



Akhilesh Kumar Pandey v. Union of India, (CAT)(Allahabad Bench) : Law Finder Doc Id # 2750363

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CENTRAL ADMINISTRATIVE TRIBUNAL

(Allahabad Bench)

Before:-Mr. Justice Om Prakash VII, Member (Judicial) and Mr. Mohan Pyare, Member (Administrative).

Original Application No. 813 of 2019. D/d.14.07.2025.

Akhilesh Kumar Pandey - Applicant

Versus

Union of India and ors. - Respondents

For the Petitioner:- Shri. Ashish Srivastava.

For the Respondent:- Shri. Vinod Kumar Pandey.

IMPORTANT

Service Law - Termination of employee for alleged fraudulent appointment - Inquiry conducted without payment of subsistence allowance - Violation of principles of natural justice - Inquiry and termination set aside with liberty to conduct fresh inquiry.

A. Service Law - Termination of employment - Inquiry conducted ex parte without paying subsistence allowance - Principles of natural justice violated - Held, non-payment of subsistence allowance deprived the delinquent employee of reasonable opportunity to defend himself in inquiry - Inquiry proceedings and termination order quashed.

[Paras [6](#) to [13](#)]

B. Service Law - Employer's obligation in inquiry proceedings - Burden to prove allegations in disciplinary proceedings lies on employer - Inquiry officer must ensure allegations are proven with oral and documentary evidence even in ex parte inquiries.

[Paras [10](#) to [13](#)]

C. Service Law - Reinstatement with consequential benefits - Tribunal allowed reinstatement with arrears of salary and subsistence allowance - Liberty granted to employer to initiate fresh inquiry in accordance with law.

[Paras [14](#) to [15](#)]



Cases Referred :-

Anand Kumar Tiwari v. Union of India, Original Application No. 330/00842/2019 dated 15.12.2022

[Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., 1999 \(2\) ESC 1009 \(SC\)](#)

[Commissioner of Income Tax-1 Agra v. Central Administrative Tribunal, Writ A No. 3260 of 2005](#)

[Ghanshyam Das Shrivastava v. State of Madhya Pradesh, 1973 SCC\(L&S\)289](#)

[Jagdamba Prasad Shukla v. State of U.P., 2000 \(4\) ESC 2431 \(SC\)](#)

[M. Paul Anthony v. Bharat Gold Mines Ltd.](#)

Union of India through General Manager, Northern Railway v. Anand Kumar Tiwari, Writ - A No. 432 of 2006

ORDER

Mr. Justice Om Prakash VII, Member (Judicial). - Shri. Ashish Srivastava, learned counsel for the applicant and Shri. Vinod Kumar Pandey, learned counsel for the respondents, are present.

2. The instant original application has been filed seeking following relief:

"(i) This Hon'ble Tribunal may be pleased to quash the impugned orders dated 27-10-2018 and 27-02-2019 issued by the respondent no. 3 & 2 (Annexure No. A-1 & A-2) accordingly.

(ii) This Hon'ble Tribunal may be pleased to direct the respondents to reinstate the applicant in service with all consequential benefits.

(iii) This Hon'ble Court may be pleased to direct the respondents to pay the arrear of salary from the date of termination to the date of reinstatement i.e. 20-03-2001 to 06-10-2016 along with 18% interest till the date of final payment.

(iv) This Hon'ble tribunal may be pleased to direct the respondents to reinstate the services of the applicant with immediate effect.

(v) Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case may be given in favour of the applicant.

(vi) Award the costs of the original application in favour of the applicant."

3. The brief facts of the case are that the father of the applicant was working as Khalasi in Regional Diesel Locomotive Shed, Mughalsarai and since father of the applicant was declared unfit, the applicant requested for his appointment on compassionate grounds and he was asked to join the duty of Khalasi on 21.02.1994 and the applicant started working as Khalasi in the said Diesel Locomotive Shed, Mughalsarai and subsequently he was given Token No. 95. After some time, the Government took a decision to close down the Diesel Locomotive Shed and as such



willingness of employees was taken if they are interested to join the other division. As per willingness of the applicant, he was posted under the respondent No. 3. All of sudden, vide order dated 20.03.2001, the service of the applicant was terminated on the ground that applicant has secured appointment fraudulently on the basis of forged documents. Being aggrieved of the order of termination, the applicant filed OA No. 1470/2001 which was allowed by the Tribunal on 09.11.2004. The operative portion of the order is reproduced below:-

"8. In the result in view of the discussion made above, the OA succeeds on merit and is accordingly allowed. The respondents are directed to reinstate the applicant forthwith with the liberty to the respondents to initiate the disciplinary proceedings in accordance with law if so advised".

4. Aggrieved against non-compliance of the order dated 09.11.2004, applicant filed contempt petition. However, the respondents filed writ petition No. 291 of 2006 before Hon'ble High Court and in view of pendency of writ petition, the contempt proceeding was dropped. After exchange of the pleadings, the writ petition was finally dismissed on 05.05.2016 with observation that "we do not find any ground entitling petitioners for grant of any of above reliefs. No interference, therefore, is called for". Respondents filed a recall application against the order dated 5.5.2016. Hon'ble High Court vide order dated 24.1.2017 again dismissed the Writ Petition with observation that "We find no illegality in the order passed by the Tribunal. The writ petition is devoid of merit and is accordingly dismissed." The respondents in compliance of order of Hon'ble High Court dated 5.5.2016 had issued order dated 20.9.2016 (Annexure No. A-5 to the O.A), whereby reinstated the applicant in Railway Service as Khalasi with immediate effect. The aforesaid letter was received by the applicant on 29.09.2016 and applicant appeared before the office of the respondent No. 3 for resuming his duties but applicant was served with a memorandum dated 06.10.2016 (Annexure No. A-6 to the O.A.) whereby he was placed under suspension under Rule 5 (1) of Railway Servants (Discipline and Appeal) Rules, 1968 with immediate effect. Against the suspension order, applicant submitted representation and on 06.10.2016, the respondents have lodged an FIR against the applicant under section 420 of IPC. Respondent No. 3 issued charge sheet (SF-5) against the applicant on 20.10.2016 under section 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. Applicant also submitted his reply against the charge sheet denying the charges leveled against him. Thereafter inquiry officer has been appointed and inquiry officer has submitted a cryptic and non-speaking inquiry report. Applicant submitted his representation against the inquiry report. The respondents on 13.11.2018 issued an order dismissing the applicant from service. Applicant preferred an appeal against the order of disciplinary authority on 24.12.2018, which was rejected by the appellate authority on 27.02.2019.

5. Per contra, learned counsel for respondents has filed counter reply stating therein that applicant is frequently changing his stand regarding mode of his initial appointment and he is just trying to mislead the Hon'ble Tribunal. Earlier, when the Railway Administration came to know that on the basis of forged, concocted and fake documents, the applicant had shown himself as being appointed in the Railway Department in the Diesel Locomotive Shed, Mugalsarai, later on he had shown himself to be transferred on his own request in then Dy. COS/JU now at present Dy.



CMM/JU. A detailed inquiry was conducted in respect of the appointment of the applicant by the Vigilance Department and after getting all the relevant information from the Lucknow Division as well as from the Chief Medical Superintendent, service of the applicant had been terminated vide order dated 20.3.2001. Applicant filed O.A. No. 1470 of 2001 before this Tribunal. In the present O.A., applicant has alleged that he was appointed as Khalasi in the office of Loco Shed, Mugalsarai. It is stated that as per the forged, concocted and fake documents available with the answering respondents, the applicant was shown to be appointed on compassionate ground vide letter dated 25.11.1993. It is further stated that while working at Jodhpur Division, on the basis of a complaint, a detailed Vigilance Investigation was made by the General Manager (Vigilance) Baroda House and during investigation, information in respect of Medical Memo as well as so called appointment were sought from the concerned Chief Medical Superintendent, Lucknow and from the office of Divisional Railway Manager, Northern Railway, Lucknow. Chief Medical Officer, Lucknow vide letter dated 22.10.1998 informed that Medical memo relating to the applicant do not pertain to books of Divisional Hospital, Northern Railway, Lucknow nor there is any book of this series in record. Similarly, the Divisional Railway Manager, Northern Railway, Lucknow vide letter dated 13.11.1998 informed that no appointment letter dated 25.11.1993 had been issued by their office and it seems to be forged. During the investigation, the DRM, Lucknow vide letter dated 8.1.1999 informed that no such letter bearing No. E/WB/4572/ACG dated 30.11.1993 and E/WB/4563/ACG dated 25.11.1993 have been issued from this office. It was further informed that letters issued from this Office bearing No.s E/WB/ACG/456 dated 3.95 and E/WB/ACG/4572 dated 25.7.1994 are in favour of Shri. Mohd. Imran, Mohd. Ankil and Mohd. Tauheed. During the investigation, the statement of the applicant was also recorded and the applicant accepted that he was given appointment on compassionate grounds and his father is still alive. It is further stated that during the investigation, the applicant was given proper opportunity of hearing.

6. Rejoinder affidavit has also been filed in which the applicant has reiterated the facts as stated in the OA and denied the contents of the counter affidavit. Written submissions was filed on behalf of learned counsel for the respondents which is taken on record. Heard learned counsel appearing for the parties.

7. Heard learned counsel for the parties and perused the record.

8. Submission of learned counsel for the applicant is that the applicant was posted as Store Khalasi, Jodhpur. He was suspended on 06.10.2016 but no suspension order was given to him. The applicant was terminated without conducting any inquiry. Due to this reason the applicant approached before this Tribunal through O.A./1470/2001 which was allowed by order dated 09.11.2004 by this Tribunal directing the respondents/ authority concerned to reinstate the applicant forthwith. Liberty was also given to the respondents to initiate disciplinary proceedings in accordance with law, if so advised. The respondents approached the Hon'ble High Court of Allahabad through Writ No. 291 of 2006 which was dismissed on 05.05.2016. Despite this fact, the applicant was not reinstated nor was the subsistence allowance paid to him. Memorandum was served upon him on 06.10.2016 subsequent to which the charge sheet was also given. The applicant requested again and again for subsistence allowance but no heed was paid by the authority. Due to this reason, the applicant



could not attend/ participate in the inquiry proceedings. Referring to the inquiry report annexed with the O.A, learned counsel for the applicant further argued that the inquiry officer concluded the inquiry ex parte without assigning any reason. He further argued that the inquiry report is a non-speaking order and the documents and facts that were forged have also not been disclosed in it. Learned counsel for the applicant further argues that since subsistence allowance was demanded by the applicant and the same was not paid to him at any point of time, the applicant was not in a position to attend the inquiry proceeding, thus, the inquiry report/ inquiry itself will be vitiated on this ground itself. Thus learned counsel for the applicant puts reliance on the following case laws:-

- i) *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. And another 1999(2) ESC 1009 (SC)*
- ii) *Jagdamba Prasad Shukla v. State of U.P. and others 2000(4) ESC 2431 (SC)*
- iii) *Ghanshyam Das Shrivastava v. State of Madhya Pradesh ,1973 SCC(L&S)289.*
- iv) *Commissioner of Income Tax-1 Agra and others v. Central Administrative Tribunal and others (Writ A No. 3260 of 2005) (Allahabad High Court)*
- v) O.A. No. 334/2003 decided on 24th day of May, 2004

9. Learned counsel for the respondents, referring to written submissions filed on 09.07.2025 argued that the applicant has been dismissed from service after conducting full-fledged inquiry. He was given the opportunity to participate in the inquiry and despite this he did not appear to defend his case nor did he adduce any evidence. Referring to the charge sheet filed against the applicant it was further argued that the charges were against the applicant. The applicant obtained employment on the basis of forged documents. Due to this reason, he was dismissed. Appellate authority also after consideration has rightly dismissed the appeal. There is no illegality, infirmity or perversity in the punishment order, inquiry report as well as the order passed by the appellate authority. As such no interference is required by the Tribunal.

10. I have considered the rival submissions and have gone through the entire record.

11. As is evident from the records, one Anand Kumar Tiwari who was identically situated to the applicant herein was also served with a charge sheet and punishment was imposed thereafter. Appeal was also decided against him. He approached before this Tribunal vide OA No. 842 of 2019 which was allowed on 15.12.2022. The operative portion of the judgment is quoted herein below:

"10. In the instant case, applicant was dismissed from service vide order dated 20.3.2001. He filed O.A. No.1485/2001 before this Tribunal which was allowed by this Tribunal vide order dated 10th November, 2004 with direction to the respondents to reinstate the applicant forthwith. The liberty was given to the respondents to initiate disciplinary proceeding in accordance with law. Respondents had filed writ petition No. 432/2006 against the order dated 10th November, 2004 which was dismissed by the Hon'ble High Court vide order dated 24.1.2017. Respondents issued reinstatement order dated 19.9.2016 but again suspended to the applicant vide order dated 6.10.2016. In pursuance of letter dated 25.2.2017 of



Inquiry Officer, applicant intimated the inquiry officer vide letter dated 3.3.2017 (Annexure No. A- 17 to the O.A.) that he has no source of livelihood and unless he may not be paid the subsistence allowance and arrears of salary, it will not be possible for him to attend the inquiry at Jodhpur. Applicant vide letter dated 1.6.2018 submitted a representation for payment of subsistence allowance. Inquiry officer vide letter dated 28.6.2018 and 20.7.2018 directed the applicant to appear in the inquiry on 9.7.2018 and 30.7.2018 but the applicant could not participate in the inquiry due to paucity of money. Inquiry Officer submitted inquiry report on 10.8.2018. Respondent No. 3 vide letter dated 7.9.2018 asked reply from the applicant against the inquiry report. Applicant submitted his representation against the inquiry report dated nil (Annexure No. A-27 to the O.A.). Disciplinary Authority vide letter dated 27.10.2018 imposed the penalty of dismissal from service. Applicant preferred appeal against the penalty order which was also rejected by the Appellate Authority vide order dated 27.2.2019. Both the orders have been challenged by the applicant in the present O.A. on the ground that Inquiry officer had submitted the inquiry report exparty as the applicant could not participate in the inquiry due to non payment of subsistence allowance.

11. Hon'ble Apex Court in the case of M. Paul Anthony v. Bharat Gold Mines Ltd. (supra), has held as under:-

"The question whether the appellant was unable to go to Kolar Gold Fields to participate in the inquiry proceedings on account of non-payment of Subsistence Allowance may not have been raised before the Inquiry Officer, but it was positively raised before the High Court and has also been raised before us. Since it is not disputed that the Subsistence Allowance was not paid to the appellant during the pendency of the departmental proceedings, we have to take strong notice of it, particularly as it is not suggested by the respondents that the appellant had any other source of income."

12. Hon'ble Apex Court in the case of Jagdamba Prasad Shukla v. State of U.P. (supra), has held as under:-

"Learned counsel for the respondents did not dispute the factual position that the subsistence allowance as urged on behalf of the appellant was not paid to him. The justification offered by the respondents for not paying the subsistence allowance is that the applicant had not furnished the address where the amount was to be sent and had also not given the requisite certificate indicating that he was not employed else during the period of suspension.

Learned counsel for the respondents did not dispute the factual position that the subsistence allowance as urged on behalf of the appellant was not paid to him. The justification offered by the respondents for not paying the subsistence allowance is that the applicant had not furnished the address where the amount was to be sent and had also not given the requisite certificate indicating that he was not employed else during the period of suspension.

It is evident from the record that the High Court is not right in observing that ground sought to be urged was not taken in the claim petition or in the writ petition. In fact, the High Court in the latter part of the judgment observes that 'for



the first time, the petitioner has taken the ground in this writ petition that he could not attend the departmental proceedings due to financial crunch as he was not paid his subsistence allowance.' A perusal of the record shows that the contention urged before the High Court and again before us, was also raised before the U.P. Public Service Tribunal and even earlier before the authorities. The U.P. Public Service Tribunal considered it and on the facts of the case, the Tribunal held that 'Therefore, those rulings where person was unable to attend the enquiry for nonpayment of subsistence allowance, resulting in enquiry being vitiated will not be applicable.' Apart from it, in reply dated 22nd January, 1979 sent to show cause notice, the appellant specifically stated that he has not been paid his pay and suspension allowance which cannot be withheld and as such how could he be expected to reach Gorakhpur or elsewhere due to shortage of funds. He further stated that 'the applicant has requested a number of times for drawing his pay and suspension allowance, but the same could not be drawn and sent to applicant which was a serious handicap to appear anywhere even if he so preferred during illness and even against the recommendations of his medical attendant.' The request of the appellant for payment of subsistence allowance is also contained in his letter dated 31st March, 1978 sent to Superintendent of Police, Railways, Gorakhpur Section, Gorakhpur. The said letter also contains the address of the appellant. The address of the appellant is in fact contained on various communications sent by him to the respondents. It is curious that the respondents could serve all other communications including the show cause notice to the appellant but in so far as payment of subsistence allowance is concerned, the plea taken is that the appellant did not intimate his address and, therefore, the amount could not be sent. Thus, it is evident that despite repeated requests, the subsistence allowance was not paid to the appellant from the date of suspension till removal. It is also evident that the appellant had expressed difficulty to reach place of enquiry due to shortage of funds.

Reverting now to the other reason which prevailed with the High Court, namely, the appellant having not furnished a certificate stating that he is not engaged in any other employment, business, profession or vocation and having thus not complied with Rule 53(2) of the Financial Hand Book, it may be noticed that at no stage, the appellant was told that he had to furnish such a certificate, and that he could not be paid subsistence allowance without it. It was not the case of the respondents that in response to the appellant's request for payment of subsistence allowance, he was asked to furnish such a certificate and since he did not furnish it, the amount of subsistence allowance was not paid to him. Therefore, the second reason for rejecting the appellant's contention for non-payment of subsistence allowance also does not deserve to be sustained.

The payment of subsistence allowance, in accordance with the Rules, to an employee under suspension is not a bounty. It is a right. An employee is entitled to be paid the subsistence allowance. No justifiable ground has been made out for non-payment of the subsistence allowance all through the period of suspension i.e. from suspension till removal. One of the reasons for not appearing in enquiry as intimated to the authorities was the financial crunch on account of non-payment of subsistence allowance and the other was the illness of the appellant. The appellant



in reply to show cause notice stated that even if he was to appear in enquiry against medical advice, he was unable to appear for want of funds on account of non-payment of subsistence allowance. It is a clear case of breach of principles of natural justice on account of the denial of reasonable opportunity to the appellant to defend himself in the departmental enquiry. Thus, the departmental enquiry and the consequent order of removal from service are quashed."

13. Hon'ble Apex Court in the case of *Ghanshyam Das Shrivastava v. State of M.P.* (supra) has held as under:-

"There is nothing on record to show that he has any other source of income except pay. As he did not receive subsistence allowance (sic) was made to him on March 20, 1965 after a part of the evidence had already been recorded on February 9, 10 and 11, 1965. The enquiry proceedings during those days are vitiated accordingly. The report of the enquiry officer based on that evidence is infected with the same defect. Accordingly, the order of the Government dismissing him from service cannot stand. It was passed in violation of the provisions of Article 311(2) of the Constitution for the appellant did not receive a reasonable opportunity of defending himself in the enquiry proceedings."

14. In the Judgment relied upon by the applicant in O.A. No. 334 of 2003 decided on 24th May, 2004, coordinate bench of this Tribunal relying on the aforesaid case laws of Hon'ble Supreme Court, allowed the O.A. and quashed the impugned order. It was also observed that it will be open to the respondents to start a fresh inquiry in accordance with law from the stage it was in March, 1993. The inquiry shall however, be undertaken only after making payment of subsistence allowance with a period of one month from the date of receipt of certified copy of this order along with certified copy under FR53(2). It is however, observed that as the matter has become very old, the enquiry shall be completed within a reasonable period of time and the applicant shall cooperate in the enquiry proceeding, the respondents would be free to proceed against him as per law. Costs easy.

15. In the present case, applicant was not paid subsistence allowance due to which he could not participate in the enquiry, hence the case laws relied upon by the applicant will be applicable to the case of the applicant also and O.A. deserves to be allowed.

16. Accordingly, O.A. is allowed. Impugned orders dated 27.10.2018 and 27.2.2019 are quashed. Respondents are directed to reinstate the applicant in service with all consequential benefits including arrears of salary and subsistence allowance. However, liberty is given to the respondents to start a fresh inquiry in accordance with law if so advised. It is further directed that as the matter has become very old, the enquiry shall be completed within a reasonable period of time and the applicant shall cooperate in the enquiry proceeding, the respondents would be free to proceed against him as per law.

17. There shall be no order as to costs."

12. It further appears that judgment and order passed in the aforesaid OA was challenged before the Hon'ble High Court of Allahabad in Writ A No. 13365 of 2023



which was dismissed on 24.08.2023 affirming the judgment and order passed in the OA by the Tribunal. The order passed by the Hon'ble High Court of Allahabad is as follows:

Court No. - 39

Case Writ - A No. - 13365 of 2023

Petitioner-Union of India and 2 Others

Respondent-Anand Kumar Tiwari and Another

Counsel for Petitioner- Saumitra Singh

Counsel for Respondent-Ashish Kumar Srivastava, Sunil

Hon'ble Saumitra Dayal Singh.J.

Hon'ble Rajendra Kumar-IV.J.

1. Heard Sri. Saumitra Singh, learned counsel for the petitioners-Union of India and Sri. Ashish Kumar Srivastava, learned counsel for the private respondent no.1.

2. Present writ petition is directed against the order of the Central Administrative Tribunal, Allahabad Bench, Allahabad *dated 15.12.2022 in Original Application No. 330/00842/2019 (Anand Kumar Tiwari v. Union of India & Ors.)*. By that order, the Tribunal has allowed the original application filed by the private respondent and directed the petitioners to reinstate the private respondent with all consequential benefits including arrears of salary and subsistence allowance. Yet, liberty has been given to the petitioners to conduct a fresh enquiry, in accordance with law, if so advised.

3. The undisputed facts of the present case are, the private respondent was earlier appointed on Group - D post by the North Central Railway against appointment letter dated 12.12.1997.

4. Based on vigilance enquiry report, services of the private respondent were dispensed with vide order dated 20.03.2001. At that stage, it had been alleged, the appointment letter, medical report, etc. were all fabricated and forged by the private respondent. The said order of termination was challenged by the private respondent by means of an earlier Original Application No. 1483 of 2001. That was allowed vide judgement and order of the Tribunal dated 10.11.2004. The operative portion of that order reads as below:

"8. In the result in view of the discussions made above, this the O.A. succeed on merit and is accordingly allowed. The respondents are directed to reinstate the applicant forthwith the liberty to the respondents to initiate the disciplinary proceedings in accordance with law if so advised."

5. The above order of the Tribunal was challenged by the Union of India by filing Writ - A No. 432 of 2006 (*Union of India through General Manager, Northern*



Railway & Ors. v. Anand Kumar Tiwari & Anr.). The same was dismissed by a coordinate bench of this Court dated 24.01.2017. The operative portion of that order reads as below :

"We have perused the order of the Tribunal and we find that no illegality in the same can be said to be committed by the Tribunal. No inquiry was held behind back of opposite party and no finding whatsoever has been recorded that the termination order was not handed over to the opposite party and the same was handed over to the opposite party at later point of time during pendency of Original Application, hence the order was put to challenge by means of amendment after the Original Application has been filed. Therefore, the argument of the learned counsel for the petitioners that no amendment was made in the Original Application cannot be accepted.

We find no illegality in the order passed by the Tribunal. The writ petition is devoid of merit and is accordingly dismissed."

6. Though facts of reinstatement of the private respondent are not clear or admitted to the parties, it remains a further fact, a domestic enquiry proceeding was initiated against the private respondent upon issuance of the charge sheet dated 20.10.2016. While charge sheet had been issued to the private respondent, perusal of the enquiry report dated 11.08.2018 (annexed as Annexure No. 24 to the writ petition) clearly indicates, no enquiry whatsoever was conducted. Neither any witness of fact was examined at that enquiry nor any document was proved before the enquiry officer. The enquiry report only records issuance of repeated notices to the private respondent and his continued failure to appear at the enquiry proceeding. Solely on the basis of conduct offered by the private respondent and upon self perusal of the documents appended to the charge sheet, the enquiry officer has recorded his satisfaction and not his firm conclusion based on appraisal of any evidence that the charges levelled against the private respondent were true.

7. It is a *sine qua non* in service jurisprudence that the domestic enquiry proceeding initiated with reference to serious charges that may lead to imposition of major penalty must involve oral enquiry wherein not only an opportunity of hearing may be given to the delinquent but before such hearing arises, the charges levelled against him must be proven by the employer by leading appropriate oral and documentary evidence.

8. Further submission of learned counsel for the Union of India that no enquiry was required to be conducted in face of the forged appointment obtained by the delinquent, cannot be considered at this belated stage. That defence was available to the Union of India in the first leg of proceedings when services of the delinquent had been terminated on the strength of vigilance and the enquiry. That order of the employer dated 20.03.2001 was made subject matter of challenge in Original Application No. 1485 of 2001. That order was set aside by the Tribunal vide order dated 10.11.2004. That was confirmed by this Court in Writ - A No. 432 of 2006. Therefore, that ground of challenge no longer available.

9. The burden to prove charges levelled remains on the employer. The conduct of



the delinquent in not participating in such enquiry would remain inconsequential to a case such as this where the employer utterly failed to lead any evidence either oral or documentary. The submissions of learned counsel for the Union of India that the private respondent cannot draw any benefit for his own default in not participating in the enquiry proceeding is of no avail.

10. If assuming the delinquent failed to participate in the enquiry proceedings, it may have become necessary to the enquiry officer to proceed *ex parte* against the delinquent. Even if the enquiry had been proceeded and concluded in an *ex parte* manner, the burden to prove the charges would have survived on the employer itself. Notwithstanding non-participation of the delinquent, the employer/Union of India remained obligated to prove the charges levelled against the delinquent by leading oral or documentary evidence at the *ex parte* enquiry, that had that been conducted.

11. Seen in that light, the order of the Tribunal calls for no interference. The continued insistence on part of the Union of India that the initial appointment of the delinquent was fraudulent has lost its effect owing to the conduct of the Union of India that has not been able to prove the charges over a long period of 20 years despite two opportunities available to them.

12. Here, the Tribunal has been lenient in allowing the Union of India to conduct a fresh enquiry, if facts so warrant. Since the delinquent is not before us in writ petition, we are not proposing to interfere with that part of that order.

13. For the reasons noted above, present writ petition is dismissed.

Order Date 24.8.2023

Abhilash

(Rajendra Kumar-IV, J.)

(S. D. Singh, J.)

13. In this matter, charge sheet was served upon the applicant. The applicant sent a letter to the Inquiry Officer as well as the authority concerned for subsistence allowance and TADA but no heed was paid. Again and again, the inquiry officer has sent a letter to participate in the inquiry but again and again the same request has been made on the part of the applicant. Inquiry was completed *ex parte* and the inquiry report was submitted. Thereafter, on the basis of the inquiry report, the disciplinary authority imposed the punishment and the appellate authority also affirmed the order passed by the disciplinary authority. No oral evidence was adduced on the part of the prosecution in support of the allegation leveled against the delinquent employee, no reason has been assigned in the inquiry report to form a particular opinion. In the similar circumstances, the OA filed by Anand Kumar Tiwari was allowed which was challenged before the Hon'ble High Court through the aforesaid Writ in which the Hon'ble High Court has observed that no proper inquiry was conducted neither any witnesses of fact were examined in that inquiry nor any document was proved before the inquiry officer. Similar is the position in the present matter and solely on the basis of conduct offered by the applicant and upon the self



perusal of the documents appended to the charge sheet, the inquiry officer has recorded his satisfaction. Opinion formed by the inquiry officer was not based on any evidence. Procedure prescribed for conducting the inquiry have also not been strictly followed. Burden to prove the charges was upon the employer / prosecution but the inquiry officer / presenting officer did not adduce any evidence to discharge his burden and failed to lead any evidence either orally or documentary. Thus, we are of the view that the present Original Application is also liable to be allowed in terms of the judgment and order passed in the OA No 842 of 2019 and also by the Hon'ble High Court in Writ A No. 13365 of 2023.

14. Thus, in view of the aforesaid discussions and analysis, the instant original application is allowed. Impugned orders dated 27.10.2018 and 27.02.2019 are hereby quashed and set aside. Respondents are directed to reinstate the applicant in service with all consequential benefits including arrears of salary and subsistence allowance. However, liberty is given to the respondents to start a fresh inquiry in accordance with law if so advised. It is further directed that as the matter has become very old, the inquiry shall be completed within a reasonable period of time and the applicant shall cooperate in the inquiry proceedings.

15. There shall be no order as to costs.

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