

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 6418 of 2007**

Ashok Kumar Dwivedi, Aged about 45 years, S/o. Shri R.K. Dwivedi, Occupation Service, Head Constable, District Special Branch, District Dhamtari, R/o. Govt. Quarter, Police Station City Kotwali, District Dhamtari, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, Through Secretary, Government of Chhattisgarh, Department of Home, D.K.S. Bhawan, Mantralaya, Raipur, Chhattisgarh
2. Director General of Police, Police Headquarters, Chhattisgarh, Raipur, Chhattisgarh
3. Additional Director General of Police (Administration) Police Headquarters, Chhattisgarh, Raipur, Chhattisgarh
4. Inspector General of Police, Raipur Range, Raipur, Chhattisgarh
5. Superintendent of Police, District Dhamtari, Chhattisgarh

----Respondents

For Petitioner	:	Mr. Amrito Das, Advocate
For State	:	Mr. Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****06/04/2018**

1. The challenge in the present writ petition is to the order dated 31.03.2005 whereby the petitioner was inflicted with a punishment of demotion from the post of Assistant Sub-Inspector to the post of Head Constable and also the order dated 22.07.2006 whereby the appellate authority has rejected the departmental appeal preferred by the petitioner.
2. The foremost ground of challenging the impugned order is the fact that the entire departmental inquiry conducted against the petitioner stands vitiated only on the ground that the respondents had not engaged a Presenting officer to present the case on behalf of the

department.

3. According to the petitioner, it is a case where the Inquiry officer himself acts both as a presenting officer as well as an Inquiry officer and that it was the Inquiry officer himself, who had examined all the witnesses on behalf of the department and have also cross-examined the witnesses including the evidence, which was led by the petitioner-the delinquent employee and the witnesses brought in support by the delinquent employee.
4. According to the counsel for the petitioner, the said issue whether the Inquiry officer could himself act as a Presenting officer as also as an Inquiry officer is no longer *res integra* for the reason that the Hon'ble Supreme Court itself has settled the issue in its judgment passed in the case of “**State of Uttar Pradesh and Others v. Saroj Kumar Sinha**” reported in **(2010) 2 SCC 772** and the said view has also been taken by this Court in a couple of decisions i.e. in **2016 Lab IC 2136** in the case of “**Vinod Kumar Kori v. State of Chhattisgarh & Others**”. Further in **WPS No. 1019/2017 (Bablu Mishra v. State of Chhattisgarh & Others)** decided on 01.03.2017, so also further judgment of this Court in the case of “**Ramesh Kumar Sahu v. C.G. Infrastructure Development Corporation Ltd. and Others**” reported in **2006 SCC OnLine Chh 94**.
5. The State counsel does not dispute the aforesaid factual aspects so far as the inquiry being conducted without a Presenting officer. However the State counsel opposes the petition on the ground that no prejudice as such has been caused to the petitioner in the course of the inquiry. He further submits that the petitioner had fully

participated in the Departmental enquiry and has also been granted full opportunity to prove his innocence. Further that the petitioner at no point of time before the Inquiry officer had objected to the non-appointment of a Presenting officer or in respect of the examination and the cross-examination being conducted by the Inquiry officer, and thus prayed for the rejection of the petition.

6. Having heard the contentions put forth on either side and on perusal of record, it would be relevant at this juncture to refer to the legal position as it stands in the given factual matrix of the case. In paragraphs No. 28 & 30 of the judgment of the Hon'ble Supreme Court in the case of "Saroj Kumar Sinha" (supra), it has been held as under:

"28. An inquiry 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 un rebutted 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.

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 inquiry 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.”

7. A similar view has also been taken by the Hon'ble Supreme Court in its judgment in the case of “***State of Uttaranchal v. Kharak Singh***” reported in **(2008) 8 SCC 236**, wherein in paragraph No.17 it has been 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.”

8. Taking help of the aforesaid two judgments of the Hon'ble Supreme Court, this Court in the case of “***Vinod Kumar Kori***” (supra) has under similar set of facts had set-aside the order of termination. In paragraph No.17 of its judgment, this High Court has in the case of “***Vinod Kumar Kori***” (supra) has held as under:

“17. Thus, it appears that no Presenting Officer was appointed and Inquiry Officer himself has conducted whole Departmental Enquiry by conducting regular examination-in-chief by leading prosecution witnesses through prosecution case and also cross-examined the

departmental witnesses to some extent and thereby also worked as prosecutor, which is in violation of principles of natural justice. Neither the Disciplinary Authority nor the Appellate Authority and the Revisional Authority considered this aspect of the matter while inflicting punishment and examining the appeal as also the revision on merits and thereby order of termination and appellate order as well as revisional order deserve to be quashed.”

9. This Court again in the case of "Bablu Mishra" (supra) has relied upon a decision of the Hon'ble 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** in paragraph No.4, wherein the Hon'ble Supreme Court had set-aside the order of punishment and 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.”

10. In the light of the aforesaid legal positions, when we look into the facts of the case, undisputedly it is a case where the inquiry initiated against the petitioner was in absence of a Presenting officer. Further it is also established on perusal of the record that it was the inquiry officer himself who had conducted the entire enquiry including examination and cross-examination of all the witnesses both on the part of the department as well as on the part of the defence.
11. In view of the legal pronouncements referred to in the preceding paragraphs, the said order of punishment and the inquiry proceedings would automatically stand vitiated being hit by the principles of natural justice.
12. The Hon'ble Supreme Court in the case of ***“Chairman, Life Insurance Corporation of India and Others v. A. Masilamani”*** reported in ***(2013) 6 SCC 530***, wherein in paragraph No.16 it has been held as under:

“16. It is a settled legal proposition, that once the Court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the Court cannot reinstate the employee. It must remit the concerned case to the disciplinary authority, for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide, ECIL v. B. Karunakar, AIR 1994 SC 1074, Hiran Mayee Bhattacharyya v. S.M. School for Girls, (2002) 10 SCC 293, U.P. State Spg. Co. Ltd. v. R.S. Pandey, (2005) 8 SCC 264 and Union of India v. Y.S. Sadhu, (2008) 12 SCC 30.”
13. The impugned order of punishment as well as the order passed by

the Appellate authority is therefore not sustainable and the same deserves to be and is accordingly set-aside consequences to follow. It shall be open for the respondents to reopen the enquiry after due appointment of a Presenting Officer and an enquiry officer and conduct the departmental enquiry in a fair and reasonable manner.

14. The writ petition thus stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved