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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 4915 of 2004**

Narendra Singh Parihar S/o late Shri K. S. Parihar, aged about 29 years, Ex-Constable No. 126, P.S. Dantewada (CG) R/o village Chargharkapura, PO Nunheta, District Bhind (MP)

---- Petitioner**Versus**

1. State Of Chhattisgarh through Secretary, Dept. of Home (Police), Mantralaya, DKS Bhawan, Raipur (CG)
2. Director General of Police, Police Head Quarter, Raipur (CG)
3. Superintendent of Police, South Bastar, Dantewada (CG)

---- Respondents

For Petitioner	:	Shri Abhishek Pandey, Advocate
For State	:	Shri R. K. Gupta, Dy. Advocate General

Hon'ble Shri Justice P. Sam Koshy**Order On Board****26.09.2018**

The challenge in the present writ petition is to the order of termination dated 14.08.2003 Annexure P-1 passed by the Superintendent of Police i.e. respondent no.3. The challenge is also to the order Annexure P-2 dated 12.10.2004 passed by respondent no.2, the Director General of Police whereby the departmental appeal preferred by the petitioner against the order of termination stood rejected.

2. The petitioner was issued with a charge sheet dated 24.10.2002 on the ground that the petitioner during the course of his duty was found under

the influence of alcohol. Subsequently, an enquiry was conducted and on the basis of the enquiry report, the Disciplinary Authority vide Annexure P-1 imposed the punishment of termination from service. The appeal preferred against the said order was also rejected vide Annexure P-2.

3. Though the petitioner has raised various grounds for challenging the writ petition but he primarily challenges the impugned termination order on a couple of legal grounds that he has raised though he has not made any specific pleading in the writ petition. The primary objection or contention of the petitioner assailing the impugned orders is that the petitioner was charge-sheeted along with another Constable namely Khoaram with the same charges and that the Department proceeded to conduct a joint enquiry against them. While doing so, the necessary compliance as is required under Rule-18 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 has not been followed in as much as the necessary compliance under Rule-18 before commencement of a joint enquiry was not ensured. The second ground that the petitioner has raised is that the entire enquiry stands vitiated for not having appointed a Presenting Officer on behalf of the prosecution to present their case.

4. According to the counsel for the petitioner, it is a case where the entire enquiry has been conducted by the Enquiry Officer himself and that no Presenting Officer was appointed. It was the Enquiry Officer who had got the witnesses examined and thereafter given an enquiry report on the basis of which the punishment order was passed and which has further been affirmed in the appeal. Further contention of the petitioner is that the order of punishment is in violation of Rule 226 of the Police Regulation in

as much as the order of punishment is disproportionate to the nature of misconduct alleged. It was lastly contended by the counsel for the petitioner that the action on the part of the respondents in issuing the termination order is bad in law for the reason that the person who was prosecuted along with the petitioner in the joint enquiry against whom identical charges were levelled was subsequently reinstated by the appellate authority while deciding the appeal whereas the appeal of the petitioner has been rejected in spite of the grounds being the same.

5. Before entering into any of other contentions raised by the petitioner this court would like to deal with the issue as to whether the enquiry conducted against the petitioner is proper, legal and justified or not. So far as the contention of the petitioner that there was no Presenting Officer appointed is concerned, the petitioner has been able to produce during the course of hearing the statements of the prosecution witnesses examined and cross-examined (the petitioner is directed to bring the same on record during the course of the day) and from the deposition sheets which have been produced before the Court it reveals that the said deposition sheets have been signed only by the Enquiry Officer, the delinquent employee i.e. the petitioner and the concerned witnesses. There is no reference of any Presenting Officer neither is there any signature of a Presenting Officer nor does it reflect from the evidence that the examination-in-chief has been conducted by the Presenting Officer, rather it appears that the statement of these witnesses were recorded by the Enquiry Officer himself. As stated in the preceding paragraph, the petitioner has not taken this plea of non appointment of the Presenting Officer in the course of enquiry and therefore

the respondent State could not have taken any defence in this regard. But from perusal of the record particularly the deposition sheets it clearly reflects that all the witnesses who have been examined i.e. all the five witnesses who have been referred to in the charge sheet were examined in the presence of the Enquiry Officer as well as the delinquent employee and it was the delinquent employee who has cross-examined. There was no Presenting Officer to present the case on behalf of the Department or for recording the statement-in-chief in the presence of the employee. Therefore this Court has no hesitation in reaching to the conclusion that the enquiry has been conducted without appointment of a Presenting Officer. The view of this Court stands established from the fact that even in the enquiry report there does not seem to be a reference made in respect of the Presenting Officer or the contents of the Presenting Officer. Thus, the view of this Court that the enquiry was without appointment of a Presenting Officer further stands strengthened.

6. So far as the non appointment of the Presenting Officer is concerned, the law has by now well settled by a series of decisions and the latest decision in this regard by the Supreme Court being the case of **Union of India & others Vs. Ram Lakhan Sharma** decided on 2nd July, 2018 in Civil Appeal No. 2608 of 2012.

7. 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.

8. 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.*, the case of a person who was in the police department of the rank of Assistant Sub Inspector.

9. 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.”

10. 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.”

11. In view of the aforesaid legal position as it stands in the admitted factual background where the enquiry appears to have been conducted without a Presenting Officer appointed, this Court is of the opinion that the entire enquiry stands vitiated on this ground alone and it stands vitiated from the stage of the enquiry proceeding being conducted without appointment of a Presenting Officer. Reserving the right of the employer respondents in proceeding further with the enquiry from the stage of appointment of a Presenting Officer on wards, the impugned order of termination and the order of appeal both are not sustainable and the same deserve to be and are accordingly set aside/quashed with consequences to follow.

12. As a consequence, the respondents would have to reinstate the petitioner in service with liberty of the employer to proceed further with the enquiry if they so deem fit. So far as the other objections and contentions

which the petitioner has raised are concerned, the respondents would also be at liberty to take those objections into consideration while proceeding further with the enquiry proceedings. So far as granting of the consequential benefits for the intervening period is concerned, it shall be left to the authority concerned to take a decision subject to the outcome of the enquiry proceeding, if the respondents initiate any against the petitioner. Needless to mention that in case the respondents are not able to establish the charges against the petitioner or do not proceed further with the enquiry, the authority would have to pass an order as to how the intervening period has to be considered particularly the monetary benefits which the petitioner is entitled for keeping in view the provisions of the Fundamental Rules.

13. With the aforesaid observation, the writ petition stands allowed.

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