

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (S) No. 5345 of 2008**

Hareesh Kumar Pateriya, S/o Shri Damodar Prasad Pateriya, aged about 39 years, R/o Shastri Ward, Tahsil and Post Hatta, District Damoh (MP)

... Petitioner**versus**

1. Union of India, through its Secretary, Department of Central Reserve Police Force, Old Secretariat, P.O. Civil Line, Delhi.
2. Deputy Inspector General of Police, Central Reserve Police Force, Raipur (CG)
3. Upper Police Deputy Inspector General of Police, Group Center, Central Reserve Police Force, Bilaspur (CG)
4. Assistant Commandant (Enquiry Officer), Group Center, Central Reserve Police Force, Bilaspur (CG)

... Respondents

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- Mr. Ravi Bhagat, Advocate, under instructions of Mr. Vinay Pandey, Advocate, for the Petitioner.
- Mr. Bhupendra Singh, Advocate, for the Respondents.
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Hon'ble Shri Justice P. Sam Koshy
Order on Board

27/10/2018

1. Challenge in the present writ petition is to the three orders passed by the authority in the respondent-department, those are Annexure P-1, Annexure P-5 and Annexure P-7.
2. Annexure P-5 is the order passed by the Disciplinary Authority dated 6.9.2007 whereby the Petitioner has been inflicted with a punishment of compulsory retirement after a departmental enquiry was conducted. Against the said order, the petitioner preferred an appeal before the appellate

authority and the appellate authority vide order dated 6.11.2007, Annexure P-7, rejected the appeal of the petitioner. Against the rejection of the first appeal on 6.11.2007, the petitioner preferred a second appeal before the Inspector General of Police, C.R.P.F. and the second appellate authority also vide Annexure P-1 dated 2.4.2008 rejected the second appeal also.

3. It is these three orders which are under challenge in the present writ petition.

4. The petitioner while working under the respondents on the post of a Constable at the Group Centre Central Reserve Police Force, Bharni, District Bilaspur, was issued with a charge-sheet on 26.5.2007. The petitioner had filed a detailed reply to the charge-sheet dated 28.5.2007. Subsequently, one Shri D. P. Dogariya, Assistant Commandant, was appointed as Inquiry Officer on 1.6.2007 to inquire into the charges which have been levelled against the petitioner. The said Inquiry Officer conducted the enquiry and examined as many as six witnesses on behalf of the department and there was no evidence led on behalf of the petitioner/delinquent. Subsequently, the Inquiry Officer submitted the enquiry report on 19.6.2007 and the Disciplinary Authority based on the report of the Inquiry Officer imposed the punishment of putting the petitioner on compulsory retirement vide order dated 6.9.2007 which was later on subjected to challenge in the said two departmental appeals both of which stood rejected vide order dated 6.11.2007 and vide order dated 2.4.2008 respectively.

5. Challenging the said action on the part of the respondents, the petitioner primarily raises a ground that the entire enquiry and the punishment order and the order passed by the appellate authority is per se bad in law for the reason that the enquiry has been conducted without

appointment of a Presenting Officer. According to the petitioner, the Inquiry Officer acted both as a prosecutor and also as a judge in the enquiry in which he was appointed as an Inquiry Officer. It was also the contention of the petitioner that it was the Inquiry Officer who had examined all the witnesses adduced on behalf of the department and therefore there was all chances that the Inquiry Officer was bound to give an enquiry report being biased as he has himself represented the department in the enquiry. Therefore applying the doctrine of bias in the departmental enquiry, the proceeding requires to be held to be bad in law. He further submits that the Inquiry Officer also has in the course of the departmental enquiry taken note of certain additional alleged misconduct committed by the petitioner, for which no additional charge-sheet was issued, which again would vitiate the enquiry. It was further the contention of the petitioner that the fact that the entire enquiry has been conducted without appointing a Presenting Officer it would amount to blatant violation of principles of natural justice as the fair opportunity of defence has not been provided to the petitioner.

6. Shri Bhupendra Singh, learned counsel appearing for the respondents submits that so far as the non-appointment of the Present Officer is concerned, the rules governing the field i.e. the rules which are applicable upon the member of Central Reserve Police Force do not prescribe of such a provision under the rules. According to the counsel for the respondents, in the rules which prescribe the procedure for conducting a departmental enquiry, it is only appointment of an Inquiry Officer which is stipulated and that there is no rules prescribed for the appointment of a Presenting Officer. Thus, it cannot be said that there is any illegality committed by the respondents in the course of conducting the departmental enquiry. According to the respondents, as per the Rules, the Inquiry Officer was

appointed, he conducted an enquiry and submitted his report to the Disciplinary Authority. During the course of conducting of the departmental enquiry also, the petitioner did not raise specific objection in this regard and thus he cannot raise such a ground at this juncture. According to the respondents, no prejudice as such has also been caused to the petitioner in the course of conducting departmental enquiry and that it is only material facts that have been brought before the Inquiry Officer which have been relied upon and which by itself prove the charges levelled against the petitioner.

7. Perusal of the record it appears that apart from the fact that the Presenting Officer was not appointed, there were also other lapses which are reflected from the proceedings drawn like in addition to the original charge sheet, there were certain additional charges also levelled against the petitioner for which no separate charge sheet was issued nor was any explanation called from him nor was there any decision on the part of the respondents clubbing those charges to be inquired into with the earlier constituted departmental enquiry.

8. Now coming to the issue of non-appointment of a Presenting Officer, it is by now well settled position of law that a departmental enquiry which is constituted by the employer is a quasi judicial proceeding. The Inquiry Officer so appointed by the department is supposed to be an unbiased and neutral balanced personality before whom both the department as well as the delinquent would be presenting their case and taking into consideration the evidence brought forth by either side and on due scrutiny of the same, the Inquiry Officer is supposed to provide an enquiry report wherein he gives a finding as to whether the charges stand proved or not. The Inquiry Officer while conducting a departmental enquiry must keep in mind the fundamental

principles of natural justice. Some of the salient features required to be followed in a departmental enquiry are that the Inquiry Officer acts as an adjudicator and should be totally impartial and free from bias. At the same time, the Inquiry Officer in the capacity of an adjudicator should also not act as a prosecutor simultaneously. Likewise, it is also said that the complainant shall never be an adjudicator nor can a witness be an adjudicator.

9. In view of the aforesaid salient features what is expected in a departmental enquiry is that on the appointment of an Inquiry Officer, the respondent employer should also simultaneously appoint a Presenting Officer for presentation of the case of the department before the Inquiry Officer. In the absence of which, the whole proceeding gets vitiated. In the absence of a Presenting Officer what stands established is that the Inquiry Officer acts both as an adjudicator as well as a Presenting Officer. He presents the witnesses and the evidences before himself and he examines the witnesses also which therefore would amount to be an one sided enquiry which has been conducted.

10. The law so far as non appointment of Presenting Officer is concerned, it would be relevant at this juncture to refer to the judgment of the Supreme Court in the case of **Union of India through its Secretary, Ministry of Railway, New Delhi and Others v. Mohd. Naseem Siddiqui** reported in **(2005) 1 LLJ 931** wherein paragraph-7 the Hon'ble Supreme Court dealing with the issue 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 recognised facets: (i) The adjudicator shall be impartial and free from bias, (ii) The adjudicator shall not be the prosecutor, (iii) The complainant 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 material or on extraneous considerations. If any one of these fundamental rules is breached, the inquiry will be vitiated.

Further, in paragraph-16, Their Lordships summarized 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.”

11. A similar view has been taken by the Supreme Court in the case of Moni Shankar (supra) where in paragraph-30 it has been held as under:

“30. For the aforementioned purpose, the manner in which the enquiry proceeding was conducted was required to be taken into consideration by the High Court. The trap was not conducted in terms of the Manual; the Enquiry Officer acted as a prosecutor and not as an independent quasi-judicial authority; he did not comply with Rule 9 (21) of the Rules,

evidently, therefore, it was not a case where the order of the Tribunal warranted interference at the hands of the High Court.”

12. The Supreme Court had again in a similar situation in the case of **State of Uttaranchal and others v. Kharak Singh** reported in **(2008) 8 SCC 236** in paragraph-17 has held 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.”

13. The Hon'ble Supreme Court again in the case of **State of Uttar Pradesh and others vs. Saroj Kumar Sinha** reported in **(2010) 2 SCC 772**, in paragraphs- 27 to 30 has held as under:

“27.....But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.

28. An enquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above by virtue of Article 311 (2) of the

Constitution of India the departmental inquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in punishment being imposed on the employee.

30. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”

14. This High Court also had the occasion of dealing with the similar situations. This Court in WPS No. 1691/2011 decided on 13.01.2016 in the case of Vinod Kumar Kori v. State of Chhattisgarh & others considering the aforesaid judgments of the Supreme Court has held that non appointment of Presenting Officer and the enquiry being conducted entirely by Enquiry Officer himself and submitted an enquiry report had struck down the disciplinary action. This Court again in WPS No. 1019/2017 decided on 01.03.2017, WP No. 1828/2003 decided on 10.01.2018 and also WPS 6418/2007 decided on 06.04.2018 have reiterated the aforesaid position laid down by the Supreme Court wherein the enquiry proceeding and the action taken subsequently have been struck down on the ground of non appointment of Presenting Officer and the Inquiry Officer acting both as Presenting Officer as well as Inquiry Officer.

15. Given the aforesaid legal position as it stands, the impugned orders Annexures P-1, P-5 & P-7 dated 02.04.2008, 06.09.2007 & 06.11.2007

respectively would not be sustainable under law and the same deserve to be and are accordingly set aside/quashed.

16. Since the order of punishment is being quashed on the ground of enquiry itself being vitiated, this Court does not think it proper to go into the merits and veracity of the charges which have been raised by the petitioner.

17. The writ petition accordingly stands allowed with consequences to follow.

Sd/-
(P. Sam Koshy)
Judge

sharad/Bhola