

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1579 of 2005

1. Smt. Saroj Singh Bhadoriya Wd/o Late M. L. Bhadoriya, Aged About 45 Years
R/o Durga Chowk, Block Colony Katekalyan Road, Dantewada Chhattisgarh,
Chhattisgarh
2. Ankur Singh Bhadoriya S/o Late M. L. Bhadoriya, Aged About 29 Years R/o
Durga Chowk, Block Colony Katekalyan Road, Dantewada Chhattisgarh,
District : Dantewada, Chhattisgarh
3. Abhishek Singh Bhadoriya, S/o Late M. L. Bhadoriya, Aged About 19 Years
R/o Durga Chowk, Block Colony Katekalyan Road, Dantewada Chhattisgarh,
District : Dantewada, Chhattisgarh

---- Petitioners

Versus

1. State Of M. P. Through The Secretary, Home Department, Vallabh Bhawan,
Bhopal, Madhya Pradesh
2. The Director General Of Police, Madhya Pradesh Bhopal,, District : Bhopal,
Madhya Pradesh
3. The Deputy Inspector General Of Police , Bastar Range Jagdalpur , District :
Bastar(Jagdalpur), Chhattisgarh
4. The Superintendent Of Police, Dantewada, District Bastar , District :
Bastar(Jagdalpur), Chhattisgarh
5. Shri Harish Bajpai Additional Superintendent Of Police, Dantewada, District
Bastar , District : Bastar(Jagdalpur), Chhattisgarh

---- Respondents

For Petitioners	:	Shri Vasant Zokarkar, Advocate on behalf of Shri P.P. Sahu, Advocate
For State	:	Shri Majid Ali, Dy. Govt. Advocate

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

26/02/2018

Heard.

1. This petition is directed against orders dated 10.6.1996, 6.11.1996 and 1.4.1997 passed in the departmental enquiry against the original petitioner- Mewalal Bhadoriya. Vide order dated 10.6.1996 (Annexure A-9), the Superintendent of Police, Dantewada imposed a penalty of dismissal from service on proof of allegation of misconduct against the original petitioner in a departmental enquiry. The appeal filed before the Deputy Inspector General of Police, Bastar Range, Jagdalpur was also dismissed vide order dated 6.11.1996 (Annexure A-10). The original petitioner thereafter preferred a mercy appeal before the Director General of Police which too was dismissed, giving rise to this petition.
2. While the original petitioner was posted and working as Constable at Dantewada, District- Bastar, it is alleged that though the petitioner was relieved on 23.12.1994 to proceed on training for three months, the petitioner disobeyed the direction of the higher authorities. It was also alleged that the petitioner, instead of proceeding to join training, remained unauthorizedly absent from duty for 175 days. A charge sheet was issued to the petitioner on 22.7.1995 on the aforesaid allegations. The petitioner refuted the allegations and a departmental enquiry was instituted by appointing Enquiry Officer. The records of the Departmental Enquiry speak that the Superintendent of Police/the Disciplinary Authority, dis-satisfied with the progress of enquiry and the then Enquiry Officer, changed the Enquiry Officer also. The Enquiry Officer examined the prosecution witnesses. According to Enquiry Officer, the petitioner did not lead any defence evidence and therefore the Enquiry Officer proceeded to submit enquiry report before the Disciplinary Authority/Superintendent of Police.
3. The enquiry report found all the charges proved against the original petitioner. The petitioner was thereafter given a show cause notice against proposed penalty along with the copy of enquiry report. After receiving petitioner's reply, the Superintendent of Police, holding the charges proved,

proceeded to pass impugned order on 10.6.1996 imposing major penalty of dismissal from service.

The appeal and mercy appeal having been dismissed, the original petitioner filed this petition.

4. During pendency of this petition, original petitioner- Mewalal Bhadoriya died and his Legal Representatives were permitted to prosecute the petition.
5. Assailing correctness and validity of the disciplinary proceedings and the orders passed thereafter by the Disciplinary Authority and the Appellate Authority, it is argued in extenso, that the enquiry is vitiated on account of serious violation of principles of natural justice. Learned counsel for the petitioner vehemently argued that the Enquiry Officer assumed the role of the Prosecutor inasmuch as the enquiry proceeded without there being any presentation of the case of the prosecution by any duly appointed Presenting Officer. The act of the Enquiry Officer in issuing notices to the prosecution witnesses to appear along with documents and depose before him shows that the Enquiry Officer himself assumed the role of Prosecutor. Therefore, only on this count, the entire departmental enquiry is vitiated. Reliance has been placed on the decision in the case of **Vinod Kumar Kori Vs. State of Chhattisgarh through Secretary, Home Department & Ors.** (2016) LIC 2136.

The next submission of learned counsel for the petitioner is that the document relied upon by the prosecution and enlisted with the charge sheet were not supplied to the petitioner, therefore, the documentary evidence proposed to be used against the petitioner was not disclosed to him.

Third submission of learned counsel for the petitioner is that the first Enquiry Officer had allowed the petitioner to engage a defence assistant and a defence assistant was actually engaged by the petitioner. But, later on, when the Enquiry Officer was changed and new Enquiry Officer was

appointed, the petitioner was pressurized to sign on blank papers which was used as an application by the petitioner that he does not want to engage any defence assistant which is highly improbable. This shows that the Enquiry Officer was not acting fairly. He was biased and was virtually acting as Prosecutor to somehow close the enquiry in a slipshod manner without affording due opportunity of hearing to the petitioner.

Finally, it is submitted that the punishment imposed on the petitioner is shockingly disproportionate to the gravity of misconduct. Even if it is assumed that for some reason, the petitioner could not proceed on training and acted in an indisciplined manner and thereafter remained unauthorizedly absent for 175 days, imposition of extreme penalty of dismissal from service would be extremely harsh and shockingly disproportionate. Learned counsel for the petitioner placed reliance on the decision of the Supreme Court in the case of **Commissioner of Police and Ors Vs. Sandeep Kumar** (2011) 4 SCC 644.

6. Per contra, learned counsel for the State would submit that none of the grounds raised by the petitioner is made out inasmuch as the petitioner has duly acknowledged receipt of the documents enlisted with the charge sheet vide his acknowledgement dated 7.12.1995 (Annexure R-IV). On the aspect of engagement of defence assistant, learned counsel for the State submits that though initially, the first Enquiry Officer had allowed the petitioner to engage defence assistant who was actually engaged also, but the Enquiry Officer was changed. When new Enquiry Officer came, the petitioner was again asked with regard to supply of documents and engagement of defence assistant and then the petitioner refused to engage defence assistant under his own signature on 14.4.1996. He would further submit that on 11.4.1996, the petitioner under his own signature, submitted that he does not claim supply of any other document. Therefore, it cannot be said that in the matter of supply of documents relied upon by the prosecution and in the matter of engaging a defence assistant, the petitioner was prejudiced.

With regard to allegation that the petitioner was not allowed to examine his defence witness Mangal Nath, it is argued that the enquiry records produced before the Court in original did not show any application of the petitioner in writing that he had applied for examination of any defence witness namely Mangal. On the contrary, there is a noting that the petitioner expressed that he does not want to examine any defence witness. Moreover, it is argued that the petitioner has failed to establish the relevancy of the oral evidence of so called defence witness and how this has prejudiced his defence. Therefore, only on that ground, the order of penalty could not be interfered with.

To the last submission, learned counsel for the State replied that the petitioner was a Member of the Disciplined Force of Police. The two charges against the petitioner related to indiscipline and unauthorized absence for about 175 days. Therefore, looking to the above aspect, the imposition of penalty of dismissal from service could not be said to be shockingly disproportionate.

7. I have considered the rival submissions made by learned counsel for the parties and perused the records of the case.
8. As far as the allegation that the Enquiry Officer assumed the role of the Prosecutor in the absence of a Presenting Officer, I am unable to find any plea in this regard in the writ petition. There is no whisper in the writ petition that the Enquiry Officer assumed the role of the Prosecutor, muchless any pleading as to what conduct of the Enquiry Officer, if proved, constituted a biased attitude against the petitioner rather than impartial role as Enquiry Officer. True it is that there was no Presenting Officer appointed by the Superintendent of Police but that by itself, without anything more, would not lead to conclusion that the Enquiry Officer acted like Prosecutor. The records of enquiry show that when the charge sheet along with the list of documents and witnesses were placed before the Enquiry Officer, he issued notice to the prosecution witnesses, who appeared before the Enquiry Officer and gave their statements and were

subjected to cross-examination. This procedure may be said to irregular but to say that the Enquiry Officer itself assumed the role of Prosecutor is not acceptable on the face of the material on record.

I have gone through the records of the enquiry proceedings and proceedings recorded by the Enquiry Officer. None of those reflect that the Enquiry Officer himself assumed the role of the Prosecutor. There is neither any suggestion nor anything reflected from the enquiry records to show that the Enquiry Officer required the prosecution witnesses to depose in a particular manner in proof of allegation. Therefore, despite there being an irregularity committed in the proceeding that formally, a Presenting Officer was not appointed, but the prosecution witnesses appeared before the Enquiry Officer, upon notice and gave their own statement by submitting various documents, I am unable to hold that the enquiry was vitiated on this ground. Whether or not the Enquiry Officer assumed the role of Prosecutor is an issue of fact. The burden was heavy on the petitioner which the petitioner has failed to discharge.

9. As far as supply of documents are concerned, Annexure R-IV filed along with the return shows the petitioner's acknowledgement dated 7.12.1995. Five documents mentioned in the said acknowledgment are those which are enlisted with the charge sheet supplied to the petitioner. Annexure R-I is a letter dated 11.4.1996 of the petitioner in which it is written that the petitioner does not want any other document. Though this document is sought to be avoided by the petitioner on the averment by way of rejoinder that his signature were obtained on the blank papers, I am not inclined to accept this bald submission. Rather, it is quite obvious that the petitioner would be saying that he does not want any document because all the documents of the prosecution were received by him under the acknowledgement dated 7.12.1995 (Annexure R-IV).
10. As far as engagement of defence assistant is concerned, true it is that initially the petitioner demanded and he was allowed to engage defence assistant by the Enquiry Officer, however, when the Enquiry Officer was

changed, new Enquiry Officer again gave the petitioner an opportunity to engage defence assistant and at this stage, according to learned counsel for the respondents, the petitioner submitted a letter dated 14.4.1996 (Annexure R-II) that he does not wish to engage a defence assistant. This particular application placed on record by the respondent as Annexure R-II has been disowned by the petitioner on the averment by way of rejoinder that the petitioner's signature were obtained on blank papers. This defence of the petitioner appears to be highly improbable. The petitioner was in service for last 14 years before start of departmental enquiry and therefore at the stage of departmental enquiry, it is highly improbable that the employee facing charge of misconduct would be signing blank papers. This clearly appears to be an afterthought while filing rejoinder, when faced with his own letter dated 14.4.1996. It is pertinent to mention that the petitioner has not disputed his signatures but his defence is that his signatures were obtained under pressure. This pleading, to say the least, is blissfully vague.

11. In the petition, the petitioner has averred that he wanted to examine one Mangal Nath as defence witness which he was not allowed to examine. After going through the contents of the enquiry proceedings, this Court does not find that there was any application in writing submitted by the petitioner before the Enquiry Officer, after the conclusion of prosecution witnesses, that he intended to examine one Mangal Nath as his defence witness. On the contrary, there are noting that the petitioner does not wish to examine any defence witness. The Enquiry Officer in his report has also stated that the petitioner, when asked, did not lead any defence witness. The petitioner was given a show cause notice by the Disciplinary Authority along with the copy of the enquiry report. At this stage and first opportunity, the petitioner could have raised the grievance that he had demanded examination of Mangal as his defence witness. However, after going through the reply to the show cause notice given to the petitioner, placed in the records of Departmental Enquiry, I found that in his reply, the petitioner has not even whispered that he wanted to examine Mangal Nath

as defence witness and he was not allowed to examine and that contents of enquiry report are factually incorrect. The petitioner has not even filed copy of application in writing, submitted before the Enquiry Officer bearing acknowledgment that the petitioner wanted to examine said Mangal Nath as his defence witnesses. In any case, the relevancy, if any, of the evidence of said Mangal Nath has not been established before this Court. Therefore, for all these reasons, I am unable to accept that the petitioner had ever made any application in writing or made any oral prayer before the Enquiry Officer for examination of one Mangal Nath as his defence witness and further that the petitioner has failed to establish relevancy. Thus even by application of prejudice theory, the departmental enquiry cannot be vitiated.

12. Last but not the least, the contention regarding punishment being disproportionate, is not acceptable to the Court. The petitioner was a Member of a disciplined force. The two charges found proved against him were relating to indiscipline and long unauthorized absence of about 175 days. Looking to the aforesaid factual aspects that the petitioner was a Member of the disciplined force, long unauthorized absence and that he acted disobediently in not proceeding on training despite having been established, I am unable to hold that the penalty could be categorized as “shockingly disproportionate” so as to call for any interference on that ground in these proceedings under Article 226 of the Constitution of India.

13. In the result, I do not find any merit in the petition. The petition is liable to be dismissed and is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge