

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 7120 of 2018

Ashok Kumar Dwivedi S/o Shri R.K. Dwivedi, Aged About 57 Years,
Presently Posted As Sub Inspector, Police Station Taar Bahar, Bilaspur,
Chhattisgarh.

---Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, Department Of Home, Mantralaya, Mahanadi Bhawan, Atal Nagar, District Raipur Chhattisgarh.
2. Director General Of Police, Police Headquarters, Raipur, Chhattisgarh.
3. Additional Director General Of Police, Police Headquarters, Raipur, Chhattisgarh.
4. Inspector General Of Police, Raipur, Range, Raipur Chhattisgarh.
5. Superintendent Of Police, Dhamtari, District Dhamtari, Chhattisgarh.
6. Additional Superintendent Of Police, Dhamtari, District Dhamtari, Chhattisgarh.

---Respondents

For petitioner	:	Shri Amrito Das, Advocate.
For State	:	Shri Syed Majid Ali, Dy.G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

27/10/2018

1. The present Writ Petition has been filed seeking following relief:-

“10.1 :- This Hon'ble Court may kindly be pleased to call for the entire record pertaining to the initiation of the departmental enquiry against the petitioner from the respondent-authorities for its perusal.

10.2 :- This Hon'ble Court may kindly be pleased to issue an appropriate writ quashing the initiation of the departmental enquiry against the petitioner without restoring his position what

it would have been if the first order of punishment was not imposed upon him in the departmental enquiry.

10.3 :- This Hon'ble Court may kindly be pleased to issue an appropriate writ quashing and setting aside the notice dated 24.07.2018, 16.08.2018 and 20.09.2018 passed by respondent No.6 and all subsequent notice issued thereafter.”

2. The facts of the case is that, the petitioner while working as an Assistant Sub Inspector was subjected to disciplinary proceedings wayback in the year 2004 and the petitioner was inflicted with a punishment on 31/03/2005 whereby the punishment of demotion from the post of Assistant Sub Inspector to the post of Head Constable.
3. The said order also have been affirmed in a departmental appeal vide order dated 22/07/2006.
4. This order was put to challenge in a Writ Petition i.e. WPS No. 6418/2008.
5. The said Writ Petition finally stood allowed vide order dated 06/04/2018.
6. While allowing the Writ Petition, this Court had made the following observation:-

“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 accordingly stands allowed and disposed off.”

7. Pursuant to the order passed by this Court it appears that the respondents have now proceeded further with the liberty that was granted by this Court by going in for a fresh enquiry and in the process have appointed a fresh enquiry officer as well as presenting officer and have intended to proceed further with the departmental enquiry. It is at this juncture the present Writ Petition has been filed.

8. The contention of the counsel for the petitioner is that, by virtue of allowing of the Writ Petition, the respondents ought to have restored the position of the petitioner at par with his immediate junior and could have thereafter proceeded further with the departmental enquiry. Not restoring the position would amount to the petitioner being subjected to double jeopardy as he remains to perform his duties on a lower post as compared to his colleagues who were appointed along with him and who were immediate juniors to him are working in the department at a much higher post. Therefore, he has filed this Writ Petition seeking for a direction that the respondents may be ordered to restore the position of the petitioner first and thereafter if they intend to proceed with the departmental enquiry, they may do so.

9. Considering the entire facts and circumstances of the case, what has to be taken note of is the fact that the earlier punishment order and the Appellate Authority order as also the departmental enquiry proceedings were vitiated on a technical ground of there being no presenting officer appointed

to present the case of the department and it was the enquiry officer himself who had attempted the role of prosecutor as well as the enquiry officer.

10. Therefore, the petition having been allowed on these technicalities, this Court had granted the liberty to the respondents to proceed further with the departmental enquiry if they so think fit.

11. The respondents have now taken a decision to hold a fresh enquiry and for which they have appointed an enquiry officer as also the presenting officer.

12. Now, the only issue left is what would be the consequence of order passed by this Court in the earlier round of litigation vide order dated 06/04/2018.

13. This Court has not expressed any opinion so far as the misconduct or the charges which were levelled against the petitioner is concerned in its first order.

14. These facts are again to be examined and are in the process of being examined in the departmental enquiry afresh which has been ordered by the High Court.

15. In the given facts, this Court disposes off this Writ Petition holding that the consequential benefits which the petitioner would be entitled for would be decided subject to the outcome of the departmental enquiry which has been proposed by the respondents.

16. It is expected that the petitioner would render all co-operation in the departmental enquiry and the department is also directed to ensure that the

departmental enquiry is conducted after giving due opportunity of hearing to the petitioner and in compliance of all principles of natural justice which includes the departmental enquiry to be conducted by the enquiry officer after granting opportunity of cross-examination of the witnesses who would be examined on behalf of the department and only thereafter an appropriate decision would be taken at the earliest.

17. With the aforesaid observations, the Writ Petition stands disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit