

(2012) 03 AHC CK 0117

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 11565 of 2012

Sri Lal Singh

APPELLANT

Vs

The State of U.P. and others

RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Constitution of India, 1950 — Article 311(2)
Uttar Pradesh Government Servants (Discipline and Appeal) Rules, 1999 — Rule 16,
3, 54, 6, 7

Citation : (2012) 03 AHC CK 0117

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble V.K. Shukla, J.—In the present case, petitioner has rushed to this Court questioning the validity of the decision dated 01.02.2012, Annexure-5 to the writ petition wherein order of punishment has been passed for making recovery from Lal Singh to the extent of share of Rs. 7,46,500/- for having caused loss to the State Government by misappropriating the amount meant for scholarship of socially backward classes. Brief background of the case as is reflected that petitioner has been performing and discharging duty as Senior Assistant in the office of District Social Welfare Officer, Kanpur Dehat. In respect of various serious irregularities being committed, petitioner was placed under suspension vide order dated 22.04.2000. Petitioner at the said juncture preferred writ petition before this Court wherein this Court proceeded to pass interim order and left it open for departmental proceedings to proceed. Thereafter on 21.08.2000 one Phool Chand Deputy Director, Headquarter was appointed as an inquiry officer and charge sheet dated 14.09.2000 was issued and thereafter it appears that certain new facts emerged and as per the same various amount in question has been misappropriated which was otherwise meant for extending benefit to the students from Scheduled Caste category. Petitioner was again placed under suspension vide order dated 26.09.2000 and one R.B. Sonkar Additional District

Development Officer, Headquarter has been nominated as Inquiry Officer, and charge sheet dated 26.09.2000 was issued. R.B. Sonkar did not complete inquiry and then by order dated 27.08.2001, Deputy Director Social Welfare Lucknow Division Lucknow has been appointed as Inquiry Officer and thereafter as there were two sets of disciplinary proceedings and it was pertaining to same district, it was resolved that inquiry be conducted by single Inquiry Officer and accordingly Phool Chand Deputy Director, Social Welfare Lucknow Division Lucknow was nominated as Inquiry Officer. As there was delay in not completing the inquiry as such suspension order was revoked on 28.05.2003 and thereafter it appears that Rama Kant Deputy Director, Headquarter was nominated as Inquiry Officer on 18.06.2008. Said Inquiry Officer submitted report and show cause notice was issued to the petitioner on 19.06.2008 and petitioner submitted his reply on 24.12.2008 and then it was resolved that matter be re investigated and one P.C. Upadhyay was appointed as Inquiry Officer. P.C. Upadhyay on the basis of reply submitted to the charge sheet submitted his report on 29.11.2009 and thereafter as petitioner has already attaining the age of superannuation, in this background on the premises that inquiry shall be treated to be in operation, impugned order in question has been passed for recovery of the amount in question.

2. Sri Islam Ahmad, learned counsel for the petitioner, has stated before this Court that the enquiry report is farce, as after submitting reply to the charge sheet no date has been fixed for holding of enquiry and based on the reply submitted, without holding enquiry opinion of guilt has been formed, the proceedings are in breach of natural justice as well the principles of equity and fair play, as such writ petition deserves to be allowed.

3. Countering the said submissions, learned standing counsel, on the other hand, has contended that rightful view has been taken in the matter, which need not be interfered with.

4. After respective arguments have been advanced, relevant Rules 6, 7 and 8 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999 are to be looked into, and for ready reference, they are being quoted below:

5. Pay and allowances etc. the suspension period.-After the order is passed in the departmental enquiry or in the criminal case, as the case may be under these rules, the decision as to the pay and allowances of the suspension period of the concerned Government servant and also whether the said period shall be treated as spent on duty or not, shall be taken by the Disciplinary Authority after giving a notice to the said Government servant and calling for explanation within a specified period under rule 54 of the Financial Hand Book, Volume-II, Part II to IV.

6. Disciplinary Authority.-The appointing authority of a Government servant shall be his Disciplinary Authority who, subject to the provisions of these rules, may impose any of the penalties specified in Rule 3 on him.

Provided that no person shall be dismissed or removed by an authority subordinate to that by which he was actually appointed.

Provided further that the Head of the Department notified under the Uttar Pradesh Class II Services (Imposition of Minor Punishments) Rules, 1973 subject to the provisions of these Rules shall be empowered to impose minor penalties mentioned in Rule 3 of these rules.

Provided also that in the case of a Government servant belonging to Group "C" and "D" posts, the Government, by a notified order, may delegate the power to impose any penalty, except dismissal or removal from service under these rules, to any Authority subordinate to the Appointing Authority and subject to such conditions as may be prescribed therein.

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 inquire 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 charges 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 witnesses proposed to prove the same along with oral evidences, if any, shall be mentioned in the charge-sheet.

(iv) The charged 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 the 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 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 charged Government servant shall be

permitted to inspect the same before the Inquiry Officer.

(vi) Where the charged Government servant appears and admits the 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 charges the Inquiry Officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charged 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 witness 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 Witness 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 in spite of the service of the notice on him or having knowledge of the date, the Inquiry Officer shall proceed with the inquiry ex parte. 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 it 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 his behalf but not engage a legal practitioner for the purpose unless the presenting officer appointed by the Disciplinary Authority is a legal practitioner or the Disciplinary Authority having regard to the circumstances of the case so permits

Provided that this 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 impracticable to hold an inquiry in the

manner provided in these rules; or

(iii) Where the Governor is 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.

8. Submission of enquiry report.-When the inquiry is complete, the Inquiry Officer shall submit its inquiry report to the Disciplinary Authority along with all the records of the inquiry. The Inquiry report shall contain a sufficient record of brief facts, the evidence and statement of the findings on each charge and the reasons thereof. The Inquiry Officer shall not make any recommendation about the penalty.

9. Action on Inquiry Report.-(1) The Disciplinary Authority may, for the reasons to be recorded in writing, remit the case of re-inquiry to the same or any other Inquiry Officer under intimation to the Government servant. The Inquiry Officer shall thereupon proceed to hold the inquiry from such stage as directed by the disciplinary authority, according to the provisions of Rule 7.

(2) The Disciplinary Authority, if it disagrees with the findings of the Inquiry Officer on any charge, record its own findings thereon for reasons to be recorded.

(3) In case the charges are not proved, the charged Government servant shall be exonerated by the Disciplinary Authority of the charges and informed accordingly.

(4) If the Disciplinary Authority, having regard to its findings on all or any of charges is of the opinion that any penalty specified in Rule 3 should be imposed on the charged Government servant, he shall give a copy of the inquiry report and his findings recorded under sub-rule (2) to the charged Government servant and require him to submit his representation if he so desires, within a reasonable specified time. The Disciplinary Authority, having regard to all the relevant records relating to the inquiry and representation of the charged Government servant, if any, and subject to the provisions of Rule 16 of these rules, pass a reasonable order imposing one or more penalties mentioned in Rule 3 of these Rules and communicate the same to the charged Government servant.

5. A bare perusal of the aforesaid Rules makes it clear that full fledged procedure has been provided for holding regular departmental enquiry before proceeding to award major punishment.

6. At this juncture the view point of this Court is being looked into. Division Bench of this Court in the case of Sharad Kumar Verma Vs. State of U.P. and Others, , has taken the view that even if it is accepted that petitioner was given adequate opportunity to inspect record, the present inquiry proceeding cannot be sustained as admittedly after submission of reply to the charge sheet, Inquiry Officer did not give any opportunity to the petitioner to participate in the inquiry nor fixed any date. Further it has been held that charges unless proved, can not form basis of any punishment, and in this background, disciplinary proceedings are vitiated. Paragraphs 9, 10, 11 and 12 of the judgment being relevant are being quoted below:

9. Even if it is accepted that the petitioner was given adequate opportunity to inspect record, the present enquiry proceeding cannot be sustained, as, admittedly after submission of reply to the charge sheet, the enquiry officer did not give any opportunity to the petitioner to participate in the inquiry nor fixed any date for leading evidence either to the department or to the delinquent officer. In fact, the requests dated 12.10.1998 and 26.10.1998 (annexures-5 and 6) have not at all been considered and the representation dated 6.6.2000 (Annexure-7) has been taken as reply to the charge sheet by the enquiry officer. This fact is evident from the averments made in para 19 of the counter affidavit. The State admits that the enquiry officer did not fix any date, time or place for holding the enquiry or for adducing evidence and the petitioner was also not called by him to participate in the enquiry after submission of reply to the charge-sheet but defends the order by emphatically asserting that since the charges were based on documents, no oral enquiry was needed. The argument is that charges stood proved by documentary evidence, which were available with the enquiry officer and, there for, no illegality has been committed, if the petitioner was not called for any oral hearing and no oral evidence was led. In support of the submission, it has also been argued that the petitioner in his reply dated 6.6.2000 has only prayed that an impartial enquiry report be submitted and had not asked for any personal hearing or opportunity to adduce evidence.

10. This question has come up before this Court very often and the Court had been explaining in all the cases of departmental proceedings that if the delinquent denies the charges then whether he asks for personal hearing or opportunity to participate in the proceedings or not, it is the bounden duty of the enquiry officer to afford such an opportunity. The enquiry officer requires that the charges levelled against the delinquent officer should stand proved on the basis of the material on record and the necessary evidence, which may be oral or documentary or both. The delinquent has not participated in the enquiry despite the opportunity being given is a separate issue but where no opportunity is afforded, the enquiry stands vitiated. The petitioner submitted his reply to the charge-sheet on 12.10.1998 and 21.10.1998 and in both the replies, he did not accept the charges but expressed his inability to give complete answer in the absence of the documents being supplied. In the representation dated 6.6.2000 again the petitioner raised the same plea and prayed that impartial enquiry report be submitted. The aforesaid request including the representation of the petitioner by no stretch of imagination can constitute an admission on his part to the charges levelled nor would mean that he has agreed for submitting of the enquiry report without associating the petitioner and without giving opportunity to lead evidence.

11. In departmental proceedings, the charges unless proved cannot form the basis of any punishment. The standard of proof is different as against the required standard in the case of a criminal trial but the charges levelled must stand proved on the basis of the relevant material. The moment charge is required to be proved, the necessity would arise for adducing evidence, which

may be documentary or oral or both. The burden to prove charges lies upon the departmental, therefore, the department owes its liability first to adduce evidence and take steps for proving the charge. It is after this stage that the delinquent would be required to rebut the evidence adduced and also to cross examine the witnesses produced or to nullify the documentary evidence by adducing such evidence, as may be necessary and may be available or to show the unworthiness of the documents which are sought to be relied upon but this can only be done if the enquiry officer does not fix a date for adducing evidence and not otherwise. Merely because the delinquent did not say so in so many words about his participation in the enquiry despite the charges not being admitted to him and they having been denied, the enquiry officer does not stand absolved of his legal obligation of holding enquiry in the manner prescribed. It is to be kept in mind that denial of charges and admission of the charges cannot be taken on the same footing. There may be a case where the delinquent denies the charges specifically and there may be a case where the delinquent does not refer to the charge but does not admit the charge and in such a case also the enquiry officer would be under legal obligation to hold the enquiry to see that the charges are proved or not. It is only where in a case the delinquent admits the charge, the department may not lead any evidence before the enquiry officer and the charge can be taken to be proved, as the facts admitted need not be proved.

12. In the instant case, admittedly the aforesaid procedure was not followed and that at no point of time the petitioner was associated with the enquiry and, therefore, he could not get any opportunity to rebut the documentary evidence, which was relied upon nor was in a position to adduce any evidence in rebuttal. The entire proceedings was thus conducted in violation of the principles of natural justice. The charges thus cannot be said to be proved against the petitioner and the enquiry stands vitiated on this ground alone.

7. Division Bench of this Court in the case of Subhash Chandra Sharma Vs. Managing Director, U.P. Co-op. Spg. Mills Federation Ltd., Kanpur and another, , has taken the view that for enquiry, date, time and place has to be fixed. Relevant paragraph 4 of the said judgment is being quoted below:

4. Several points have been raised in the petition, but this petition deserves to be allowed on one ground alone, and it is not necessary to go into the other grounds. In paragraph 5 of the petition, it has been stated that no enquiry was held nor any date for holding the enquiry was intimated to the petitioner nor was any evidence led in the said enquiry. The reply to paragraph 5 of the petition is contained in paragraph 5 of the counter affidavit. There is no denial in paragraph 5 of the counter affidavit to the allegation in paragraph 5 of the writ petition that no date for enquiry was fixed nor any evidence led in the said enquiry. All that has been said in paragraph 5 of the counter-affidavit is that in the charge-sheet "fifteen days" time was given to the petitioner to submit his reply, and thus the date in the enquiry was fixed. In our opinion, this does not mean that the date for the enquiry was fixed. The charge-sheet is Annexure-3 to the writ petition

and a perusal of the same shows that no date was fixed for the enquiry in the same nor was any date fixed in the supplementary charge-sheet. Thus, the allegation in paragraph 5 of the writ petition that neither the date for the enquiry was fixed nor evidence led in the same stands un rebutted. In paragraph 5 of the counter-affidavit, it has been alleged that petitioner had asked for some documents, but he was only allowed to see the documents. We are of the opinion this again does not mean that any date for the enquiry was fixed nor was any oral evidence led in the enquiry. In fact it has been admitted in paragraph 5 of the petition that no oral evidence was produced by the management.

8. Hon''ble Apex Court in the case of State of Uttaranchal and Others Vs. Kharak Singh, , as to in what way and manner domestic enquiry is to be concluded, has given guidelines. Relevant portion of the said judgment contained in paragraphs 5 to 11 of the said judgment is being quoted below:

5. Before analyzing the correctness of the above submissions, it is useful to refer various principles laid down by this Court as to how enquiry is to be conducted and which procedures are to be followed.

6. The following observations and principles laid down by this Court in Associated Cement Co. Ltd. Vs. The Workmen and Another, are relevant:

...In the present case, the first serious infirmity from which the enquiry suffers proceeds from the fact that the three enquiry officers claimed that they themselves had witnessed the alleged misconduct of Malak Ram. Mr. Kolah contends that if the Manager and the other officers saw Malak Ram committing the act of misconduct, that itself would not disqualify them from holding the domestic enquiry. We are not prepared to accept this argument. If an officer himself sees the misconduct of a workman, it is desirable that the enquiry should be left to be held by some other person who does not claim to be an eye-witness of the impugned incident. As we have repeatedly emphasized, domestic enquiries must be conducted honestly and bona fide with a view to determine whether the charge framed against a particular employee is proved or not, and so, care must be taken to see that these enquiries do not become empty formalities. If an officer claims that he had himself seen the misconduct alleged against an employee, in fairness steps should be taken to see that the task of holding an enquiry is assigned to some other officer. How the knowledge claimed by an enquiry officer can vitiate the entire proceedings of the enquiry is illustrated by the present enquiry itself....

... It is necessary to emphasise that in the domestic enquiries, the employer should take steps first to lead evidence against the workman charged, give an opportunity to the workman to cross examine the said evidence and then should the workman be asked whether he wants to give any explanation about the evidence led against him. It seems to us that it is not fair in domestic enquiries against industrial employees that at the very commencement of the enquiry, the employee should be closely cross-examined even before any other evidence is

led against him. In dealing with domestic enquiries held in such industrial matters, we cannot overlook the fact that in a large majority of cases, employees are likely to be ignorant, and so, it is necessary not to expose them to the risk of cross-examination in the manner adopted in the present enquiry proceedings. Therefore, we are satisfied that Mr. Sule is right in contending that the course adopted in the present enquiry proceedings by which Malak Ram was elaborately cross-examined at the outset constitutes another infirmity in this enquiry.

7. In *Managing Director, ECIL, Hyderabad and others v. B. Karunakar and others*, 1993 (67) FLR 1230 (SC), it was held:

Where the enquiry officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached.

While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report. the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the 42nd Amendment. The second stage consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the enquiry officer. The latter right was always there. But before the Forty-second Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the Forty-second Amendment of the Constitution is to advance the point of time at which representation of the employee against the enquiry officer's report would be considered. Now the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence in respect of the charges.

Article 311 (2) says that the employee shall be given "reasonable opportunity of being heard in respect of the charges against him". The finding on the charges

given by a third person like the enquiry officer, particularly, when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. The proviso to Article 311 (2) in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the enquiry officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the enquiry officer's report and conclusion of such reply by the disciplinary authority also constitute an integral part of such inquiry.

Hence, when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt of innocence of the employee with regard to the charges leveled against him. That right is part of the employee's right to defend himself against the charges leveled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

8. In *Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another*, , it was held:

34. But in cases where the termination is preceded by an inquiry and evidence is received and findings as to misconduct of a definitive nature are arrived at behind the back of the Officer and where on the basis of such a report, the termination order is issued, such an order will be violative of principles of natural justice inasmuch as the purpose of the inquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular departmental inquiry. In such cases, the termination is to be treated as based or founded upon misconduct and will be punitive. These are obviously not cases where the employer feels that there is a mere cloud against the employees conduct but are cases where the employer has virtually accepted the definitive and clear findings of the Inquiry Officer, which are all arrived at behind the back of the employee -even though such acceptance of findings is not recorded in the order of termination. That is why the misconduct is the foundation and not merely the motive, in such cases.

9. In *Syndicate Bank and Others Vs. Venkatesh Gururao Kurati*, , the following conclusion is relevant:

18. In our view, non-supply of documents on which the Enquiry Officer does not rely during the course of enquiry does not create any prejudice to the delinquent. It is only those documents, which are relied upon by the Enquiry Officer to arrive at his conclusion, the non-supply of which would cause prejudice being violative of principles of natural justice. Even then, the non-supply of those documents prejudice the case of delinquent officer must be established by the delinquent

officer. It is well settled law that the doctrine of principles of natural justice are not embodied rules. It cannot be put in a straitjacket formula. It depends upon the facts and circumstances of each case. To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of principles of natural justice.

10. In regard to the question whether an enquiry officer can indicate the proposed punishment in his report, this Court, in a series of decisions has pointed out that it is for the punishing/disciplinary authority to impose appropriate punishment and enquiry officer has no role in awarding punishment. It is useful to refer to the decision of this Court in *A.N.D Silva v. Union of India*, 1962 Supp 1 SCR 968, wherein it was held:

In the communication addressed by the Enquiry Officer the punishment proposed to be imposed upon the appellant if he was found guilty of the charges could not properly be set out. The question of imposing punishment can only arise after enquiry is made and the report of the Enquiry Officer is received. It is for the punishing authority to propose the punishment and not for the enquiring Authority.

11. From the above decisions, the following principles would emerge:

(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, 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 concerned materials relied on by the enquiry officer to enable him to offer his views, if any.

12. On the parameters as quoted above, facts of the present case as is reflected that on the repeated occasions inquiry officers have been changed and at last on 25.05.2009, P.C. Upadhyaya, In charge Deputy Director, Social Welfare Kanpur Division Kanpur was appointed as Inquiry and before him reply has been submitted by the petitioner, to both the charge sheets. Said inquiry officer submitted his report on 29.11.2009 and thereafter in reference of 12 charges, two charges were found to be partly proved and 10 charges were found to be

fully proved. Fact of the matter is that in the present case after reply has been submitted to the charge sheet in question at no point of time any date, time and place has been fixed by the Inquiry Officer to inquire as such for all practical purpose enquiry in question is exparte as inquiry has been held in closed room without fixing any date, time and place for holding an enquiry. Such an inquiry is no inquiry in the eyes of law, and cannot be approved of. Any action based on said enquiry can also not be approved of.

13. Consequently, writ petition succeeds and the same is allowed. The order impugned dated 01.02.2012, Annexure-5 to the writ petition is hereby quashed and set aside. The Disciplinary Authority is directed to conclude the proceedings from the stage, when petitioner has submitted reply to the charge-sheet, within a period of four months from the date of receipt of a certified copy of this order, after fixing date, time and place for enquiry. The petitioner is directed to extend full cooperation in this behalf. No order as to costs.