

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.1574 of 2004

Rajesh Das, S/o Late Hari Das, aged about 41 years, Occupation Service, Constable No.158, Police Line Janjgir, District Janjgir-Champa (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Home, D.K.S. Bhawan, Raipur (C.G.)
2. Inspector General of Police, Bilaspur Range, Bilaspur (C.G.)
3. S.P. Janjgir Champa, District Janjgir-Champa (C.G.)
4. D.S.P. (HQ) Janjgir-Champa, District Janjgir-Champa (C.G.)
5. Director General of Police Chhattisgarh, Police Head Quarter, Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Raghavendra Pradhan, Advocate.

For Respondents / State: -

Mr. Prasun Kumar Bhaduri, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

10/10/2017

1. Disciplinary authority Superintendent of Police, Janjgir-Champa, by order dated 30-8-2003 imposed a punishment of reduction in rank of the petitioner for a period of five years which was affirmed in appeal by the appellate authority against which this writ petition has been preferred.
2. Learned counsel for the petitioner would submit that the impugned order is unsustainable and bad in law and it is liable to set aside, as

the enquiry officer has also acted as prosecutor, as in the departmental enquiry, charge No.1 is partly found proved and charge Nos.2 and 3 are not found proved against the petitioner and the charges which are found proved are based on perverse finding. Therefore, the impugned order is liable to be set aside.

3. Learned State counsel would support the impugned order and would submit that enquiry has been conducted fairly and the petitioner was allowed to cross-examine the departmental witnesses and seven defence witnesses have been examined by the petitioner, therefore, no prejudice has been caused by the said enquiry. The petitioner has been served with notice for removal from service, but he has been given only penalty of reduction in rank for five years as such, the penalty is commensurate with his misconduct and the said penalty has been imposed upon the petitioner, as the petitioner's conduct was found unbecoming as a member of disciplinary force, therefore, the penalty is strictly in accordance with law and no interference is called for.
4. I have heard learned counsel for the parties and considered their rival submissions and also gone through the documents available on record with utmost circumspection.
5. The petitioner was charge-sheeted stating that he has taken out ₹ 10,500/- from the pocket of complainant Ramadhar Kewat and thereby misconducted himself and also he has conducted himself in the manner of unbecoming of a Government servant and caused damage to the reputation of police force by his own conduct, as

charge No.1 was partly found proved, whereas charge Nos.2 and 3 were found proved for which the petitioner has been imposed penalty of reduction in rank for a period of five years.

6. It is evident from the record that the petitioner was allowed to be cross-examined by the enquiry officer extensively and he has also examined seven defence witnesses in support of his case. Though the proposed penalty by the disciplinary authority was removal from service, but he has given the penalty of reduction in rank for five years.
7. It is well settled law that inquiry officer cannot act as prosecutor, as it is opposed to the principles of natural justice and that will vitiate the inquiry. (See **Vinod Kumar Kori v. State of Chhattisgarh, through Secretary, Home Department and others**¹, **Union of India through its Secretary, Ministry of Railway, New Delhi and others v. Mohd. Naseem Siddiqui**² and **State of Uttaranchal and others v. Kharak Singh**³.)
8. However, in the matter of **Mulchand Electrical and Radio Industries Ltd. v. The Workmen**⁴, 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: -

1 (2016) LabIC 2136

2 2005 (1) LLJ 931

3 (2008) 8 SCC 236

4 AIR 1975 SC 2125

“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 Court in *Workmen in Buckingham and Camatic Mills Madras v. Buckingham and Camatic 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.”

9. Taking into account the misconduct which has been found proved against the petitioner and further taking into account that he was given fullest opportunity to defend himself following the law laid down in the matter of **Mulchand Electrical and Radio Industries Ltd.** (supra) and also taking into consideration that the petitioner being a member of disciplinary force – police has acted in the manner which is unbecoming of a Government servant, particularly of police force, I do not find it a fit case where the discretion under Article 226 of the Constitution of India can be exercised in favour of the petitioner, particularly when the finding of fact recorded by the disciplinary authority as affirmed by the appellate authority is based on the material available on record. The writ petition is accordingly, dismissed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge