
(2013) 04 AHC CK 0297

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 75686 of 2005

Shiv Kumar Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: April 25, 2013

Citation: (2014) 1 ALJ 577 : (2014) 1 AWC 1065 : (2014) LabIC 1159 : (2013) 3 UPLBEC 2040

Hon'ble Judges: Sabhajeet Yadav, J

Bench: Single Bench

Advocate: I.N. Singh and Sri Ajay Yadav, for the Appellant; G.K. Pandey and Sri G.M. Tripathi, S.C., for the Respondent

Final Decision: Allowed

Judgement

Sabhajeet Yadav, J.

Heard Sri I.N. Singh, learned Counsel for the petitioner and Sri G.M. Tripathi, learned Standing Counsel for the respondents. By this petition, the petitioner has challenged the order dated 19.9.1996 passed by respondent No. 4, order dated 26.10.2005 passed by respondent No. 2 and the order dated 11.4.2005 passed by respondent No. 3.

2. The brief facts leading to the case are that while working on the post of Constable, Civil Police at Police Station Chakeri, Kanpur the petitioner was granted three days leave w.e.f. 4.5.1989, wherein he was to resume his duty by 7.5.1989, but on account of certain unavoidable reason, he could not report to his duty on 7.5.1989 and he sent information to the authorities vide registered letters dated 6.5.1989, 6.5.1991 and 7.5.1993. A true copy of registered letters dated 6.5.1989, 6.5.1991 and 7.5.1993 are on record as Annexure No. 2 to the writ petition. Meantime the petitioner was transferred from District Kanpur Nagar to Police Line, Fatehgarh. The petitioner was ill and suffering from serious disease hence he could not join his duty after expiry of a period of 3 days leave. In this regard a photostat copy of medical certificate dated 15.11.1994 is on record as Annexure No. 3 to the writ petition. After recovering from illness, the petitioner reported to his duty in

District Kanpur Nagar but he was told that he had already been transferred from District Kanpur Nagar to Fatehgarh. As soon as the petitioner came to know about this fact, he joined his duty on 11.5.1994 at Police Line Fatehgarh and has worked as such at Police Line, Fatehgarh upto 19.9.1996 and he has been paid his salary for the said period from month to month as and when fell due to him. The respondent No. 3 even without giving any charge sheet and show cause notice and without holding any disciplinary enquiry in the matter dismissed the petitioner from service vide order dated 19.9.1996, copy of which was also not given to the petitioner. In spite of the best efforts of the petitioner, the respondents have never given copy of dismissal order dated 19.9.1996. However, the Clerk of the office of Superintendent of Police Fatehgarh has given an undated letter to the petitioner in the month of February, 2005 wherein it was mentioned that he has been dismissed from service on account of unauthorized absence from duty from 2.7.1991 to 11.5.1994. A true copy of undated letter is on record as Annexure No. 4 to the writ petition. It is stated that when the petitioner came to know about aforesaid fact, he immediately filed an appeal before the respondent No. 3 on 21.3.2005 well within 90 days as provided under the provisions of U.P. Police Officers of the Subordinate Rank (Punishment and Appeal) Rules, 1991. The appellate authority even without considering the grounds raised by the petitioner in the appeal has dismissed the same as barred by time vide order dated 11.4.2005. A true copy of the order dated 11.4.2005 passed by respondent No. 2 is on record as Annexure No. 6 to the writ petition.

3. It is stated that aggrieved against the aforesaid illegal orders passed by respondents, the petitioner approached this Court by means of writ petition No. 59819 of 2005, thereupon this Court directed the petitioner to file a revision before revisional authority, in pursuance of which, the petitioner filed a revision before Inspector General of Police, Kanpur Zone, Kanpur on 18.9.2005, which too was dismissed in very arbitrary manner vide order dated 26.10.2005 even without considering the facts and circumstances of the case as well as grounds raised by petitioner in the revision. True copy of the order dated 26.10.2005 is on record as Annexure No. 8 to the writ petition. These aforesaid three orders passed by the departmental Police authorities are under challenge in this petition.

4. The learned Counsel for the petitioner has submitted that the entire disciplinary proceeding was conducted by the respondents behind back of the petitioner and without giving any charge sheet and opportunity of hearing to him, therefore, the same is void and could not be made basis for dismissal of petitioner from service. While elaborating his submission learned Counsel for the petitioner has submitted that in view of the provisions of Rule 5 read with Rule 14 of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 alongwith Appendix-I, it was mandatory duty of the respondents authorities to give a charge sheet to the petitioner and his signature should be taken on the copy of charge sheet and if in any case it was not possible at all, then it should have been sent through registered post, but the respondents authorities, without serving any charge sheet upon the

petitioner either personally or through registered post and without giving any opportunity to the petitioner to defend his case, has illegally and arbitrarily dismissed the petitioner from service on the ground that he was found absent from duty since 7.5.1989 to 11.5.1994 (5 years 4 days or 1829 days). Learned Counsel for the petitioner has further submitted that in case the petitioner would have been given opportunity of hearing in the disciplinary enquiry, he would have shown that he had sufficient justification to be absent from duty during the period of absence from duty as the situation was beyond his control, therefore, he could not attend the duties during the aforesaid period. In support of his aforesaid submissions learned Counsel for the petitioner has placed reliance upon several reported decisions, which shall be referred hereinafter at relevant places.

5. A detailed counter-affidavit has been filed in the writ petition. In para-5 of which it has been stated that the petitioner was unauthorisedly absent from duty w.e.f. 4.5.1989 to 10.5.1994. On 10.5.1995 he was again unauthorisedly absent from duty. It is also stated that charge sheet PF No. 13/1995 was sent to the house of petitioner on 4.4.1996 through special messenger Constable No. 28 A.P. Ram Naresh but he was not found at his house, therefore, special messenger has served the said charge sheet upon the father of petitioner namely Sri Jhuri Ram Yadav on 7.4.1996 in presence of two witnesses namely Ram Kumar Yadav and Ram Jiyawan R/o Village Nasirpur P.S. Kotwali, District Pratapgarh but the petitioner has not filed any reply and has never appeared before the Inquiry Officer for defending his case in spite of opportunity provided to him.

6. From the perusal of averments contained in para-8 of the writ petition, it is clear that the petitioner has specifically stated that he had resumed his duties at Police Line, Fatehgarh on 11.5.1994 and he had worked as such upto 19.9.1996 and had been paid his salary regularly month to month but these facts have not been specifically denied in para-4 of the counter-affidavit filed by Sri Vipin Kumar Srivastava, Deputy Superintendent of Police, Fatehgarh while making reply of para-8 of the writ petition and alongwith counter-affidavit he did not file copy of charge sheet and any record about the service of copy of charge sheet upon the petitioner. No other record about the service of notice of date and place of holding disciplinary inquiry has been filed alongwith counter-affidavit nor copy of show cause notice nor findings of Inquiry Officer nor order of dismissal of the petitioner from service by Superintendent of Police has been filed alongwith said counter-affidavit. The continuance of petitioner w.e.f. 11.5.1994 to 19.9.1996 at Police Line, Fatehgarh and payment of his salary has also not been specifically denied. Since the petitioner has specifically stated that after joining his duties at Fatehgarh w.e.f. 11.5.1994 he has been continuously working at Police Line, Fatehgarh till 19.9.1996 and paid his salary, whereas in reply thereto the respondents have stated in their counter-affidavit that the petitioner was found again absent from duty w.e.f. 10.5.1995, therefore, charge sheet could not be served upon him rather it was sent to his house and served upon father of petitioner on 7.4.1996 through special

messenger as the petitioner was not found at his house.

7. In this view of disputed question of facts vide order dated 6.3.2013 passed by this Court, the Superintendent of Police, Fatehgarh was directed to file his personal affidavit enclosing copy of charge sheet, record about service of charge sheet upon the petitioner, service of notice about date and place of holding disciplinary inquiry, copy of show cause notice, record of service of show cause notice upon the petitioner and order of dismissal passed against him and also record of the staff of police personnels at Police Line, Fatehgarh w.e.f. 15.4.1994 to 19.9.1996 and payment of salary made to the petitioner during the said period. The copies of said record were also directed to be enclosed alongwith said affidavit and originals were directed to be produced before this Court on the next date fixed by this Court by directing the case to be listed on 20.3.2013.

8. In pursuant of said direction Sri Jogendra Kumar posted as Superintendent of Police, Fatehgarh has filed supplementary counter-affidavit on 20.3.2013 on behalf of respondent No. 4. The relevant statements made in para-12 to 22 of the said supplementary counter-affidavit are extracted as under:

12. That the petitioner has stated that he was suffering from spinal problem as such he could not join the duty. This statement of petitioner is absolutely false and incorrect because he has stated in his reply that due to illness and death of his nephew, wife and one son, he became mentally upset as such he could not inform about his absence to the authorities. A correct copy of the reply/statement of the petitioner dated 11.5.1994 is being filed here with and is marked as Annexure No. 2 to this affidavit.

13. That it is relevant to point out here that the petitioner had been suspended vide order dated 11.10.1995 on the allegation that the trees of "Sheesham" of Government, situated on the bank of Umarda Haseran Canal, were being cutted by the petitioner in the night of 5.10.1995.

14. That as far as the payment of salary made to the petitioner for the period of 7.5.1989 to 11.5.1994 and 12.5.1994 to 19.9.1996 is concerned, it is submitted that according to the report submitted by Assistant Accountant on 12.3.2013, no payment of salary had been made to petitioner for the aforesaid period. It appears that the petitioner has made false and incorrect statement in the writ petition in respect of payment of salary to him only with a view to get the benefit of the same. A correct copy of the report of Assistant Accountant dated 12.3.2013 is being filed here with and is marked as Annexure No. 5 to this affidavit.

15. That the petitioner has been given proper opportunity of hearing before passing the order of dismissal from service. The Inquiry Officer/Circle Officer, City, Fatehgarh namely Dr. B.N. Tiwari has submitted his preliminary inquiry report on 2.12.1995 after recording the statement of petitioner on 23.6.1995. A correct copy of the preliminary inquiry report dated 2.12.1995 is being filed here with and is marked as

Annexure No. 4 to this affidavit.

16. That after the preliminary inquiry report was submitted, vide order dated 26.12.1995 the then Superintendent of Police, Fatehgarh has directed the Circle Officer, Mohammdabad Sri Abes Ahmad to initiate department proceeding against the petitioner.

17. That while initiating the departmental proceeding against the petitioner, the Circle Officer, Mohammdabad Sri Abes Ahmad prepared the charge sheet No. PF-13/1995 dated 4.4.1996 which was sent for the service on petitioner through Constable 28 C.P. Ram Naresh. According to the report of Pratisar Nirikshak, as the petitioner had been absent without any information since 11.3.1996 and he was also not present at his residence as such the charge sheet was served to father of the petitioner namely Sri Jhuri Ram Yadav on 7.04.1996 before two witnesses namely Ram Kumar Yadav and Ram Sajeevan. The notice was again sent to petitioner to put his case but he did not appear.

18. That the Presiding Officer/Circle Officer, Mohammdabad Sri Abes Ahmad submitted his report on 26.7.1996 recommending for departmental disciplinary action against the petitioner.

19. That in pursuance of the aforesaid report dated 26.7.1996, the then Superintendent of Police, Fatehgarh directed to take departmental action against the petitioner. In continuance of the said order/direction, the show cause notice was issued on 1.8.1996. The petitioner was served the copy of the show cause notice through Superintendent of Police, Pratapgarh on 19.8.1996. The correct copies of the letter dated 1.8.1996 sent to S.P. Pratapgarh and show cause notice alongwith the endorsement of petitioner dated 19.8.1996 are being filed herewith and are marked as Annexure No. 5 and 6 to this affidavit.

20. That in spite of service of the inquiry report and show cause notice, the petitioner neither appeared to put his case nor he submitted any explanation/reply as such the order of dismissal of petitioner from service was passed on 15.9.1996. The copy of dismissal order was sent to serve on petitioner through Superintendent of Police, Pratapgarh. In pursuance of the order Book No. 29 and GR No. 220/96 dated 19.9.1996 Kotwali Pratapgarh, the father of the petitioner Sri Jhuri Ram Yadav refused to receive the copy of the order as such the same was pasted at the house of the petitioner before two witnesses namely Chandra Bhushan Dubey and Anil Kumar Yadav.

21. That the petitioner has made incorrect and false statement that he has not been given the copy of the charge sheet, show cause notice and the copy of the dismissal order in spite of his best efforts with a view to get the benefit of the same. Rather the petitioner has not tried at all to get the same.

22. That it is submitted here that petitioner has been given full opportunity of hearing and to put his case but he did not appear before the Inquiry Officer or the other Authorities concerned. The petitioner did not want to face the departmental proceeding as such he had been absent without any information.

9. The Court was not satisfied about supplementary counter-affidavit filed by Sri Jogendra Kumar and material brought on record alongwith that affidavit filed on 20.3.2013, as such this Court has again directed the Standing Counsel to file another supplementary counter-affidavit by the next date of listing bringing on record the facts and documents which could not be filed with the supplementary counter-affidavit filed on 20.3.2013 by directing the case to be listed again on 4.4.2013. In pursuant of said direction a supplementary counter-affidavit has again been filed on 4.4.2013 on behalf of respondent No. 4 sworn by Sri Vijay Bahadur Singh posted as Circle Officer, Amritpur, Fatehgarh. The relevant statements made in para-6 to 12 of the said supplementary counter-affidavit are extracted as under:

6. That the petitioner has been given the copy of the charge sheet including the details of evidence upon which the proceedings against the petitioner was to be initiated vide letter dated February, 1996. A correct copy of charge sheet dated February, 1996 is being filed herewith and is marked as Annexure No. 1 to this supplementary counter-affidavit.

7. That the petitioner has also been afforded proper opportunity to submit his reply/explanation against the charge sheet given to him in his defense. In this context a reference may be made to the letters dated 4.4.1996 and 22.6.1996 sent to petitioner, the copy of which are being filed herewith and are marked as Annexure No. 2 and 3 to this supplementary counter-affidavit.

8. That Sri Avesh Ahmad, the Presiding Officer/Circle Officer, Line, Fatehgarh who has conducted the inquiry in the present matter, has submitted his report on 26.7.1996. The Presiding Officer has found the petitioner the guilty of being absent from duty without information and further has recommended to initiate proceeding against him. A correct copy of the report dated 26.7.1996 submitted by the Presiding Officer is being filed herewith and is marked as Annexure No. 4 to this supplementary counter-affidavit.

9. That the petitioner has been dismissed from service vide order dated 15.9.1996 passed by Senior Superintendent of Police, Fatehgarh. A correct copy of the order dated 15.9.1996 passed by Senior Superintendent of Police Fatehgarh is being filed herewith and is marked as Annexure No. 5 to this supplementary counter-affidavit.

10. That it is respectfully submitted here that the record of the Constables, who have been posted in Police Line during the period of 15.4.1994 to 19.9.1996, has been destroyed due to passage of time as such the same is not available at present. A correct copy of the report to this effect dated 13.3.2013 is being filed here with and is marked as Annexure No. 6 to this supplementary counter-affidavit.

11. That it is relevant to submit here that the petitioner has been given Rs. 36668.20 as subsistence allowance after his suspension during the period of March, 1995 to September, 1996. A correct copy of the report to this effect submitted by ASI (M) Assistant Accountant in the officer of Superintendent of Police, Fatehgarh dated 2.4.2013 is being filed here with and is marked as Annexure No. 7 to this supplementary counter-affidavit.

12. That it is also submitted here that the petitioner has sent a letter to Superintendent of Police, Fatehgarh on 6.5.1989 giving the information in respect of his illness whereas he has been transferred from Kanpur to Fatehgarh by Deputy Inspector General, Kanpur Range, Kanpur vide order dated 9.5.1989 as such it submitted that when on 6.5.1989, there was no transfer order of petitioner then how he send the letter to Superintendent of Police, Fatehgarh on 6.5.1989 giving the information in respect of his illness. Thus the letter dated 6.5.1989 is forged and manipulated document.

10. In reply to the supplementary counter-affidavits filed by Sri Jogendra Kumar, Superintendent of Police, Fatehgarh and Sri Vijay Bahadur Singh, Circle Officer, Amritpur, Fatehgarh on behalf of the respondents the petitioner has filed supplementary rejoinder affidavit stating the facts in para-4 to 28 of the said supplementary rejoinder affidavit as under:

4. That U.P. Police, Officers of the Subordinate Rank (Punishment and Appeal) Rules, 1991 (hereinafter referred as Rules, 1991) is framed with a view to regulate the departmental proceeding, punishment and appeal of the Police Officers of Subordinate Ranks of U.P. Police, which includes Constables also.

5. That, Rule 4(1)(a) provides that major penalty namely dismissal and removal from service etc. may be imposed upon a Police Officer for good and sufficient reasons. Rule 5(1) and Rule 14(1) of the said Rule provides procedure for award of major punishment. Rule 14(1) of the Rules provides that departmental proceedings for awarding major punishment to Police Officer shall be dealt in accordance with procedure laid down in Appendix-I of the Rules and the charge sheet shall be sent to the charged employee on the prescribed proforma namely Form I as mentioned in Appendix-I itself.

6. That, Appendix I of the Rules as well as Form provided therein are Part of Rule 14(1) of the Rules and mandatory in nature. On perusal of Appendix I and Form as provided therein, it is evidently clear that grounds for proposed action shall be informed in writing to the charged Police Officer, the said charged Police Officer must be afforded opportunity to participate in enquiry proceedings, charges must be definite and precise and shall be communicated to the charged Police Officer personally, and such employee will be provided opportunity for filing written statement and also opportunity of personal hearing and to cross examine to the witnesses or to call any person as the witness.

7. That, Form I of the said Appendix provides that the record which is relied in support of charges, must be appended with the charge sheet and charged employee must be informed in writing about specific date, time and place of such enquiry and be given an opportunity of cross examination and personal hearing. It is clearly provided in the Appendix that the charge sheet should be given to the person concerned and his signature should be taken on a copy of the charge sheet itself and if that is not possible, it should be served by registered post as well as by other mode of service.

8. That, none of the procedure, as stated herein before, have ever been followed by the respondents authorities even then they have illegally and arbitrarily dismissed the petitioner from service by an order dated 15.9.1996, which was never communicated to him prior to 4.04.2013. Since the dismissal order dated 15.9.1996 was never communicated to the petitioner hence the respondents have no authority in law to implement the same against the petitioner in any manner.

9. That, it is settled principle of law that in absence of service of charge sheet upon charged employee, the very initiation of departmental proceeding is bad in law and suffers from procedural infirmity hence the entire subsequent proceeding would be illegal and void ab initio and also would be against the principle of natural justice. It is also settled principle of law that the enquiry officer must give specific time, date and place of enquiry at which date, time and place the charged employee has to appear and in failure thereof, entire enquiry proceeding would be in violation of principle of natural justice and would be of no avail.

10. That, it is also settled principle of law that where a procedure is given to do a certain things in a certain manner, the things must be done in that way alone or not at all and every word of statute have to be given its due meaning. The procedure as provided in Rules, 1991 for imposing major penalty are mandatory in nature and that should be followed and in failure thereof it vitiates entire departmental proceedings.

11. That, in the present case admittedly copy of undated charge sheet was never served upon the petitioner, as required under the aforesaid Rules nor the same was ever sent by registered post nor any publication in newspaper was ever made informing to the petitioner about the said charge sheet and enquiry proceedings rather it is admitted fact that copy of the charge sheet was served upon petitioner's father which is totally against the procedure as prescribed under Rules, 1991. Even enquiry officer has not given any opportunity to the petitioner to have his say in the matter as well as to cross examine the witnesses and also any personal hearing to the petitioner in the matter. The entire enquiry proceedings was conducted by the enquiry officer behind the back of petitioner which is wholly illegal, arbitrary and in violation of principles of natural justice.

12. That, the records namely Hindi Order Book (HOB), which contains the complete whereabouts of Police Officer i.e. posting, joining etc., salary payment register and Register maintaining character report of Police were all times available in department and those documents were never destroyed or weed out due to passage of time. If the respondent authorities produced all those documents then on perusal of those documents, it would be evidently clear as to whether the petitioner had worked since 11.5.1994 to 19.9.1996 at Fatehgarh or not and whether he has been paid salary or not. The respondents willfully and deliberately have not filed those documents and also not intending to produce those documents before the Hon"ble Court so that this fact may be proved or denied as the case may be rather specific stand has been taken by them in Supplementary Counter-affidavit under reply that no record is available for the period since 11.5.1994 to 19.9.1996 because the same have been destroyed due to passage of time.

Parawise Reply of Supplementary Counter-affidavit as filed by Jogendra Kumar, Superintendent of Police, Fatehgarh on behalf of respondent No. 4

13. That, the contents of paragraphs No. 1, 2 and 3 of the supplementary counter-affidavit needs no comment.

14. That, in reply to the contents of paragraph No. 4 of the supplementary counter-affidavit under reply, it is stated that the respondents have not filed all those documents as required by this Hon"ble Court by order dated 6.3.2013. It was specific case of the petitioner in para 8 of the writ petition that since 11.5.1994 to 19.9.1996 he has worked on post in question at Police Lanes, Fatehgarh and for the said period he was paid his salary. It may be stated here that Hindi Order Book (HOB), Salary Payment Register, Register maintaining Character Roll of all employees always remain available in the officer of the respondents, which will clearly prove the fact that whether petitioner had worked at Fatehgarh since 11.5.1994 to 19.9.1996 and whether he has been paid his salary for the said period nor not, but the respondents authorities have willfully and deliberately neither filed copy of those records nor is intending to produce the same before this Hon"ble Court on the next date of hearing on the false ground that all records have been destroyed. In the Hindi Order Book (HOB), Salary payment register and register of maintaining Character Roll of Constables are those documents, which were always available in the office and never weeded out after lapse of time as suggested in Supplementary Counter-affidavit under reply.

15. That, in reply to the contents of paragraphs No. 6, 7 and 8 of the supplementary counter-affidavit under reply it is stated that due to illness and other unavoidable circumstances the petitioner could not join his duty after expiry of period of leave for which petitioner has already sent necessary applications before the respondents authorities as already disclosed in writ petition. Admittedly the petitioner had done duty at Fatehgarh and he has worked on the post in question since 11.5.1994 to 19.9.1996 and for the said period he has been paid his salary. However, it is further

submitted that even if the petitioner was absent from duty for some period, that itself does not give any authority or licence to the respondents to dismiss the petitioner from service in such an arbitrary manner even without complying with the principles of natural justice.

16. That, the contents of paragraphs No. 9 and 10 of the supplementary counter-affidavit under reply are totally false hence denied as incorrect. It is admitted fact that the petitioner had joined his duty at Fatehgarh on 11.5.1994. It is totally incorrect to say that petitioner has joined his duty at Kanpur Nagar on 11.5.1994. After coming to know of his transfer, he has joined his duty at Fatehgarh and sent letter to the authorities concerned about his absence from duty disclosing the reason thereof. It is totally incorrect to say that the letter dated 6.5.1989, 6.5.1991 and 7.5.1993 are forged and fabricated documents and the same were never sent by the petitioner before the authorities concerned. On perusal of Annexure SCA-1 it is evidently clear that the petitioner joined his duty at Fatehgarh on 11.5.1994. However, the petitioner was never called by enquiry officer either in any preliminary enquiry or in regular enquiry as allegedly conducted by them. However, it has already been disclosed by the petitioner that he has already sent application that he could not joined his duty after lapse of period of leave. Rests of the averments made in para under reply are wholly incorrect hence denied.

17. That, the contents of paragraph No. 11 of the supplementary counter-affidavit under reply are totally false hence denied as incorrect. The petitioner has already sent applications dated 6.5.1989, 6.5.1991 and 7.5.1993 clearly stating therein that on account of his illness as well as unavoidable circumstances he could not join his duty after expiry of the period of leave. Rests of the averments made in para under reply are wholly false and misconceived hence denied.

18. That, in reply to the contents of paragraphs No. 13 and 14 of the supplementary counter-affidavit under reply, it is stated that petitioner has no knowledge about suspension order dated 11.10.1995 as mentioned in para under reply rather he was permitted to work since 11.5.1994 to 19.9.1996 on the post in question. Annexure SCA-3 as written by Writ Lipik in respect of payment of salary of the petitioner since 11.5.1994 to 19.9.1996 is totally false and manufactured document because in subsequent supplementary counter-affidavit as filed by Vijay Bahadur Singh, in para 10, it has been clearly stated by respondent authority that entire record about posting, joining and payment of salary etc. of a Police Officer in Police line Fatehgarh has been destroyed due to passage of time as such the same is not available. Once the record has been admittedly destroyed by respondents, then how this Clerk has given certificate to the effect that petitioner was not paid salary for the period since 11.5.1994 to 19.9.1996. The respondents authorities have filed false and manufactured documents which is very serious matter which may be dealt seriously by the Hon"ble Court.

19. That, in reply to the contents of paragraphs No. 15 and 16 of the supplementary counter-affidavit under reply, it is stated that the petitioner was never served with copy of charge-sheet, he was never given opportunity to appear before enquiry officer nor he was ever given any show cause notice about proposed punishment, but even then he has been illegally dismissed from service. Preliminary enquiry is different one than regular enquiry. Asking any question by petitioner in preliminary enquiry does not give an authority to the respondent authority to dismiss the petitioner from service even without serving copy of charge sheet and holding regular enquiry giving proper opportunity to the petitioner to appear in the said enquiry proceedings and also show cause notice about proposed punishment as it has not been done by respondent authority in the present case. On perusal of Annexure SCA-4, copy of preliminary enquiry report dated 2.12.1995, it is evidently clear that this was preliminary enquiry and not regular enquiry on which basis petitioner was dismissed from service. Under the provisions of Rule 1991 no Constable could be dismissed from service on the basis of preliminary enquiry rather the authority is required to follow the specific procedure as provided in the said Rules 1991.

20. That, in reply to the contents of paragraphs No. 16, 17 and 18 of the supplementary counter-affidavit, it is stated that petitioner was never served copy of charge sheet nor he was given any opportunity to participate in enquiry. The said enquiry officer has submitted ex parte enquiry report dated 26.10.1996 on which basis petitioner has been illegally dismissed from service. It is totally incorrect to say that the petitioner was absented himself since 11.5.1994. He has worked since 11.5.1994 to 19.9.1996 at Fatehgarh. Even the respondents authority in para under reply have admitted the fact that the charge sheet was not served upon the petitioner rather it was already served upon the petitioner's father on 7.4.1996. The alleged enquiry report dated 4.4.1996 is an ex parte enquiry report and on that basis petitioner has been illegally dismissed from service.

21. That, in reply to the contents of para 19 of the supplementary counter-affidavit under reply, it is stated that show cause notice dated 1.8.1996 was never served upon the petitioner. On perusal of Page No. 20 on which it has been alleged that the petitioner received show cause notice, it is evidently clear that his signature has been made fraudulently on the said notice and signature as made on that paper is of not the signature of petitioner rather the same has been illegally made by the respondents themselves. This Hon'ble Court may compare the signature of petitioner as it is evident on perusal of page No. 15 and 19 of the same Supplementary Counter-affidavit under reply, which may clear the matter. The report itself speaks about service of order No. F. 13/96 and not about service of show cause notice about proposed punishment. It is totally incorrect to say that show cause notice dated 21.8.1996 was served upon the petitioner on 19.8.1996.

22. That, the contents of para 20 of the supplementary counter-affidavit under reply are totally false hence denied as incorrect. The respondents even without following the procedure under law has illegally and arbitrarily dismissed the petitioner from service by order dated 15.9.1996, copy of which was never given to the petitioner and now the copy of the said order, is filed by respondents alongwith second supplementary affidavit when this Hon"ble Court has been pleased to pass orders dated 6.3.2013 and 20.3.2013 respectively in this regard. Even dismissal order is allegedly served upon the petitioner's father and not upon the petitioner. Rests of the averments made in para under reply are wholly false hence denied as incorrect.

23. That, the contents of paragraphs No. 21, 22 and 23 of the supplementary counter-affidavit under reply are totally false, misconceived hence denied as incorrect. It is further stated that the petitioner was never given copy of charge sheet nor any opportunity to participate in enquiry and no opportunity to cross examine the witness etc. and he was also not given show cause notice about proposed punishment, but even then the respondents have illegally and arbitrarily dismissed the petitioner from service on 15.9.1996, copy of which was never given to the petitioner prior to 4.4.2013, when the Counsel of petitioner received copy of supplementary counter-affidavit. The petitioner has been illegally and arbitrarily terminated from service in total violation of principle of natural justice as well as in violation of procedure as prescribed in Rules 1991. The Supplementary Counter-affidavit under reply lacks merit and deserves to be ignored outrightly.

Parawise Reply of Supplementary Counter-affidavit filed by Sri Vijay Bahadur Singh, Circle Officer, Amritpur, Fatehgarh on behalf of respondent No. 4.

24. That, the contents of paragraphs No. 1, 2, 3, 4 and 5 of the supplementary counter-affidavit need no comments.

25. That, the contents of paragraphs No. 6 and 7 of the supplementary counter-affidavit under reply are totally false hence denied as incorrect. On perusal of Annexure No. SCA-1 it is evidently clear that the charge sheet is undated charge sheet and only remark is made on the charge sheet that "AAROP PATRA KI EK PRATI AAJ DINANK KO PRAPT KI". The date of charge sheet is not mentioned at all. In the said charge sheet no time and place is mentioned at which the petitioner has to appear in the matter. In the said charge sheet 16.4.1996 was date fixed for submitting defence by petitioner then what was occasion before the respondents to send alleged letter dated 4.4.1996 to the petitioner earlier point in time and the same was also not served upon the petitioner rather it was allegedly served upon petitioner's father on 07.4.1996. On perusal of Annexure SCA-1 allegedly sent by Special messenger it is evidently clear that the same was not served upon the petitioner but it was allegedly pasted on the door of the petitioner. It has been disclosed by petitioner in his writ petition that he was on duty at Police Lines, Fatehgarh since 11.5.1994 to 19.9.1996 then why the same was not served upon the petitioner at the said Police Line and it was allegedly sent by special messenger to

the petitioner's house. No finding has been recorded by respondent authority in the said proceeding that the petitioner was absconding and avoiding the departmental proceeding. It is totally incorrect to say that the charge sheet was served to the petitioner and he was given opportunity to have his say in the matter.

26. That, the contents of para 8 of the supplementary counter-affidavit under reply are totally false hence denied as incorrect. Even on perusal of Annexure SCA-4 it is evidently clear that charge sheet was not served upon the petitioner nor he was given any opportunity to appear before the enquiry officer to have his say in the matter. The enquiry officer has made enquiry against the petitioner behind his back and submitted his ex parte enquiry report on which basis services of the petitioner has been illegally dismissed by respondent. The service of charge sheet is presumed by enquiry officer on the ground that since an undated charge sheet is allegedly served upon petitioner's father hence petitioner has come to know about charges as levelled against him. When specific procedure is provided in Rules, 1991 for service then the respondent cannot act upon such presumption as well as on such surmises and conjectures. The enquiry report dated 26.7.1996 is ex parte enquiry report and on that basis petitioner cannot be dismissed from service by respondent authority. It may be stated here that prior to receiving the copy of second supplementary counter-affidavit by petitioner's Counsel on 4.4.2013 copy of the dismissal order dated 15.9.1996 was never given to the petitioner. Even on perusal of dismissal order dated 15.9.1996 it is evidently clear that since the petitioner has not submitted his explanation in the matter hence the charges levelled against him are found proved and established hence he is being dismissed from service.

27. That, the contents of paragraph No. 10 of the supplementary counter-affidavit under reply are totally false hence denied as incorrect. In earlier supplementary counter-affidavit the respondents authorities have filed a letter dated 13.3.2013 of Writ Clerk clearly stating therein, in accordance with record available in the department, no salary was paid to the petitioner since 11.5.1994 to 15.9.1996 and in the present supplementary counter-affidavit in para under reply they are filing Annexure SCA-6 stating that due to passage of time the record about posting etc. in police line, Fatehgarh during the period 1994 to 1996 have been destroyed and not available at present. When the record destroyed then on what basis Clerk has given certificate dated 12.3.2013 which is filed in earlier supplementary counter-affidavit stating therein that no salary was given to the petitioner from 11.5.1994 to 19.9.1996. In fact, the Register and documents, as stated hereinbefore, Hindi Order Book, Salary payment Register, Register of maintaining Character Roll etc. are always available in the department and it has never been weeded out or destroyed and the same are not being produced/filed before this Hon"ble Court with a view to mislead this Hon"ble Court in the matter.

28. That, in reply to the contents of paragraphs No. 11 and 12 of the supplementary counter-affidavit under reply, it is stated that on the one hand they are saying that

no record is available and on the other hand they are filing certificate as Annexure SCA-7 to the effect that petitioner has been paid subsistence allowance since the month of March, 1995 to September, 1996. When the respondents have paid subsistence allowance as shown in Annexure SCA-7 up to the month of September, 1996, then why the petitioner was not available for service of charge sheet and enquiry report, show cause notice and dismissal order, which are dated February 1996, 4.4.1996, 19.6.1996, 26.7.1996 and 15.9.1996 respectively. No enquiry whatsoever has been held by respondents authorities in tune with the principle of natural justice in which petitioner was found guilty as suggested in para under reply. It is totally incorrect to say that letters dated 6.5.1989, 6.5.1991 and 7.5.1993 are forged and manufactured documents. Rests of the averments made in para under reply are totally false hence denied as incorrect.

11. Learned Counsel for the petitioner has further submitted that from the perusal of Annexure-2 of supplementary counter-affidavit filed by Sri Jogendra Kumar, Superintendent of Police, Fatehgarh on 20.3.2013 it is admitted that on 11.5.1994 the petitioner had moved an application before the Senior Superintendent of Police, Fatehgarh seeking his permission to join duty at Fatehgarh wherein he has clearly stated that on getting information about the illness of his nephew he had taken three days leave on 4.5.1989 while he was posted at P.S. Chakeri, District Kanpur Nagar and had gone to his house, where he found that his nephew was seriously ill and shortly thereafter he died. Thereafter his wife fell ill and ultimately died. Shortly after the death of his nephew and wife, his son also fell ill and shortly thereafter he also died. Thus, on account of these three successive incidents of death of his three family members including his wife and son one by one in very short period he was mentally upset and started roaming here and there and after much time when his mental condition was restored by taking treatment from a doctor, he has visited Police Line, Kanpur Nagar for joining his duties but he came to know that he has already been transferred and relieved for joining at Fatehgarh on 3.7.1991 then he has come to Fatehgarh for joining his duties. On that very application a report from R.I. was sought by Senior Superintendent of Police, Fatehgarh, who had also made query from the petitioner, which were replied by him reiterating the facts stated in his application. Thereupon R.I. had recommended to permit the petitioner for joining his duties, thus after satisfying about the cause of absence the petitioner was permitted to join his duties at Police Line, Fatehgarh on 11.5.1994. Therefore, it is clear that petitioner has sufficiently explained the cause of his absence from duty w.e.f. 7.5.1989 to 10.5.1994 and under the circumstances stated by him it was humanely not possible for him to attend his duties earlier to 11.5.1994, as such, the aforesaid absence from duty of the petitioner could not be taken as his willful absence from duty without verifying the aforesaid facts from the house of petitioner inasmuch as the persons who were in contact of the petitioner during the said period and Medical Officer from whom the petitioner has taken treatment. In case such inquiry would have been done by the authorities concerned the petitioner

would have been excused for said absence from duty and there would have been no need to initiate formal disciplinary inquiry against him. However, at any rate in case the disciplinary inquiry was intended to be held against him it could have been held in accordance with the procedure prescribed under 1991 Rules but no such inquiry has been done, as such entire disciplinary inquiry held against the petitioner is bad from very inception and vitiated under law. The submissions of the learned Counsel for the petitioner have substance and deserve to be accepted.

12. In order to examine aforesaid submissions, it would be useful to extract the averments contained in the application moved by the petitioner to the Senior Superintendent of Police, Fatehgarh on 11.5.1994 and reply of the petitioner on query made from him by the R.I., who has recommended the petitioner's joining at Fatehgarh as under:

13. Thus, from the aforestated facts, it is clear that while joining his duties at Fatehgarh, after overstaying leave the petitioner has moved an application before Senior Superintendent of Police, Fatehgarh on 11.5.1994, wherein he has stated that under compelling circumstances he could not attend his duty for a period of 5 years four days on expiry of leave. Now question arises for consideration that as to whether aforesaid absence from duty was due to his willful default or under the compelling circumstances beyond his control and as such he could be excused for such absence?

14. In this connection a reference can be made to a decision of Apex Court rendered in [Krushnakant B. Parmar Vs. Union of India \(UOI\) and Another](#), wherein Apex Court has held that if the absence is due to compelling circumstances under which it is not possible to report or perform duty, such absence cannot be held to be willful and employee cannot be held to be guilty of misconduct. In the said case neither Inquiry Officer nor Appellate Authority found absence of appellant willful. Evidence produced by the appellant to substantiate his claim was ignored by the authorities concerned and on the basis of irrelevant fact and surmises he was held guilty. In the said case the impugned order of dismissal passed by the Disciplinary Authority affirmed by Appellate Authority, C.A.T. and High Court has been set aside considering that the appellant had suffered a lot since 1996 when the proceedings were initiated against him. Matter was not remitted to the Disciplinary Authority instead thereof the appellant was directed to be reinstated in service with 50% back wages. In para 17, 18 and 19 of the said decision the Apex Court observed as under:

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be willful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean willful. There may be different

eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc. but in such case the employee cannot be held guilty of failure of devotion to duty or behavior unbecoming of a Government servant.

18. In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in the absence of such finding, the absence will not amount to misconduct.

19. In the present case the inquiry officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold that the absence was willful; the disciplinary authority as also the appellate authority, failed to appreciate the same and wrongly held the appellant guilty.

15. At this juncture it would also be useful to refer some decisions wherein Apex Court has occasion to examine the relevant service Rule under which the services of Government employees were liable to be terminated automatically on account of absence from duty for a period of more than five years. In [Jai Shanker Vs. State of Rajasthan](#), while construing the Regulation 13 of the Jodhpur Service Regulations Apex Court held that Regulation involves a punishment for overstaying one's leave, no matter how the Regulation describes it, therefore opportunity must be given to the person against whom an order under Regulation was proposed and that to give no opportunity was to go against Article 311(2) of the Constitution. Similarly, Rule 76 of Bihar Service Code came to be considered by Apex Court in [Deokinandan Prasad Vs. The State of Bihar and Others](#). In said case five Judges of Constitution Bench of Apex Court held that an order of termination of service passed under Rule 76, Bihar Service Code on account of the Government servant's continuous absence for five years without giving an opportunity to the servant under Article 311 would be invalid. Again in [The State of Assam and Others Vs. Akshaya Kumar Deb](#), the Apex Court while interpreting the Fundamental Rule 18 of Assam Fundamental and Subsidiary Rules held that termination of service of Government employee on account of his continuous absence for more than five years is "removal" from service within the meaning of Article 311(2) of the Constitution and held that before such termination of service the disciplinary enquiry must be held against such employee as by necessary intendment, the Rule regards such conduct of employee, as a fault or blameworthy behavior which renders him unfit to be continued in service. In para-13 of the said decision it was held that another reason for equating "cessation" of service under this Rule with "removal" within the meaning of Article 311(2) is that it proceeds on a ground personal to the employee involving an imputation which may conceivably be explained by him in the circumstances of a particular case. The cases are not unknown where the absence of a Government servant, even for a prolonged period, has been due to circumstances beyond his control. The case of the Japanese soldier who remained cut off and stranded in the jungles of a remote Pacific island for three decades after the termination of World

War, II, is a recent instance of this fact.

16. Thus, the legal proposition which can be deduced from the aforesaid decisions of the Apex Court is that it is not the length of period of absence from duty of the Government employee, which is material for consideration rather the material thing is that as to whether there were compelling circumstances beyond the control of Government employee due to which he could not attend his duties during the period of absence from duty. Such compelling circumstances would be due to various reasons such as illness, accident and hospitalization etc. but these circumstances, in my opinion, are only instances and illustration and no exhaustive list of circumstances can be enumerated by the Court. There may be cases where the absence of a Government servant even for a prolonged period may be due to circumstances beyond his control. Therefore, In my considered opinion, as held by the Apex Court such absence from duty can be explained by the Government servant in an inquiry to be held against him wherein he should be given adequate opportunity to explain the situation. After such inquiry if it is found that absence from duty was due to under the compelling circumstances which were beyond the control of the Government servant, in that event of the matter such unauthorised absence from duty cannot be treated his willful absence from duty and his misconduct warranting any punishment or penalty. The satisfaction of the authority should be no doubt subjective but must be based on objective materials and it should not be whimsical, fanciful and arbitrary.

17. Now testing the facts of the instant case on the touchstone of the aforesaid proposition, it transpires from the record (application of petitioner dated 11.5.1994 moved before the S.S.P., Fatehgarh and reply of the petitioner to the queries of R.I., Fatehgarh brought on record as Annexure-2 of the supplementary counter-affidavit filed by Jogendra Kumar on 20.3.2013) that on getting the information about illness of his nephew, petitioner had taken three days leave on 4.5.1989 and visited to his house where he found that his nephew was so serious that he ultimately died. Soon after this unfortunate incident of death of his nephew, the wife of the petitioner also fell ill who also died very soon. Not only this but shortly thereafter his son also fell ill and ultimately died. It is stated that these three successive incidents of death of family members of the petitioner in very short span of time have shocked him and due to such nervous shock he became abnormal and started wondering hither and thither. After being medically treated, when he recovered from bad mental condition, he reached at Fatehgarh and submitted an application before the S.S.P., Fatehgarh for joining his duties on 11.5.1994, stating the happenings of aforesaid unfortunate incidents in his family. Thereafter, the Senior Superintendent of Police Fatehgarh sought for a report from the R.I. Fatehgarh who in his turn, after making necessary queries from the petitioner, has recommended for his joining at Police Line Fatehgarh in pursuance whereof the petitioner was permitted to resume his duties on 11.5.1994 at Police Line Fatehgarh.

18. Thus, from the aforesaid facts, it is clear that from very inception, the petitioner has taken stand that on account of three frequent death of his family members, he was naturally and psychologically placed into worst mental agony as a result of which he could not attend the duties on account of sick mental condition for the aforesaid period of five years. After having medical treatment from the doctor, any how, he became able to attend his duties. During the whole enquiry, this fact has never been verified either in the preliminary inquiry or in the formal inquiry, nor medical certificate dated 15.11.1994 enclosed as Annexure-3 of the writ petition has been disputed or doubted while making reply of para-7 of the writ petition, in para-4 of the counter-affidavit instead thereof only this much is stated that same was not received in the office of S.S.P., Fatehgarh. In any view of the matter, the petitioner was not given any opportunity to defend his case and explain the crucial situation under which he could not attend his duties for the aforesaid period. Therefore, in my opinion, since due to these three untoward incidents of successive deaths of family members including the wife and son of the petitioner within short span of time it was but natural for the petitioner to become restless, abnormal and mentally sick. It goes without saying that in the circumstances and situations faced by the petitioner, only the passionless saint/Yogi, described in Srimad Bhagwat Geeta could remain mentally intact/free inspite of such incidents before him. But in the case of ordinary man like petitioner, it was but natural for him to become mental sick and mentally dis-balanced which heals by and by, by efflux of time naturally. Thus, it can easily be assumed by this Court that on account of aforesaid compelling circumstances, the petitioner could not resume his duties earlier to 11.5.1994. Further in the wake of statement at Bar that the petitioner was appointed as a constable in the year 1972 and since then upto 4.5.1989, when the petitioner took leave for three days, he never defaulted in joining and performing his duties for last 17 years, therefore on this count also, it cannot be accepted that after working for a period of more than 17 years sincerely, the petitioner would abandon his job in the mid stream of his career and life. In such a circumstance, it can safely be assumed that due to his aforesaid sick mental condition, the petitioner could not resume his duties earlier to 11.5.1994. Therefore in view of law laid down by the Apex Court referred hereinbefore, the aforesaid alleged unauthorised absence from duties of the petitioner, cannot be treated to his willful absence from duty and accordingly cannot be treated to be a misconduct warranting any punishment or penalty.

19. Now coming to the next question as to whether proper disciplinary inquiry was held against the petitioner before his dismissal from service? In this connection, it is to be noted that Rule-4 of 1991 Rules provides Punishments to be imposed upon the Police Officer. Sub-rule 1(a) of which deals major penalties like (i) dismissal from service, (ii) removal from service, (iii) reduction in rank including reduction to a lower-scale and to a lower stage in a time scale. Rule-5 of 1991 Rules deals with the procedure for awarding of punishment. Sub-rule (1) of which provides that the cases in which major punishments enumerated in Clause (a) of sub-rule (1) of Rule-4 may

be awarded shall be dealt with in accordance with the procedure laid down in sub-rule (1) of Rule 14. Rule-14 of 1991 Rules deals with the procedure for conducting departmental proceedings. Sub-rule (1) of which stipulates that subject to provisions contained in these Rules, the departmental proceedings in the cases referred to in sub-rule (1) of Rule 5 against the Police Officers may be conducted in accordance with the procedure laid down in Appendix I. Appendix-I of 1991 Rules provides Procedure Relating to the Conduct of Departmental Proceedings against Police Officers.

20. For ready reference it would be appropriate to extract the provisions of Rule-4, Rule-5(1), Rule-14 Clause (1) and Appendix-I of 1991 Rules alongwith Form 1 as contained in said Rules in extenso as under:

4. Punishment.--(1) The following punishments may, for good and sufficient reasons and as hereinafter provided, be imposed upon a Police Officer, namely.--

(a) Major Penalties--

(i) Dismissal from service.

(ii) Removal from service.

(iii) Reduction in rank including reduction to a lower-scale or to a lower state in a time scale.

(b) Minor Penalties--

(i) Withholding or promotion.

(ii) Fine not exceeding one months' pay.

(iii) Withholding of increment, including stoppage at an efficiency bar.

(iv) Censure.

5. Procedure for award of punishment.--(1) The cases in which major punishments enumerated in Clause (a) of sub-rule (1) of Rule 4 may be awarded shall be dealt with in accordance with the procedure laid down in sub-rule (1) of Rule 14.

14. Procedure for conducting departmental proceedings.--(1) Subject to the provisions contained in these Rules, the departmental proceedings in the cases referred to in sub-rule (1) of Rule 5 against the Police Officers may be conducted in accordance with the procedure laid down in Appendix I.

APPENDIX-I

PROCEDURE RELATING TO THE CONDUCT OF DEPARTMENTAL PROCEEDINGS AGAINST POLICE OFFICER.

[See Rule 14 (1)]

Upon institution of a formal enquiry such Police Officer against whom the inquiry has been instituted shall be informed in writing of the grounds on which was proposed to take action and shall be afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be used in the form of a definite charge or charges as in Form 1 appended to these Rules which shall be communicated to the charged Police Officer and which shall be so clear and precise as to give sufficient indication to the charged Police Officer, of the facts and circumstances against him. He shall be required, within a reasonable time, to put in, 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 Inquiry Officer so directs an oral enquiry shall be held in respect of such of the allegation as are not admitted. At that enquiry such oral evidence will be recorded as the Inquiry Officer considers necessary. The charged Police Officer 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 Inquiry Officer 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 finding and the ground thereof. The Inquiry Officer may also separately from these proceedings make his own recommendation regarding the punishment to be imposed on the charged Police Officer.

FORM-1

Form of charge to be used in proceedings u/s 7
of the Police Act, 1861

Office of the

To

Dated:199

(Full name and designation of the Police Officer charged)

You are hereby charged as follows:

(1) that you on (or about (or between) and and hereby

(Facts of the case)

committed a breach of rule or, were guilty of failure to discharge your duty, or etc.

Evidence which is proposed to consider in support of the charge-

(I) +

(II) +

(III) +

(2) that you* etc.

(3) that you* etc.

+ (to be repeated as many times as there charges)

You are hereby required on or before to put in a written statement of your defence in reply to each of the charges. You are warned that if no such statement is received from you by the undersigned within the time allowed, it will be presumed that you have none to furnish and order"s will be passed in your case accordingly.

You are further required simultaneously to inform the undersigned in writing whether you desire to be heard in person and, in case, you wish to examine or cross-examine any witnesses to submit alongwith your written statement their names and address together with a brief indication of the evidence which each such witness shall be expected to give.

(Signature and Designation of Inquiry Officer)

(For and on behalf of*)

Certified that the charge has been read over and explained to party charged) in simple Hindi and a copy of the same was handed over to Received a copy of charge.

(Signature and Designation of Inquiry Officer)

Signature of party charged

NOT TO FORM PART OF THE CHARGE

Instructions:

(I) The charge sheet should be given to the person concerned and his signature should be taken on a copy of the charge-sheet. If that is not possible, it should be served by registered post.

(II) Each charge should be drawn up precisely and clearly, care being taken to avoid vagueness.

(III) State the act, or commission by the Government servant with as much precision as possible.

(IV) If the act or omission can be related to any specific rule or order it should be shown here, if not a general statement like were there by guilty of dishonesty dereliction of duty etc. should be.

(V) It is not necessary that the evidence should be set in detail. It is enough to specify the different places evidence which it is proposed to take into account against the Government servant charged e.g., statement of so and so or letter or

report of so and so, dated such and such. Care should be taken, however, to see that the evidence cited is exhaustive as no further place of evidence can be considered against the Government servant charged later on, unless he given fresh notice of it and so also an opportunity to meet it.

21. Before applying the aforesaid rules in the facts of the present case, it would be useful to refer some reported decisions having material bearing with the question in controversy involved in the case. In [Dr Ramesh Chandra Tyagi Vs. Union of India \(UOI\) and Others](#), no charge sheet was served on the appellant. The Enquiry Officer himself stated that the notices sent were returned with endorsement "left without address" and on other occasion, "on repeated visits people in the house stated that he has gone out and they do not disclose where he has gone. Therefore, it is being returned." The Apex Court observed that it may be that appellant was avoiding it but avoidance does not mean that it gave a right to Enquiry Officer to proceed ex parte unless it was conclusively established that he deliberately and knowingly did not accept it. The endorsement on the envelope that it was refused, was not even proved by examining the postman or any other material to show that it was refusal by the appellant who denied on oath such a refusal. No effort was made to serve in any other manner known in law. Under Postal Act and Rules the manner of service is provided. Even service rules take care of it. Not one was resorted to. And from the endorsement it is clear that the envelope containing charge sheet was returned. In absence of service of charge sheet or any material supplied to the appellant the Apex Court held that it is very difficult to agree that the inquiry did not suffer from any procedural infirmity.

22. In [Union of India and Others Vs. Dinanath Shantaram Karekar and Others](#), the charge sheet which sent to the respondent was returned with postal endorsement "not found". This indicates that the charge sheet was tendered to him even by postal authorities. A document sent by registered post can be treated to have been served only when it is established that it was tendered to the addressee. Where addressee was not available even to the postal authorities and the registered cover was returned to the sender with the endorsement "not found", it cannot be legally treated to have served. The appellant should have made further efforts to serve the charge sheet on the respondent. Single effort, in the circumstances of the case, cannot be treated to be sufficient. That being so, the very initiation of the departmental proceedings was bad. It was ex parte even from the stage of the charge sheet which at no stage, was served upon the respondent. It was held that the charge sheet and show cause notice should be served personally and if they are not served, they should be sent under registered cover, even if service is not effected, it may be published in popular newspapers having wide circulation, which is expected to be read by public in general in the locality where the delinquent employee ordinarily resides.

23. In instant case under the relevant provisions of 1991 Rules the respondents were under legal obligation to serve the charge sheet upon the petitioner personally and while serving the charge sheet his signature should have been taken on a copy of charge sheet and if that was not possible, it should have been served by the Registered post, even if it was found that service of charge sheet is deliberately avoided by the petitioner as held by Apex Court from time to time it should have been published in popular daily newspaper having wide circulation in locality where the petitioner resides, which is expected to be read by general public, but no such steps were taken by the respondents to serve charge sheet upon the petitioner. In this connection, the respondents have taken stand in para-17 of the supplementary counter-affidavits filed by Sri Jogendra Kumar, Superintendent of Police on 20.3.2013 that the petitioner was continuously absent from duty since 11.3.1996, hence the charge sheet was sent to the house of the petitioner on 4.4.1996 through special messenger namely 28 C.P. Ram Naresh but he was not found at his house, therefore, the special messenger has served the said charge sheet upon the father of the petitioner namely Sri Jhuri Ram Yadav on 7.4.1996 in presence of two witnesses namely Ram Kumar Yadav and Ram Jiyawan R/o of Village Nairpur P.S. Kotwali, District Pratapgarh.

24. The petitioner has denied his alleged absence from duties w.e.f. 11.3.1996 and contrary to it in paras 18, 20 and other paragraphs of the supplementary rejoinder affidavit, the petitioner has specifically stated that since 11.5.1994 to 19.9.1996 i.e. till his dismissal from service, he has continuously worked and paid his monthly salary for the aforesaid period. Thereafter this Court has directed the authorities to bring the material before this Court regarding service of charge sheet upon the petitioner. In pursuance of direction of this Court, no material has been brought on record to establish that charge sheet was served upon the petitioner or even upon his father on 7.4.1996. Even Constable Ram Naresh was not examined by the inquiry officer to establish the service of charge sheet upon the father of the petitioner nor witnesses namely Ram Kumar Yadav and Ram Jiyawan were examined before the Inquiry Officer to establish the fact that charge sheet was served upon the father of the petitioner namely Jhuri Ram Yadav on 7.4.1996 in their presence. Therefore, in wake of these facts and circumstances of the case, I am of the considered opinion that the fact of service of charge sheet upon the petitioner even through his father could not be proved. Even for the sake of argument if it is assumed that the charge sheet was served upon the father of petitioner on 7.4.1996 even then it cannot be necessarily assumed that before holding ex parte inquiry as according to the inquiry officer on 17.7.1996, the petitioner must have visited his house and his father must have handed over the copy of charge sheet to him for submitting his reply. Thus, in my opinion, it cannot be held that charge sheet was served upon the petitioner even through his father.

25. At this juncture, it is also to be noted that in pursuance of direction of this Court regarding the working and payment of salary to the petitioner w.e.f. 11.5.1994 to

19.9.1996 i.e. till he was dismissed from the service, the respondents have failed to produce the pay bill on the ground that pay bill of aforesaid period has been destroyed by passage of time. This fact has been specifically denied by the petitioner in para-14 and 27 of the supplementary rejoinder affidavit stating therein that such document cannot be destroyed on passage of time and as a matter of pretext the respondents have filed report of clerk of the office of Superintendent of Police stating therein that the record of constables who have been posted in Police Lines during the period 15.4.1994 to 19.9.1996 has been destroyed due to passage of time vide report dated 12.3.2013 filed as Annexure-3 to the supplementary counter-affidavit filed by Sri Jogendra Kumar on 20.3.2013. It is stated by the petitioner in said supplementary rejoinder affidavit that if the record of payment was destroyed, then on what basis the clerk has given certificate dated 12.3.2013 stating that no salary was given to the petitioner from 11.5.1994 to 19.9.1996. It is further stated that in fact the register and document as stated herein before Hindi order book, salary payment register, register of maintaining character roll etc. are always available in department and it has never been wiped out or destroyed and the same are not being produced before this Court with a view to mislead this Court in the matter.

26. In this connection it is also to be noted that in para 11 of the supplementary counter-affidavit filed by Sri Vijay Bahadur Singh Circle Officer, Amritpur, Fatehgarh on 4.4.2013 it is admitted that the petitioner has been given Rs. 36,668.02/- as subsistence allowance after his suspension during the period of March, 1995 to September, 1996. In this view of the matter, in my opinion, once the petitioner was present for receiving subsistence allowance during the period commencing March 1995 to September, 1996 how it can be said that he was not available for service of charge sheet on 4.4.1996 which was allegedly served upon the father of the petitioner on 7.4.1996. Therefore, in my opinion, these facts lead towards conclusion that the petitioner was available for service of charge sheet in Police Line, Fatehgarh on 4.4.1996 onward but in order to take impugned action against him neither charge sheet was served upon him personally nor it was sent through registered post nor it was published in popular newspaper having wide circulation in locality, which is expected to be read by general public, as such initiation of the disciplinary inquiry against the petitioner since very inception for want of service of charge sheet upon him is bad in law, hence entire disciplinary inquiry held against him cannot be sustained and liable to be quashed on this ground alone.

27. There is yet another reason, which would also leads to same conclusion. From the perusal of findings of Inquiry officer dated 26.7.1996 contained in Annexure-4 of the Supplementary counter-affidavit filed by Sri Vijai Bahadur Singh, Circle Officer, Amritpur, Fatehgarh on 4.4.2013, it appears that Inquiry officer has recorded a finding that with regard to the date of examination of departmental witnesses on 17.7.1996, during disciplinary inquiry the petitioner was informed through R.I., Police Line on 15.7.1996 but R.I., Police Line has reported on 16.7.1996 to the Inquiry

Officer that the petitioner is continuously absenting from duty with effect from 30.6.1996 with the result the statement of departmental witnesses were recorded in absence of the petitioner. Thus, it is categorically clear that the story set up by the respondents that petitioner is continuously absenting from police line with effect from 11.3.1996 is wholly incorrect in the wake of statement of R.I. dated 16.7.1996 wherein he has stated that petitioner is continuously absenting from 30.6.1996 and for the same reason another finding recorded by the inquiry officer that after joining on 11.5.1994, the petitioner is again continuously absent from duty from 10.5.1995 also appears to be without any factual basis and contrary to the statement of R.I., Thus, from the aforesaid finding of Inquiry Officer it is clear that ex parte disciplinary inquiry has been held against the petitioner on 17.7.1996 without any notice and information to him about the date and place of holding disciplinary inquiry. Further the aforesaid findings of Inquiry Officer also falsified the statement made by the Superintendent of Police, Fatehgarh and Circle Officer, Fatehgarh through the supplementary counter-affidavits filed before this Court on 20.3.2013 and 4.4.2013. Therefore, in given facts and circumstances of the case I am of the considered opinion that the petitioner was neither served any charge sheet nor any notice about the date and place of holding inquiry was served upon him before holding ex parte inquiry against him. Thus, in view of aforesaid legal position stated by the Apex Court, such ex parte inquiry could only be held against the petitioner when it is found that after service of charge sheet upon the petitioner, he has failed to submit his reply and not in other situation, therefore, in given facts and circumstances of the case, I am of the considered opinion that disciplinary authority had no authority under law to hold ex parte disciplinary inquiry against the petitioner.

28. So far as service of show cause notice upon the petitioner is concerned, it is to be noted that although in para-18 and 19 of the supplementary counter-affidavit filed by Sri Jogendra Kumar, Superintendent of Police, Fatehgarh on 20.3.2013 it is stated that after holding disciplinary inquiry Sri Mohd. Abes Ahmad, Inquiry Officer has submitted his inquiry report to the disciplinary authority on 26.7.1996. Thereupon a show cause notice dated 1.8.1996 was issued to the petitioner and copy of said show cause notice was served upon him on 19.8.1996 through Superintendent of Police, Pratapgarh and after receiving the copy of show cause notice he has made his signature thereon. In reply to the paragraph 19 of the said supplementary counter-affidavit in para 21 of the supplementary rejoinder affidavit filed by petitioner, it has been specifically stated that the show cause notice dated 1.8.1996 was never served upon the petitioner. On perusal of page 20 on which it has been alleged that petitioner received show cause notice, it is evidently clear that his signature has been made fraudulently on the said notice and signature made in that paper is not signature of the petitioner rather the same has been made by respondents themselves. This Hon"ble Court may compare the signature of petitioner as it is evident on perusal of page-15 and 19 of the same supplementary

counter-affidavit, which may clear the matter. The report itself speaks about the service of F No. 13/96 and not about the service of show cause notice about the proposed punishment. It is totally incorrect to say that show cause notice dated 1.8.1996 was served upon the petitioner on 19.8.1996. In view of aforesaid statement of the petitioner on oath and having regard to the conduct of the disciplinary authority, it is very difficult for this Court to accept the contention of respondents that show cause notice dated 1.8.1996 was served upon the petitioner on 19.8.1996 and the petitioner was given adequate opportunity to defend his case. Thus, in view of foregoing discussion, I am of the considered opinion that entire disciplinary inquiry held against the petitioner is without service of charge-sheet, without any notice and information of date and place of holding inquiry and without service of show cause notice alongwith copy of inquiry report upon the petitioner, as such is in utter violation of provisions of Rule 1991 and violative of Article 311(2) of the Constitution of India, therefore, held to be void ab initio. Accordingly, the impugned order of dismissal dated 15/19.9.1996 passed by respondent No. 4/Disciplinary Authority based on such inquiry report, order dated 26.19.2005 passed by appellate authority respondent No. 2 and order dated 11.4.2005 passed by revisional authority respondent No. 3 cannot be sustained and the same are hereby quashed. In the result, petitioner is directed to be reinstated forthwith alongwith continuity of service.

29. Taking into consideration the entire facts and circumstances of the case, in my opinion, since the petitioner could not be permitted to work for long time since 1996 till now on account of callous and unreasonable attitude of the respondents, therefore, the petitioner cannot be alone blamed. Unjustified and arbitrary action of the respondents are also responsible for the same. So far as alleged unauthorised absence from duties for a period of five years 4 days of the petitioner w.e.f. 7.5.1989 to 10.5.1994 is concerned, in my opinion, it was not willful default of the petitioner rather it was on account of unforeseen and unavoidable compelling circumstances created by the act of the Almighty, therefore, the petitioner cannot be held responsible for the same. Accordingly, aforesaid period cannot be excluded from his service and also cannot be treated to be break in service. However, in given facts and circumstances of the case, the aforesaid period shall also be treated to be on duty on notional basis for the other benefits of service i.e. for seniority, annual increments and revision of pay scale for the purpose of pensionary benefits and pension but actual payment of salary shall not be made for the said period.

30. Thus, in totality of these facts and circumstances. I direct that from the date of dismissal from service till date, the petitioner shall be paid 50% salary as revised from time to time by adding annual admissible increment by treating the petitioner to be in continuous in service, within a period of two months from the date of production of a certified copy of this order before the authority concerned. But for the purposes of other pensionary benefits, his whole salary from the date of his dismissal till the date of his reinstatement, shall be counted without such payment.

Since it is admitted by the petitioner that w.e.f. 11.5.1994 till the date of his dismissal he had been paid his salary, therefore, no direction for payment of salary during the aforesaid period can be given by this Court. In the result, the writ petition succeeds and is allowed in the light of directions/observations made above directing the respondents to reinstate the petitioner forthwith on production of a certified copy of this order before the competent authority.