

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 6402 of 2008

1. Santosh Shukla (dead) through legal representative Nandita Shukla, aged about 36 years, W/o Late Shri Santosh Kumar Shukla, R/o Near Home Guard Office Kududand, Bilaspur (CG)

---- Petitioner

Versus

1. State Of Chhattisgarh through Secretary, Department of Home, D.K.S. Bhawan, Mantralaya, Raipur (CG)
2. Director General Of Police, State Of Chhattisgarh Raipur (CG)
3. Additional Director General Of Police, Special Armed Forces/ Training/ Telecommunication PHQ, Raipur (CG)
4. Inspector General Of Police, Special Armed Forces, Bhilai Distt. Durg (CG)
5. Senani, 2nd Battalion Special Armed Forces Sakri, Bilaspur (CG)

---- Respondent

For Petitioner	Shri Abhishek Pandey, Advocate
For Respondent/State	Shri Shashank Thakur, GA

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

29/03/2016

1. Santosh Kumar Shukla (*henceforth 'the original petitioner'*), now represented by his widow Nandita Shukla (*henceforth 'the petitioner'*), has preferred this writ petition under Article 226 of the Constitution of India challenging the order dated 5-12-2003 passed by the Deputy Inspector General of Police, Chhattisgarh

Armed Force, Bhilai (henceforth 'the DIG'), order of removal from service passed by the Commandant, 2nd Battalion, Chhattisgarh Armed Forces, Sakri, Bilaspur on 28.07.2004; the appellate order dated 09.02.2005 passed by the Additional Director General of Police, Chhattisgarh; the decision on mercy petition passed by the Director General of Police, Chhattisgarh on 22.02.2007; and the subsequent order on his mercy petition, which was dismissed by the State Government on 14.02.2008.

2. The original petitioner was appointed as Constable in the 2nd Battalion, Chhattisgarh Armed Forces, Sakri, Bilaspur on 23.09.1998. He successfully completed his probation in the year, 2000. At the relevant time i.e. January, 2003, the original petitioner was posted at Police Station Pamed, District Bastar. On 30.01.2003, a dispute/quarrel took place involving the original petitioner on one side and Assistant Platoon Commander Ramakant Giri and Head Constable Gajanand Pandey on the other side. After the incident, the petitioner submitted a report to the Station House Officer on the same day and requested for sending him for medical examination, however, he was referred to head quarter. There is nothing in the record as to whether the petitioner was sent for MLC to the head quarter.
3. Be that as it may, for the act of misbehaviour committed by the original petitioner against his superior APC Ramakant Giri, the Commandant of the 2nd Battalion passed an order dated 06.05.2003 imposing punishment of 'censure' upon the petitioner.

When the order of punishment was sent for information to the DIG, the said officer passed the order dated 05.12.2003 setting aside the order of punishment of 'censure' and directing initiation of a departmental enquiry against the petitioner.

4. Shri Abhishek Pandey, learned counsel appearing for the petitioner, has argued that under Regulation 270 (4) of the Chhattisgarh Police Regulations, the order imposing punishment of 'censure' could not have been set aside or cancelled without giving opportunity of hearing to the delinquent. Shri Pandey would also refer to the judgment rendered by this Court in **Vinod Kumar Kori v. State of Chhattisgarh & Others**¹, to argue that in the case at hand, the enquiry officer has also functioned as the presenting officer, therefore, the entire enquiry is vitiated.
5. Shri Shashank Thakur, learned Government Advocate appearing for the State, would oppose the writ petition on the submission that opportunity of hearing is to be afforded at the time of holding enquiry and not at the time of consideration of the matter by the DIG in *suo motu* jurisdiction.
6. Regulation 270 of the Chhattisgarh Police Regulations confers power on the revising authority to vary or reverse the order or direct a fresh enquiry. The said Regulation is reproduced hereunder for ready reference:-

270. (1) Every order of punishment of exoneration, whether original or appellate shall be liable to revision suo motu by any

¹ WPS No.1691 of 2011 (decided on 13-1-2016)

authority superior to the authority making the order.

(2) Every appellate order by a Final Appellate Authority shall be liable to revision by such Final Appellate Authority, on application made in that behalf by the person against whom the order has been passed.

Explanation: For the purposes of this clause, the expression "Final Appellate Authority" means the final authority empowered to hear an appeal under Police Regulation 262.

(3) The provisions of Regulations 266, 267, 268 and 271 shall, as nearly as may be, apply to an application for revision.

(4) The revising authority may for reasons to be recorded in writing exonerate or may remit, vary or enhance the punishment imposed or may order a fresh enquiry or the taking of further evidence in the case:

Provided that it shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard.

7. A bare perusal of the provisions contained in sub-regulations (1) and (4) of Regulation 270 would manifest that the order of punishment or exoneration shall be liable to revision *suo motu* by any authority superior to the authority making the order and that the revising authority may for reasons to be recorded in writing exonerate or may remit, vary or enhance the punishment imposed or may order a fresh enquiry or the taking of further evidence in the case provided that the revising authority shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard.

8. In the case at hand, there is no dispute about the fact that the order passed by the DIG on 05.12.2003 setting aside the order of imposition of penalty of 'censure' has been passed without giving any opportunity of hearing to the original petitioner.
9. It is the settled proposition of law that when the statute itself provides for opportunity of hearing i.e. adherence to the principles of natural justice, any order passed in violation thereof would be arbitrary being violative of Article 14 of the Constitution of India.
10. In the subsequent enquiry, punishment of removal from service has been imposed on the original petitioner and the said order has been affirmed by the appellate authority and the authorities hearing the mercy petitions, however, the very basis of the order pursuant to which the departmental enquiry was initiated itself being rendered by the DIG in violation of the principles of natural justice, all subsequent orders would be vitiated.
11. For the reasons mentioned herein above, the writ petition deserves to be and is hereby allowed. The order passed by the DIG on 5-12-2003 as well as the orders dated 28-7-2004, 9-2-2005, 22-2-2007 and 14-2-2008 are quashed. Since the writ petition has been allowed on the ground of violation of principles of natural justice, the other arguments raised by the learned counsel for the petitioner is not dealt with.

12. As a consequence of quashment of order dated 05.12.2003 passed by the DIG and the order of removal from service passed by the Commandant, 2nd Battalion on 28.07.2004 and the appellate order as well as the orders passed by the authorities hearing the mercy petitions, the original petitioner would be entitled to reinstatement in service with full back wages, however, on account of death of original petitioner during pendency of the writ petition on 9-4-2012, his widow i.e. the petitioner would be entitled to receive the amount of back wages without any interest.

13. There shall be no order as to costs.

Sd/-

Judge

Prashant Kumar Mishra

Gowri