

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C) No. 715 of 2015

Kumar Pandey.

...Petitioner

- Versus -

Union of India.

...Respondents

**B E F O R E
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH**

ORDER

24-08-2023

[1] Heard Mr. K. Roshan, learned counsel assisted by Mrs. Donnapriya Ashem, learned counsel appearing for the petitioner and Mr. S. Samarjeet, learned Sr. PCCG appearing for the respondents.

[2] The present writ petition had been filed with a prayer for quashing the order dated 09-05-2013 imposing to the petitioner the penalty of removal from service, order dated 28-10-2013 rejecting the appeal filed by the petitioner as well as the order dated 23-04-2014 rejecting the revision petition filed by the petitioner.

[3] Mr. K. Roshan, learned counsel appearing for the petitioner challenged the said impugned orders only on the ground that the departmental enquiry against the petitioner was conducted without appointing a presenting officer and the enquiry officer himself acted as a presenting officer and conducted the examination-in-chief of the prosecution witnesses and led them through the facts so as to present the case of the disciplinary authority against the petitioner and that the enquiry officer acted as a Judge and Prosecutor in

the said enquiry. It has also been vehemently submitted by the learned counsel for the petitioner that such act of the enquiry officer has greatly prejudiced the petitioner's rights to a fair enquiry and that a reasonable opportunity of being heard has also been deprived of. The learned counsel further submitted that non appointment of presenting officer vitiates the whole departmental enquiry and accordingly, the impugned order are unsustainable in the eyes of law and are liable to be quashed and set aside and the respondents be directed to reinstate the petitioner in service and to hold a fresh enquiry by appointing a presenting officer and by following the principles of natural justice and to complete the said enquiry within a stipulated period. The learned counsel further submitted that the issue raised in the present petition is squarely covered by the judgment and order dated 18-10-2022 passed by this Court in WP(C) No. 1061 of 2019 and the present writ petition can be disposed of in term of the said judgment and order.

[4] For ready reference, the operative portions of the said judgment are reproduced hereunder:—

"[9] I have heard the rival submissions of the learned counsel appearing for the parties at length and I have also carefully perused and examined the record of the present case. In the present case, it is an undisputed fact that no presenting officer was appointed to conduct the said departmental enquiry on behalf of the disciplinary authority despite the fact that there is a Circular Order dated 23.05.2018 for appointing a presenting officer to present the case on behalf of the Disciplinary Authority in the Departmental Enquiry held under the CRPF Act and Rules and that the enquiry officer himself conducted the said departmental enquiry on behalf of the disciplinary authority and assumed the role of a Judge and Prosecutor. In my considered view,

such conduct and act of the enquiry officer greatly prejudiced the petitioner's valuable rights to have a fair trial and it also violates the well established principle of natural justice. In such circumstances, non-appointment of the presenting officer would vitiates the entire departmental enquiry against the petitioner. In my considered view, the issue raised in the present case is squarely covered by the principle of law laid down by the Hon'ble Apex Court and High Court in its judgment relied on by the counsel for the petitioner and quoted hereinabove.

[10] *In the result, the impugned removal order dated 07.05.2011, the impugned appellate order dated 24.10.2011 and the impugned Revision order dated 24.11.2019 are hereby quashed and set aside.*

It is, however, made clear that as the impugned orders have been quashed and set aside only on the technical ground of non appointment of a presenting officer, the respondents are at liberty to initiate a fresh enquiry against the writ petitioner in respect of the same charges if they so wishes to do so. In the event of initiating such an enquiry, the respondents should conduct the said departmental enquiry fairly and in compliance with the principles of natural justice and conclude the same within a reasonable time which should not be more than four months from today. It is also made clear that if in case a fresh departmental enquiry is held against the petitioner, he shall be treated as under suspension and that if no such enquiry is initiated within the period prescribed, the petitioner is to be reinstated to his service with all the consequential benefits."

[5] Mr. S. Samarjeet, learned Sr. PCCG appearing for the respondents fairly submitted that there is no dispute with regard to the non appointment of the presenting officer during the enquiry held against the petitioner and that the present writ petition can be disposed of in terms of the aforesaid judgment and order dated 18-10-2022 passed by this Court in WP(C) No. 1061 of 2019 by granting similar relief.

[6] In view of submissions made by the learned counsel appearing for the parties and on careful examination of the material available on record, this Court is of the considered view that the issue raised in the present writ petition is squarely covered by the judgment and order dated 18-10-2022 passed by this Court in WP(C) No. 1061 of 2019 and the present writ petition can be disposed of by granting similar relief. Accordingly, the present writ petition is disposed of with the following directions:—

- (i) The impugned removal order dated 09-05-2013, the impugned appellate order dated 28-10-2013 and the impugned revision order dated 23-04-2014 are hereby quashed and set aside.
- (ii) As the impugned orders have been quashed and set aside only on technical ground of non appointment of a presenting officer, the respondents are at liberty to initiate a fresh enquiry against the writ petitioner in respect of the same charges if they wish to do so.
- (iii) In the event of initiating such an enquiry, the respondents should conduct the said departmental enquiry fairly and in compliance with the principles of natural justice and conclude the same within a reasonable time which should not be more than five months from today.
- (iv) In the event of holding a fresh departmental enquiry against the petitioner, the petitioner shall be treated as under suspension with all the consequential benefits.
- (v) It is also made clear that if no such enquiry is initiated and completed within the period prescribed above, the authorities are

directed to reinstate the petitioner in his service with all the consequential benefits.

- (vi) It is also made clear that the petitioner should fully cooperate at the time of holding the fresh departmental enquiry and if he does not extend cooperation during the said enquiry, the respondents are at liberty to approach this Court for extension of the time period.

With the aforesaid directions, the present writ petition is allowed.

Parties are to bear their own costs.

JUDGE

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