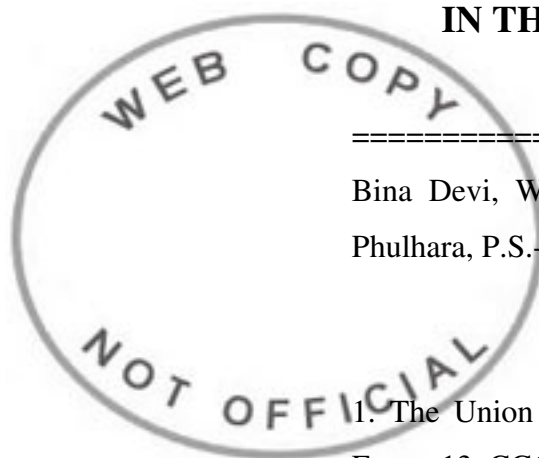




IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1562 of 2000

=====

Bina Devi, Wife of Late Ram Japu Jha, resident of Village and Post Office-
Phulhara, P.S.-Singhia, District-Samastipur.

.... Petitioner/s

Versus

1. The Union of India through the Director General, Central Industrial Security Force, 13, CGOS Complex, Lode Road, New Delhi-110003.
2. Inspector General, Central Industrial Security Force, Eastern Zone Head Quarters, 19 Telegraph Colony, Kidwaipuri, Patna-1.
3. Deputy Inspector General, Central Industrial Security Force, Eastern Zone Head Quarters, 19 Telegraph Colony, Kidwaipuri, Patna-1.
4. Group Commandant, Central Industrial Security Force, Ministry of Home Affairs, Kurji Balupar, P.O.-Sadakat Ashram, Patna-10.
5. Shri R.P. Singh, Inspector (Enquiry Officer), Central Industrial Security Force, Unit Kahalgaon Super Thermal Power Plant, Kahalgaon.

.... Respondent/s

With

=====

Civil Writ Jurisdiction Case No. 14742 of 2001

=====

Udai Narayan Singh, Son of Sri Amar Singh, resident of Village and P.O.-
Uttrawan, P.S.-Kurtha, District-Jehanabad.

.... Petitioner/s

Versus

1. The Union of India through the Director General, Central Industrial Security Force, 13, CGOS Complex, Lodi Road, New Delhi-110003.
2. Inspector General, Central Industrial Security Force, Eastern Zone Head Quarters, New Patliputra Colony, Patna.
3. Deputy Inspector General, Central Industrial Security Force, Eastern Zone Head Quarters, New Patliputra Colony, Patna.
4. Group Commandant, Central Industrial Security Force, Kurji Balupar, P.O.-

Sadakat Ashram, Patna-10.

5. Deputy Commandant, Central Industrial Security Force, Unit Kahalgaon Super Thermal Power Plant, Kahalgaon, Bhagalpur.

6. Shri Manish Priyadarshi, Assistant Commandant, Central Industrial Security Force, Unit Kahalgaon Super Thermal Power Plant, Kahalgaon, Bhagalpur.

.... Respondent/s

=====

Appearance :

(In C.W.J.C. No. 1562 of 2000)

For the Petitioner/s : Mr. Manish Kumar, Adv.

Mr. Sanjay Paras Muni, Adv.

For the Respondent/s (Union of India) : Mr. Kumar Priya Ranjan, Adv. (CGC)

Ms. Gunja, Advocate

(In C.W.J.C. No. 14742 of 2001)

For the Petitioner/s : None

For the Respondent/s (Union of India) : Mr. Rakesh Kumar Sinha, Adv. (CGC)

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 24-06-2015

Arising out of same occurrence, two disciplinary proceedings were initiated, under Central Industrial Security Force Rules, 1969, against the petitioner of C.W.J.C. No. 1562 of 2000 and the petitioner of C.W.J.C. No. 14742 of 2001. Different punishments came to be passed against the petitioners by separate orders, by the concerned Disciplinary Authorities. However, since the

proceedings arose out of same occurrence, both the cases were directed to be listed together and heard together and are accordingly on board today for hearing.

2. In course of hearing, however, there has been no representation on behalf of the petitioner in C.W.J.C. No. 14742 of 2001, Udai Narayan Singh, to press the writ petition. C.W.J.C. No. 14742 of 2001 is, accordingly, dismissed for non-prosecution.

3. The original petitioner of C.W.J.C. No. 1562 of 2000 died during the pendency of the writ application and his name has been substituted by his wife Bina Devi. However, for the purpose of the present judgment, the original petitioner has been referred to as “the petitioner” for convenience.

4. The petitioner of C.W.J.C. No. 1562 of 2000, is aggrieved by an order dated 30.06.1999, passed by the Group Commandant, Central Industrial Security Force, Group Headquarters, Patna, whereby, he imposed upon him punishment of dismissal from service as, according to the Disciplinary Authority, charge of gross misconduct levelled against the petitioner stood proved, in a



departmental enquiry. The petitioner's appeal, against the said order dated 30.06.1999, preferred before the Deputy Inspector General, Central Industrial Security Force, Eastern Zone Headquarters, Patna, came to be dismissed vide order dated 06.11.1999. The revision petition, preferred by the petitioner, against the order of dismissal and the order passed by the Appellate Authority, has been dismissed by an order dated 04.01.2003, by the Inspector General, Central Industrial Security Force, Eastern Sector, Patna. The said orders dated 06.11.1999 and 04.01.2003 have also been challenged in the present writ application.

5. Learned counsel appearing on behalf of the petitioner (C.W.J.C. No. 1562 of 2000) has made a very short submission in order to assail the impugned orders. He has contended that the order of the Disciplinary Authority is based on a report submitted by the Enquiry Officer in a departmental enquiry, held by him. He has contended that in course of the departmental enquiry, there was no Presenting Officer appointed by the Disciplinary Authority to prove the case of the department, before the Enquiry Officer. He has,



accordingly, submitted that apparently, in the present case, the Enquiry Officer assumed the role of Investigator and Prosecutor at the same time and he proved the charges on behalf of the Department against the petitioner, Ram Japu Jha. He has submitted that the function of the Enquiry Officer is quasi-judicial in nature and he is supposed to act in a fair and unbiased manner, as he is neither the Agent or Representative of the Disciplinary Authority. He has submitted that though the Central Industrial Security Force Rules, 1969, did not specifically provide at the relevant point of time, for appointment of a Presenting Officer in a departmental enquiry, it was incumbent upon the Disciplinary Authority to have appointed a Presenting Officer, to prove the charge levelled against the petitioner, Ram Japu Jha, before Enquiry Officer. He submits that since the Enquiry Officer failed to play the role, which was expected of him in a departmental enquiry, the enquiry report submitted by him, holding the petitioner guilty of the charge prepared against him, stands vitiated and all the orders, based on such enquiry report, are unsustainable.



6. Learned counsel for the petitioner has placed reliance upon recent decision of this Court in case of *“Sudhanshu Shekhar Deo vs. Union of India & Ors.”*, reported in *“2014 (1) PLJR 297”* as well as in case of *“Ganesh Chandra Prasad vs. The State of Bihar & Ors.”*, reported in *“2014 (1) PLJR 753”* in support of his submission. He has also submitted that though there is no specific provision for appointment of a Presenting Officer under the Central Industrial Security Force Rules, 1969 (*hereinafter refereed to as the Rules*), as in force when the departmental proceeding was held against the petitioner, Rule 70 of the said Rules did provide that supervisory officers and members of the Force shall, in respect of all other matters regarding conditions of service, for which no provision or insufficient provision has been made in these rules, be governed by the rules and orders for the time being applicable to officers, holding corresponding posts in Central Government in respect of such matters. He submits, relying upon Rule 70 of the said Rules, that in the event when there was no provision for appointment of a Presenting Officer in the Central Industrial Security Force



Rules, 1969, the Disciplinary Authority was required to take aid of Central Civil Service (Classification, Control and Appeal) Rule, 1965 (*hereinafter referred to as C.C.S. (C.C.A.) Rules*), which governed the Officers, holding corresponding posts in the Central Government. He has referred to Rule 14 (5) (c) of C.C.S. (C.C.A.) Rules in order to contend that in a case where the Disciplinary Authority itself inquires into the articles of charge or appoints an Enquiry Authority for holding any enquiry into such charge, it should, by an order appoint a government servant or legal practitioner, to be known as the Presenting Officer to present the case in support of the articles of charge. He, referring to the said provision, has contended that the Disciplinary Authority ought to have taken aid of such provision under Rule 14 (5) (C) of the C.C.S. (C.C.A.) Rules in absence of any provision under the Central Industrial Security Force Rules, 1969, for appointment of a Presenting Officer.

7. From the perusal of the records, it would appear that there were all together three charges levelled against the petitioner, Ram Japu Jha, for an occurrence



which had taken place on 29.08.1998 and in substance, the chargesheet contained an allegation against him that he misbehaved with a Constable and a Sub-Inspector of Central Industrial Security Force and abused them in a public place and threatened them of life. He is also said to have caused obstruction in carrying out the preliminary enquiry, with respect to the incident which had taken place on 29.08.1998. It was thirdly alleged against him that he had been punished, at least on four previous occasions for his indisciplined conduct and despite such punishments, no improvement could be found in said Ram Japu Jha, the petitioner, who was at the relevant point of time, working as Constable, posted in Central Industrial Security Force Unit, KHSTPP, Kahalgaon.

8. From the nature of charge framed against the petitioner, apparently, they were required to be proved by the witnesses through oral evidence or any other evidence in course of departmental enquiry.

9. Learned counsel appearing on behalf of the respondent-Union of India has not disputed the factual aspect that no Presenting Officer was appointed to place



the case on behalf of the Department, before the Enquiry Officer in order to prove the charge. He has, however, submitted that there was no mandatory requirement of appointment of a Presenting Officer. Pursuant to the order of this Court, the original records, relating to the concerned departmental proceeding, has been produced. Referring to the said records, learned counsel for the respondent-Union of India has submitted that indisputably, witnesses appeared before the Enquiry Officer, who deposed in support of the charge levelled against the petitioner, Ram Japu Jha. He has submitted that no *de facto* prejudice can be said to have been caused to the delinquent employee, against whom the departmental proceeding was held, as he was given sufficient opportunity to cross-examine the witnesses; on the ground of non-appointment of a Presenting Officer. He has further contended that Rule 14 (5) (c) of C.C.S. (C.C.A.) Rules does not mandatorily require that a Presenting Officer must be appointed. He submits that the said provision confers a discretion on the Disciplinary Authority to appoint a Presenting Officer to conduct the



case in support of the charge before the Enquiry Officer. He has further submitted that the petitioner has neither pleaded that any prejudice was caused to him in course of departmental enquiry and in the absence of such pleading, this Court may not interfere with the orders under challenge in the present writ application on the ground of non-appointment of a Presenting Officer.

10. In my opinion, it is basic requirement in a departmental enquiry before an Enquiry Officer, appointed to inquire into the charge of misconduct framed against an employee, that a person, who may be called as Presenting Officer, is appointed to present the case of the Department relating to misconduct alleged against the concerned employee before the Enquiry Officer. This is because the function of an Enquiry Officer is quasi-judicial in nature and he himself cannot proceed to present the case of department to prove the charge against an employee, as if he was acting as the Prosecutor. In my opinion, this is basic requirement of principles of natural justice that the Enquiry Officer, appointed by the Disciplinary Authority, performing quasi-judicial

functions, acts unbiased, in a fair manner. He cannot, assume the role of Prosecutor.

11. In the present case, apparently, there was none on behalf of the Department to present the case of the department to establish the charge before the Enquiry Officer. Apparently, the Enquiry Officer discharged all the functions, which were required to be performed by a person appearing before him on behalf of the department in support of the charge.

12. In a Division Bench decision of this Court in case of *“Narayan Prasad Sah vs. The Union of India & Ors.”*, reported in *“2008 (2) PLJR 581”*, this Court quashed the entire disciplinary proceeding on the solitary ground of non-appointment of a Presenting Officer, holding the findings, in violation of principles of natural justice, the Enquiry Officer having assumed the role of Prosecutor. Learned counsel appearing on behalf of the petitioner appears to be right in his submission in this regard, while relying upon other decisions of this Court in case of *“Sudhanshu Shekhar Deo vs. Union of India & Ors.”*, reported in *“2014 (1) PLJR 297”* as well as in case of *“Ganesh Chandra*

Prasad vs. The State of Bihar & Ors.”, reported in “2014 (1) PLJR 753”, in this regard.

13. Learned counsel appearing on behalf of the respondent-Union of India has submitted that on the basis of such technical deficiency in departmental enquiry, the action of the Disciplinary Authority should not be interfered with, keeping in mind, the gravity of charge levelled against the employee and the fact that his past records were also adverse.

14. The submission made on behalf of the respondent-Union of India that non-appointment of Presenting Officer did not result into any prejudice caused to the employee and, therefore, the impugned orders need no interference by this Court, in my opinion, cannot be accepted.

15. In the present case, I find that there has been blatant violation of principles of natural justice, which principle has two facets: (i) that no person can be contempt and heard and (ii) that no person can be judge in his own case. In the present case, the decision of the respondents, imposing punishment upon the petitioner is



hit by the second principles of natural justice, where the Enquiry Officer himself acted as a Prosecutor and held the charge against the employee to be proved. This Court has been consisted in view that non-appointment of a Presenting Officer in a departmental proceeding, leaving the Enquiry Officer to act as Investigator and Prosecutor at the same time, for proving a charge in a departmental proceeding, is gross violation of principles of natural justice. Further, the Courts have also been consisted in view that an Enquiry Officer functions as a quasi-judicial authority and he is under an obligation to act fairly and not as an Agent or Representative of the Department. He cannot act like a Prosecutor instead of a quasi-judicial authority.

16. In view of above, I am of the opinion that impugned orders cannot be sustained. Accordingly, the order dated 30.06.1999, passed by the Group Commandant, Central Industrial Security Force, Patna; order dated 06.11.1999, passed by the Deputy Inspector General, Central Industrial Security Force, Eastern Zone Headquarters, Patna as well as the order dated 04.01.2003,

passed by Inspector General, Central Industrial Security Force, Eastern Sector, Patna, which are impugned in the present writ application, are quashed.

17. Normally, on quashing of an order of dismissal from service of an employee, on the ground of irregularity in the departmental enquiry, this Court would have remanded the matter back to the Disciplinary Authority for holding an enquiry afresh, but such order cannot be passed in the present case, as the original petitioner, namely, Ram Japu Jha, against whom the order of dismissal was passed, died during the pendency of the writ application. Therefore, the consequences will follow arising out of quashing of the order of dismissal and subsequent orders passed in appeal and revision by the Appellate/Revisional Authority by the present order. The substituted petitioner, namely, Bina Devi, shall be entitled for all consequential benefits including the arrears of salary and other monetary benefits, as if no order of dismissal was passed against the employee, Ram Japu Jha (the original petitioner). Such arrears of salary for the period during which said Ram Japu Jha, remained out of

service because of the order of the dismissal, shall be calculated and paid to the petitioner, namely, Bina Devi, within a period of six months from the date of receipt/production of a copy of this judgment. However, if the respondents have any cogent evidence to the effect that said Ram Japu Jha (the original petitioner) was gainfully employed somewhere else during the period in question; it will be open to them to pass an appropriate order with respect to payment of arrears of salary etc.

18. This application is, accordingly, allowed.

19. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Praveen-II/-

U			
---	--	--	--