

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 955 of 2014

IN

Civil Writ Jurisdiction Case No 7962 of 2011

- =====
1. Union of India through Director General, Central Reserve Police Force, New Delhi.
 2. Inspector General, Central Reserve Police Force, BS, Patna 25, Bihar.
 3. Deputy Inspector General, Central Reserve Police Force, Range HQR, Muzaaffarpur, Patna.
 4. Commandant, 95 Bn, Central Reserve Police Force, Pahariya Mandi, Pandeypur, Sarnath Road, Varanasi.
 5. Enquiry Officer Cum Assistant Commandant, 95 Bn, Central Reserve Police Force, Varanasi.

.... Appellant/s

Versus

Sudhanshu Shekhar Deo son of Shri Chandradeo Prasad resident of Village Damodarpur Baldhan, P.S. Nagarnausa, District Nalanda.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr S D Sanjay, Additional S G
Mr Anjani Kr Sharan, Assistant S G
For the Respondent/s : M/s Rajni Kant Jha, Neeraj Kr, Advocates

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CORAM: HONOURABLE DR JUSTICE RAVI RANJAN

And

HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE MADHURESH PRASAD)

Date: 12-09-2018

The learned Additional Solicitor General has appeared on behalf of the Union of India. He submits that the order of the learned Single Judge allowing the writ petition as well as setting aside the order of dismissal dated 31.12.2009 is unsustainable. He submits that merely because the Presenting Officer has not been appointed in the proceedings, which were conducted against the petitioner under



the provisions of Central Reserve Police Force Act and Rules, the proceeding cannot be said to be bad in the eyes of law.

2 The specific submission made on behalf of the Union of India is that non-appointment of Presenting Officer per se is not sufficient to conclude that there has been a procedural illegality. He submits that the issue has to be considered with reference to the facts of each individual case. Only in a case where non-appointment of Presenting Officer causes prejudice to the delinquent, the same can be made a ground for interfering with the order of punishment arising out of such a procedure. Reliance is placed on a judgment of the Apex Court in the case of *Union of India & Others –Versus- Ram Lakhan Sharma* reported in 2018 (3) PLJR (SC) 319. Referring to paragraph 35 of the said judgment, the learned Additional Solicitor General of India has emphasized that this Court should set aside the order of the learned Single Judge since, in the instant case, the facts were such that non-appointment of Presenting Officer did not occasion any procedural unfairness in the proceedings conducted against the petitioner.

3 For a better perspective of the submission advanced by the learned Additional Solicitor General of India, this Court considers it appropriate to reproduce Rule 27 (c) of the Central Reserve Police Force Rules, 1955 which provides the procedure for conducting a



departmental enquiry. The same is as follows:

“Rule 27 (c). The procedure for conducting a departmental enquiry shall be as follows:-

(1) The substance of the accusation shall be reduced to the form of a written charge which should be as precise as possible. The charge shall be read out to the accused and a copy of it given to him at least 48 hrs before the commencement of the enquiry.

(2) At the commencement of the enquiry the accused shall be asked to enter a plea of Guilty or Not Guilty after which evidence necessary to establish the charge shall be let in (emphasis ours). The evidence shall be material to the charge and may either be oral or documentary, if oral:-

(i) it shall be direct:

(ii) it shall be recorded by the Officer conducting, the enquiry himself in the presence of the accused:

(iii) the accused shall be allowed to cross-examine the witnesses.

(3) When documents are relied upon in support of the charge, they shall be put in evidence (emphasis ours) as exhibits and the accused shall, before he is called upon to make his defence be allowed to inspect such exhibits.

(4) The accused shall then be examined and his statement recorded by the officer conducting the enquiry. If the accused has pleaded guilty and does not challenge the evidence on record, the proceedings shall be closed for orders. If he pleads “Not guilty”, he shall be required to file a written statement and a list of



such witnesses as he may wish to cite in his defence within such period, which shall in any case be not less than a fortnight, as the officer conducting enquiry may deem reasonable in the circumstances of the case. If he declines to file a written statement, he shall again be examined by the officer conducting the enquiry on the expiry of the period allowed.

(5) If the accused refuses to cite any witnesses or to produce any evidence in his defence, the proceedings shall be closed for orders. If he produces any evidence the officer conducting the enquiry shall proceed to record the evidence. If the officer conducting the enquiry considers that the evidence of any witness or any document which the accused wants to produce in his defence is not material to the issues involved in the case he may refuse to call such witness or to allow such document to be produced in evidence, but in all such cases he must briefly record his reasons for considering the evidence inadmissible. When all relevant evidence has been brought on record (emphasis ours), the proceedings shall be closed for orders.

(6) If the Commandant has himself held the enquiry, he shall record his findings and pass orders where he has power to do so. If the enquiry has been held by any officer other than the Commandant, the officer conducting the enquiry shall forward his report together with the proceedings to the commandant who shall record his findings and pass order where he has power to do so.”

4 Specific query was made by this Court with reference to sub rule (2), sub rule (3) and sub rule (5) of Rule 27 (c), as to who examined the witnesses on behalf of the Department and who put in the evidence and exhibits necessary to establish the charge against the



petitioner, the reply of the learned Additional Solicitor General of India was that the same was done by the Enquiry Officer himself. Drawing attention of the Court towards the enquiry proceedings, which have been produced before this Court, he submits that before recording the evidence of the delinquent, the Enquiry Officer had maintained absolute fairness. He has pointed out from the proceedings that the Enquiry Officer had, at the very outset, before recording evidence of the witnesses, warned them of the requirement to be truthful in their deposition and the consequence that the statements may be used against them if they are found to be false. He submits that this ensures fairness in the procedure adopted by the Enquiry Officer. Since such warning has been given to the witnesses, the fact that there was no Presenting Officer would not cause any prejudice to the delinquent.

5 On going through the entire proceedings of the enquiry, which have been produced before this Court, this Court would find that the Enquiry Officer himself had conducted the examination-in-chief, though the same was done with such warning, as submitted by the learned Additional Solicitor General of India. The Enquiry Officer has specifically conducted the examination-in-chief of the witnesses. From the record of the enquiry proceedings, it is more than evident that the Enquiry Officer has himself acted as a



Prosecutor in the proceedings, wherein he was also deciding the issue functioning as a quasi judicial Authority. He was, thus, acting as a Prosecutor as well as Judge in the disciplinary proceedings being conducted against the petitioner. Clearly, the concept of independent adjudicator was lost. The procedure adopted in enquiry proceedings gave rise to a reasonable likelihood of bias. By no stretch of imagination, can such a proceeding wherein the adjudicator has discharged the role of the Prosecutor can be said to be fair and sustainable. This Court cannot affirm such a procedure adopted by the Enquiry Officer, as the same is contrary to the principles of natural justice and fairness in action required from an Authority discharging such adjudicatory role.

6 Non-appointment of Presenting Officer in the facts of the present case strikes at the root of fairness.

7 In view of the facts emanating from the enquiry proceedings, the punishment awarded to the petitioner is not sustainable. The observations made by the Hon'ble Apex Court in paragraph 35 of the judgment in the case of *Union of India & Others –Versus- Ram Lakhan Sharma (supra)*, which has been relied upon by the learned Additional Solicitor General of India; in fact disapproves of such procedure in an enquiry wherein the Enquiry Officer has assumed the role of a Presenting Officer and acted as a Prosecutor and



Judge in the proceedings. The observations of the Hon'ble Apex Court in paragraph 35 of the said judgment are being reproduced herein below:

“35. Thus, the question as to whether Inquiry Officer who is supposed to act independently in an inquiry has acted as prosecutor or not is a question of fact which has to be decided on the facts and proceedings of particular case. In the present case we have noticed that the High Court had summoned the entire inquiry proceedings and after perusing the proceedings the High Court came to the conclusion that Inquiry Officer himself led the examination-in-chief of the prosecution witnesses by putting questions. The High Court further held that the Inquiry Officer acted himself as prosecutor and Judge in the said disciplinary enquiry. The above conclusion of the High Court has already been noticed from paragraphs 9 and 10 of the judgment of the High Court giving rise to Civil Appeal No 2608 of 2012.”

8 This Court, therefore, does not find any reason to interfere with the order of the learned Single Judge. The order of punishment dated 31.12.2009 as well as the appellate order dated 18.03.2010 and the revisional order dated 16.12.2010 have rightly been set aside. The Letters Patent Appeal is, therefore, dismissed. There shall, however, be no order as to costs.

9 However, we would add to the order of the learned Single Judge by giving opportunity to the appellants to proceed against the delinquent/writ petitioner afresh in accordance with law.



10 While dealing with the issue of consequential benefits, this Court was considering the petitioner's entitlement with reference to the conduct of the respondent authorities. This Court is informed that even after the writ petition was allowed by this Court under order dated 25.07.2013 passed in *CWJC No 7962 of 2011*, till date the consequential benefits have not been made available to the petitioner. In fact, in spite of the writ petition having been decided in favour of the petitioner, the respondent authorities have not allowed the petitioner to work. He has been deprived of the opportunity to work by the respondent authorities in spite of the fact that his dismissal, under order dated 31.12.2009, has been set aside by the Writ Court.

11 This Court would consider the law in this regard, which has been reiterated time and again by all Courts including the Apex Court. Though the principle of "*no work no pay*" is the rule in a situation where the Government employee has not worked. Exceptions, however, is made in circumstances where for no fault of his own, the Government employee has been prevented from discharging his duties. The Apex Court has, under various circumstances, considering the unique facts and circumstances, sometimes allowed a particular percentage of the back wages/arrears of salary for periods during which the Government employee has not



worked/was prevented from working. In many of the cases, awarding 50% or some part back wages has been found to be sufficient.

12 In the instant case, the order of dismissal dated 31.12.2009 was set aside by the learned Single Judge under order dated 25.07.2013 passed in *CWJC No 7962 of 2011*. Till date of passing of the order of dismissal, the petitioner was allowed to discharge his duties and paid salary since he had not been placed under suspension in the said period. However, even though the learned Single Judge allowed the writ petition and held the order of dismissal to be bad, the respondent authorities, showing total disregard to the order of this Court passed by the learned Single Judge, for no justifiable reasons whatsoever, have deprived the petitioner of his right to discharge duties, and fruits of his litigation arising out of the order dated 25.07.2013 passed by the learned Single Judge.

13 In such circumstances, this Court would consider it appropriate that the respondents may not be permitted to take advantage of their own wrong. The records of this appeal reveal that no efforts were made by the respondent authorities to obtain stay of the order passed by the learned Single Judge. In fact, the respondent authorities themselves have sat on the order of the learned Single Judge, so as to deprive the petitioner, as noticed hereinabove.



14 This Court would, thus, have no hesitation in holding that the petitioner would be entitled to all his consequential benefits as a result of the order of the Writ Court dated 25.07.2013. It is expected that the respondent authorities would ensure that the order of the Writ Court is complied with within a period of eight weeks from the date of receipt/production of a copy of this order.

15 The writ petitioner/respondent would be entitled to his consequential benefits including full back wages as a result of the order of the Writ Court dated 25.07.2013.

16 The Letters Patent Appeal is devoid of merit and the same is dismissed.

(Dr Ravi Ranjan, J)

(Madhuresh Prasad, J)

M.E.H./-

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