

HIGH COURT OF CHHATTISGARH AT BILASPURWP No.1828 of 2003

M.M.Mishra S/o Late Shri Jagdish Mishra, aged about 53 years, Assistant Sub Inspector, presently posted in the office of Superintendent of Police, Raipur (C.G.).

---Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Home Department, D.K.Bhawan, Raipur (C.G.).
2. Inspector General of Police, Raipur Zone, Raipur.
3. Superintendent of Police, Raipur (C.G.).

---Respondents

For the petitioner	:	Shri N.K.Vyas, Advocate.
For resp./State	:	Shri S.P.Kale, Dy.A.G.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

10/01/2018

1. Present petition has been filed challenging the order dated 29/08/2002-Annexure-P/2 passed by the Superintendent of Police, Raipur whereby the petitioner who was working as an Assistant Sub Inspector was vide order of punishment demoted to the minimum pay scale of the post of Assistant Sub Inspector. The challenge is also to the order dated 12/11/2002-Annexure-P/1 passed by the Appellate Authority who has rejected the appeal upholding the order of punishment passed by the Superintendent of Police, Raipur.
2. The facts of the case in brief is that, a complaint was received against the present petitioner in respect of an act of misbehavior which he has done with one Manuram Kavar on 01/12/2001 for which the chargesheet was

issued on 20/02/2002. Subsequently, the concerned authorities after issuance of the chargesheet and finding the reply-the chargesheet to be not satisfactory, subjected the petitioner to a departmental enquiry. The Additional Superintendent of Police, Raipur was appointed as an enquiry officer to ascertain whether the charges levelled against the petitioner was justified or not? Subsequently, after the enquiry was concluded, the enquiry officer submitted the report holding the petitioner guilty of the charges levelled and the disciplinary authority vide Annexure P/2 had imposed the order of punishment upon the petitioner to which an appeal was preferred and the Appellate Authority vide Annexure-P/1 has rejected the appeal.

3. The ground of challenge by the counsel for the petitioner is that, it is a case where the enquiry conducted against the petitioner itself stands vitiated for the reason that, the enquiry officer in the instant case has acted also as a presenting officer and as also extensively cross-examined the witnesses on behalf of the management so also the present petitioner who was delinquent in the enquiry. According to the counsel for the petitioner, the very fact that the enquiry officer has himself acted both as a presenting officer as also the inquiry officer has by itself created substantial prejudice to the interest of the petitioner and therefore the enquiry and the findings of enquiry officer is not sustainable and same deserves to be set-aside. He further relied upon the decision of Madhya Pradesh High Court in the case of **G.M.Telecom Factory, Jabalpur Vs. P.V.Upadhyay & Anr [1991 MPST 204]**, decision of Karnataka High Court in the case of **N.R.Dhananjayan Vs. Management of Indian Overseas Bank & Anr[2006 LLR 726]** and

recent decision of this Court in the case of **Bablu Mishra Vs. State of Chhattisgarh & Ors.**[ILR 2017 CG 1434].

4. The State counsel however on contrary opposing the appeal submits that, it is a case where the petitioner has not been able to show as to what prejudice has been caused on the cross-examination of the witnesses by the enquiry officer. According to the State counsel, unless prejudice is shown, even if, the enquiry officer has acted as a presenting officer, the inquiry by itself cannot be held to be either bad in law or in violations of the principles of natural justice.

5. Having considered the submissions put forth on either side and on perusal of record, it would be relevant at this juncture to refer to the decision of this Court in the case of Bablu Mishra (Supra) where in paragraph 4 referring to the decision of the Hon'ble Supreme Court in the case of **Union of India & Ors. Vs. Mohd. Naseem Siddiqui** [2005 (1) LLJ 931], 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.”

6. A similar view has also been taken by the co-ordinate Bench of this Court in WPS No.1691/2011 decided on 13/01/2016 wherein also, the co-ordinate Bench has held the action on part of the enquiry officer being the presenting officer as well as in the act of cross-examination of the delinquent to be bad in law.

7. Similarly, the division Bench of Karnataka High Court in the case of N. R. Dhananjayan (Supra) in paragraph 8 has 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.”

8. Likewise, the division Bench of Madhya Pradesh High Court in the case of G.M.Telecom Factory, Jabalpur (Supra) in similar circumstances in paragraph 6 has held as under:

“6. Apart from the above facts there are reasons to believe that the Enquiry Officer was biased against respondent No.1. In this connection, it may be pointed out that Enquiry Officer did not allow the representatives of respondents No.1 to

examine the respondent and his witnesses first in examination in Chief but they were straightway confronted with the cross-examination by a searching cross-examination by Enquiry Officer and then by the Presenting Officer probably under the impression that they were inducted as untruthful witnesses. This procedure and such a conduct cannot be approved on any count. There would be no illegality if the Enquiry Officer questions the delinquent or his witnesses after they made their statement on behalf of the delinquent; but straightway to confront the delinquent and his witnesses with the cross-examination by the Enquiry Officer is derogatory which would certainly cause great prejudice to the delinquent. Learned counsel appearing for the petitioner after going through the record of Enquiry Officer, which was available with him, could not controvert the above state of things and on the contrary affirmed the same. This is not all but the Enquiry Officer looked into the W.O. Register which did not form part of the enquiry and he formed his opinion on the basis of this piece of evidence also to which respondent No.1 had neither any access nor any opportunity to meet the entries contained therein. These facts clearly revealed the mind of the Enquiry Officer that he was against respondent No.1. In the facts and circumstances, stated above, the view taken by the Tribunal cannot be said to be erroneous but perfectly justified."

9. Given the aforesaid legal position as it stands if we peruse the record available in the Writ Petition it reflects that, the prosecution in the instant case has examined one Shankar Lal, a constable to prove the mis-conduct alleged against the present petitioner. However, further perusal of the record would show that, the enquiry officer in the instant case had cross-examined the witness of the prosecution extensively which runs into pages.
10. This act on part of the enquiry officer goes to show that, he was trying to cover up the loop-holes which was extracted in the course of the cross-

examination conducted by the enquiry officer. The enquiry officer in the instant case has acted both as a presenting officer and as an inquiry-officer which is not sustainable in the eye of law and the enquiry officer stands vitiated on this ground.

11. Another ground on which the two impugned orders would not be sustainable is that, the order of Appellate Authority is not a speaking order. That the ground that the enquiry officer could not have acted as a presenting officer has not been considered by the Appellate Authority while passing the appellate order-Annexure-P/1. That perusal of Annexure-P/1 would show that, it is being passed without application of mind and only after recording the facts of the case so also findings of the disciplinary authority, the Appellate Authority has only affirmed the findings without giving any reasons to reach to the conclusion. The order of the Appellate Authority is therefore not sustainable .

12. The court stressed in support of this proposition that a higher body may agree with the conclusions of the lower body but may not necessarily agree with all its reasons. In **Siemens Engineering Vs. Union of India [AIR 1976 SC 1785]** again the Supreme Court emphasised that when adjudicatory bodies are arranged in a hierarchical order, each authority should make a speaking order.

13. However, in later cases the Supreme Court held that the appellate or revisional authority, if it affirms a reasoned decision of a lower authority, need not give separate reasons if it agrees with the reasons contained in the

order under challenge. In **Tara Chand Khatri Vs. Municipal Corporation, Delhi [AIR 1997 SC 567]** where an inquiry was conducted into charges of misconduct and the disciplinary authority, agreeing with the findings of the inquiry officer, had imposed the penalty of dismissal, the dismissal order was challenged on the ground that the disciplinary authority had not given its reasons for passing the order. The said contention was negated by the court and a distinction was drawn between an order of affirmance and reversal.

14. The same view was emphasised again by the Supreme Court in **S.N.Mukherjee Vs. Union of India [AIR 1990 SC 1984]** In **State of West Bengal Vs. Atul Krishna Shaw [91 Supp. 1 SCC 414]**, K.Ramaswamy J., observed, “unless adequate reasons are given, merely because it is an appellate authority, it cannot brush aside the reasoning of findings recorded by the primary authority”.

15. In **Union of India Vs. Nambudiri [AIR 1991 SC 1216]**, the Supreme Court again considered the question of giving reasons by the competent appellate authority and observed:

In the instant case there is no dispute that there is no rule or administrative order recording reasons in rejecting a representation. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a Government servant against the adverse entries the competent authority is not under any obligation to record reasons. But

the competent authority has no license to act arbitrarily, he must act in fair and just manner.

16. Thus, the impugned orders Annexure-P/2 and P/1 dated 29/08/2002 and 12/11/2002 passed by the disciplinary authority as well as by the Appellate Authority being not sustainable deserves to be and is accordingly set-aside/quashed. Consequences to follow.

17. The Writ Petition stands allowed and disposed off.

**Sd/-
(P. Sam Koshy)
JUDGE**

Sumit