



A.F.R.

Reserved on 21.11.2025

Delivered on 29.01.2026

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - A No. - 235 of 2004

Jai Prakash Verma

.....Petitioner(s)

Versus

State of U.p.through Secy Revneue and 2 Ors

.....Respondent(s)

Counsel for Petitioner(s)	: Mohammad Ali, Avinash Chaturvedi, Mansi Singh, Mohan Singh, Rahul Singh, Ravindra Singh, Saket Gupta, Vishal Singh
Counsel for Respondent(s)	: C.S.C.,

Court No. - 25

HON'BLE AMITABH KUMAR RAI, J.

1. Heard Sri Rahul Singh, learned counsel for the petitioner, and Sri Nitin Mathur, learned Additional Standing Counsel for the State-respondent.

2. The instant writ petition has been filed seeking quashing of the punishment order of removal from service dated 02.08.1995 from the post of Collection Amin, as well as the order dated 27.11.2003 passed by the District Magistrate, Lakhimpur Kheri, whereby the representations of the petitioner dated 20.03.2002 and

18.03.2003 seeking re-employment in service were rejected.

3. The brief facts, shorn of unnecessary details, are that the petitioner was initially appointed to the post of Collection Amin in the year 1988 in Tehsil Dhauraha, District Lakhimpur Kheri. The petitioner was charge-sheeted and placed under suspension vide order dated 19.01.1994 on three charges; firstly, that during the period from 01.11.1993 to 31.12.1993, he made a recovery of only Rs.1,328/- against the outstanding main dues of Rs.46,436/- and a recovery of only Rs.495/- against miscellaneous dues amounting to Rs.2,45,565/-, which was much below the prescribed norms; secondly, that he failed to prepare the list of defaulters in respect of development tax dues amounting to Rs.6,446/- in his assigned area along with the statement of outstanding amounts; and thirdly, that he did not remain present on the fixed dates for filing of returns. In the meantime, criminal proceedings were also initiated against the petitioner and he was arrested by the police on 01.02.1994 and was later released on bail in April 1994.

4. The charge-sheet dated 19.01.1994 was served upon the petitioner on 01.02.1994. Thereafter, the petitioner submitted his reply to the charges vide letter dated 09.04.1994 and also filed Writ Petition No. 1941 (S/S) of 1994 challenging the order of suspension. The said writ petition was disposed of vide judgment and order dated 26.04.1994, whereby a timeline was fixed for completion of the disciplinary proceedings, failing which it was directed that the suspension order would stand

revoked. The petitioner served a copy of the order dated 26.04.1994 passed in the aforesaid writ petition upon the authorities vide letter dated 06.05.1994.

5. The Enquiry Officer, thereafter, on the basis of the reply submitted by the petitioner to the charges, submitted an enquiry report dated 20.09.1994. In the meantime, an additional charge-sheet dated 27.05.1994, containing four additional charges, was also issued to the petitioner and was served upon him by the District Magistrate, Kheri. Charge nos. 4 and 5 pertained to allegations of misappropriation of amounts of Rs. 4,181/- and Rs. 1,360/- respectively; Charge no. 6 related to delay on the part of the petitioner in depositing an amount of Rs. 45/- in the Sub-Treasury; and Charge no. 7 alleged that during the period of his suspension, the petitioner failed to hand over the documents in his possession to any other officer or employee, as a result whereof the department faced difficulty in effecting recovery of the said amounts from the concerned persons. In support of the aforesaid charges, reliance was placed upon the report of the Naib Tahsildar, Firozabad dated 06.05.1994 and the report of the Tahsildar, Dauraha dated 17.05.1994 along with the related records, and the petitioner was directed to submit his written reply to the said charges on or before 08.06.1994.

6. In relation to the aforesaid additional charges, the petitioner submitted an application before the District Magistrate, Kheri dated 06.06.1994, stating therein that he had not been supplied with the report of the Naib

Tahsildar, Firozabad dated 06.05.1994, the report of the Tahsildar, Dhauraha dated 17.05.1994, or the related records, on the basis of which the allegations had been levelled against him in the charge-sheet served upon him, and he accordingly requested that the said documents be furnished to him so as to enable him to submit an appropriate and effective reply to the charges.

7. The petitioner did not receive any reply from the District Magistrate, Kheri on the above-made application and proceeded to file his reply to the additional charge-sheet on 24.06.1994, wherein he submitted that the total amount of Rs. 5,541/- alleged to have been misappropriated under Charge nos. 4 and 5 had already been deposited by him on 16.04.1994 through different vouchers in compliance with the order dated 05.04.1994 passed by the learned District Judge on his bail application; with respect to Charge no. 6, it was stated that the collection charges amounting to Rs. 735/-, which were required to be deposited on 10.12.1993, were in fact deposited on 21.12.1993, the delay having occurred due to his sudden illness; and as regards Charge no. 7 relating to non-deposit of his documents in the Tehsil, the petitioner explained that he was arrested on 01.02.1994 and remanded to judicial custody on 02.02.1994, while the suspension order was served upon him only on 01.02.1994, that he remained in jail for about two months, and that he received the order of the Tehsildar only on 17.05.1994 directing him to hand over charge to Shri Ravindra Kumar, who had been appointed in his place, pursuant to which Shri Ravindra Kumar met him on 20.05.1994 and the charge was duly handed over; it was

specifically asserted that the delay in handing over charge was neither deliberate nor willful but occurred due to the aforesaid circumstances.

8. Oblivious to the petitioner's reply dated 24.06.1994, the Enquiry Officer proceeded to conclude the enquiry ex parte and submitted an enquiry report dated 26.09.1994, concluding that all seven charges against the petitioner, contained in the two charge sheets dated 19.01.1994 and 27.05.1994, stood proved. The enquiry report dated 26.09.1994 was forwarded to the District Magistrate by the Enquiry Officer (Sub-Divisional Magistrate), who, taking note of the reply dated 24.06.1994 to the additional charge-sheet passed order dated 08.10.1994, remitting the enquiry back to the Enquiry Officer for submission of fresh enquiry report after taking into consideration the reply submitted by the petitioner.

9. In the meantime, as per the directions of the Hon'ble High Court in Writ Petition No. 1941 (S/S) of 1994; the District Magistrate passed an order dated 22.05.1995 revoking the suspension and reinstating the petitioner in the services as the enquiry could not be completed within the time framed fixed by the Court. It was also mentioned in the said order that as additional charge-sheet was also issued against the petitioner containing serious charges, hence enquiry proceedings would continue against him.

10. Subsequently, the petitioner was served with a fresh enquiry report dated 05.05.1995 submitted by the Enquiry Officer, wherein Charge Nos. 1 and 3 to 7 were held to be partly proved against the petitioner, while

Charge No. 2 was found not proved. The said findings were forwarded to the District Magistrate for consideration. The District Magistrate did not concur with the findings of the Enquiry Officer insofar as Charge Nos. 1 and 3 to 7 were concerned, though he concurred with the finding that Charge No. 2 was not proved. Accordingly, a show-cause notice dated 09.06.1995 was issued to the petitioner calling upon him to explain as to why his services should not be terminated and requiring him to submit his reply within 14 days from the date of receipt of the notice. No reply to the show cause notice was submitted by the petitioner, though it was received by the petitioner on 13.06.1995. Thereafter, the District Magistrate passed punishment order of removal dated 02.08.1995 terminating the service of the petitioner.

11. It is also noteworthy that the petitioner did not immediately challenge the order of removal, as a criminal case relating to the charges of embezzlement/misappropriation of government funds had also been instituted against him. In the said criminal case, the petitioner was arrested on 01.02.1994 and was granted bail in April, 1994. Ultimately, the petitioner was acquitted in Criminal Case No. 1803 of 2000 under Section 409 IPC vide judgment and order dated 02.03.2002, granting him the benefit of doubt. After his acquittal, the petitioner submitted representations dated 20.03.2002 and 18.10.2003 seeking re-employment.

12. The representations dated 20.03.2002 and 18.10.2003 were rejected by the District Magistrate, Kheri, vide order dated 27.11.2003. Aggrieved thereby,

the petitioner filed the present writ petition challenging both the order of rejection dated 27.11.2003 and the removal order dated 02.08.1995.

13. The petitioner had not challenged the punishment order of removal dated 02.08.1995 immediately, but waited for acquittal in the criminal case and thereafter sought re-employment on the basis of acquittal, which was rejected vide order dated 27.11.2003. The petitioner was also not honorably exonerated in the criminal trial; rather, the benefit of doubt was given, as the charges could not be proved against him.

14. A bare perusal of the enquiry report dated 05.05.1995 reveals that the entire disciplinary proceeding was conducted in utter violation of the statutory provisions contained in the U.P. Civil Services (Classification, Control and Appeal) Rules, 1930 (hereinafter referred to as the "Rules, 1930"). The enquiry report was prepared solely on the basis of the reply of the petitioner to the charges and no personal hearing was granted to the petitioner by fixing any date, time or place for such hearing.

15. The procedure laid down in Rule 55 of the Rules, 1930 has to be followed before any order of punishment inflicting dismissal, removal, or reduction in rank is passed. It also provides for holding an oral enquiry. Rule 55 of the Rules, 1930 is reproduced hereinbelow:

55. (1) *Without prejudice to the provisions of the Public Servants Inquiries Act, 1850, no order (other than an order based on facts which had led to his conviction in a criminal court or by a Court Martial) of dismissal, removal or reduction in rank (which includes reduction to a lower post or, time-scale or to a lower stage in a time-scale but exclude the reversion to a lower post of a person who is officiating in a higher post) shall be passed on a person who is member of a Civil Service or holds a civil post under the State unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced in the form of definite charge or charges which shall be communicated to the person charged and which shall be so clear and precise as to give sufficient indication to the charged Government servant of the facts and circumstances against him. He shall be required, within a reasonable time to put in a written statement of his defence and to state whether he desires to be heard in person. If he so desires, or if the authority concerned so directs, an oral enquiry shall be held in respect of such of the allegations as are not admitted. At that enquiry such oral evidence will be heard as the inquiring officer considers necessary. The person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish, provided that the officer conducting the enquiry may, for sufficient reasons to be recorded in writing refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the grounds thereof. The officer conducting the enquiry may also separately from these proceedings make his own recommendation regarding the punishment to be imposed on the charged Government servant.*

(2) *Where the punishing authority itself inquires into any charge or appoints an*

inquiring officer for holding an enquiry into such charge, the punishing authority, if it considers it necessary to do so, may, by an order, appoint a Government servant or a legal practitioner, to be known as 'Pre-senting Officer' to present the case on its behalf in support of the charge.

(3) The Government servant may take the assistance of any other Gov-ernment servant to present the case on his behalf, but not engage a legal practitioner for the purpose unless the presenting officer appointed by the punishing authority is a legal practitioner or the punishing authority having regard to the circumstance of the case, so permits.

(4) This rule shall not apply where the person concerned has absconded, or where it is for other reasons impracticable to communicate with him. All or any of the provisions of the rule may, for sufficient reasons to be recorded in writing, be waived, where there is difficulty in observing exactly the requirements of the rule and those requirements can in the opinion of the inquiring officer be waived without injustice to person charged.

(5) This rule shall also not apply where it is proposed to terminate the employment of either temporary Government servant or of a probationer whether during or at the end of the period of probation, In such cases a simple notice of termination, which in the case of a temporary Government servant, must conform to the conditions of his service, will be sufficient.

16. It is made clear that Rule 55 of the Rules, 1930 has been made applicable to the members of the subordinate services vide Rule 1-A(5), vide Notification No. 2627/11-264 dated 08.08.1932, issued under Rule 54 of the Rules, 1930.

17. The requirement under Rule 55 of the Rules, 1930 for an oral enquiry is that if the delinquent employee so desires, or if the concerned authority so directs, an oral enquiry shall be held in respect of such allegations as are not admitted.

18. In the instant case, the charge-sheet dated 19.01.1994 specifically posed a question to the petitioner as to whether he required any oral enquiry and examination/cross-examination of any witness, and if so, the same was to be informed through his reply to the charge-sheet. The additional charge-sheet dated 20.05.1994 also poses the same question. However, the reply to the charge-sheet filed by the petitioner on 24.06.1994 does not reflect that the petitioner, at any stage, requested an oral enquiry. It appears that the Enquiry Officer, in the absence of any such request by the petitioner, proceeded with the departmental enquiry relying upon the reply submitted by the petitioner to the charges. Such approach of the Enquiry Officer in holding the oral enquiry cannot be appreciated. Even if the delinquent employee does not request for personal hearing the burden of proving the charges normally being upon the department, the enquiry officer was under obligation to fix a date for such enquiry, with information to the delinquent and to conduct enquiry wherein he was required to examine documentary as well as oral evidence, if any, in support of the charges.

19. The Hon'ble Supreme 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 Bank⁹ and Nirmala J. Jhala v. State of Gujarat : (2013) 4 SCC 301.**

20. In the case of **Roop Singh Negi (Supra)**, Hon'ble Supreme 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 hereinbefore 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. ..."

21. Same view was reiterated in **State of Uttar Pradesh v. Saroj Kumar Sinha : (2010) 2 SCC 772** wherein, Hon'ble Supreme Court has 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 (Supra)** 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."

22. In the case of **Nirmala J. Jhala (Supra)**, Hon'ble Supreme 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 [, 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.

23. In view of the above principles of law laid down by Hon'ble Supreme Court, this Court holds that the enquiry proceedings conducted against the petitioner pertains to charges punishable with major penalty, stood vitiated and non-est in the eyes of law as no oral evidence was recorded by the Enquiry Officer in support of the charges.

24. The Enquiry Officer, in his enquiry report dated 05.05.1995, has held the second charge not proved, whereas charges Nos.1 and 3 to 7 were partially proved. However, the disciplinary authority, while passing the order of punishment dated 02.08.1995, held charges Nos. 4 to 7 fully proved.

25. Thus, the disciplinary authority differed with the findings of the Enquiry Officer but did not give any opportunity to the petitioner by stating reasons for such disagreement, so as to enable the petitioner/delinquent employee to counter the findings recorded by the disciplinary authority before the passing of the punishment order.

26. The Hon'ble Supreme Court, in the cases of **Punjab National Bank v. Kunj Behari Misra, (1998) 7 SCC 84** and **Lav Nigam v. Chairman & MD, ITI Ltd., (2006) 9 SCC 440**, has held that in the event of a different view taken by the disciplinary authority, than that of Enquiry officer, then in such situations, the disciplinary authority is bound to give a notice stating its tentative conclusions to the delinquent officer so that he may have an opportunity to represent against such findings and persuade the disciplinary authority to accept the favourable conclusions of the Enquiry Officer.

27. This Court is of the view that such an approach adopted by the disciplinary authority/District Magistrate in passing the punishment order dated 02.08.1995, by recording disagreement with the finding of the Enquiry Officer but not putting the delinquent employee on notice stating its tentative conclusion is patently illegal in view of the judgments of the Hon'ble Supreme Court cited hereinabove. Consequently, the punishment order dated 02.08.1995, whereby the petitioner was inflicted with the punishment of removal, is liable to be set aside and is accordingly quashed. Normally, for such procedural defect in disciplinary proceeding, the matter is remitted back to

the disciplinary authority for holding fresh proceedings from the stage the defect has crept in. However, in the instant case, the allegations relates to the year 1993-1994 and hence, it would be not viable to remit the matter back for holding fresh enquiry after more than 30 years and as such the matter is not being remitted back for holding fresh enquiry.

28. Since this Court has already quashed the removal order dated 02.08.1995, the order dated 27.11.2023 rejecting the petitioner's representation for re-engagement loses its significance.

29. Keeping in view the fact that the acquittal of the petitioner in the criminal trial vide judgment and order dated 02.03.2002 in Case Crime No. 32 of 1994 under Section 409 I.P.C., Police Station Dhorhara, District Kheri, in Criminal Case No.1803 of 2000, was on the basis of benefit of doubt, it would be proper that the petitioner be allowed arrears of salary to the extent of 25 percent of salary admissible to him. Taking into consideration the fact that the petitioner did not challenge the punishment order dated 02.08.1995 till his exoneration in the criminal trial, which concluded on 02.03.2002, and thereafter challenged the punishment order by filing a writ petition in January, 2004, this Court is of the view that the relief to the petitioner, as a consequence of the quashing of the punishment order dated 02.08.1995, should be confined to arrears of salary from January, 2004, when he challenged the removal order for the first time by filing the writ petition, and not

for the earlier period, i.e., from 02.08.1995 till December, 2003.

30. The services of the petitioner shall be treated as continuous, and his entire period from the date of removal till the date of reinstatement shall be treated as qualifying service for pensionary and other benefits. He shall be entitled to all other service benefits, including pay increments, as admissible under the government orders issued from time to time. In case the petitioner has already attained the age of superannuation, he shall be allowed pension along with arrears of salary by treating him to be in continuous service from the date of removal till the date of superannuation. The arrears of salary will be admissible in the manner as indicated in the preceding paragraph.

31. The petitioner shall be granted all the benefits as directed above within a period of three months from the date of production of a certified copy of this order.

32. The writ petition stands **allowed**.

33. No order as to costs.

34. Before parting with, I acknowledge the assistance of Mr. Piyush Sinha, Research Associate, who assisted the Court in research relating to the present case.

(Amitabh Kumar Rai,J.)

January 29, 2026
Ashish Dewal