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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 4699 of 2012**

B. P. Tiwari S/o late Shri B. D. Tiwari, aged 50 years, working as
Sub Inspector, Traffic Thana, Raipur (CG) Pin Code – 492001, PO
Gen. Post Office

---- Petitioner**Versus**

1. State of Chhattisgarh through its Secretary, Department of Home,
D. K. S. Bhawan, Raipur (CG) PIN Code-492001, PO – Gen. Post
Office, PS – Gol Bazar
2. Director General of Police, Police Head Quarters, Raipur (CG), PIN
Code-492001, PO- Gen. Post Office, PS Civil Lines
3. Inspector General of Police, Raipur Area, Police Head Quarters,
Raipur (CG), PIN Code- 492001, PO- Gen. Post Office, PS Gol
Bazar
4. Superintendent of Police, Raipur (CG), PIN Code-492001, PO- Gen.
Post Office, P.S. Gol Bazar

---- Respondents

For Petitioner	: Shri Ali Asgar, Advocate
For Respondent/State	: Shri Ashutosh Pandey, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order On Board****05.07.2018**

Challenge in the present writ petition is to the order of the respondents dated 14.01.2011 whereby the petitioner has been inflicted with an order of punishment of stoppage of two increments with cumulative effect.

2. Facts of the case are that the petitioner while working as SHO,

Police Station Purani Basti, Raipur, he was served with a charge sheet on 18.08.2010. The allegation as per the charge sheet was that the petitioner is said to have shown dereliction in his duty on 01.08.2008 which was a friendship day on which some miscreants could enter into Vivekanand garden and had blackened the face of a couple who were there in the garden on the said day. Subsequently, a departmental enquiry was initiated by appointing an enquiry officer on 31.08.2010. Later on, the petitioner was inflicted with the order of punishment on 14.01.2011 against which an appeal was preferred to the Director General of Police who has also rejected the appeal leading to the filing of the present writ petition.

3. The main ground which has been raised by the petitioner is that the entire enquiry proceedings and the impugned order stand vitiated on the simple reason that the enquiry has been conducted without a presenting officer being appointed. He submits that it is the enquiry officer who has also acted as a presenting officer which otherwise is impermissible under the service jurisprudence particularly in a departmental enquiry, therefore, the impugned order and the departmental enquiry both deserve to be quashed.

4. State counsel, however, tried to justify the action on the part of the respondents holding that there was no requirement of a presenting officer as the allegations were factual in nature and the enquiry officer himself has conducted the enquiry and given a report based upon which the disciplinary authority has imposed the order of punishment. He submits that the petitioner at the relevant point of time did not raise any objection so far as non appointment of a Presenting Officer is concerned. Thus, prayed for rejection of the writ petition.

5. Having heard the contentions put forth on either side and on perusal of the record, so far as the effect of non appointment of a presenting officer in a departmental enquiry is concerned, this Court recently in the case of S. R. Chhari Vs. State of Chhattisgarh and others decided on 11.05.2018 in WPS No. 6729 of 2010 dealing with the issue of non appointment of the presenting officer has referring to various judgments of the Hon'ble Supreme Court and also this Court held that the departmental enquiry and the subsequent actions would get vitiated on the ground of non appointment of the presenting officer. It would be relevant at this juncture to refer to paragraphs – 9 to 13 of the said judgment of this Court which is reproduced hereinunder:

“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 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.”

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.”

6. In the light of the decision of this Court in the case of S. R. Chhari (supra), this Court is of the view that the facts of the instant case would be squarely covered by the decision rendered by this Court in the said case.

In the instant case also, since the entire enquiry has been conducted without appointment of a presenting officer and the enquiry officer himself has examined and cross-examined all the witnesses on behalf of the department as well as the delinquent employee, the departmental enquiry gets vitiated on this ground alone and thereby the subsequent disciplinary action also stands vitiated for the same reason.

7. Accordingly, the impugned orders Annexure P-6 dated 14.01.2011 and Annexure P-1 dated 17.10.2011 are not sustainable and the same deserve to be and are quashed reserving the right of the respondents to proceed further in case they feel so in accordance with law. As a result of the quashment of the punishment order, the petitioner as of now would be entitled for all consequential benefits.

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