2026:AHC-LKO:82344-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

SPECIAL APPEAL DEFECTIVE No. - 704 of 2026

U.P. Power Corporation Ltd. Shakti Bhawan Lucknow through its Chairman and 6 others .....Appellant(s)

Versus

Rakesh Kumar .....Respondent(s)

Counsel for appellant(s)	:	Mr. Manish Jauhari
Counsel for respondent(s)	:	Mr. Gaurav Mehrotra (Sr. Adv.) assisted by Mr. Akber Ahmad and Ms. Shhreiya Agarwal

Chief Justice's Court

HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE JASPREET SINGH, J.

1. Heard Sri Manish Jauhari, learned counsel for the appellant and Sri Gaurav Mehrotra, learned Senior Counsel assisted by Sri Akber Ahmad and Ms. Shhreiya Agarwal, learned counsel for the sole respondent.

2. The instant intra-court appeal assails the judgment and order dated 14.09.2026 passed in Writ-A No. 3920 of 2023, whereby the Writ Court allowed the writ petition, setting aside the punishment order dated 10.01.2022 as well as the order dated 04.03.2023 passed by the Appellate Authority, as a consequence the forfeiture of 100% pension and post-retiral benefits payable to the writ petitioner, was set aside and it was directed that the entire pension be restored and retiral dues be paid within a period of four months along with interest at the rate of 6% per annum starting from the 30th day of retirement till the date of actual payment.

3. The aforesaid intra-court appeal is accompanied by an application seeking condonation of 21 days of delay in filing the appeal, bearing I.A. No. 1 of 2026, which is duly supported by an affidavit explaining the cause for delay.

4. The learned counsel for the appellant, while pressing the application seeking condonation of delay, urged that the order passed by the Writ Court dated 14th of September, 2026 was received by the appellant department, whereupon legal opinion was sought, and after receiving the

said legal opinion, the matter was placed before the Board who recommended for filing of the intra-court appeal, and soon thereafter the appeal was prepared and was filed. In the aforesaid circumstances, the delay of 21 days was purely unintentional and as such it deserves to be condoned.

5. Learned Senior Counsel for the sole respondent very fairly submitted that he does not wish to contest the issue of limitation.

6. Considering the averments made in the affidavit filed by the appellant explaining the delay of 21 days, this Court finds that the cause shown is sufficient and the delay of 21 days in filing the intra-court appeal is condoned. The appeal shall be treated to have been filed within time. The Office is directed to allot a regular number to the instant intra-court appeal.

On Merits:

7. Sri Jauhari, learned counsel for the appellant, while pressing the intra-court appeal on merits, submitted as under:

> (i) Serious charges were levelled against the respondent which were backed with documentary evidence. The charge-sheet was served, against which no worthy reply was filed by the respondent. The charges apparently were not disputed and were found to be proved. However, the learned Writ Court interfered with the punishment order without adequate reasons.
>
> (ii) It was further urged that right from initiation of the departmental proceedings till the passing of the punishment order, all procedural compliances were made so that the process of inquiry is not vitiated, but this aspect of the matter was not appropriately considered by the Writ Court, who on technical basis set aside the punishment order as well as the order passed by the Appellate Authority, which has resulted in sheer miscarriage of justice.
>
> (iii) It was also urged by Sri Jauhari that once the

punishment order was set aside and the learned Single Judge had directed the pension and retiral dues to be paid to the respondent, but it erred in granting the same with interest at the rate of 6% per annum, which was not justifiable.

(iv) It was further submitted that the charges against the respondent were grave and serious and though the appellant had filed its evidence, but no evidence was filed by the respondent, and in absence of any contrary evidence, the learned Single Judge was not justified in observing that the evidence was not considered by the Inquiry Officer and this was against the weight of the material on record.

8. For the aforesaid reasons, it was urged that the learned Single Judge fell in error in allowing the writ petition and directing the appellants to pay the retiral dues and the pension to the respondent along with interest at the rate of 6% per annum, and thus the instant appeal deserves to be allowed.

9. Sri Gaurav Mehrotra, learned Senior Counsel for the respondent, refuted the aforesaid contentions and submitted that from the perusal of the inquiry report, it would be clear that none of the charges could be proved, yet findings have been returned by the Inquiry Officer to the contrary, which clearly indicates non-application of mind and perversity of the findings recorded.

10. It was further submitted that the anomalies in the inquiry were pointed out by the respondent before the Appellate Authority, who also ignored the fundamental principles applicable in domestic inquiries and affirmed the findings of the Inquiry Officer, resulting in sheer miscarriage of justice.

11. The learned Senior Counsel also urged that this aspect of the matter was examined by the learned Single Judge and found that the inquiry suffered from foundational errors and the punishment order as well as the order passed by the Appellate Authority could not be sustained. The learned Writ Court in the given circumstances rightly intervened and set

aside the punishment order by which the entire pension of the respondent was forfeited. The appeal has no merit and it deserves to be dismissed.

12. The Court has heard learned counsel for the parties and also perused the material on record.

13. The record would indicate that the respondent (writ petitioner) was appointed on the post of Assistant Engineer in the year 1985. The petitioner, after completing his service with a clean record, attained the age of superannuation on 31.03.2021.

14. On 17.11.2021, the petitioner was served with a charge-sheet wherein five charges were levelled against the respondent. A copy of the said charge-sheet is at page 195 to 198 of the paper book (Volume-I of the paper book). All the said charges related to the period while the respondent was the Superintending Engineer posted at NOIDA.

15. The petitioner had submitted his response to the said charge-sheet. The Inquiry Officer, making a reference to certain facts, found all the charges proved except Charge No. 3, which was held to be partially proved.

16. The Inquiry Officer, while returning its findings and recommendation, observed that, had the respondent been in active service, it would have warranted major punishment leading to his termination, but since the respondent had retired, hence the recovery be made from his post-retiral dues and also recommended for forfeiture of his pension.

17. The order of punishment was challenged by the respondent by filing a departmental appeal, which also came to be dismissed, and being aggrieved, the respondent had assailed the said impugned orders in Writ-A No. 3920 of 2023, which was allowed by the Writ Court vide judgment and order dated 14.09.2026, which is under challenge in the instant appeal.

18. The record would further indicate that the charge-sheet referred to five charges leveled against the respondent. It also referred to the documents which the department proposed to rely upon, to drive the charges home against the respondent. The inquiry report dated 20.12.2021

has been placed on record at running page 242 to 249 of the paper book (Volume-II of the paper book).

19. From the bare perusal of the inquiry report, it would reveal that it holds charges to have been proved, but how and upon what evidence or material the said charges were held to be proved, to arrive at the said conclusion, is conspicuously absent. In other words, the inquiry report does not indicate as to what documentary evidence (as mentioned in the charge-sheet) was considered to prove which charge.

20. In absence of any clear consideration of the documentary evidence available on record, the findings recorded by the Inquiry Officer become vulnerable.

21. Another peculiar fact that emerges from the record is that Charge No. 3, which was found to be partially proved, has been made the basis for upholding Charge No. 4 and said to have been proved. At this stage, it will be relevant to state that the tenor of Charge No. 3 and Charge No. 4 was quite independent of each other. In absence of any clear evidence and without disclosing as to how Charge No. 3 stood proved, it ipso facto could not have been taken to mean that Charge No. 4 also stood proved. In this regard, the observations and the findings as contained in the inquiry report on Charge Nos. 3 and 4 is being reproduced hereinafter for ease of reference:

<u>आरोप संख्या - 3</u>

"प्रथम चरण में 33/11 केवी उपकेन्द्र इटेहस से टैप कर 1000 के०वी०ए० का संयोजन 31.05.2018 में निर्मत किया गया, उपभोक्ता को पत्र संख्या 2968/ वि०वि०ख०प्र० नोएडा / एनटीसी दिनांक 10.01.2018 के माध्यम से रू० 795678 की टीसी निर्गत की गयी। उक्त लाइन निर्माण कार्य हेतु स्वीकृत प्राक्कलन में 8 प्रतिशत सुपरविजन शुल्क रू० 1109447, मीटरिंग शुल्क रू० 405190, लेबर व ओवर हेड शुल्क रू० 81038 कुल रू० 01595700 के साथ जमानत धनराशि रू० 400000 सिस्टम लोंडिग शुल्क रू० 5200000 तथा 18 प्रतिशत जी०एस०टी रू० 199701 ही शामिल किया जाना पाया गया तथा 33 केवीए का शुल्क उपभोक्ता से प्राप्त नही किया गया।

प्राक्कलन में यह भी पाया गया कि क्र० सं० 1 पर अंकित 3Cx300Sqmm .XLPE(3460 Meter x 2Run +50 Meter) की कुल Qty 2860 MTR लिखते हुए Rate रू० 1644 लिखकर Amount Rs. 47,01,840 दर्शाया गया है, जबकि यह 3460 x 2 +50-6970 MTR होना चाहिये था तथा Amount Rs. 1,14,58,680 होना चाहिए था। इस प्रकार

शेष Amount Rs (1,14,58,680-47,01,840-67, 36,840, पर 8% सुपरविजन शुल्क रू० 5,40,547 भी उपभोक्ता से कम प्राप्त किया गया।

अत: अपने अधीनस्थों के कार्यों का अनुश्रवण न करने तथा अपने कर्तव्यों एवं दायित्वों के निर्वहन में जानबूझकर शिथिलता बरतने, कारपोरेशन को वित्तीय क्षति पहुंचाने एवं उ०प्र० राजकीय सेवक आचरण नियमावली 1956 का उल्लंघन करने हेतु प्रथम दृष्टया दोषी मानते हुए आपको आरोपित किया जाता है।"

आरोपित सेवक का अभिकथन:-

इस आरोप के सम्बन्ध में कृपया अवगत कराना है कि उत्तर प्रदेश पावर कारपोरेशन लि० के कार्यालय ज्ञाप सं० 4512 कार्य चौदह/पाकालि/2017-3- के/2000/टी०सी० -2017 दिनांक 27.11.2017 (संलग्नक - 10) द्वारा डिपाजिट कार्यों के एव दस करोड़ तक के प्रावकलनों के स्वीकृत करने का अधिकार अधिषासी अभियन्ता को प्रदत्त किया गया है, परन्तु प्रावकलन स्वीकृति से पूर्व उसका तकनीकी अनुमोदन उच्चाधिकारी से अनिवार्य रूप से प्राप्त किये जाने का प्रावधान है। इस उपभोक्ता का प्रावकलन स्वीकृत करने से पूर्व अधिषासी अभियन्ता द्वारा अधोहस्ताक्षरी से (तत्कालीन अधीक्षण अभियन्ता, विद्युत नगरीय वितरण मंडल , नोएडा के रूप में) प्राप्त नहीं किया गया। साक्ष्य के रूप में अधोहस्ताक्षरकर्ता के पत्र संख्या सी- 1348 / प्र०वि०वि०नि०लि० मेरठ तक सिविर दिनांक 18.11.2021 (संलग्नक - 11) कें सापेक्ष अधिषासी अभियन्ता, विद्युत वितरण खण्ड , ग्रेटर नोएडा के पत्र संख्या 2541 / वि०वि०ख०ग्रे०नो० दिनांक 23.11.2021 (संलग्नक - 12) का बिन्दु संख्या -2 संलग्न है।

यहाँ यह भी अवगत कराना है कि अधिशासी अभियन्ता द्वारा विद्युत भार अवमुवत करने हेतु उपभोक्ता को धनराशि जमा करने के लिए निर्गत पत्र (Term & conditions) पत्रांक 2988/EDD/GNN/TC दिनांक 10.01.2018 (संलग्नक - 13) द्वारा निर्गत किया गया परन्तु इसकी प्रतिलिपि भी अधीक्षण अभियन्ता को पृष्ठांकित नही की गई।

वह भी विशेष रूप से सूचनीय है कि अधिशासी अभियन्ता द्वारा निर्गत Term & conditions का पत्र दिनांक 10.01.2018 को निर्गत किया गया। जबकि नोएडा में एक नवसृजित मण्डल - विद्युत नगरीय वितरण मण्डल - द्वितीय का सृजन एव क्रियान्वयन होने के फलस्वरूप इस खण्ड का प्रशासनिक नियंत्रण दिनांक 12.01.2018 से अन्य अधीक्षण अभियंता को अधोहस्ताक्षरित हो गया था। अधीक्षण अभियन्ता विद्युत नगरीय वितरण मण्डल - द्वितीय के सृजन का कार्यालय ज्ञाप संख्या 8153/ प्र०वि०वि०नि०लि० /मेरठ नवसृजित दिनांक 04.12.2017 (संलग्नक-14) एवं अधीक्षण अभियन्ता द्वारा दिनांक 12.01.2018 को कार्यभार ग्रहण करने का प्रमाण - पत्र संलग्न है (संलग्नक - 15)

विवेचना:-

आरोपित सेवक ने लाइन टेप करके संयोजन अवमुवत करने के आरोप के सम्बन्ध में कोई भी अभिकथन /तथ्य /साक्ष्य प्रस्तुत नहीं किया गया है अर्थात आरोप स्वीकार किये गये। विद्युत उपकेन्द्र को फीड करने वाले 33 केवी फीडर से किसी उपभोक्ता को टैंपिग कर कनेक्शन देना ना तो विधि सम्मत है और ना ही तकनीकी रूप से ऐसा किया जाना वांछित है, विद्युत उपकेंन्द्र को फीड करने वाले 33 केवी फीडर से किसी उपभोक्ता को टैपिंग कर कनेक्शन देना अत्यंत ही गंभीर विषय ङऐ। अधिशासी अभियंता श्री लाल सिंह राकेश द्वारा पत्रांक 2672 / वि०वि०ख-

ग्रे०नो० दिनांक 7.11.2017 के माध्यम से अधीक्षण अभियंता को उपरोक्त अनाधिकृत टैपिंग की अनुमति के लिए लिखा गया था। जो पत्र व्यक्तिगत सुनवाई के समय उपलब्ध कराए गए दस्तावेजों मे सम्मिलित है।

निष्कर्षः- आरोप का उपरोक्त अंश सिद्ध पाया गया।

केबिल की मात्रा की गणना में त्रुटि के सम्बन्ध में भी कोई साक्ष्य प्रस्तुत नहीं किया गया है। सिथिलता के लिए यह कहा जाना अधिशासी अभियन्ता द्वारा निर्गत टीसी अधीक्षण अभियंता को पृष्ठांकित नहीं थी यह तथ्य स्वीकार करने योग्य नहीं है। अपने अधीनस्थ कार्मिकों के द्वारा की गयी अनुचित कार्यवाही के प्रशासनिक शिथिलता से विमुख नहीं हो सकते। चूंकि नोएडा में एक नवसृजित मण्डल - विद्युत नगरीय वितरण मण्डल - द्वितीय का सृजन एवं क्रियान्वयन होने के फलस्वरूप इस खण्ड का प्रशासनिक नियंत्रण दिनांक 12.01.2018 से अन्य अधीक्षण अभियन्ता को हस्तांतरित हो गया था।

निष्कर्षः- आरोप का उपरोक्त अंस आंशिक सिद्ध पाया गया।

निष्कर्षः- आरोप संख्या 3- आरोप आंशिक सिद्ध पाया गया।

<u>आरोप संख्या - 4</u>

"प्रावकलन से स्पष्ट है कि 33 केवी 'बे' के निर्माण के विरूद्ध रू० 2397000 का शुल्क उपभोक्ता से प्राप्त नही किया गया जिससे कारपोरेशन को रू० 23,97,000 की हानि हुयी और मेसर्स और सन्स रियलिटी प्रा०लि० को आपके द्वारा अनुचित रूप से लाभ पहुंचाया गया जबकि 33 केवी मिशन पर विद्युत भार अवमुक्त करने हेतु 33 केवी 'बे' (Bay) के निर्माण तथा इस हेतु निर्धारित राशि उपभोक्ता द्वारा जमा की जानी चाहिए थी।

अतः मेसर्स और सन्स रियलिटी प्रा०लि० को अनुचित लाभ पहुंचाने तथा कारपोरेशन को आपके द्वारा उपभोक्ता से दुरभि संधि करके हानि पहुंचाने एवं अपने कर्तव्यों एवं दायित्वों के निर्वहन मे जानबूझकर सिथिलता बरतने, कारपोरेशन को वित्तीय क्षति पहुंचाने एवं उ०प्र० राजकीय सेवक आवरण नियमावली 1958 का उल्लंघन करने हेतु प्रथण दृष्टया दोषी मानते हुए आपको आरोपित किया जाता है। "

आरोपित सेवक का अभिकथनः-

इसका विस्तृत उत्तर उपरोक्त आरोप संख्या - 3 में प्रस्तुत किया जा चुका है।

विवेचनाः-

आरोपित कार्मिक के द्वारा अपने प्रति उत्तर में कोई अनिश्चित तथ्य प्रस्तुत नहीं किया गया है मात्र यह इंगित किया गया है कि 33 केवी के निर्माण के विरूद्ध विस्तृत उत्तर बिन्दु संख्या 03 में प्रस्तुत किया जा चुका है।

जब कि बिन्दु संख्या 03 में 33 केवी के सम्बन्ध में कुछ भी इंगित नहीं है। इस आरोप के लिए उपरोक्त कथन ना तो पर्याप्त है ना ही स्वीकार योग्य है। अतः स्पष्ट रूप से आरोपित अधिकारी पर 33 केवी 'बे' (Bay) के निर्माण हेतु मेसर्स और सन्स रियलिटी प्रा०लि० को अनुचित लाभ

पहुंचाने तथा कारपोरेशन को रू 2397000 की हानि पहुंचाने का आरोप सिद्ध होता है।

निष्कर्ष आरोप संख्या 4- आरोप सिध्द पाया गया।

22. The other charges no.1, 2 and 5 have been held to be proved in a similar manner, as noted above and it does not inspire confidence.

23. From the perusal of the aforesaid quoted portion, it would be clear that Charge No. 3 and 4, as observed above, were quite independent, and the manner in which the evidence has been considered and the findings recorded do not inspire confidence. There is actually no consideration of the evidence relating to Charge No. 3 and 4, and in absence thereof, the findings returned by the Inquiry Officer are rendered perverse.

24. It will also be relevant to notice that the scope of interference in departmental inquiry, though is narrow, but at the same time, a domestic inquiry cannot be permitted to be used as a tool of oppression for an employee who has given his entire active life to his employer and in his twilight years he is made to suffer, forfeiting his entire pension and retiral dues.

25. One limb of submission advanced by the counsel for the appellant is that the respondent did not effectively deny the charges and though had furnished his reply and in absence of any effective defence, the charges would stand proved. This submission also does not impress this Court for the reason that even if at all the respondent did not choose to effectively contest the inquiry, yet the employer who initiated the inquiry is bound to ensure that the charges levelled are established with cogent evidence, but having failed to do so, it cannot penalize the employee.

26. Another aspect of the matter which comes to light is the fact that the appellant initiated an inquiry against the respondent after his superannuation, relating to events which occurred while he was posted in NOIDA, which was prior to four years from the date of his superannuation.

27. It would also be relevant to state that the nature of the punishment awarded, relating to forfeiture of his entire pension required serious approach with which the charge ought to have been proved, a casual approach could not have been adopted. Even otherwise, before passing a

punishment order relating to forfeiture of the pension, at least a finding ought to have been returned as to how the department had been put to financial loss by the delinquent employee and to what extent. In the entire inquiry report or even in the punishment order, there is no material to indicate as to how the respondent was guilty or responsible for causing any financial loss to the department. The record would indicate that in the inquiry report, the material considered is all based on certain estimate and vague assertions and it cannot partake the nature of cogent evidence unless proved and connected to the charges levelled.

28. In absence of any such finding and merely on the basis of surmises the punishment order was passed which is not justifiable.

29. From the perusal of the punishment order, it would indicate that it is a mechanical exercise where the charges levelled against the respondent, his reply, and the findings of the Inquiry Officer have been reproduced and there does not appear to be any independent application of judicial mind. Moreover, when this matter came up before the Appellate Authority, it also affirmed the same without taking into consideration the grounds of appeal raised by the respondent, including the deficiencies pointed out in the decision-making process.

30. In view of the aforesaid, this Court does not find that the alleged charges made against the respondent could be proved in law, and this Court further does not find that there is any palpable error in the judgment and order dated 14th of September, 2026 passed by the Writ-A No.3920 of 2023, which may require interference in the intra-court appellate jurisdiction.

31. For the reasons aforesaid, this Court does not find that there is any substance in the appeal, which is, accordingly, dismissed. In the facts and circumstances, there shall be no order as to costs.

(Jaspreet Singh,J.) (Arun Bhansali,CJ.)

November 17, 2026
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Digitally signed by :-
ALI NEWAZ KHAN
High Court of Judicature at Allahabad,
Lucknow Bench