

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 488 of 2009

Yadram Yadav S/o Bholaram Yadav, aged about 46 years, aged about 46 years, Constable G.D. No. 810480147, 188 Batallian, C.R.P.F. Lalbagh, Rajnandgaon (C.G.).

---Petitioner

Versus

1. Union Government of India, Through :- The Secretary Home Department, Lodhi Road, New Delhi.
2. Inspector General of Police, Central Reserve Police Force, Office of Inspect General of Police, CRPF Agartala, (Tripura).
3. Commandant, 188 Batallian, Lalbagh, Rajnandgaon (C.G.).
4. B.C. Sharma, II-IC 188, Batallian, Lalbagh, Rajnandgaon (C.G.).

---Respondents

For petitioner : Shri Anup Majumdar, Advocate.
For respondent : Shri Raghav Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

24/09/2018

1. The petitioner initially had filed the present Writ Petition challenging the chargesheet dated 14/05/2008.
2. Pending the petition, the respondents had proceeded with the departmental enquiry and inflicted the petitioner with an order of compulsory retirement thereby and as a consequence it was also ordered for reduction of his pension to 2/3rd vide order Annexure-P/12 dated 21/01/2009.
3. Against the said order, the petitioner had preferred an appeal which too stood rejected vide order Annexure-P/13 dated 25/05/2009.

4. The petitioner has challenged the impugned order of punishment as well as the rejection of appeal on more than one grounds.

5. Of the best of grounds which the petitioner has raised, the petitioner prima-facie questioned the impugned action on part of the respondents on two grounds.

6. Firstly, the entire enquiry proceedings been vitiated on the ground that, the enquiry has been conducted without appointment of presenting officer and that it was the enquiry officer alone who has conducted the enquiry and also examined and cross-examined the witnesses on behalf of the prosecution as well as on behalf of the defence.

7. The subsequent ground was that, the petitioner has not been provided with all the material documents which the respondents have collected during the course of preliminary investigation as also the copy of the complaint itself filed by the complainant Jaydeep Thakur.

8. Before entering into the second ground of non-providing of the material documents, this Court intends to look into the first ground raised by the petitioner that the enquiry stands vitiated on the ground of non-appointment of the presenting officer.

9. Undisputedly, the petitioner was issued with a chargesheet on 14/05/2008. Lateron, the enquiry officer was appointed vide order dated 25/09/2008.

10. Another admitted fact is that, the respondents while appointing the enquiry officer have not appointed any presenting officer to represent the case of the department before enquiry officer.

11. Admittedly, the department on its behalf i.e. the prosecution has examined as many as 5 witnesses and in defence, the petitioner had examined as many as 9 witnesses on his behalf. All these witnesses were examined by the enquiry officer and were also cross-examined.

12. Needless to mention that the witness on behalf of the defence were also examined and cross-examined by the enquiry officer himself.

13. Lateron, the same enquiry officer submitted the enquiry report on 24/12/2008 and thereafter on the basis of the findings of the enquiry officer, the order of punishment Annexure-P/12 and the rejection of the appeal Annexure-P/13 had been passed.

14. This Court in the recent past had the occasion of considering this issue of non-appointment of presenting officer in the course of departmental enquiry on more than one occasions.

15. In **WPS No. 1691/2011 decided on 13/01/2016 [Vinod Kumar Kori v. State of Chhattisgarh & Ors.]** this Court has considered this aspect and relying upon a couple of decision of the Hon'ble Supreme Court in this regard reached to the conclusion that the enquiry proceedings conducted in the absence of presenting officer would vitiate the entire enquiry proceedings itself and allowing the Writ Petition had set-aside the departmental enquiry proceedings and the punishment therein.

16. The same view has further been relied upon by this Court in WPS No. 1019/2017 decided on 01/03/2017 in the case of Bablu Mishra v. State of Chhattisgarh & Ors. and again in WPS No. 6418/2007 decided on 06/04/2018 in the case of Ashok Kumar Dwivedi v. State of Chhattisgarh & Ors. so also in WPS No. 4539/2012 decided on 11/05/2018 in the case of Lachchhan Ram Giri v. State of Chhattisgarh & Ors.

17. A similar view also has been taken in WPS No. 1828/2003 decided on 10/01/2018 in the case of M.M.Mishra v. State of Chhattisgarh & Ors., a person who was also in the police department holding the rank of Assistant Sub Inspector.

18. In all these aforesaid orders, this Court had relied upon the judgment of the Supreme Court in the case of Union of India & Ors. Vs. Mohd. Naseem Siddiqui [2005 (1) LLJ 931], wherein this Court has held as under:

“4. The leading decision of which is 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 where in the Supreme Court in paragraph 7 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.”

19. In addition to this, this Court has also relied upon a decision of Karnataka High Court in the case of N. R. Dhananjayan v. Management of Indian Overseas Bank & Anr. [2006 LLR 726] wherein in paragraph 8 it has been held as under:

“8. From a reading of the entire proceedings what is clear to us is that the Enquiry Officer seemed to be under the impression that he was representing the management as is evident from these proceedings. The way in which the proceedings were conducted by the Enquiry Officer and the way in which the questions were posed by him, witnesses were examined prove in unmistakable terms that the Enquiry Officer has assumed the role of a prosecutor and a Judge in the case on hand. Law is fairly well-settled that the Enquiry Officer can only seek clarification. Clarification has to be a real clarification in the real sense but not examination-in-Chief/cross-examination etc., as is done in the present case.”

20. Given the aforesaid legal position as it stands on the basis of the judgment of the Supreme Court as also the judgment delivered by this Court in a series of decisions referred to in the preceding paragraph from the admitted factual matrix of the case, the impugned order of the departmental enquiry proceedings drawn against the petitioner in the present case would also stand vitiated on the same analogy of there being no presenting officer been appointed.

21. The enquiry report as well as the punishment orders therefore would not be sustainable and the same deserve to be and is accordingly set-aside/quashed from the state of appointment of the Enquiry Officer.

22. The respondents would be at liberty to proceed further against the petitioner if they deemed so fit by duly appointing a presenting officer and thereafter the enquiry be conducted in accordance with the provisions of law.

23. The Writ Petition accordingly stands allowed in terms of the observations made above.

Sumit

Sd/-
(P. Sam Koshy)
JUDGE