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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 6729 of 2010**

S. R. Chhari S/o Shri K. R. Chhari, age 54 years, working as
Inspector, Police Line, Bastar, Jagdalpur (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh through its Secretary, Department of Home,
D. K. S. Bhawan, Raipur (CG)
2. Director General of Police, Police Head Quarters, Raipur (CG)
3. Inspector General of Police, Raipur Area, Police Head Quarters,
Raipur (CG)
4. Superintendent of Police, Jagdalpur (CG)

---- Respondents

For Petitioner	: Shri Ali Asgar, Advocate
For Respondent/State	: Shri S. P. Kale, Dy. Advocate General

Hon'ble Shri Justice P. Sam Koshy**Order On Board****11.05.2018**

The challenge in the present writ petition is to the order dated 10.12.2009 Annexure P-13 passed by the Inspector General of Police imposing punishment of stoppage of one increment with cumulative effect (major penalty). The challenge is also to the impugned order dated 01.10.2010 Annexure P-1 whereby the appellate authority i.e. the Director General of Police has rejected appeal preferred by the petitioner against the order of punishment.

2. It is a case where the petitioner had been served with a charge

sheet on 15.11.2008 Annexure P-7 wherein the allegation/charge against the petitioner was that of showing undue haste in registration of an FIR and further proceeding with the investigation with a motive of helping the complainant.

3. The petitioner in response to the charge sheet filed a detail reply on 26.12.2008. Thereafter the respondents appointed an Additional SP as the Enquiry Officer. No Presenting Officer was appointed to present the case on behalf of the prosecution. The Enquiry Officer himself acted as a Presenting Officer also as an Enquiry Officer and submitted his enquiry report based upon which the Disciplinary Authority vide Annexure-13 dated 10.12.2009 passed the order of punishment of stoppage of one increment with cumulative effect. The petitioner immediately challenged the said order of punishment before the Appellate Authority and the appellate authority has rejected the appeal vide Annexure P-1 dated 01.10.2010 leading to the filing of the present writ petition.

4. At the outset, counsel for the petitioner submits that the entire departmental enquiry and the proceedings stand vitiated on the ground of not appointment of Presenting Officer. The Enquiry Officer himself has acted as a prosecutor as well as a judge and submitted the enquiry report. In the absence of a Presenting Officer, the Enquiry Officer himself has discharged the functions of a Presenting Officer and simultaneously has also as an Enquiry Officer submitted the enquiry report. Thus, there is a great element of prejudice caused to the interest of the petitioner while the enquiry was being conducted. Counsel for the petitioner submits that in the absence of a Presenting Officer, the enquiry report is not sustainable. He submits that it is by now settled position of law that the

basic requirement in a departmental enquiry is that of appointment of an Enquiry Officer as well as a Presenting Officer. The role of an Enquiry Officer is that of a quasi judicial authority where he exercises quasi judicial powers. It is always expected that the Enquiry Officer should be impartial and independent and should give a report based upon the evidences which are led by the delinquent employee so also by the department through the Presenting Officer. He further submits that in the instant case, the Enquiry Officer himself on the one hand was presenting the case of the department and at the same time elaborately cross-examining the witnesses produced by the department and also has cross-examined the delinquent employee which shows that the Enquiry Officer could not have acted in an independent, impartial manner and therefore the chances of bias is writ large on the face of record. Counsel for the petitioner relied upon the judgment of the Supreme Court in the case of **Moni Shankar Vs. Union of India and another** reported in **2008 (3) SCC 484**.

5. So far as the merits of the case is concerned, counsel for the petitioner submits that the charge itself would reveal that there was no misconduct as such committed by the petitioner for the reason that he had acted firstly at the instruction of superior authorities and secondly before registering the FIR, he had also consulted the public prosecutor and obtained a written opinion from the public prosecutor and then proceeded further. This aspect has also not been considered by the Disciplinary Authority nor by the Appellate Authority and therefore, the order of punishment is not sustainable on merit as well.

6. State counsel, however, opposing the writ petition submits that a perusal of the records filed along with the writ petition i.e. enquiry

proceedings would clearly reflect that the petitioner has been granted ample and sufficient opportunity by the Enquiry Officer in the enquiry proceeding. All the prosecution witnesses has been elaborately cross-examined and during the course of enquiry, the petitioner has never raised any objection in respect of the non appointment of the Presenting Officer. Thus, it is difficult to hold that the petitioner has been denied with the principles of natural justice and therefore, the plea taken by the petitioner not being sustainable the petition deserves to be rejected. State counsel submits that perusal of the order of punishment as also the order passed by the appellate authority would clearly reveal that the petitioner has in fact committed misconduct in the course of registration of the FIR and has also shown undue favour to the complainant in the said case. He further submits that merely because the Presenting Officer has not been appointed that by itself would not prejudice the case of the petitioner in any manner. According to the State, ample opportunity has been provided by the Enquiry Officer to the petitioner in the course of departmental enquiry. Thus, the enquiry cannot be said to be bad in law in any manner and prayed for rejection of the writ petition. In addition, state counsel also raised the issue of an alternative statutory remedy available to the petitioner and having not availed the same, the petition deserves to be rejected on the ground of availability of alternative remedy.

7. Having heard the contentions put forth on either side and on perusal of the record, dealing with the question of alternative remedy first, this Court is not inclined to entertain the said contention of the State Government at this juncture when the writ petition has already been entertained by this Court and it is more than 8 years that the petition is

pending consideration before this Court. In addition, the petitioner did avail the remedy of appeal to the appellate authority. Moreover, by efflux of time, the petitioner has also crossed the age of superannuation and it would not be worthwhile now to relegate the matter, permitting the petitioner to prefer a revision. Considering the aforesaid factual matrix, the plea of alternative remedy raised by the State deserves to be and is accordingly rejected.

8. So far as the non appointment of Presenting Officer is concerned, undisputedly the record shows that no Presenting Officer was in fact appointed. The petitioner all along has been raising the plea of the enquiry being vitiated on account of there being no presenting officer. The fact that the petitioner has raised this plea all along also reflects from Annexure P-1 i.e. the order of the appellate authority who has also dealt upon this issue.

9. 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.”

10. 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.”

11. 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.”

12. 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 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.

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.”

13. 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 Enquiry Officer acting both as Presenting Officer as well as Enquiry Officer.

14. Given the aforesaid legal position as it stands, the order of punishment as well as the order passed by the appellate authority i.e. Annexures P-13 & P-1 respectively would not be sustainable under law and the same deserve to be and are accordingly set aside/quashed.

15. 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 has been raised by the petitioner.

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

**Sd/-
P. Sam Koshy
Judge**