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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 1720 of 2000**

Ali Nadeem Zaidi, aged about 31 years, S/o Mr. Hashmat Hussain Zaidi, R/o Bada Imam Bada, Jafar Nawaz, Saharanpur (U.P.)

---- Petitioner

Versus

1. Union of India, Through : Secretary, Home Affairs, New Delhi.
2. The Commandant, Central Industrial Security Force (C.I.S.F.), Unit Balco, Korba, Balco Nagar, Korba (M.P.) (now C.G.)
3. The Deputy Inspector General, Central Industrial Security Force, East Zone Headquarter, 19, Telegraph Colony, Kidvaipuri, Patna -1.

---- Respondents

For Petitioner	: Shri Parag Kotecha, Advocate.
For Respondents	: Shri N.K. Vyas, Asstt. Solicitor General of India.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****18/09/2017**

(1) The petitioner calls in question the order dated 18.06.1999, by which he has been imposed with the major penalty of removal from service and also the order dated 31.1.2000 by which his appeal has been dismissed by the appellate authority.

(2) Learned counsel for the petitioner would submit that in the instant case presenting officer was not appointed and the enquiry officer himself acted as prosecutor as well as judge, therefore, it is against the principles of natural justice and thereby the enquiry is vitiated. He further submits that both the authorities have acted unfairly, rather improperly by imposing punishment of removal upon the petitioner and the co-delinquent employees i.e. Constable

and Head Constable were punished with lighter penalty and, therefore, the impugned order is liable to be set aside.

(3) Learned counsel for the respondents would submit that the Department's witnesses were extensively cross-examined by the petitioner and, as such, only by way of some clarification, some questions were put by the Enquiry Officers. He would further submit that in the Central Industrial Security Force Rules, 1969 (henceforth "Rules, 1969"), which was applicable in the present case, there was no provision for appointment of presenting officer and, therefore, the presenting officer was not appointed. He further submits that the punishment imposed upon the petitioner, who was working as Sub Inspector and two other co-delinquent employees with the CISF is strictly in accordance with law as per their proven misconduct and, therefore, the writ petition is liable to be dismissed.

(4) I have heard learned counsel appearing for the parties & considered their rival submissions made hereinabove and perused the order impugned with utmost circumspection.

(5) It is not in dispute that the petitioner, who was working as Sub Inspector with the Central Industrial Security Force, was charge sheeted on 14.01.1999 for committing misconduct while he was posted at Bharat Aluminium Company, Korba. The Charge No.1 was that the petitioner being the head of the checking department had failed to check the vehicle properly. He was also charge- sheeted for indiscipline and negligency while discharging his duty as on 31.12.1998 at about 9 O' clock the vehicle of Richu Industry, which was loaded with materials was not examined properly despite information with regard to excess loading of materials. The Vigilance Department of Balco, Korba examined the vehicle and it was found that it

was having excess load. He was also charge-sheeted for failure to check the records.

(6) The charges were denied by the petitioner and the disciplinary authority was not satisfied with the reply and, therefore, departmental enquiry was ordered as per Rule 34 of the CISF Rules, 1969, which provides for imposing major penalties. Rules, 1969 in fact does not provide for any appointment of presenting officer.

(7) On behalf of Department, eight witnesses were examined to bring home the charges. It is the case of the petitioner that the inquiry officer acted as presenting officer, rather as prosecutor as well as judge, therefore, such a course is unsustainable and bad in law and it is not inconsistent with the principles of natural justice relying upon the decision of this Court in the matter of **Vinod Kumar Kori Vs. State of Chhattisgarh, through Secretary, Home Department and others**¹, whereas it is the case of the respondents that department's witnesses were extensively cross-examined by the petitioner himself and, thereafter only 2 or 3 questions were put to the witnesses for clarification and, therefore, it cannot be held that enquiry officer has also acted as prosecutor.

(8) In the matter of **Union of India through its Secretary, Ministry of Railway, New Delhi and others Vs. Mohd. Naseem Siddiqui**², the Division Bench of Madhya Pradesh High Court has held as under:

“7. One of the fundamental principles of natural justice is that no man shall be a judge in his own cause. This principle consists of seven well recognized facets; (i) The adjudicator shall be impartial and free from bias, (ii) The adjudicator shall not be the prosecutor, (iii) The complainant

¹ (2016) LabIC 2136

² 2005 (1) LLJ 931

shall not be an adjudicator, (iv) A witness cannot be the Adjudicator, (v) The Adjudicator must not import his personal knowledge of the facts of the case while inquiring into charges, (vi) The Adjudicator shall not decide on the dictates of his Superiors or others, (vii) The Adjudicator shall decide the issue with reference to material on record and not reference to extraneous materials or on extraneous considerations. If any one of these fundamental rules is breached, the inquiry will be vitiated.”

Further, in paragraph-16, Their Lordships summarised the legal position by observing as under:-

(i) The inquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a prosecutor.

(ii) It is not necessary for the Disciplinary Authority to appoint a Presenting Officer in each and every inquiry. Non-appointment of a Presenting Officer, by itself will not vitiate the inquiry.

(iii) The Inquiry Officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Inquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he should thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.

(iv) If the Inquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case employee, the Inquiry Officer acts as prosecutor thereby vitiating the

inquiry.

(v) As absence of a Presenting Officer by itself will not vitiate the inquiry and it is recognised that the Inquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Inquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry.

Whether an Inquiry Officer has merely acted only as an Inquiry Officer or has also acted as a Presenting Officer depends on the facts of each case. To avoid any allegations of bias and running the risk of inquiry being declared as illegal and vitiated, the present trend appears to be to invariably appoint Presenting Officers, except in simple cases. Be that as it may.

(9) In the matter of **Workmen of Lambabari Tea Estate V. Management Lambabari Tea Estate**³, Their Lordships of the Supreme Court have considered a case where the Manager of the Estate presided over the inquiry, recorded the statements, cross-examined the delinquent employees and also recorded his own statement and observed as under:-

"..... The Manager did not keep his functions as the Enquiry Officer distinct but became witness, prosecutor and Manager in turn. The record of the enquiry as a result is staccato and unsatisfactory"

(10) Thus, it appears that domestic inquiry must be held by an unbiased person who is unconnected with the incident so that he can be impartial and objective in deciding the subject matter of the inquiry. He should have an open mind till the enquiry is completed and should neither act with bias nor give an impression of bias. Where the Inquiry Officer acts as the Presenting Officer, bias can be presumed.

3 1966 II LLJ 315

(11) In the matter of **State of Uttaranchal and others Kharak Singh**⁴, the Supreme Court has held that act of the Inquiry Officer is opposed to principles of natural justice where he acted as investigator, prosecutor and judge by observing as under:-

“17. On the other hand, one Mr. P.C. Lohani, Dy. Divisional Forest Officer, Nandhaur acting as an inquiry officer after putting certain questions and securing answers submitted a report on 16/11/1985. No witnesses were examined. Apparently, there was not even a presenting officer. A perusal of the report shows that the inquiry officer himself inspected the areas in the forest and after taking note of certain alleged deficiencies secured some answers from the delinquent by putting some questions. It is clear that the inquiry officer himself has acted as the investigator, prosecutor and judge. Such a procedure is opposed to principles of natural justice and has been frowned upon by this Court.”

(12) As such, it is well settled that the adjudicator shall be impartial and free from bias and shall not be the prosecutor.

(13) However, in the matter of **Mulchand Electrical and Radio Industries Ltd. Vs. The Workmen**⁵, their Lordships of the Supreme Court have held that the Enquiry Officer in a domestic enquiry can put questions to the witnesses for clarification, wherever necessary and if he allows the witnesses to be cross-examined, thereafter, the enquiry proceedings cannot be impeached as unfair. Paragraph 5 of the report states as under:-

“5. In our opinion the note made by the Enquiry Officer stating that the witnesses had turned hostile meant only that they had stated before him something that was inconsistent with what appeared in the memorandum signed by them. We do not think that the enquiry was vitiated because the Enquiry Officer put some questions to the said witnesses by way of clarification in the circumstances stated above. This

4 (2008) 8 SCC 236

5 AIR 1975 SC 2125

Court in *Workmen in Buckingham and Carnatic Mills Madras Vs. Buckingham and Carnatic Mills Madras*, (1970) 1 Lab LJ 26(SC) held that the Enquiry Officer in a domestic enquiry can put questions to the witnesses for clarification wherever necessary and if he allows the witnesses to be cross-examined thereafter, the enquiry proceedings cannot be impeached as unfair. We are therefore unable to accept that the enquiry in this case had not been conducted in a fair and proper manner.”

(14) If the facts of the case are examined in light of the aforesaid decisions, it appears that the Enquiry Officer has put two or three questions to each of witness for clarifying the facts in issue and also permitted the witnesses to be cross- examined and the petitioner has cross-examined them extensively and, therefore, it is held that the Enquiry Officer has strictly followed the principles laid down in the matter of **Mulchand Electrical and Radio Industries Ltd. (supra)** and there is no illegality in the departmental inquiry conducted by the Respondent.

(15) This would bring me to the next question raised on behalf of the petitioner that punishment imposed upon him was arbitrary and discriminatory as well.

(16) In paragraph 29 of the reply on behalf of respondents No. 1 to 3 to the writ petition, it has been stated that other Sub Inspector – Atma Ram was also removed from service as he is equally responsible for checking of the vehicle like the petitioner; similarly Constables Ram Manohar and Mukesh Kumar have acted according to the direction of the petitioner and Sub Inspector – Atma Ram, found to be less responsible, as such, the disciplinary authority imposed the penalty of reduction of pay to lower time scale of pay for five years on both constables and, therefore, no

discrimination has been made in awarding punishment and that in view of the aforesaid discussion, there is no discrimination in awarding punishment to the petitioner and other similarly situated employees.

(17) As a fallout and consequence of the aforesaid discussion, the writ petition being devoid of merit, is liable to be and is hereby dismissed leaving the parties to bear their own costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-