Annexure no. 1) passed by the opposite party no. 2, i.e. Housing Commissioner, U.P. Housing and Development Board, Lucknow.

3. Before adverting to the facts and merits of this case it is to indicate that the

petitioner Naipal Singh who filed this writ petition has died and his wife Smt. Karuna Singh has been substituted on 25.7.2022.

4. It is also relevant to indicate that the judgment and order of this Court was reserved on 2.11.2022 and the same was pronounced on 29.5.2023 dismissing the writ petition vide judgment and order dated 29.5.2023. Challenging the judgment and order dated 29.5.2023, Special Appeal No. 402 of 2023 was filed before the Division Bench of this Court and the Division Bench disposed of the special appeal finally vide order dated 10.8.2023 setting aside the judgment and order dated 29.5.2023 remanding back the matter to the writ court to decide this writ petition afresh.

5. Sri Gaurav Mehrotra has submitted that the impugned dismissal order has been passed on the basis of defective departmental inquiry inasmuch as the departmental inquiry has not been conducted and concluded as per procedure prescribed.

6. The enquiry conducted by the enquiry officer is in complete violation of principles of natural justice and also the relevant service rules on account of the fact that the deceased Petitioner was never served with copies of document on the basis of which the charges were framed against the deceased Petitioner along with the charge-sheet dated 30.07.2002. As a matter of fact, even after several requests were made by the deceased Petitioner vide his letters dated 07.07.2004, 14.07.2004, 16.7.2004 and 19.07.2004, no heed was paid by the enquiry officer to either provide with the documents or reply to the requests made by the deceased Petitioner.

7. Sri Mehrotra has submitted that from bare perusal of the enquiry report dated 22.04.2004 submitted by the enquiry officer, it is not borne out that the Interregnum reply sent by the deceased Petitioner, under anticipation that the documents along with the charge-sheet dated 30.07.2002 would be provided by the enquiry officer, has been taken into account and considered by the enquiry officer while submitting his enquiry report dated 22.04.2004.

8. The relevant provisions governing the services of the deceased Petitioner are Conditions of Service of Officers and Servants of the Board Regulations, 1966 (hereinafter referred to as "Regulations, 1966" for the sake of brevity) wherein an elaborate procedure has been enumerated in Regulation 27 of Regulations, 1966 for conducting disciplinary proceedings against a delinquent employee. For ease of perusal and kind consideration of this Hon'ble Court, Regulation 27 of Regulations, 1966, is herein below:

"27. (1) No order on an officer or servant of the Board any of the penalties specified in clauses (e) to (g) of regulation 25 shall be passed except after an inquiry, held as far as may be, in the manner hereinafter provided.

(2) The disciplinary authority shall frame definite charges on the basis of the allegations on which the inquiry is proposed to be held. Such charges. together with a Statement of the allegations on which they based, shall be communicated in writing to the officer or servant and be shall be required to submit, within such time as may be specified by the disciplinary authority, a written statement of his defence and also to state whether he desires to be heard in person.

Explanation: In this sub-regulation and in sub-regulation (3) the expression "the disciplinary authority shall included the authority competent under these regulations to to impose any of the penalties in clauses (a) to (d) of regulation 25.

(3) The officer or servant of the Board shall, for the purpose of preparing his defence, be permitted to inspect and take extracts from such official records as he may specify, provided that such permission may be refused, if, for reasons to be recorded in writing, in the opinion of the disciplinary authority such records are not relevant for the purpose or it is against the public interest to allow him access thereto.

(4) On receipt of the written statement of defence, or if no such statement is received within the time specified, the disciplinary authority may itself inquire into such of the charges as are not admitted, or, if it considers it necessary so to do, appoint a Board of Inquiry or an Inquiring Officer for the purpose.

(5) The disciplinary authority may also nominate any person to present the case in support of the charges before the authority inquiring into the charges (hereinafter eferred to as the inquiring authority). The Officer or servant of the Board may present his case with the assistance of any other officer or servant of the Board approved by the disciplinary authority. Neither the Board not its officer or servant shall be entitled to be represented by a counsel.

(6) The inquiring authority shall, in the course of the enquiry, consider such documentary evidence and take such oral evidence as may be relevant or material in regard to the charges. The Officer or servant of the Board shall be entitled to cross-examing witnesses examined in support of the charges and to give evidence in person. The person presenting the case in support of the charges shall be entitled to cross-examine the officer or servant of the Board and the witnesses examined in his defence. If the enquiring authority declines to examine any witness on the ground that is evidence is not relevant or material, it shall record its reasons in writing

(7) At the conclusion of the enquiry, the inquiring authority shall prepare a report of the inquiry, recording its findings on each of the charges together with reasons therefore. If in the opinion of such authority the proceedings of the inquiry establish charges different from those originally framed, it may record findings on such charges provided that finding on such charges shall not be recorded unless the officer or servant of the Board has admitted the facts constituting them or has had an opportunity of defending himself against them.

(8)The record of the inquiry shall include -

(1) the charges framed against the Officer or servant and the statement of allegations furnished to him under sub-regulations (2):

(i) his written statement of defence, if any.

(ii) the oral evidence taken in the course of the inquiry.

(iv) the documentary evidence considered in the course of the inquiry.

(v) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry, and (vi) a report setting out the findings on each charge and the reason thereafter.

(9) The disciplinary authority shall, if is not the inquiring authority,

consider the record of the inquiry and record its findings on each charge.

(10)(i) If the disciplinary authority, having regard to its finding on the charges, of the opinion that any of the penalties specified in clause (e) to (g) of regulation 25 should be imposed it shall

(a) furnish to the officer or servant a copy if the report of the inquiring authority and, where the disciplinary authority is not the inquiry authority a statement of its findings together with brief reasons for disagreement, if any, with the findings of the authority having regard to its findings is of the opinion that any of the penalties specified in clauses (a) to (d) of regulation 25 should be imposed, it shall pass appropriate orders in the case.

(b) give him a notice stating the action proposed to be taken in regard to him and calling upon him to submit within a specified time such representation as he may wish to make against the propose action.

(ii) The disciplinary authority shall consider the representation, if any. made by the officer or servant in response to thee (1) and determine what penalty, if any, should be imposed on the officer or servant and pass appropriate orders in the case.

(11) If the disciplinary authority having regard to its findings is of the opinion that any of the penalties specified in clauses (a) to (d) of regulation 25 should be imposed, it shall pass appropriate orders in the case.

(12) Orders passed by the disciplinary authority shall be communicated to the officer or servant who shall also be supplied with a copy of the report of the inquiring authority and where the disciplinary authority is not the inquiring authority, a statement of its findings together with the brief reasons for disagreement if any with the findings of the inquiring authority unless they have already been supplied to him."

9. Regulation 27 of 1966, Regulations provides for the due procedure which is required to be adhered to by the enquiry officer while conducting disciplinary procedure against the delinquent employee.

10. Regulation 27(3) of 1966 Regulation explicitly provides that after serving of statement of allegation/charge-sheet upon the delinquent employee, for the purpose of preparing his defence, the delinquent employee be permitted to inspect and take extract of such official report as he may specify. It is further provided in regulation 27(3) of 1966 regulation that such request for permission to inspect and to take extract of such official reports may be refused for the reasons to be recorded in writing. However, in the instant matter undisputedly despite several requests and reminders for providing documents on the basis whereof the charges were framed in the charge-sheet dated 30.07.2002 were neither provided nor any refusal was provided in writing to the deceased Petitioner which is in clear defiance of Regulation 27(3) of 1966 regulations.

11. Sri Mehrotra has submitted that despite several request to provide documents on the basis of which charges were framed against the deceased Petitioner, the documents were not provided. It is well settled that an employee facing a departmental enquiry is entitled to all the relevant statements, documents and other materials to enable him to have a reasonable opportunity to defend himself in the departmental enquiry.

12. Regulation 27(6) of 1966 Regulation provides that the enquiry officer, in the course of enquiry shall consider oral evidence in regards to charges. The delinquent employee shall be entitled to cross examine witnesses examined in support of the charges and to give evidence in person. If the enquiry officer declines to examine any witnesses on the ground that the evidence is not relevant or material then it shall be recorded in writing.

13. Sri Mehrotra has submitted that in the instant matter from enquiry report dated 22.04.2004 makes it evident that the enquiry was not conducted in accordance to regulation 27(6) of the 1966 regulations inasmuch as oral enquiry has not at all been held, no witnesses have been examined/ cross examined. Therefore, the enquiry report prepared by the enquiry officer is completely vitiated.

14. As per Regulation 27(8) of the Regulations 1966, the record of inquiry shall include the charges framed against the officer or servant and the statement of allegations furnished to him under sub-regulation (2), written statement of defence, oral evidence taken in the course of inquiry, the documentary evidence considered in the course of inquiry, the orders, if any made by the disciplinary authority and the inquiring authority in regard to the inquiry and a report setting out the findings on each charge and reason thereafter. However, in the instant matter the inquiry report does not conform to the mandate of Regulation 27 (8) as the necessary ingredients of the enquiry report as mandated in Regulation 27 (8) are missing in the enquiry report dated 22.04.2004.

15. In the enquiry report dated 22.04.2004 in present matter, the deceased Petitioner was exonerated from six charges out of the eight charges levelled against him. Only two charges i.e. charge no 3 and charge no. 6 out of total eight charges levelled against the deceased Petitioner have been found allegedly proved against the deceased Petitioner. For ease of perusal and kind consideration of this Hon'ble Court Charge No. 3 and 6 are reproduced herein under:

"....

आरोप संख्या-3 :- **(शिलान्यास तथा मूर्ति स्थापना पर व्यय) -**

इस मद में आरोप है कि शिलान्यास एवं मूर्ति हेतु न तो प्रारम्भिक आगणन में कोई प्रावधान था और न ही शासन द्वारा दी गयी प्रशासनिक स्वीकृति में। इसके बावजूद उक्त मद में 14.32 लाख की धनराशि व्यय कर दी गयी तथा कार्य के समाप्त हो जाने के पश्चात् भी उक्त हेतु कोई औपचारिक स्वीकृति प्राप्त नहीं की गयी।

उक्त में परिषद सेवा शाई-1006 के विनियम-48 (1) प. (2) के अनुरूप आचरण प्रदर्शित करने के लिए आप दोषी हैं।

आरोप संख्या-6:- **(वाच एम वार्ड कार्यों पर अनियमितता बरतना)-**इस मद में अपचारी पर यह आरोप है कि इन्होंने बगैर किसी स्वीकृति व प्राविधान के जनपद अम्बेडकर नगर के निर्माणाधीन कलेक्ट्रेट तथा आवासीय भवनों के कार्यों पर बाच एवं

वार्ड के कार्यों पर रू. 19.20 लाख की धनराशि व्यय करके शासन को आर्थिक हानि पहुंचागी तथा परिषद की छवि धूमिल की। इसके लिए आप पूर्णतः दोषी हैं।

16. Sri Mehrotra has submitted with vehemence that instead of considering the case of the deceased Petitioner compassionately, particularly when the Enquiry Officer in the Enquiry Report dated 22.04.2004 had completely exonerated the Petitioner from charge no. (i) charge no. (ii), Charge no. (iv), Charge no. (v), Charge no. (vii) and charge no. (viii) levelled against the deceased Petitioner in the charge-sheet dated 30.07.2002, while the charge no. (iii) and Charge no. (vi) was found to be allegedly proven against the deceased Petitioner and against which the deceased Petitioner had submitted his reply dated 27.07.2004, the Respondent No.2 in a most arbitrary and illegal manner, without considering contentions of deceased petitioner raised in the reply dated 27.07.2004, against the charge no. (iii) and charge No. (iv) levelled in the charge-sheet dated 30.07.2002, which was allegedly found proven by the Enquiry Officer in the Enquiry Report dated 22.04.2004 has proceeded to award major penalty of dismissal of service that too two days prior to the retirement of the deceased Petitioner, which is not only grossly disproportionate vis-à-vis the alleged charges levelled against the deceased Petitioner but also reeks of malice and deliberate victimization of the deceased Petitioner,

17. Further, the impugned order dated 29.07.2004 i.e. dismissal from service goes on to show that the impugned order dated 29.07.2004 was passed without assigning good and sufficient reasons.

18. Sri Mehrotra has also submitted that it is settled principle of law that in case the quantum of punishment is so disproportionate to the gravity of the offence that it shocks the conscience of the Hon'ble Court, it is liable to be set aside. It is a law settled by the Hon'ble Supreme Court of India that if the punishment awarded is disproportionate to the gravity of the misconduct, it would be arbitrary and thus would violate the mandate of Article 14 of the Constitution, hence being illegal, it cannot be enforced. The aforesaid contention of the Petitioner is based on catena of pronouncements of the Hon'ble Supreme Court of India as well as this Hon'ble Court, few of such judgments are reported in **(1983) 2 SCC 442 in re: Bhagat Ram v. State of Himachal Pradesh; (1987) 4 SCC 611 in re: Ranjit Thakur v. Union of India and Ors.; 1994 Supp (3) SCC 755 in re: Union of India v. Giriraj Sharma; 1995 Supp (3) SCC 519 in re: S.K. Giri v. Home Secretary, Ministry of Home Affairs and Ors.; (1995) 6 SCC 749 in re: BC Chaturvedi v. Union of India and (1996) 10 SCC 461 in re: Bishan Singh and Ors. vs. State of Punjab, and reported in (2005) 5 AWC 4845 ALL in re: Bhaskar Parashari Vs. Board of Directors, Aligarh Gramin Bank and Others.**

19. Sri Gaurav Mehrotra has submitted that so far as charge no. 3 and 6 are considered on its face value, the petitioner may not be held responsible for those charges as he had categorically explained this fact in his reply dated 27.7.2004. However, without considering the explanation of the petitioner the disciplinary authority incorrectly held that those two charges are proved against the petitioner.

20. To strengthen the aforesaid arguments, Sri Gaurav Mehrotra has placed

reliance of the recent judgment of the Apex Court in re: **Satyendra Singh vs. State of Uttar Pradesh and another** reported in **2024 SCC Online SC 3325** thereby the Apex Court has held that the enquiry proceedings should be conducted strictly as per the procedure prescribed and if the enquiry is conducted dehors the procedure, that would be nullity in the eyes of law. In the aforesaid judgment couple of relevant judgments of the Apex Court on the subject matter have been considered.

21. Per contra, Sri Puneet Chandra, learned counsel for the respondents tried to defend the impugned order but he could not defend the impugned order properly inasmuch as he could not demonstrate that the inquiry proceedings have been conducted strictly as per the procedure prescribed. He could also not defend as to why the specific explanation of the petitioner given in respect of charge no. 3 and 6 has not been considered by the disciplinary authority inasmuch as no findings thereon have been returned in the impugned order. Though Sri Chandra has stated that the reply to the show cause notice dated 24.7.2004 received in the office of 30.7.2004 whereas the punishment order was already passed on 29.7.2004, therefore, it could have not been considered.

22. On being further confronted showing the impugned order wherein in respect of Charge no. 3 and 6 only this much has been alleged that the charged employee should have taken proper care and precaution, therefore, he is only responsible for slackness in discharging his duties, as to why the major punishment of dismissal has been awarded to him at the fag end of his retirement, Sri Chandra could not explain the reason awarding major punishment to the petitioner. So Sri Chandra could not defend the punishment order on the plea of being disproportionate as it does not commensurate with gravity of misconduct.

23. Having heard learned counsel for the parties and having perused the material available on record, at the very outset, I would like to consider para 13, 14, 15,16,17 and 18 in re: **Satyendra Singh (supra)** wherein the Apex Court considering the earlier judgments held that the departmental enquiry should be conducted as per procedure prescribed and disciplinary authority may pass any order strictly in accordance with law. The paras no. 13,14,15,16.17 and 18 in re: **Satyendra Singh (supra)** are as under :

"13. This Court in a catena of judgments has held that the recording of evidence in a disciplinary proceeding proposing charges of a major punishment is mandatory. Reference in this regard may be held to ***Roop Singh Negi v. Punjab National Bank and Nirmala J. Jhala v. State of Gujarat.***

14. In the case of Roop Singh Negi, this Court held that mere production of documents is not enough, contents of documentary evidence have to be proved by examining witnesses. Relevant extract thereof reads as under:-

"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. We have noticed herein-before that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. ***Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence.*** *Even there was no indirect evidence. The tenor of the report demonstrates. that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.*

...

19. The judgment and decree passed against the respondent in Narinder Mohan Arya case [(2006) 4 SCC 713 2006 SCC (L&S) 840] had attained finality. In the said suit, the enquiry report in the disciplinary proceeding was considered, the same was held to have been based on no evidence. The appellant therein in the aforementioned situation filed a writ petition questioning the validity of the disciplinary proceeding, the same was dismissed. This Court held that when a crucial finding like forgery was arrived at on evidence which is non est in the eye of the law, the civil court would have jurisdiction to interfere in the matter. ***This Court emphasised that a finding can be arrived at by the enquiry officer if there is some evidence on record...."***

(emphasis supplied)

15. Same view was reiterated in State of Uttar Pradesh v. Saroj Kumar Sinha, 12 wherein, this Court held that even in an ex-parte inquiry, it is the duty of the Inquiry Officer to examine the evidence presented by the Department to find out whether the unrebutted evidence is sufficient to hold that the charges are proved. The relevant observations made in Saroj Kumar Sinha are as follows:-

"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.***

33. As noticed earlier in the present case not only the respondent has been denied access to documents sought to be relied upon against him, but he has been condemned unheard as the inquiry officer failed to fix any date for conduct of the enquiry. In other words, not a single witness has been examined in support of the charges levelled against the respondent. The High Court. therefore, has rightly observed that the entire proceedings

are vitiated having been conducted in complete violation of the principles of natural justice and total disregard of fair play. The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge-sheet."

(emphasis supplied)

16. In the case of Nirmala J. Jhalad, this Court held that evidence recorded in a preliminary inquiry cannot be used for a regular inquiry as the delinquent is not associated with it and the opportunity to cross-examine persons examined in preliminary inquiry is not given. Relevant extract thereof reads as under:-

"42. A Constitution Bench of this Court in Amalendu Ghosh v. North Eastern Railway [AIR 1960 SC 992], held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.

43. Similarly in Champaklal Chimanlal Shah v. Union of India [AIR 1964 SC 1854] a Constitution Bench of this Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. Preliminary inquiry may be held ex parte, for it is merely for the satisfaction of the Government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the Government as to whether a regular inquiry must be held. The Court further held as under: (AIR p. 1862, para 12)

"12. There must therefore be no confusion between the two enquiries and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of that article 1. nor prior to that]."

44. In Narayan Dattatraya Ramteerthakhar v. State of Maharashtra [(1997) 1 SCC 299 1997 SCC (L&S) 152 AIR 1997 SC 2148] this Court dealt with the issue and held as under:

"... a preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice of (sic) nor, remains of no consequence."

45. In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.

(emphasis supplied)

17. Thus, even in an ex-parte inquiry, it is sine qua non to record the evidence of the witnesses for proving the

charges. Having tested the facts of the case at hand on the touchstone of the Rules of 1999, and the law as expounded by this Court in the cases of Roop Singh Negi and Nirmala J. Jhalals, we are of the firm view that the inquiry proceedings conducted against the appellant pertaining to charges punishable with major penalty, were totally vitiated and non-est in the eyes of law since no oral evidence whatsoever was recorded by the department in support of the charges.

18. As a consequence, thereof, the High Court fell into grave error of law while interfering in the well-reasoned judgment rendered by the Tribunal whereby, the Tribunal had quashed the order imposing penalty upon the appellant."

24. In view of what has been considered above, including the case law in re: **Satyendra Singh (supra),** I am of the considered opinion that the departmental enquiry must be conducted and concluded strictly as per procedure prescribed and the disciplinary authority while passing final order shall ensure that the enquiry officer has followed the procedure. Thereafter, he shall afford an opportunity of hearing to the charged employee providing copy of enquiry report seeking explanation from him. He shall return his clear findings on the explanation of the charged employee in the final order. The punishment, if any, so imposed must commensurate with gravity of misconduct as he must avoid imposing disproportionate punishment.

25. In the present case, the enquiry officer has not conducted departmental enquiry as per procedure prescribed under Regulation 27 of Regulation 1986 as neither the copies of relevant / demanded / relied upon documents have been provided to the employee nor the date, time and place has been fixed for oral enquiry to prove the charges. So the findings of enquiry officer vitiates for these reasons. On the basis of this enquiry report no punishment could have been awarded to the employee. At the same time, the disciplinary authority has not dealt with this aspect as no findings have been returned on these points. It was his legal duty to go through the enquiry report carefully but no such effort has been taken by him. Had he gone through these aspects lawfully he would have remitted back the issue for fresh enquiry as per procedure prescribed. Even otherwise, if the disciplinary authority had perused the enquiry report on charge nos. (iii) and (vi) which appear to have proved partially, he would have not awarded major punishment at the fag end of his retirement.

26. Therefore, the enquiry report and punishment order are non-est in the eyes of law as being illegal, arbitrary and uncalled for in view of facts and circumstances of the case. Hence, these are liable to set aside and quashed.

27. Since the charged employee / petitioner of the writ petition namely, Naipal Singh has died during the pendency of the writ petition and his widow is contesting this writ petition to claim the dues, therefore, no purpose would be served to remand back the issue for de-novo departmental enquiry as the departmental enquiry is admittedly a defective departmental enquiry.

28. Accordingly, the writ petition is **allowed**.

29. A writ in the nature of certiorari is issued **quashing** the order dated 29.7.2004

(Annexure no. 1) passed by the opposite party no. 2.

30. A writ in the nature of **mandamus** is issued commanding the opposite parties to pay all service benefits including post retiral benefits of charged employee i.e. Naipal Singh (since deceased) to his wife Smt. Karuna Singh who has been substituted petitioner on 25.7.2022 within a period of two months from the date of receipt of certified copy of the order of this Court along with interest @ 8% w.e.f. the date when the aforesaid benefits accrued till the date of its actual payment.

31. It is further directed that in case the aforesaid payments are not paid to the substituted petitioner namely, Karuna Singh within time, so stipulated and in the manner so directed, she shall be entitled for penal interest @ 12% per annum.

32. No order as to costs.

(2025) 5 ILRA 923
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 01.05.2025

BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE OM PRAKASH SHUKLA, J.

Writ C No. 1775 of 2025

Mohd. Talha ...Petitioner
Versus
U.O.I. & Ors. ...Respondents

Counsel for the Petitioner:
Arshad Jameel, Mohd. Amir Shazad, Mohd. Salman

Counsel for the Respondents:
A.S.G.I., C.S.C.

A. Civil Law - Constitution of India,1950-Article 226, 21 & 19(1)(d)-Passport Act,1967-Sections 6(2)(f) & 22-The petitioner a practicing advocate applied for a passport –his application was denied due to the pendency of two criminal cases, following Umapati ruling-legal issue arise whether under trial is required to obtain permission or a No Objection Certificate from the concerned criminal court for issuance or renewal of the passport under the act,1967-Held, The court held that Section 6(2)(f) of the Act,1967 bars issuance of passport where criminal proceedings are pending against the applicant-However, this restriction is not absolute due to the Central Government's power under section 22 of the Act-As per GSR 570(E) dated 25.08.1993, under trials may be exempted from this restriction if they produce orders from the concerned court permitting them to depart from India-not merely an NOC-exemption notification has statutory force and courts cannot disregard its requirement by observing that no permission is needed-The court set aside the earlier order of the trial court that held such permission unnecessary and directed the petitioner to seek fresh permission.(Para 1 to 29)

B. Doctrine of Per Incuriam: If a judgment ignores binding precedents or statutory provisions, it is rendered per incuriam and does not have binding value. The court held that the Umapati decision fell into this category. (E-6)

List of Cases cited:

1. Salim Kumar Vs U.O.I. & ors. , W.P. No. 31723(M/B) of 2018

2. Shiv Shankar Vs U.O.I. & ors. , Writ C No. 8621 of 2022

3. Smt. Rashmi Kapoor Vs U.O.I. & ors , Writ C No. 3617 of 2022