

Court No. - 7

Reserved
A.F.R.

Case :- WRIT - A No. - 11122 of 2023

Petitioner :- Dinesh Kumar Ojha

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Prashant Kanha, Nikhil Kumar

Counsel for Respondent :- C.S.C., Satyam Singh

Hon'ble J.J. Munir, J.

1. This writ petition is directed against an order of removal from service dated 30.05.2023 passed against the petitioner by the Managing Director, U.P. State Handloom Corporation Limited, Kanpur Nagar.

2. It would be profitable to refer to facts giving rise to this writ petition. The petitioner was appointed to the post a Salesman in the year 1994 by an order passed by the Managing Director, U.P. State Handloom Corporation Limited, Kanpur Nagar (for short, 'the Corporation'). The petitioner says that he has been working ever since and until orders depriving him of his employment were passed. The petitioner says that he has had an unblemished career with no complaint, punishment or adverse entry awarded to him. Prior to the present proceedings, he was never subjected to any disciplinary proceedings. About the Corporation, the petitioner says that it was established in the year 1973 by the State Government as a Government Company registered under Section 67 of the Companies Act, 1956. The State Government has a share holding to the extent of 77.42% with the balance 22.58% being owned by the Central Government. Thus, the Corporation is fully owned and controlled by the two Governments. The

Chairman, the Managing Director and the entire Board of Directors are appointed by the State Government.

3. According to the petitioner, because of poor management by officials of the State Government, the financial condition of the Corporation became pitiable, as the petitioner has chosen to describe it. The Corporation is not in a position to pay salary to its employees, who were, therefore, frequently transferred from one place to another without any rhyme or reason. It is pointed out that raising this issue, a writ petition being Writ Petition No.3442(S/S) of 1999, U.P. Rajya Hathkargha Nigam Ltd. Kshetriya Karamchari Sangathan and others v. State of U.P. and others, was filed before the Lucknow Bench of this Court, where an interim order dated 06.08.1999 was passed to the effect that if salary to the members of the petitioner association is not paid, they will not be able to leave their place of posting, which would be in violation of Article 21 of the Constitution. The said petition is represented to be still pending before the Lucknow Bench, where further orders dated 07.01.2013, 12.03.2013 and 22.04.2013 have been passed.

4. The petitioner says that because of the poor financial condition of the Corporation, a state of anarchy became order of the day with the Managing Director of the Corporation asking employees to work in the field in order to raise revenues to pay off rent for the building occupied by the Sale Centres of the Corporation. The income from the sale of handloom goods, because of poor quality, fell drastically, leading to effacement of revenues. Several salesmen could not garner resources to pay off rent of the buildings, where Sale Centres of the Corporation were functioning.

5. The Managing Director placed the petitioner under suspension, as the petitioner says, on bogus, false and vague allegations that the petitioner could not make payment of rent for the Sale Centre premises and did not comply with the directions of the Head Office. A charge-sheet was issued to him on 06.02.2013 with a direction to submit a reply within 21 days. The petitioner put in his reply dated 12.08.2013, denying the charges. The Managing Director of the Corporation without considering the petitioner's reply in the proper perspective, concluded the proceedings initiated against the petitioner and revoked his order of suspension, reinstating him in service with a warning. This order was passed on 11.09.2013, which attached the petitioner with the office of the Corporation at the Lindsey Street, Kolkata. The petitioner says that prior to the order dated 11.09.2013, he was posted at the Sale Centre, Jamshedpur in the State of Jharkhand and all his family were residing with him there. The petitioner's children were reading at Jamshedpur.

6. It is also averred that the petitioner is a permanent resident of Village and Post Pandeypur, P.S. Bairia, District Ballia, which is in the vicinity of Jamshedpur. Prior to his suspension from service, the petitioner's salary was Rs.5,612/-. However, during the period of suspension, he was not paid his subsistence allowance. The Managing Director of the Corporation did not pay the petitioner's salary for preceding 24 months, antedating his suspension on 25th January, 2012, due to which the petitioner and his family were on the verge of starvation. It was not possible for him to make his ends meet.

7. It is the petitioner's case that without paying him salary and subsistence allowance for a period, as long as two years or

more, to ask him to go over and serve at the Corporation's office at Kolkata, was totally illegal and in violation of Article 21 of the Constitution. It is the petitioner's case that the order dated 11.09.2013 was passed without any opportunity of hearing or issuing him with any charge-sheet. The order was also castigated as bad in law because prior to the said order, for two years and more, he was neither paid his salary nor the subsistence allowance. The petitioner, in the circumstances, made a number of representations immediately after reinstatement in service and moved an application dated 28.10.2013 before the Managing Director requesting that out of the twenty-four months' unpaid salary, at least ten months' salary be paid, so that he may submit his joining report at the station of transfer, to wit, Kolkata. When the said application evinced no action, the petitioner made another application on 10th November, 2013 to the same effect, but the latter application also led to no result. This was followed by two other applications dated 25.11.2013 and 24.12.2013.

8. Aggrieved by the order punishing the petitioner dated 11.09.2013 and the Corporation's inaction, the petitioner filed Writ-A No.15589 of 2014, seeking the following material reliefs:

(a) issue a writ, order or direction in the nature of certiorari calling for the record of the case and quashing the impugned order dated 11.09.2013 passed by the respondent No.2.

(b) issue a writ, order of direction in the nature of mandamus commanding the respondent No.2 to make payment of entire arrears of salary to the petitioner along with 10% simple interest."

9. The petition was entertained and the learned Standing Counsel directed to seek instructions from the respondents by an order of this Court dated 12.03.2014. No sooner was the writ petition last mentioned filed by the petitioner and instructions

called, the Managing Director of the Corporation, as a measure of reprisal, directed a notice to be served upon the petitioner, asking him to show cause within 15 days, why his services may not be terminated. When Writ-A No.15589 of 2014 next came up before this Court on 24.03.2014, an interim order was passed to the effect that the petitioner would join at the station of transfer within three weeks and further that in view of the undertaking given on behalf of the Managing Director, the arrears of salary due to the petitioner would be paid within two weeks of his joining the station of transfer.

10. In compliance with the order dated 11.09.2013 passed by the Managing Director and the interim order dated 24.03.2014 passed by this Court, the petitioner went over to submit his joining report to the In-charge of the Corporation's office, Lindsey Street, Kolkata. Reaching there on 31.03.2014, the petitioner was surprised to find that the building, where the office of the Corporation earlier existed, there was a showroom of another establishment by the name 'M-Fie'. At the specified address, neither the showroom of the Corporation was in existence nor any employee of theirs present. There was not even a board installed at the gate of the showroom, showing it to be the Corporation's establishment.

11. It is asserted in Paragraph No.28 of the writ petition, amongst other things, that the building where earlier the showroom of the Corporation was running at Kolkata, was handed over by the officials of the Corporation to private persons in some kind of a Public Private Partnership. There is annexed on record copy of a communication dated 31.03.2014, sent by the petitioner through fax to the Managing Director of the Corporation, indicating that in the premises, where the

showroom of the Corporation used to be located at the Lindsey Street, Kolkata, there was no showroom in existence. Instead, another showroom belonging to 'M-Fie' was running there. Accordingly, the petitioner said that he was informing the Managing Director of the said fact and returning from Kolkata.

12. The petitioner then made another application dated 31.03.2014 to the Managing Director of the Corporation for further directions, but nothing was done. The petitioner submitted still another application dated 07.04.2014, requesting the Managing Director to issue appropriate directions to the petitioner to join. The Managing Director instead of issuing any directions for the petitioner to join or pay his salary, removed him from service *vide* an order dated 12.05.2014.

13. This Court notices that in Paragraph No.32 of the writ petition, there is an averment to the effect that the Managing Director has incorrectly recorded in his order dated 12.05.2014 that the petitioner did not contact the In-charge Marketing, Kolkata, Mohd. Sayeed Ansari or any competent officer in the Head Office. It is said that the petitioner in his letters dated 31.03.2014 and 07.04.2014 categorically stated that no officer of the Corporation was in existence at the Lindsey Street, Kolkata. Under these circumstances, there was no question of contacting any official of the Corporation. Nevertheless, it is averred that the Managing Director in order to cover his own misdeeds, removed the petitioner from service. It is averred in Paragraph No.33 of the writ petition that the petitioner along with the letter dated 31.03.2014 sent photographs of the building, located at the Lindsey Street, Kolkata that used to house the Corporation's showroom. The photographs show that

the site is now occupied by the showroom of an apparel store by the name 'Hyphon'.

14. It is averred in Paragraph No.35 of the writ petition that regarding the illegal possession and transfer to private parties of several showrooms of the Corporation, complaints were filed to the higher officials in the matter. The Managing Director by his memo dated 23.07.2013 sought an explanation of Mr. R.N. Gupta, Senior Manager (Production). A copy of the said letter is annexed as Annexure No.16 to the writ petition. The Managing Director is also said to have directed the Assistant Manager (Marketing) to conduct an inquiry regarding showrooms of the Corporation being illegally occupied by private persons. The Assistant Manager (Marketing) by his report dated 26.08.2013 informed the status of showrooms of the Corporation saying there that certain officials of the Corporation in collusion with private persons have illegally handed over possession of the Corporation's showrooms to third parties. The Managing Director concurred with the report and directed initiation of legal proceedings. A copy of the report dated 26.08.2013 submitted by the Assistant Manager (Marketing), addressed to the Managing Director, is on record as Annexure No.17 to the writ petition.

15. It was in the background of these facts, according to the petitioner, that he could not join his station of posting at Kolkata, where there was no office in existence. Nevertheless, the petitioner was removed from service by the Managing Director, as already said, by the order dated 12.05.2014. The petitioner challenged this order, moving an amendment application in Writ-A No.15589 of 2014, which was allowed and the petitioner

permitted to amend the writ petition. The Corporation was granted time to file a counter affidavit, but none was filed.

16. This Court by an order dated 11.04.2023 held that the order dated 12.05.2014, removing the petitioner from service, was one passed without serving any charge-sheet or holding an inquiry. It was, accordingly, set aside, leaving it open to the respondents to hold an inquiry afresh in accordance with law against the petitioner and pass appropriate orders. There is a remark in the order of this Court dated 11.04.2023 to the effect that in case an inquiry is held, the petitioner will fully cooperate with the same, without causing any unnecessary delay. The petitioner, together with an application dated 25.04.2023, served a certified copy of the order dated 11.04.2023 passed in the writ petition last mentioned in the office of the Managing Director of the Corporation, personally.

17. The copy of the application was marked by the Managing Director to the In-charge Manager Inquiry. It is the petitioner's case that nothing happened, in consequence. The petitioner then received a notice dated 19.05.2023 on 22.05.2023, requiring him to submit his reply by 26.05.2023 to the inquiry report submitted by the Inquiry Officer. It is the petitioner's case that he is residing at Jamshedpur, Jharkhand. But, in the notice dated 19.05.2023, three addresses of the petitioner are mentioned. The petitioner further on says that out of the three addresses mentioned, he lives at the second of these. It is also the petitioner's specific case that from the tenor of the notice dated 19.05.2023, it is evident that the Managing Director of the Corporation was predetermined to remove the petitioner from service, and, as such, without the provision of a reasonable opportunity, notice to show cause was issued.

18. According to the petitioner, he has furnished his reply dated 26.05.2023 to the show cause notice dated 19.05.2023 with a prayer that the inquiry report may be set aside and a copy of the charge-sheet provided to him with a month's time to answer it. The petitioner has also averred in Paragraph No.42 that he said in his reply dated 26.05.2023 that he wants to personally examine Mohd. Sayeed Ansari, and, as such, opportunity of a personal hearing may be extended to him. The Managing Director by his memo dated 12.06.2023 rejected the petitioner's reply dated 26.05.2023, holding that the petitioner was not cooperating with the inquiry, despite the orders passed by this Court. It is on the foot of the aforesaid allegations that the Managing Director passed the order impugned dated 30.05.2023, as the petitioner says, in utter violation of principles of natural justice, removing the petitioner from service. The petitioner has pleaded in Paragraph No.44 of the writ petition that he was earlier removed from service without conducting an inquiry and the said order was quashed by this Court by our order dated 11.04.2023, passed in Writ-A No.15589 of 2014.

19. The petitioner received the notice dated 19.05.2023 on 22.05.2023, asking him to show cause, along with a copy of the inquiry report. The petitioner furnished his reply by means of his representation dated 26.05.2023, which was received in the office of the Managing Director on 03.06.2023. However, prior to receipt of the petitioner's reply, the Managing Director passed his order dated 30.05.2023, removing the petitioner from service. It is the petitioner's case that the entire proceedings have been carried out in undue haste, arbitrarily and unfairly, all in violation of principles of natural justice.

20. In Paragraph Nos.46 and 47 of the writ petition, it is averred:

"**46.** That, in the present case, as per the impugned order it appears that the inquiry has been initiated on 20.04.2023 but no Charge-Sheet was served upon the petitioner no opportunity to rebut the allegations made in the Charge-Sheet were provided to the petitioner and it is incorrectly stated in the impugned order that the petitioner did not receive the Charge-Sheet. It appears that the Charge-Sheet was sent at the wrong address of the petitioner, as the petitioner received the notice dated 19.05.2023 and the impugned order dated 30.05.2023 but why the petitioner could not receive the Charge-Sheet and alleged communication made by the respondent no.3 because the respondent no.2 was determined to remove the petitioner from service and that is why Charge-Sheet and other communication made by the respondent no.3 were on wrong address.

47. That, it is surprising that on the same address the petitioner received the notice dated 19.05.2023 and the impugned order dated 30.05.2023 passed by respondent No.2 but the copy of Charge-Sheet or any communication with the Inquiry Officer was never received by the petitioner. In fact, the petitioner inquired from the concerned post office that any postal letter was returned by the postman on the ground of non-availability of the petitioner the postman after inspecting the records stated that no postal letter in the name of the petitioner was ever returned by him."

21. It is the petitioner's further case in Paragraph No.52 of the writ petition that no charge-sheet was served upon him and no notice for a personal hearing was issued to the petitioner by the Inquiry Officer. No date, time and place was fixed by the Inquiry Officer asking the petitioner to appear for personal hearing.

22. The petitioner also says that in consequence of the order dated 11.04.2023 passed by this Court, where the order of removal from service earlier passed dated 12.05.2014 was quashed, there was a direction in terms: 'Consequences to follow.' It was, therefore, imperative for the Managing Director of

the Corporation to reinstate the petitioner in the first instance and pay all his arrears of salary. That, however, was not done. He was neither paid salary nor subsistence allowance for the period that he remained under suspension pending proceedings that led to the earlier order of removal. It is next pleaded on behalf of the petitioner that the only charge now levelled against the petitioner is that he did not join the place of posting. The petitioner says that despite the petitioner properly and satisfactorily explaining the reason for not so joining, the petitioner was punished with a major penalty again.

23. It is averred in Paragraph No.58 of the writ petition that if the petitioner did not participate in the inquiry, the Inquiry Officer was under an obligation to require the establishment to examine the record available before them, but they did not do so. Both the Inquiry Officer and the Disciplinary Authority have recorded perverse finding based on non-existing materials. In Paragraph Nos.61 and 62 of the writ petition, it is averred:

"61. That, from the own documents of the respondent corporation, it is clear that no showroom of U.P. State Handloom Corporation Ltd. is in existence at Lindsey Street Kolkata, even then the petitioner was attached with a non-existent showroom only to prepare a background to remove the petitioner from his service.

62. That, entire exercise of transfer and attachment of the petitioner without payment of arrears of salary suffers from vice of malafide and the impugned order is totally malafide, illegal, arbitrary and colourable exercise of power."

24. The petitioner has also averred in Paragraph No.68 of the writ petition that the entire inquiry was done *ex parte* and at no stage, the petitioner was invited to participate, as no charge-sheet was ever served upon the petitioner and no Inquiry Officer appointed. The punishment has been castigated as

shockingly disproportionate. The impugned order is also alleged to be *mala fide*.

25. A counter affidavit on behalf of respondent No.3 and a personal affidavit on behalf of respondent No.3, that is to say, the Inquiry Officer, Suhaib Anwar Ansari, Manager Production of the Corporation, have been filed.

26. Heard Mr. Nikhil Kumar, learned Counsel for the petitioner, Mr. Baibhav Tripathi, learned Counsel appearing on behalf of respondent Nos.2 and 3 and Mr. Akhilesh Kumar Tripathi, learned Standing Counsel appearing for respondent No.1.

27. Upon hearing learned Counsel for the parties, this Court must say that there are many things about the validity of proceedings against the petitioner that could be gone into and decided. But, considering that there is a serious procedural lapse going to the root of the matter, this Court is not minded to examine the many other issues involved. It is noticed that the petitioner had earlier faced disciplinary proceedings, based on a charge-sheet dated 06.02.2013, which culminated in an order of removal from service dated 12.05.2014, since quashed by this Court *vide* order dated 11.04.2023 passed in Writ-A No.15589 of 2014. Liberty was given to the respondents to proceed afresh against the petitioner, giving him due opportunity. The ground to quash the earlier order was non-holding of an inquiry into the charges. Liberty was, therefore, given to the respondents to proceed afresh in accordance with law. Of course, the petitioner was directed to cooperate with the inquiry. If one were to look at the charge-sheet dated 06.02.2013, it was one on a completely different set of charges than those that are the subject matter of the present

proceedings. The charge-sheet dated 06.02.2013 issued by the Managing Director of the Corporation carried three charges, which read:

"आरोप सं. 1- यह कि मुख्यालय के पत्रांक संख्या 1082-84 दिनांक 26.05.2010, पत्रांक 2702-3 दिनांक 27.08.2010 एवं पत्र संख्या 4980-83/ नजारत दिनांक 18.01.2011 के माध्यम से बिक्री केन्द्र के अवशेष किराये के भुगतान हेतु आपको निर्देशित किया गया, किन्तु आप द्वारा मुख्यालय के आदेशों की अवहेलना करते हुए बिक्री केन्द्र का किराया मकान मालिक को भुगतान नहीं किया गया जिससे निगम पर वाद की स्थिति उत्पन्न हो गयी जिसके लिए आप दोषी है।

अस्तु निगम के आदेशों की अवहेलना करने, स्वैच्छाचारी ढंग से कार्य करने हेतु आरोपित।

आरोप सं0-2 - यह कि मुख्यालय के आदेशांक 2895-2901/ स्था0 -2 / 11-12 दिनांक 19.09.2011 द्वारा आपका स्थानान्तरण बिक्री केन्द्र जमशेदपुर से बिक्री केन्द्र हल्दिया किया गया किन्तु आप द्वारा नये तैनाती स्थल पर योगदान नहीं किया गया जो कि आपकी अनुशासनहीनता का द्योतक है और जिसके आप दोषी है।

अस्तु निगम के आदेशों की अवहेलना करने मनमाने ढंग से कार्य करने एवं निगम सेवा नियमावली के विरुद्ध आचरण करने हेतु आरोपित।

आरोप सं0-3- यह कि मुख्यालय के पत्रांक 4071-79 दिनांक 25.01.2012 द्वारा सेवा से निलम्बित करते हुए बिक्री केन्द्र के एक अन्य कार्मिक श्री मनीलाल बिक्रेता को प्रभार हस्तान्तरण हेतु आपको आदेशित किया गया था जिसके अनुक्रम में प्रभारी परिक्षेत्र कोलकाता द्वारा भी पत्रांक 404-06 दिनांक 13.02.2012 के माध्यम से प्रभार हस्तान्तरण हेतु निर्देशित किया गया किन्तु आप द्वारा जानबूझ कर प्रभार हस्तान्तरण न कर अवकाश पर चले गये जिसके लिए आप पूर्ण रूप से दोषी हैं।

अस्तु बिक्री केन्द्र का किराया भुगतान न करने, स्वैच्छाचारी ढंग से कार्य करने, अनावश्यक विधिक वाद उत्पन्न करने, निगम का पक्ष कमजोर करने तथा प्रभार स्थानान्तरण न करने हेतु आरोपित।"

28. The order of termination from service dated 12.05.2014 since quashed by this Court *vide* order dated 11.04.2023, passed in the writ petition above referred, was founded on the three charges, above indicated. This Court while quashing the order of termination on ground that the no inquiry was held, granted liberty to proceed afresh. Normally, this means that the

respondents would have liberty to proceed on the basis of the same charge-sheet, that was subject matter of earlier proceedings. Here, something else happened. After the order of this Court dated 11.04.2023 was passed, a fresh charge-sheet dated 20.04.2023 was issued to the petitioner, a copy of which is annexed as part of Annexure No. CA-3 to the counter affidavit filed by respondent Nos.2 and 3. This charge-sheet carries two charges, that are entirely distinct and different from the charges carried in the charge-sheet dated 06.02.2013, on the basis of which the earlier order of removal from service dated 12.05.2014 was passed. The charge-sheet dated 20.04.2023, about which the respondents say now that they attempted to serve a copy by dispatching it to three different addresses of the petitioner available with them, relates to charges for things that happened in the year 2013.

29. The charge-sheet dated 06.02.2013, on which the earlier proceedings, of whatever kind, since quashed, were held related to the years 2010, 2011 and 2012. Thus, both the charge-sheets relate to acts of omission and commission attributed to the petitioner, more or less contemporaneous in time. Since by the order of this Court dated 11.04.2023 passed in Writ-A No.15589 of 2014, the respondents were given liberty to proceed afresh after quashing the order of removal from service, the logical consequence would be that fresh proceedings taken, would rest on the same charges as the one culminating in the earlier order of removal. Nevertheless, the respondents have proceeded on the basis of a fresh charge-sheet, carrying completely different charges, detailed in the charge-sheet dated 20.04.2023.

30. There is no prohibition in doing that, but perhaps it would not be a continuation of the earlier proceedings, founded on the original charge-sheet. This may be regarded as fresh proceedings with the earlier proceedings either given or kept back by the respondents in their pocket to be utilized at some subsequent point of time. If the respondents do not wish to proceed with the charges afresh carried in the charge-sheet dated 06.02.2013, there is nothing in the order dated 11.04.2023, that would govern the fresh inquiry that was undertaken. The reason is that it is on a completely different set of charges carried in a different charge-sheet, the respondents have now proceeded.

31. This Court thinks that if the respondents intended to proceed on the basis of a fresh charge-sheet and not the one they were given liberty to proceed with afresh, they either ought to have issued both charge-sheets to the petitioner afresh or put in him to that notice, or combined the charges into a single charge-sheet. It would indeed be an abuse of process of disciplinary proceedings, in circumstances such as these, and not as a universal rule to issue successive and different charge-sheets to the petitioner, forcing him to face multiple inquiries while all the charges could be determined at the same inquiry, whether carried in a single charge-sheet or two charge-sheets, dealt with together. Since, the respondents have not chosen to proceed afresh with the charge-sheet dated 06.02.2013, a liberty given to them by this Court by our order dated 11.04.2023 passed in Writ-A No.15589 of 2014, it must be held that the respondents have given up those charges and brought fresh ones carried in the charge-sheet dated 20.04.2023.

32. This case has its own distinct features making it one that may not fit the standard mould. The pleadings of parties and the evidence on record reflect that the Corporation is not in a very sound state of financial health. There is some case and evidence to show that there is difficulty in paying off rent for the Sale Centres housed in rented buildings. The attention of this Court in this connection has been drawn to a letter dated 23.07.2013, addressed by the Managing Director of the Corporation to its Senior Manager (Production). The letter shows that there was some kind of a scheme for sharing the premises of Sale Centres with other partners, taking a part of the premises to carry on business. This was perhaps to raise revenue for the rent payable to the landlords of the premises. This letter further shows that one of the Sale Centres at Kolkata was shared with a partner M/s. Priya Gopal Bishoji Marketing Pvt. Ltd., Kolkata. For the purpose, the Senior Manager (Production) of the Corporation at Kanpur issued a letter dated 19.08.2010 to the Officer In-charge at Kolkata to transfer two counters on the backside of the Centre to the partner. It transpires that the partner in order to unauthorizedly occupy the premises of the Sale Centre got it renovated, without annexing any sketch or lay out plan. It is this kind of evidence which shows that the Corporation has been gasping for finances to run its Centres and pay off its employees. It is in the backdrop of this state of affairs that the charges against the petitioner have to be viewed.

33. There are some further facts, which are relevant. It has already been noticed that the petitioner has not been paid twenty-four months of his salary prior to his suspension dated 25.01.2012 and no subsistence allowance for the period of suspension. After this Court allowed the petitioner's earlier writ

petition and quashed the order of termination from service, the petitioner was again not paid salary. The justification now offered not to pay salary appears to be that he did not join the Kolkata office, and it is for this reason that a different charge-sheet has been issued to him, accusing him of completely different charges than those on which he was earlier removed from service.

34. In these circumstances, if the petitioner has said that he was not served with the charge-sheet dated 20.04.2023, it is possible to infer that he was not. There is no postal remark to show that in fact he refused to accept any of the registered covers carrying the charge-sheet. The impugned order 30.05.2023, again removing the petitioner from service, was passed with unsavory haste, the charge-sheet being one dated 20.04.2023. The justification for this haste is that this Court had directed fresh inquiry to be held. There was no such direction, but only an option given to the respondents. There was no time fixed to conclude the inquiry, as may have impelled the respondents to hurriedly infer service upon the petitioner. In any case, the charge-sheet being one that was different from that, that was the subject matter of proceedings leading to the earlier order of removal dated 12.05.2014, directions of whatever kind carried in the orders of this Court dated 11.04.2023 did not apply to proceedings now initiated based on a different charge-sheet. This Court is not satisfied on the state of affairs that the petitioner was indeed served with the charge-sheet. The proceedings, therefore, are again held to have been done *ex parte*.

35. Assuming that the petitioner was served with the charge-sheet and he did not participate in the inquiry, it did not mean

that the respondents could just hold the charges proved by looking into the charge-sheet and the papers filed with it. If an employee does not appear to answer the charges against him, it is imperative for the Inquiry Officer, holding a domestic inquiry, which may lead to the imposition of a major penalty, to convene a formal inquiry. At the said inquiry, the establishment have to prove the charges by leading their evidence, both documentary and oral. Witnesses have to be examined. The mere fact that the delinquent employee is *ex parte* would not absolve the establishment of their responsibility to prove the charges by leading evidence before the Inquiry Officer through a Presenting Officer. Rule 64 of the Service Rules applicable to the Corporation, quoted in Paragraph No.64 of the writ petition, specifically supports the said salutary procedure.

36. A reading of the inquiry report dated 19.05.2023 submitted in this case by Suhaib Anwar Ansari, respondent No.3, shows that he just quoted the charge and noted the fact that the petitioner though attempted to be served, intimating him of the date, did not file a reply. It is then recorded that this Court had ordered the petitioner to cooperate with the inquiry, which he was disobeying. The findings, that are then recorded, are based on idle record in the Inquiry Officer's hands, that is nothing more than the charge-sheet. The inquiry report does not show that any Presenting Officer led evidence on behalf of the establishment, both oral and documentary, to prove the charge. The report also shows that the first charge alone has been held proved in terms of the following findings:

"मा० उच्च न्यायालय के उक्त आदेश में श्री ओझा को तैनाती स्थल पर योगदान करने हेतु मा० उच्च न्यायालय द्वारा आदेशित किया गया है, जिसके क्रम में श्री ओझा ने अपने पत्र दिनांक 07.04.2014 द्वारा यह अवगत कराया है कि वह दिनांक 31.03.2014 को बिक्री केन्द्र लिण्डसे स्ट्रीट कोलकाता गये थे लेकिन वहाँ न तो बिक्री केन्द्र है और न कोई स्टाफ है, मैं अपना योगदान कहाँ और

किसको दूँ। श्री दिनेश कुमार ओझा द्वारा अपने नियंत्रक अधिकारी, श्री मो० सईद अंसारी, प्रभारी विपणन परिक्षेत्र, कोलकाता को भी कोई सूचना नहीं दी गई न ही नियंत्रक अधिकारी के माध्यम से कोई अवकाश आदि का आवेदन ही मुख्यालय अग्रसारित कराया गया। इससे स्पष्ट है कि श्री ओझा द्वारा अनुशासनहीनता तथा प्रबन्ध निदेशक के आदेशों की अवहेलना की गई।"

37. The crux of the findings is that the petitioner did not report at the Sales Centre located at Lindsey Street, Kolkata, and as he says not finding it there, he did not contact his Controlling Officer, Mohd. Sayeed Ansari, In-charge Distribution, Kolkata Region, giving him that information or submitting a leave application etc. through him. The charge of indiscipline and disobedience to the Managing Director's order has been held proved. Now, the petitioner has clearly alleged in Paragraph No.32 of the writ petition that to say that he did not contact the In-charge Marketing, Kolkata, Mr. Mohd. Sayeed Ansari, is incorrect. The petitioner in his letters dated 31.03.2014 and 07.04.2014 has said that at the Lindsey Street, Kolkata, the office of the Corporation was not in existence. There was, thus, no question of contacting any official of the Corporation.

38. It is not possible for this Court to go into the issue if in fact the Lindsey Street Sale Centre of the Corporation no longer exists or the petitioner did not find Mohd. Sayeed Ansari there to contact as he says, there being no office of the Corporation around. But, the Inquiry Officer, in order to probe the said issue and return a valid finding, had to examine not only idle papers, but witnesses as well. This is a case where in the counter affidavit filed on behalf of respondent Nos.2 and 3, it is averred in Paragraph Nos.61 and 62:

"61. That the contents of the paragraph no. 32 of the writ petition are wrong and denied, in reply it is stated that the petitioner has never contacted any officer of the Corporation he had only written letter to the officers. It is pertinent to mention here that Sri Mohd. Sayeed

Ansari himself had written a letter to the Head Quarters on dated 05.11.2011 explaining about the irregularities found by him while he inspected the showroom. A copy of the letter dated 05.11.2011 is being annexed herewith and marked as **ANNEXURE NO. CA 09** to the affidavit.

62. That it is pertinent to mention here that the Inquiry Officer Sri Sohaib Anwar Ansari called through cell phone to Sri Ansari on his number 7753977122 on dated 06.05.2023 for his statement he refused to participate in the inquiry having no option left the inquiry officer wrote a letter to Sri Mohd. Sayeed Ansari for his statement in the proceedings of the inquiry through letter dated 09.05.2023 which was return to the Corporation undelivered. A copy of the letter dated 09.05.2023 alongwith Postal Receipt and envelop are annexed herewith and marked as **ANNEURE NO. CA 10** to this affidavit.”

39. The above averments show that Mohd. Sayeed Ansari, who would be the best person to show, if in fact the Lindsey Street Office was in existence when the petitioner went there to join, and, more particularly, if he was around, where he could be contacted by the petitioner, has refused to testify on behalf of the Corporation before the Inquiry Officer. The findings of the Inquiry Officer in the absence of Mohd. Sayeed Ansari's testimony, which he himself called, but was not successful in securing, would make the charge fail utterly. The finding returned by the Inquiry Officer, on the foot of which the impugned order has been passed, would be sans any material.

40. The principle that in an inquiry likely to lead to the imposition of a major penalty, it is imperative for a salutary principle that the establishment lead evidence, both documentary and oral, before the Inquiry Officer, first in order to prove the charge, is far too well settled to brook doubt. In this connection, reference may be made to the holding of the Supreme Court in **State of Uttar Pradesh and others v. Saroj Kumar Sinha, (2010) 2 SCC 772**, where it is observed:

"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.

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."

41. Guidance in this regard is to be found in the holding 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."

42. A Division Bench of this Court in *State of U.P. and another v. Kishori Lal and another*, 2018 (9) ADJ 397 (DB) (LB), dealing with the same issue, observed:

"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.''

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.

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."

43. The same principle has been reiterated by the Division Bench of our Court in **Smt. Karuna Jaiswal v. State of U.P., 2018 (9) ADJ 107 (DB) (LB)**, where it is observed:

"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 unrebutted 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."

44. In State of U.P. v. Aditya Prasad Srivastava and another, 2017 (2) ADJ 554 (DB)(LB), again a Bench decision of this Court, it was held:

"14. Recently the entire law on the subject has been reviewed and reiterated in Chamoli District Co-operative Bank Ltd. v. Raghunath Singh Rana and others, AIR 2016 SC 2510 and Court has culled out certain principles as under:

''(i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

(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.

(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.

(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.''

15. The principal of law emanates from the above judgments is that initial burden is on the department to prove the charges. In case where inquiry is initiated with a view to inflict major penalty, department must prove charges by adducing evidence by holding oral inquiry.

17. 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. 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."

45. As would be seen, the Inquiry Officer far from adherence to the salutary principle, where the Inquiry Officer, sitting like an impartial arbiter, would have before him evidence both documentary and oral led to prove the charges by the establishment has done nothing of the kind. The Inquiry Officer in this case, as already remarked, has gleaned through the charge-sheet of his own and the papers annexed to it, and returned findings that have been recorded sans any evidence whatsoever. To add to it, is the fact that the efforts made by the Inquiry Officer to secure the attendance of the witness Mohd. Sayeed Ansari, an official of their own establishment at Kolkata, have failed. This kind of a situation has perhaps arisen because of the chaos in the Corporation's organization and lack of control, arising from poor finances. In any case, this could not be a ground on which the illegality vitiating the impugned order can be ignored.

46. It goes without saying that this Court would not close the doors for holding fresh proceedings from the stage of the charge-sheet founded on the one dated 20.04.2023, and not the charge-sheet dated 06.02.2013, which the respondents have tacitly elected out of pursuing. It is also imperative in this case given the fact that the petitioner, who has not been paid his salary for two years antedating his suspension way back on 25.01.2012, is paid his arrears of salary for the period of twenty-four months, that it was in arrears prior to his suspension and subsistence allowance for the period of his suspension, before any fresh proceedings are taken. It is also imperative that the petitioner be reinstated in service forthwith and posted at a convenient station. In case fresh proceedings against the petitioner are elected to be taken by the respondents, he would be entitled to his current salary from the

date of this judgment. However, in the event of fresh proceedings being taken, arrears of salary apart from that directed to be paid hereinabove, would abide by the result of fresh proceeding. In the event, no fresh proceedings are taken, the petitioner would be entitled to 50% of his entire salary due for the period of time he has remained out of employment, forthwith. These arrears would be payable in addition to the arrears of salary for twenty-four months and the arrears of subsistence allowance directed to be paid hereinabove, unconditionally.

47. In the result, this writ petition succeeds and is **allowed in part**. The impugned order dated 30.05.2023 passed by the Managing Director of the Corporation is hereby **quashed**. A *mandamus* is issued in the terms indicated hereinabove.

48. There shall be no order as to costs.

Order Date :- 09.01.2024
Anoop

(J.J. Munir, J.)