

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 16329 of 2010****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE MAULIK J. SHELAT**

Approved for Reporting	Yes	No
		✓

PUNAMCHAND DEVRAJ DHUA

Versus

GUJARAT WATER SUPPLY AND SEWERAGE BOARD & ANR.

Appearance:

MR G M JOSHI, SENIOR COUNSEL with MR MEHUL SHARMA for
MR.VYOM H SHAH(9387) for the Petitioner(s) No. 1

MR HS MUNSHAW(495) for the Respondent(s) No. 1

RULE SERVED for the Respondent(s) No. 2

CORAM: HONOURABLE MR. JUSTICE MAULIK J. SHELAT**Date : 08/04/2026****JUDGMENT**

1. Heard Mr. G. M. Joshi, learned Senior Counsel with Mr. Mehul Sharma, learned Advocate for Mr. Vyom H. Shah, learned Advocate for the petitioner and Mr. H. S. Munshaw, learned Advocate for respondent No.1.
2. The present petition is filed under Articles 14, 16 and 226 of the Constitution of India, seeking the following reliefs:

“A) Quashing and setting aside the orders dt.28.11.2008, 1.5.2009 and dt.2.11.2010 and directing the respondents to pay the consequential benefits.

B) During the pendency and final disposal of this petition, the Respondents may be directed to suspend the orders dt.28.11.2008, 1.5.2009 and order dt. 2.11.2010.

C) To grant such and further relief as may be deemed fit and proper.”

3. SHORT FACTS:

- 3.1.** The petitioner was serving as senior clerk with respondent No. 3 since 25.07.1984. He was served with a show-cause notice dated 16.12.2006, whereby, the respondent sought an explanation from him in regard to the irregularity committed by him while serving as senior clerk at Sukhakari Sub Division Anjar.
- 3.2.** Subsequently, the petitioner was served with a charge-sheet on 06.08.2007. Upon conclusion of the inquiry, the inquiry officer vide his report dated 24.04.2008 found the charge proved against the petitioner and accordingly submitted his report.
- 3.3.** The respondent appears to have accepted the report, whereby imposed the penalty of reduction in present pay scale by one

stage, with deduction of one increment without future effect for five years, which was modified by the Appellate Authority to one year. Hence, the present petition.

4. SUBMISSIONS OF THE PETITIONER:

- 4.1.** Mr. Joshi, learned Senior Counsel, would submit that the charge levelled against the petitioner cannot be said to have been proved by the respondent, as no witness was examined by the presenting officer to prove the charge.
- 4.2.** It is submitted that as per sub-rule 13 of Rule 9 of the Gujarat Civil Services (Disciplinary and Appeal) Rules, 1971 (hereinafter referred to as “*the Rules, 1971*”), it was incumbent upon the respondent to examine the witness to prove the charge.
- 4.3.** It is further submitted that there is no misconduct proved by the respondent and in absence of proving the charge in accordance with law, no penalty could have been imposed by the respondent.
- 4.4.** To buttress his arguments, Mr. Joshi, learned Senior Counsel, would rely upon the following decisions:

- (i) *Roop Singh Negi V/s. Punjab National Bank and others, reported in (2009) 2 SCC 570;***
- (ii) *Jai Prakash Saini V/s. Managing Director, U.P. Cooperative Federation Ltd. and others, reported in 2026 SCC Online SC 505;***
- (iii) *State of Uttar Pradesh through Principal Secretary, Department of Panchayati Raj, Lucknow, V/s. Ram Prakash Singh, reported in 2025 SCC Online SC 891.***

4.5. Making the above submissions, Mr. Joshi, learned Senior Counsel, would request this Court to allow the present writ petition.

5. SUBMISSIONS OF THE RESPONDENT NO.1:

5.1. *Per contra*, Mr. Munshaw, learned Advocate, would vehemently oppose this petition and place heavy reliance upon the reply filed by the respondent. It is submitted that the petitioner was serving as senior clerk and he did not bring to the notice of his superior about the corrections made in the receipt prepared in regard to the number of trips of the water tanker, whereby he was remained negligent in his duty.

5.2. It is further submitted that there was apparent maneuvering in the total number water tanker trips on the receipt and in such circumstance, it was the duty of the petitioner to bring this fact

to the notice of his superior-the Deputy Executive Engineer. The petitioner failed in his duty. It is also submitted that as per the representation/reply of the petitioner, he requested to impose a minor penalty than imposed upon him, meaning thereby, he has admitted his guilt.

5.3. Mr. Munshaw, learned Advocate, would submit that since the document is not disputed by the petitioner, there was no need to examine any witness and as such, the charge is satisfactorily proved in the disciplinary inquiry against the petitioner.

5.4. Making the above submissions, Mr. Munshaw, learned Advocate, would request this Court to reject the present writ petition.

6. No other and further submissions are being made.

ANALYSIS:

7. Having heard learned Advocates appearing for the respective parties and upon perusal of the pleadings and documents, it is undisputed fact that no witness was examined in the departmental inquiry by the presenting officer to prove the charge levelled against the petitioner. As per the charge-sheet,

the petitioner was subjected to only one charge that in the voucher No. D-49 dated 03.01.2002, there was maneuvering in the total number of water tanker trips and such fact was not brought to the notice of the Deputy Executive Engineer by the petitioner. The petitioner submitted his response, whereby he denied the charge, rather he specifically replied that he has not committed any misconduct as alleged. He has also submitted certain other receipts, wherein, the initials of the Deputy Executive Engineer can be noticed over such changes made in number of trips. The inquiry officer has not accepted the submission of the petitioner, rather drawn some inference while arrived at the conclusion that the charge levelled against the petitioner is proved.

8. As per sub-rule 13 of Rule 9 of the Rules, 1971, it was incumbent upon the presenting officer appointed by the respondent to call upon the witness to prove the charge, which is undisputedly not done. The aforesaid rule reads thus:

“9(13): On the date fixed for the Inquiry, the oral and documentary evidence by which the articles of charges are proposed to be proved shall be produced by or on behalf of the Disciplinary Authority. The witnesses shall be

examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government servant The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they shall have been cross-examined but not on any new matter, without the leave of the Inquiry authority. The Inquiry Authority may also put such questions to the witnesses as it thinks fit.”

9. At this stage, it would be apt to refer and to place reliance upon the recent decision of the Hon'ble Apex Court in the case of ***Jai Prakash Saini (supra)***, wherein, in a somewhat similar factual situation, the Hon'ble Apex Court held thus:

“17. From the decisions of this Court in Sur Enamel (supra) and Kharak Singh (supra), followed in Chamoli District Cooperative (supra), which deals with similar service rules as are applicable here, it is now settled that unless the charged employee accepts his guilt in clear terms, an enquiry on the charges drawn against him would have to be held. In the enquiry, the employer/department would have to take steps first to lead evidence against the workmen/delinquent charged and give an opportunity to him to cross examine those witnesses. Only thereafter, the workmen/delinquent shall be asked whether he wants to lead any evidence and/or submit an explanation about the evidence led against

him. Even in a case based solely on documentary evidence, unless the relied upon documents are admitted by the charged employee, a witness would have to be examined to prove those documents and when so examined, the witness would have to be tendered for cross-examination.

18. In the instant case, we find that the department had not produced any witness in the enquiry even though the charges levelled upon the appellant were denied by him. Therefore, in our view, the enquiry stood vitiated. Once the enquiry stood vitiated, the consequential order of punishment/recovery cannot be sustained. We therefore allow this appeal. The impugned judgment and order of the High Court is set aside. The writ petition of the appellant stands allowed to the extent indicated below. The order of dismissal and consequential recovery is set aside. The Federation is, however, at liberty to hold a de novo enquiry, if it so desires, within a period of six months from the date of this order. If the Federation does not hold de novo enquiry as permitted above, the appellant shall be entitled to reinstatement with benefit of continuity in service including arrears of salary after adjusting suspension allowance, if any, paid already. In case the Federation chooses to hold an enquiry, it shall reinstate the appellant and place him under suspension till completion of the enquiry and during this period pay suspension allowance as may be payable in accordance with law. In case de novo enquiry is held, other service benefits including

arrears of salary as well as benefits of continuity in service shall depend on the outcome of the enquiry.”

(Emphasis supplied)

10. In the present case also, no oral evidence led before the Inquiry Officer as no witness was examined by the presenting officer to prove the charge. Hence, the penalty order is unsustainable in law.

CONCLUSION:

11. Thus, in view of the aforesaid facts and circumstances, as well as the provisions of the Rules, 1971 and applying the ratio of the cited decision more particular the recent one in the case of ***Jai Prakash Saini (supra)*** to the present case, I am of the view that the order of penalty imposed by the respondent warrants interference by this Court, inasmuch as the charge cannot be said to have been proved in accordance with law; rather, the inquiry stood vitiated. Accordingly, the impugned orders dated 28.11.2008 as well as 01.05.2009 are hereby quashed and set aside.
12. Since the penalty order is quashed and set aside as witness was not examined by the respondent during the course of the

inquiry to prove the charge, liberty granted in favour of respondent to hold a *de novo* inquiry. Such recourse is adopted as per the recent decision of the Hon'ble Apex Court in the case of ***Jai Prakash Saini (supra)***.

13. In a case where such *de novo* inquiry is held against the petitioner, the same shall be completed within a period of six months from today, and shall be conducted in accordance with law. Upon the conclusion of *de novo* inquiry, in the event, the charge is proven against the petitioner, the respondent shall not impose a higher penalty than was imposed by appellate authority.
14. In a case where the respondent does not desire to hold *de novo* inquiry, in such circumstances, if the petitioner is entitled to get any benefit of second higher pay scale, such aspect of the claim of the petitioner may be considered by the respondent, if so, requested by the petitioner.
15. Before parting with the matter, it is made clear that this Court has not examined the legality and validity of the charge; rather, it has interfered with the penalty order only on the ground that the inquiry was vitiated.

- 16.** In view of the foregoing reasons and conclusions, the present writ petition is partly allowed, to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs.

NILESH

(MAULIK J. SHELAT, J)