



2026:AHC-LKO:20461

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - A No. - 8351 of 2024

Ashwanee Kumar

.....Petitioner(s)

Versus

State Of U.P. Thru. Prin. Secy., Women Welfare
Deptt. Lucknow And Others

.....Respondent(s)

Counsel for Petitioner(s)	: Jagdambika Prasad Tripathi, Indra Jeet Yadav, Vishwanath Prasad Tripathi
Counsel for Respondent(s)	: C.S.C.

Court No. - 7

HON'BLE MANISH MATHUR, J.

1. Heard Mr. Jagdambika Prasad Tripathi, learned counsel for petitioner and learned State Counsel for opposite parties.

2. Petition has been filed challenging order dated 25.09.2023 and review dated 14.08.2024 whereby petitioner has been punished by imposing major penalty of withholding three increments with cumulative effect and awarding Censure.

3. Learned counsel for petitioner submits that during the course his duties while on the post of District Probation Officer, he was issued a charge-sheet dated 28.04.2020 containing five charges to which a reply was submitted on 15.06.2020. It is submitted that in pursuance thereof, inquiry report dated 28.10.2020 was submitted resulting in passing of the order of punishment dated 25.09.2023 where against a review was preferred before the State Government in terms of Rule 14 of the U. P. Government Servant (Discipline and Appeal) Rules 1999 which has also been rejected by means of order dated

14.08.2024.

4. It has been submitted that since proceedings were initiated for imposition of major penalty, opposite parties were required to adhere to be procedure indicated in Rule 7 of the Rules of 1999 particularly with regard to oral inquiry being held.

5. It is submitted that a bare perusal of the inquiry report however will make it evident that petitioner has been found guilty of all five charges only on account of reply submitted by petitioner and on the basis of the complaint dated 30.10.2018 as well as certain reports and letters by the authorities concerned.

6. It is submitted that the inquiry report will reveal that neither the complainant nor any of the officials whose reports were relied upon were ever produced in the inquiry proceedings to substantiate or corroborate the aforesaid documents. He further submits that no oral inquiry whatsoever was ever held permitting petitioner to cross-examine the complainant and the authors of the reports which have been relied upon. Violation of Rule 7 of the Rules of 1999 has therefore been alleged.

7. It is also submitted that law enunciated by Hon'ble the Supreme Court in the case of ***Union of India & Anr. versus S. C. Parashar; (2006) 3 SCC 167*** indicates that major and minor penalty cannot be awarded by the same order. He has also placed reliance on judgments rendered by Hon'ble the Supreme Court in ***Roop Singh Negi versus Punjab National bank and others*** MANU/SC/8456/2008:(2009) 1 SCC (L & S) 398 and ***State of Uttar Pradesh and***

others versus Saroj Kumar Sinha reported in ***(2010) 2 SCC 772***.

8. Learned State counsel for opposite parties on the basis of counter affidavit 28.11.2024 has refuted submissions advanced by learned counsel for petitioner and submits that punishment has been imposed upon petitioner for disobeying directions issued by Higher Authorities and provisions of Rule 7 of the Rules of 1999 were followed for imposition of major penalty against petitioner. He submits that it is in view of facts that charges were found proven in inquiry proceedings that punishment orders have been passed after approval granted by the U. P. Public Service Commission. He further submits that there is no fundamental error of law in passing the impugned orders particularly the review petition which was rejected after examining all the facts indicated in the memorandum. Learned State counsel also submits that charge levelled against petitioner was quite serious and since it pertained to transferring pensionary amount of destitute women to accounts of ineligible women whereby dereliction of supervisory responsibility was evident.

9. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, the aspect requiring consideration is whether provision and procedure as indicated in Rule 7 of the Rules of 1999 were followed in the disciplinary proceedings or not?

10. With regard to such a consideration, this Court has perused the inquiry report submitted with covering letter dated 28.10.2020 and a

perusal of which reveals that with regard to charges levelled against petitioner, the evidence indicates not only the name of complainant Sandeep Kumar and his complaint dated 30.10.2018 but also the reports dated 27.11.2018, 29.12.2018, 11.12.2018 and 22.11.2018 along with other reports as well.

11. However from a perusal of the inquiry report, it transpires that neither the complainant nor the authors of the aforesaid reports were ever produced or summoned during the inquiry proceedings to establish oral inquiry and opportunity to petitioner to cross-examine the complainant and authors of such reports. Quite evidently impugned order has placed reliance on the aforesaid complaint and reports to arrive at a conclusion that petitioner was guilty of charges levelled against him.

12. In the considered opinion of this Court, once the inquiry officer was placing reliance not only upon the complaint but also reports indicated as evidenced in the charge-sheet, it was incumbent upon inquiry officer to have required the presence not only on the complainant but also the authors of such reports in order to enable petitioner to cross-examine them.

13. Rule 7 of the Rules of 1999 also enable presiding officer to ask questions from such witnesses who are produced during the inquiry proceedings in order to ascertain the veracity of allegations/ charges levelled against the delinquent employee.

14. Hon'ble the Supreme Court in the cases of **Roop Singh Negi** and **Saroj Kumar Sinha** (supra)

have held as follows:

15. The relevant portion of **Roop Singh Negi** (supra) is as follows:

"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."

16. The relevant portion of **Saroj Kumar Sinha** (surpa) is as follows :

"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 un rebutted 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."

17. Upon applicability of aforesaid judgments in the present facts and circumstances of the case, it is thus evident that the inquiry officer was required to permit oral inquiry after summoning or requiring presence of not only the complainant but the authors of reports upon which reliance has been placed in the inquiry report as also contemplated in terms of Rule 7 of the Rules of 1999.

18. Such a course of action having not been followed by the inquiry officer, vitiates the inquiry proceedings.

19. In the case of **S. C. Parashar** (supra) as well, Hon'ble the Supreme Court has clearly enunciated the aspect that major and minor penalty cannot be awarded with regard to same charges and by means of the same order.

20. Unfortunately even the review preferred by petitioner against the punishment order has been rejected without adverting either to be aspects of Rule 7 of the Rules of 1999 and judgments rendered by Hon'ble the Supreme Court.

21. In view of discussion made here-in-above, impugned order of punishment order dated

25.09.2023 and of review order dated 14.08.2024 are hereby quashed by issuance of a writ in nature of Certiorari granting liberty to opposite parties to inquiry a fresh during the charges levelled against petitioner from the stage of evidence. In case such inquiry proceedings are continued by the opposite parties, the same shall be concluded and decided expeditiously in the light of judgments and observations made here-in-above.

22. Resultantly, petition succeeds and is **allowed**. Parties to bear their own costs.

(Manish Mathur,J.)

March 20, 2026

Subodh/-