



2026:AHC:6411

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 18344 of 2025

Smt. Meena Srivastava

.....Petitioner(s)

Versus

State Of U.P. And 4 Others

.....Respondent(s)

Counsel for Petitioner(s)	: Ram Dayal Tiwari, Sr. Advocate, Vaibhav Goswami
Counsel for Respondent(s)	: C.S.C.

Court No. - 33

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri M.D. Singh Shekhar, learned Senior Counsel assisted by Sri Vaibhav Goswami, learned counsel for the writ petitioner and Sri Manish Kumar, learned Standing Counsel for the State.

2. Sri Manish Kumar has made a statement at Bar that post passing of the order dated 05.12.2025, he has obtained instructions on 19.12.2025 under the signatures of Under-Secretary, Government of U.P. He further makes a statement that he does not propose to file any affidavit and the writ petition be decided on the basis of the documents available on record.

3. With the consent of the parties, the writ petition is being decided at the fresh stage.

4. The case of the writ petitioner is that he was appointed as an Adhyaksha in Social Welfare Department on 20.10.1997 and thereafter he was promoted on the post of District Social Welfare Officer on 03.03.2008. The writ petitioner claims to have been transferred from one place to another. However, owing to certain allegations, a charge sheet came to be served upon the writ petitioner on 22.01.2013 containing as many as 8 charges. A reply was submitted by the writ petitioner on 05.12.2017, denying the charges. An inquiry report came to be submitted on 29.05.2018 exonerating from all the charges. However, the Principal Secretary, State of U.P. vide letter dated 17.05.2019, apprised the writ petitioner that the inquiry report submitted on 29.05.2018 is rejected and Joint Director of Chhatrapati Sahuji Maharaj Shodh Prakashan Sansthan, Lucknow is being appointed as an

Inquiry Officer. An inquiry report came to be submitted on 02.03.2021 holding the charge nos. 3, 4, 7 and 8 proved and charge nos. 1, 2 5 and 6 not proved. On 26.03.2021, a communication was made to the writ petitioner to tender his reply to the show cause notice/ inquiry report. The writ petitioner tendered his report on 23.06.2021 and thereafter on 06.11.2025, an order came to be passed by the first respondent dismissing the writ petitioner from service and an order of recovery was also passed.

5. Questioning the order dated 06.11.2025, the present writ petition has been preferred.

6. This Court entertained the writ petition on 05.12.2025 while passing the following orders:-

"1. Instructions filed today is taken on record marked as Appendix 'A'.

2. Contention of the learned counsel for the writ petitioner is that the impugned order cannot be sustained, particularly when, first of all, no oral inquiry was conducted prior to the imposition of a major punishment, as relied upon in paragraph No.18 of the writ petition. Further, submission is that an earlier inquiry was conducted by the Additional Commissioner, Administration, Devi Patan Mandal, Gonda, which did not find anything adverse. Subsequently, Joint Director, who is below in rank, has now been appointed to conduct the inquiry. He further submits that the competent authority did not have concrete, tenable reasons for directing the re-inquiry of the matter.

3. Shri Manish Kumar, learned Standing Counsel, on the basis of instructions, seeks further time as the grounds provided in the instructions do not answer the query raised by the Court.

4. Put up as fresh on 16.12.2025.

5. In the meantime, learned Standing Counsel is to obtain instructions."

7. Instruction has been produced by the learned Standing Counsel under the signatures of Director, Social Welfare Officer and marked as Appendix 'C'.

8. Learned counsel for the writ petitioner has sought to argue that the order impugned cannot be sustained for a single moment, particularly when once a departmental charge sheet came to be issued and an Inquiry Officer was appointed, then the Inquiry Officer was under obligation to conduct oral inquiry, even if in those cases also when oral inquiry was not demanded. Submission is that Rule 7 of the U.P. Government Servants (Discipline and

Appeal) Rules, 1999 itself provides for holding of an oral inquiry. Further submission is that the Inquiry Officer in the zeal of holding the charges proved against the writ petitioner, post-issuance of charge sheet and submission of a reply, proceeded to submit inquiry report without granting opportunity to the writ petitioner to put forward his stand while cross-examining the witnesses who were made the basis too hold the charges to be proved. Learned counsel for the writ petitioner has relied upon paragraph nos. 18 and 20 of the paper-book so as to contend that no oral inquiry was conducted. Learned counsel for the writ petitioner submits that there was no occasion to again conduct an inquiry, once an inquiry report came to be submitted on 29.05.2018 exonerating the writ petitioner in respect of charges and an order was passed on 17.05.2019 directing for conduction of the fresh inquiry by the Inquiry Officer. He further submits that even otherwise, the charges cannot be said to be proved against the writ petitioner and some of the charges are subject matter of criminal trial. He seeks to rely upon a Division Bench judgment of this Court in ***Girish Chandra Srivastava vs. State of U.P. and others*, 2017(2) ADJ 41.**

9. Sri Manish Kumar, learned Standing Counsel while countering the submission so made by learned Senior Counsel for the writ petitioner has submitted that none of the contentions so raised by learned Senior Counsel for the writ petitioner has any legs to stand particularly when charges are grave and serious and it is always open for the employer / appointing authority to pass order for holding another inquiry, if he is satisfied with the earlier inquiry, was not in accordance with law. He further submits that the writ petitioner has committed misconduct and that is why he has to face the music. However, he could not dispute the fact that no oral inquiry was conducted, which was mandatory under Rule 7 of the U.P. Government Servants (Discipline and Appeal) Rules, 1999. He submits that the order be set aside. Matter be remitted back to hold an inquiry from the stage of submission of charge sheet and reply to it.

10. I have heard the submissions so raised across the Bar and perused the record carefully.

11. Facts are not an issue. It is not an issue that the writ petitioner is a Government Servant, who had been proceeded with a departmental

proceeding. Post-issuing of a charge sheet dated 22.01.2013 containing eight charges, the writ petitioner tendered his reply on 05.12.2016 and the inquiry officer tendered his report on 29.05.2018, which was found not acceptable and on 17.05.2019, an order came to be passed appointing a new inquiry officer, who conducted inquiry and submitted inquiry report on 21.03.2021 while holding charge nos. 3, 4, 7 and 8 proved and charge nos. 1, 2, 5 and 6 not proved. The writ petitioner claims to have submitted his reply to the show cause notice/ inquiry report on 23.06.2021 and after a period of more than four years, now the impugned order has been passed. Importantly, a bare perusal of the inquiry report dated 02.03.2021 would reveal that the same is dedicated to several pages wherein charges have been incorporated and the reply of the writ petitioner has been mentioned, but there is nothing on record to show even in the inquiry report or the order of the Disciplinary Authority that the oral inquiry was conducted. Rule 7 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999 provides as under:-

"7-Procedure for imposing major penalties- Before imposing any major penalty on a Government Servant, an inquiry shall be held in the following manner:

(i) *The Disciplinary Authority may himself inquiry into the charges or appoint an Authority Subordinate to him as Inquiry Officer to inquire into the charges.*

(ii) *The Facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge -sheet. The charge-sheet shall be approved by the Disciplinary Authority.*

Provided that where the Appointing Authority is Governor, the charge-sheet may be approved by the Principal Secretary or the Secretary, as the case may be, of the concerned department.

(iii) *The charge framed shall be so precise and clear as to give sufficient indication to the charged Government Servant of the facts and circumstances against him. The proposed documentary evidences and the name of the witnesses proposed to prove the same along with oral evidence, if any, shall be mentioned in the charge-sheet.*

(iv) *The charge Government Servant shall be required to put in a written statement of his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge-sheet and to state whether he desires to cross-examine any witness mentioned in the charge-sheet and whether desires to give or produce evidence in his defence He shall also be informed that in case he does not appear or file written statement on the specified date, it will be presumed that he has none to furnish and inquiry officer shall proceed to complete the inquiry ex-parte.*

(v) *The charge-sheet, along with the copy of the documentary evidences mentioned therein and list of witnesses and their statements, if any shall be served on the charged Government Servant personally or by registered post at the address mentioned in the official records in case the charge-sheet could not be served in aforesaid manner, the charge- sheet shall be served by publication in a daily newspaper having wide*

circulation:

Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge-sheet, the charge Government servant shall be permitted to inspect the same before the Inquiry Officer.

(vi) Where the charged Government Servant appears and admits charges, the Inquiry Officer shall submit his report to the Disciplinary Authority on the basis of such admission.

(vii) Where the charged Government Servant denies the charge the Inquiry Officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charge Government Servant who shall be given opportunity to cross-examine such witnesses. After recording the aforesaid evidences, the Inquiry officer shall call and record the oral evidence which the charged Government Servant desired in his written statement to be produced in his defence:

Provided that the Inquiry Officer may for reasons to be recorded in writing refuse to call a witness.

(viii) The inquiry officer may summon any witnesses to give evidence or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental inquiries (Enforcement of Attendance of witnesses and production of documents) Act 1976.

(ix) The Inquiry Officer may ask any question he pleases, at any time of any witness or from person charged with a view to discover the truth or to obtain proper proof of facts relevant to charges.

(x) Where the charged Government Servant does not appear on the date fixed in the inquiry or at any stage of the proceeding inspite of the service of the notice on him or having knowledge of the date the Inquiry Officer shall proceed with the inquiry exparte. In such a case the Inquiry Officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged Government Servant.

(xi) The disciplinary Authority, if it considers if necessary to do so, may by an order appoint a Government Servant or a legal practitioner to be known as "Presenting Officer" to present on its behalf the case in support of the charge.

(xii) The Government servant may take the assistance of any other Government Servant to present the case on this behalf but not engage a legal practitioner for the purpose unless the presenting office appointed by the Disciplinary Authority is a legal practitioner of the disciplinary Authority having regard to the circumstance of the case so permits.

Provided that the rule shall not apply in following cases:

(i) Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge.

or

(ii) Where the Disciplinary Authority is satisfied, that for reason to be recorded by it in writing, that it is not reasonably practicable to held an inquiry in the manner provided in these rules; or

(iii) Where the Governor satisfied that, in the interest of the security of the state, it is not expedient to hold an inquiry in the manner provided in these rules"

12. As a matter of fact, Rule 3 deals with the punishment which has been classified into major and minor punishments. However, dismissal from service, which disqualifies from future employment is a major punishment

and Rule 7 deals with the procedure for imposition of major penalties, according to which a charge sheet is to be issued, reply is to be sought from the delinquent and in case, the delinquent denies the charges, then a full-fledged inquiry is to be conducted i.e. appointment of an inquiry officer, holding of an inquiry which includes oral inquiry, submission of inquiry report, issuance of show cause notice, reply of show cause notice or the order to be passed. Pertinently in the present case, the Court finds that though the inquiry officer was appointed and conducted inquiry but he did not hold oral inquiry which is mandatory. There is nothing on record even to suggest that the writ petitioner had shown her unwillingness for holding of oral inquiry. In **Girish Chandra Srivastava (supra)** in para-14, 15, 16, 20 and 22, following was observed:-

"14. One of us (Justice Sudhir Agarwal) in Rajesh Prasad Mishra v. Commissioner, Jhansi Division, Jhansi and others reported 2010 (1) UPLBEC 216 observed as under after detail analysis:

"Now coming to the question, what is the effect of non-holding of oral inquiry, I find that, 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. & 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 & another, 2000 (1) U.P.L.B.E.C. 541."

15. In another case in Subhash Chandra Gupta v. State of U.P., 2012 (1) UPLBEC 166 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. & 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 & another, 2000 (1) U.P.L.B.E.C. 541.

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 & another, 2000 (1) U.P.L.B.E.C. 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 & others, 2001 (2) U.P.L.B.E.C. 1475 and Laturi Singh v. U.P. Public Service Tribunal & others, Writ Petition No. 12939 of 2001, decided on 06.05.2005."

16. 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).

.....

20. 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.

....

22. In the present case the stand taken by the respondents is that the petitioner inspite of the opportunity given to him did not participate in the inquiry. Even if the said

statement is assumed to be correct the obligation on the department to prove the charges is not discharged."

13. Bearing in mind the fact that the oral inquiry has not been conducted and the said infirmity goes to the root of the matter, thus the impugned order cannot be sustained and is liable to be set aside. Accordingly, the writ petition is being decided in the following terms:-

(a) The order dated 06.11.2025 passed by Addl. Commissioner, Social Welfare Department, U.P. Lucknow is set aside.

(b) Matter stands remitted back to the Disciplinary Authority/ Inquiry Officer to hold a fresh inquiry, if it so chooses from the stage of submission to reply of the charge sheet.

(c) In case, inquiry is conducted, then the same shall be concluded within a period of three months from the date of production of certified copy of the order.

(d) The entitlement of all consequential benefits shall be subject to final outcome of the inquiry proceedings, if conducted.

14. Sri M.D. Singh Shekhar, learned Senior Counsel submits that in case, a decision is taken for holding inquiry, then the writ petition shall participate in the inquiry.

15. With the aforesaid observations, the writ petition stands **disposed of**.

January 9, 2026

N.S.Rathour

(Vikas Budhwar,J.)