

**(1999) 11 AHC CK 0004**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 109 (SS) of 1991**

Virendra Bahadur Singh

APPELLANT

Vs

District Judge, Faizabad and others

RESPONDENT

**Date of Decision :** 03-11-1999

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Uttar Pradesh Subordinate Courts Staff (Punishment and Appeal) Rules, 1976 — Rule 4, 4(1), 5, 7(1), 7(2)

**Citation :** (1999) 4 AWC 3571 : (1999) AWC 3571

**Hon'ble Judges :** R.H. Zaidi, J

**Bench :** Single Bench

**Advocate :** A.R. Khan, Asif Hasan, H.O. Singh and K.K. Srivastava, for the Appellant; C.S.C., for the Respondent

## Judgement

R.H. Zaidi, J.—By means of this petition under Article 226 of the Constitution of India, petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 7.9.91 passed by District Judge, Faizabad dismissing the petitioner from the post of peon of Civil Court, Faizabad.

2. Relevant facts of the case as unfolded from the material on record, in brief, are that the petitioner was appointed on the post of peon in the Judgeship of Faizabad on 13.11.1987. It was on 1.6.89 Km. Sudha Singh, VIth Addl. Munsif Magistrate, Faizabad made a complaint to the District Judge that the petitioner firstly approached her not to grant bail to the accused persons but when he failed in his attempt, he has interpolated release order issued, in Case Crime No. 33 of 1989. He added figure "1" in crime number and Interpolated Crime No. 93 of 1989 as Crime No. 193 of 1989, so that the accused who have allegedly assaulted father-in-law of his real brother Sri Ram Bahadur, may not be released on bail. On account of aforesaid interpolation, personal bonds furnished by the accused were returned on 1.6.89 with the report that the wrong crime number "193" was mentioned in the bonds. The complaint was based on information given by Sri Vldyadhar Tripathi, Advocate to Km. Sudha Singh, On receipt of the

complaint. District Judge appointed one Sri I. J. Verma, VIIIth Addl. Munsif Magistrate as Enquiry Officer to make enquiry in the case and submit the report. The said Enquiry Officer issued notice to the petitioner to appear before him on 22.6.1989 at 4.0 O'clock. Petitioner appeared before the Enquiry Officer. The Enquiry Officer after making preliminary enquiry submitted his report dated 17.7.1989 along with the evidence which has come on record during the course of enquiry. On the basis of said report Sri R. M. Bajpai, Addl. District Judge was appointed as Enquiry Officer. Thereafter, a charge-sheet was prepared by the aforesaid Enquiry Officer and forwarded to the District Judge on 28.9.89. The District Judge communicated/served the charge-sheet upon the petitioner on 26.6.1990. in the meanwhile, Sri Bajpai was transferred and Sri R. S. Pandey, Addl. District Judge was appointed as Enquiry Officer. On receipt of the charge-sheet, petitioner filed an application to supply him copies of certain documents. Petitioner, thereafter, submitted his explanation denying the charges levelled against him. It was asserted that from the evidence on record, no case for any disciplinary action against the petitioner was made out. The complaint was stated to be the result of collusion of Vidyadhar Tripathi. Advocate and Km. Sudha Singh. Petitioner also made a request for summoning Km. Sudha Singh for examination and cross-examination on oath.

3. The Enquiry Officer conducted and concluded the enquiry, thereafter submitted his report on 16.8.1990, with the recommendation for dismissal of the petitioner from service. Enquiry Officer also reported that the petitioner was permitted to inspect the record on 7.7.90. It is stated that the petitioner was not permitted to inspect the entire record. In his reply, the petitioner also stated that actually Ram Kumar and Wahid Khan, peons were given the release warrant from the office of Nazarat. who handed over the same to jail authorities. Said persons, according to him, were material, witnesses but were not examined in the case.

4. It was on 7.9.90 that a notice was issued to the petitioner along with the copy of the enquiry report to show-cause as to why he be not dismissed from service. In reply of the said notice, petitioner asserted for recording statement of Km. Sudha-Singh and for an opportunity to cross-examine her. as according to him, she was very material witness in the case as she made the complaint, on the basis of which disciplinary proceedings were initiated. Grievance of non-examination of Abdul Wahid and Ram Kewal was also reiterated. The District Judge, Faizabad after receiving the reply and perusing the material on record, passed the impugned order dated 7.9.91 dismissing the petitioner from service as the explanation submitted by the petitioner was unsatisfactory and the charges levelled against him were fully proved, hence the present petition.

5. It has been urged by learned counsel for the petitioner that the material witnesses, i.e., the complain- ant Kumari Sudha Singh, VIth Addl. Munsif Magistrate, Faizabad. two peons Ram Kewal and Abdul Wahid were not examined in the case and the petitioner was also not afforded opportunity to cross-examine the said witnesses. Therefore, the charges levelled against the petitioner cannot

be held to have been proved, that the petitioner was deprived of an opportunity to defend himself in the case and that the findings recorded by the District Judge, in the impugned order are not based on any relevant evidence. According to him, the impugned order was liable to be quashed and the respondents were liable to be directed to reinstate the petitioner on the post held by him before he was dismissed from service.

6. On the other hand, learned standing counsel appearing for the respondents supported validity of the impugned order. It was submitted that the impugned order was appealable and appeal could be filed before the High Court on the administrative side. No such appeal having been filed by the petitioner the writ petition was liable to be dismissed on the ground of availability of statutory alternative remedy. It was urged that the District Judge, after perusing the whole material on record, recorded clear and categorical findings that the charges levelled against the petitioner were fully proved and petitioner was rightly dismissed from service. Said findings are based on relevant evidence on record. It has also been urged that the District Judge has rightly held that by non-examination of Km. Sudha Singh no material prejudice was caused to the petitioner and that it was, under the facts and circumstances of the present case not necessary to examine her as a witness. It was urged that the petitioner was afforded full opportunity to defend himself in the case and the impugned order was passed after affording full opportunity of hearing to him. The writ petition was, therefore, liable to be dismissed.

7. I have considered submissions made by learned counsel for the parties and also perused the record.

8. The petitioner happened to be a class IV employee (peon) in the Judgeship of Faizabad, the service conditions of Ministerial and class IV staff of the subordinate courts are governed by U. P. Subordinate Courts Staff (Punishment and Appeals) Rules. 1976 (for short "the Rules"). The disciplinary proceedings against the members of the ministerial and class IV staff of the subordinate courts, are to be conducted in accordance with the provisions of the Rules. In the present case. disciplinary proceedings were conducted against the petitioner and ultimately the order of dismissal from service was passed by the District Judge, Faizabad against the petitioner. Dismissal from service is one of the punishment prescribed under Rule 4 of the Rules which can be awarded by the punishing authority. Sub-rules (1) and (2) of Rule 7 of the Rules are relevant for the purposes of present case which are quoted below :

"7. Appeals.--(1) A person against whom an order imposing a penalty specified in clause (a), clause (b) of sub-rule (1) of Rule 4 has been passed by the presiding officer of a subordinate court, other than the Court of District Judge, may file an appeal to the District Judge.

(2) A person against whom an order :

(a) imposing a penalty specified in any of the clauses (a) to (h) of sub-rule (1) of

Rule 4 has been passed by a District Judge ; or

(b) if enhancement of punishment has been made by a District Judge in appeal filed under sub-rule (1) of this rule ; may file an appeal to the High Court."

9. In accordance with the provisions of the abovenoted rule, the petitioner could file an appeal against the order of dismissal passed against him by District Judge before the High Court on the administrative side. No such appeal was filed by the petitioner against the said order, he instead filed the present petition under Article 226 of the Constitution of India. In view of the availability of statutory alternative remedy, objection raised by learned standing counsel could be upheld but in view of the fact that present petition was entertained by this Court in the year 1992 and time was granted to the Chief Standing Counsel to file counter-affidavit and also to the petitioner to file rejoinder-affidavit and since the counter and rejoinder-affidavits have already been filed, I do not consider it proper at this stage after expiry of about 7 years, to dismiss this petition on the ground of availability of alternative remedy. The preliminary objection raised by learned standing counsel to that effect is overruled.

10. The question which arises for consideration in the present case. Is as to whether the disciplinary proceedings were conducted against the petitioner in accordance with the Rules and as to whether the petitioner was afforded adequate opportunity to defend himself. As stated above, the disciplinary proceedings against the petitioner were to be conducted in accordance with the Rules. Rule 5 of the Rules provides a detailed procedure for conducting the disciplinary proceeding, the relevant portion of which is quoted below :

"5. Procedure in respect of major-punishments.--(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 lower post or time-scale, or to a lower stage in a time-scale but excludes the reversion to a lower post of a person who is officiating in a higher post) shall be passed on any person unless he had been informed in writing of the grounds on which it is proposed to take action and had 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 a definite charge or charges which shall be communicated to the person charged. The charge or charges shall be so clear and definite as to give sufficient indication to the charged Government servant of the allegations 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 Inquiry shall be held in respect of such of the allegation as are not admitted. At that inquiry such oral evidence will be heard as the Enquiring 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 inquiry 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 inquiry may also separately from these proceedings, make his own recommendations regarding the punishments to be imposed on the Government servant charged.

Explanation I.--The procedure laid down in this sub-rule shall not apply where the person concerned has absconded, or where it is, for any other reason to be recorded in writing. Impracticable to communicate with him. All or any of the provisions of this sub-rule may for sufficient reasons to be recorded in writing be waived, where there is difficulty in observing exactly the requirements of this sub-rule and those requirements can in the opinion of the Enquiry Officer be waived without injustice to the person charged.

Explanation II.--This sub-rule shall also not apply where it is proposed to terminate the employment of either a 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."

11. The petitioner was holding the post of peon in the temporary capacity but since his services were proposed to be terminated by way of punishment, the provisions of Explanation II, referred to above, will have no application in the present case. The proceedings had to be conducted and concluded in accordance with the aforesaid rules as they are normally conducted against a permanent employee. As in cases of awarding of punishment, there is no distinction so far as the procedure is concerned between a temporary and a permanent employee. Grievance of the petitioner is that the witnesses who were necessary to be examined in the case, were not examined and that he was, thus, deprived of an opportunity to cross-examine the witnesses. It was also urged that the documents which were necessary to defend the case, were not supplied to the petitioner. In the present case, the preliminary inquiry was conducted by the inquiring Officer who after conducting the inquiry submitted the report. On the basis of the preliminary inquiry, charge-sheet was prepared against the petitioner and same was supplied to him by the competent authority. The petitioner was also afforded an opportunity to file his explanation in his defence. Along with the charge-sheet, however, the documents which were proposed to be relied upon against the petitioner and upon which the said charges were based, were not supplied. The petitioner raised objection and filed an application before the Inquiring Officer to supply the said documents. It has been stated in the report of the Inquiring Officer that the petitioner was thereafter permitted to inspect the record twice. The petitioner inspected the record and did not thereafter raise any objection with regard to non-supplying of documents, therefore, in my opinion, by non-supply of documents along with the charge-sheet, no prejudice was caused to the petitioner and it cannot be said that the petitioner was not afforded

an opportunity to defend himself, on this Score.

12. So far as the question of calling the main witnesses at the instance of the petitioner is concerned. Rule 5 of the Rules, referred to above, specifically provided that 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 have wished provided that the officer conducting the inquiry may for sufficient reasons to be recorded in writing, refuse to call a witness. It has also been provided that all or any of the provisions of the sub-rule may for sufficient reasons to be recorded in writing, be waived where there is difficulty in observing exactly the requirements of sub-rule and those requirements can in the opinion of the Enquiring Officer be waived without injustice to the person charged.

13. As has been stated above, the petitioner since very beginning has been insisting upon for calling the complainant Km. Sudha Singh. VIth Addl. Munsif-Magistrate Faizabad. Abdul Wahid Khan and Ram Kewal as witnesses in the case as the disciplinary proceedings against the petitioner were Initiated on the complaint made by Km. Sudha Singh. The petitioner for the said purpose also, filed an application on 18.9.90. a copy of which is contained as Annexure-10 to the writ petition. However, no order appears to have been passed on the said application either allowing or rejecting the application. No reasons appear to have been recorded by the Enquiry Officer for not calling Km. Sudha Singh and two other witnesses and for not affording any opportunity to cross-examine the said witnesses to the petitioner. The Enquiring Officer could reject the application filed by the petitioner but he had to record sufficient reasons for the same in writing. No such reasons appear to have recorded by the Enquiring Officer. The District Judge, however, while passing the final order of dismissal from service against the petitioner has been recorded reasons for not calling Km. Sudha Singh and two other witnesses and for not affording opportunity to the petitioner to cross-examine the said witnesses. It has been held that by the time the inquiry was entrusted, the Enquiry Officer Km. Sudha Singh was transferred from Faizabad. It has also been held that the petitioner has been making filthy allegations and he wanted her in the witness box in order to malign her. It has also been observed that the petitioner was a haughty and impertinent who can make any allegation against any officer without the least repentance. For all these reasons, it has been held that it was not necessary to examine Km. Sudha Singh in the disciplinary proceedings against the petitioner and to permit the petitioner to cross-examine her. In view of the clear and express provisions of the rules referred to above, the reasons for not calling the witnesses, for not recording their evidence, for not affording an opportunity to cross-examine the witnesses are to be recorded by the Enquiry Officer and not by the punishing authority. Therefore, the reasons recorded by the District Judge in the impugned order are of no consequence. The disciplinary proceedings against the petitioner were initiated on the basis of the letter alleged to have been written by Km. Sudha Singh. The contents of the said letter were emphatically denied by the petitioner, therefore, it was necessary to examine Km. Sudha Singh as a witness

in the disciplinary proceedings particularly when her statement was recorded on oath in the preliminary enquiry, and to afford an opportunity to the petitioner to cross-examine her if the Enquiry Officer was to record finding on the question as to whether the petitioner has approached Km. Sudha Singh not to grant bail to the accused persons in the case crime number to be noted above. Km. Sudha Singh having not been examined and the letter alleged to have been written by Km. Sudha Singh having not been proved in accordance with law, the allegations made against the petitioner that he approached Km. Sudha Singh not to grant bail to the accused in the above noted case, remained unproved. The finding recorded by the District Judge to the contrary is based on evidence but upon surmises and conjectures and is not sustainable in law. The said allegations having not been proved, there arises no question of any findings on Charge No. 2 against the petitioner as he will have no reasons to interpolate the warrant of release. The provisions of rules in so far they provide for examination of witnesses and opportunity to cross-examine and to defend the delinquent employee, are substantive and mandatory in nature. Violation of the said provisions in the absence of any reasons recorded by the Enquiring Officer rendered the proceedings invalid.

14. In view of the aforesaid discussions, impugned order of dismissal dated 7.9.91 and the disciplinary proceedings from the stage after the petitioner filed his explanation to the charge-sheet, are liable to be quashed.

15. The writ petition succeeds and is allowed in part. Order dated 7.9.91 passed by District Judge, Faizabad and the disciplinary proceedings after the petitioner filed his explanation to the charge-sheet, are hereby quashed. The respondents shall, however, be at liberty to conduct and conclude disciplinary proceedings in accordance with law and in the light of the observations made above, failing which petitioner will be entitled to be reinstated on the post of peon held by him before he was dismissed from service with all consequential benefits.