

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION NO.1991 OF 2005**

Lalaram Shakya S/o late Shri Jhamman Lal Shakya, aged about 55 years, occupation Ex-Head Constable No.10, PTC (Police Training Centre) Borgaon, R/o Village Khadepur, PO Kishni, District Mainpuri (UP).

...Petitioner(s)

Versus

1. State of Chhattisgarh Through its Secretary, Department Of Home DKS Bhawan Raipur (CG).
2. Director General of Police, Police Headquarter, District Raipur Chhattisgarh.
3. Inspector General of Police, Chhattisgarh Armed Force Bhilai (CG).
4. Deputy Director General of Police, Chhattisgarh Armed Force Head Quarter Bhilai (CG).
5. Commandant, PTC (Police Training Centre) Borgaon, District Bastar (CG).

... Respondent(s)

For Petitioner	:	Shri Abhishek Pandey and Shri Santosh Pandey, Advocates.
For Respondent-State	:	Shri Saleem Kazi, Dy. Advocate General.

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

25.03.2019

The petitioner in this petition has challenged Annexures P/6 & P/7 i.e. order dated 22.05.2004 passed by the Disciplinary Authority imposing punishment of compulsory retirement and the order dated 24.07.2004 passed by the appellate authority dismissing the appeal preferred by the petitioner.

2. Facts of the case is that the petitioner was working as a Head Constable under the respondents. He was substantively posted at Police Training Centre, Borgaon, District Bastar. During the relevant period i.e. in the year 2002-03 while being posted at Police Training Centre, Borgaon, the services of the petitioner was attached to the Police Training Centre, Mana, District Raipur. Charge sheet was issued to the petitioner on

13.08.2002 alleging serious misconduct against the petitioner in the course of discharging his duties at Police Training Centre Mana while his services were attached there. Thereafter, an enquiry officer was appointed to enquire into the allegation of misconduct against the petitioner and one Shri K.S. Tomar, Company Commander, Police Training Centre Borgaon was appointed as enquiry officer. The enquiry officer submitted enquiry report on 15.12.2002. Based on the enquiry report, the disciplinary authority imposed a punishment of compulsory retirement vide Annexure P/6 dated 22.05.2004. Against the said order of compulsory retirement, the petitioner preferred a Departmental Appeal and the Departmental Appeal also stood rejected vide order dated 24.07.2004 (Annexure P/7) passed by the Additional Director General of Police. It is these two orders which are under challenge in this writ petition.

3. During the course of argument, learned counsel for the petitioner raises a legal ground so far as the veracity of the departmental enquiry that has been conducted against the petitioner is concerned. The petitioner along with the writ petition produced documents of the enquiry proceedings conducted. It has been alleged by the petitioner that in the departmental enquiry there was no Presenting Officer appointed to present the case of the department. It is further the contention of the petitioner that even if there was a Presenting Officer appointed, the entire departmental enquiry was conducted by the enquiry officer himself who had examined and cross examined the witnesses both on behalf of the prosecution as well as the defence including the delinquent petitioner. Thus, the entire enquiry proceedings initiated against the petitioner stands vitiated as it violates all the basic principles of natural justice where the enquiry officer is not

expected of acting both as Judge as also the prosecutor in the same enquiry proceedings.

4. The petitioner drew the attention of the court to the statements recorded on behalf of the department, the statements recorded by the defence witnesses as also the delinquent employee to establish the fact that most of the departmental witnesses were cross examined by the enquiry officer in addition to those witnesses being cross examined by the delinquent employee. Moreover, the defence witnesses also were extensively cross examined by the enquiry officer himself. Thus, according to the petitioner, there is a grave infirmity on the part of the department in conducting departmental enquiry and prayed for vitiating of the entire enquiry and the consequent disciplinary action initiated against the petitioner in this regard and rejection of the appeal thereafter by the appellate authority.

5. The State counsel, on the contrary, opposing the petition submits that it is a case where the charges levelled against the petitioner apparently is serious in nature and perusal of statements of the witnesses examined during the course of the enquiry would reveal that most of the charges levelled against the petitioner infact has been proved, therefore, there is no scope of interference by this court.

6. Having heard the contentions put forth on either side and on perusal of records, so far as enquiry proceedings are concerned particularly the documents which have been brought on record by the petitioner would reveal that most of the witnesses on behalf of the department were cross examine by the enquiry officer at length. Further, the document also reveals that the defence witnesses adduced by the petitioner and the

petitioner himself as the delinquent chargesheeted employee were also cross examined at length by the enquiry officer himself. Thus, there is no dispute of the fact that both the departmental witnesses as also the defence witnesses and the delinquent employee were cross examined by the enquiry officer.

7. The document along with the writ petition would also reveal that infact there does not seem to be any document with which it can be established that there was a Presenting Officer duly appointed by the department. Moreover, the enquiry proceedings show that there were three signatures on each of the statements and proceedings drawn. One was that of enquiry officer, one was that of delinquent employee and the third signature was of the person whose statement was being recorded.

8. Thus, in none of the proceedings there was a signature of the Presenting Officer affixed which would further establish the fact that there was no Presenting Officer appointed.

9. So far as the appointment of the Presenting Officer is concerned, the law by now is well settled by a series of decisions and the latest decision in this regard by the Hon'ble 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, wherein the Hon'ble Supreme Court in paragraphs 29 and 36 has held as follows:

“29. This Court had occasion to observe in Workmen of Lambabari Tea Estate vs. Lambabari Tea Estate, 1966 (2) LLJ 315, that if Inquiry Officer did not keep his function as Inquiry Officer but becomes prosecutor, the inquiry is vitiated. Following was observed:

"The inquiry which was held by the management on the first charge was presided over by the manager himself. It was conducted in the presence of the assistant manager and two others. The enquiry was not correct in

its procedure. The manager recorded the statements, cross-examined the labourers who were the offenders and made and recorded his own statements on facts and questioned the offending labourers about the truth of his own statements recorded by himself. The manager did not keep his function as the enquiring officer distinct but became witness, prosecutor and manager in turns. The record of the enquiry as a result is staccato and unsatisfactory."

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36. The High Court having come to the conclusion that Inquiry Officer has acted as prosecutor also, the capacity of independent adjudicator was lost which adversely affecting his independent role of adjudicator. In the circumstances, the principle of bias shall come into play and the High Court was right in setting aside the dismissal orders by giving liberty to the appellants to proceed with inquiry afresh. We make it clear that our observations as made above are in the facts of the present cases."

10. The same view has further been relied upon by this Court in WPS No. 1019/2017 decided on 1.3.2017 in the case of Bablu Mishra v. State of Chhattisgarh & Ors. and again in WPS No. 6418/2007 decided on 6.4.2018 in the case of Ashok Kumar Dwivedi v. State of Chhattisgarh & Others so also in WPS No. 4539/2012 decided on 11/05/2018 in the case of Lachchhan Ram Giri v. State of Chhattisgarh & Others.

11. A similar view also has been taken in WPS No. 1828/2003 decided on 10.1.2018 in the case of M.M.Mishra v. State of Chhattisgarh & Others, that is the case of a person who was in the police department of the rank of Assistant Sub Inspector.

12. In all these aforesaid orders, this Court had relied upon the judgment of the Hon'ble Supreme Court in the case of Union of India & Others 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. Nonappointment of a Presenting Officer in each and every inquiry. Nonappointment 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.”

13. In addition to this, there is a decision of Karnataka High Court in the case of N. R. Dhananjayan v. Management of Indian Overseas Bank & Another, 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.”

14. Similar view has been taken by this court again in one of its recent decision rendered on 01.10.2018 in case of Smt. Anita Thakur Vs. The State of Government of Chhattisgarh & Ors. in WPS No.1166 of 2011.

15. There is another judgment of Karnataka High Court in case of Abdul Wajeed Vs. State of Karnataka & Ors., reported in 1981(1) SLR 454 wherein again the Karnataka High Court has vitiated the departmental enquiry where the defence witnesses were extensively cross examined by the enquiry officer.

16. Given the aforesaid legal position as it stands, this court has no hesitation in holding that the departmental enquiry conducted against the petitioner also suffers from same infirmity and is not sustainable in the eye of law and it is in complete violation of the principles of natural justice. Thus, the enquiry proceedings and the subsequent decision taken on the basis of the enquiry conducted in an illegal manner deserves to be and accordingly stands set aside/quashed.

17. Since this court is setting aside the impugned orders on technicalities, applying the doctrine of 'No Work No Pay' it is ordered that the petitioner would not be entitled for the wages for the period from the date of issuance of the impugned order dated 22.05.2004 till the date the petitioner crossed the age of superannuation. However, the said period for all practical purposes have to be treated as period spent on duty and the petitioner would be entitled for consequential benefits that he would be entitled on his retirement.

18. The petitioner would be entitled for only the notional fixation of the annual increments and any promotional benefits which he would have got had he been in service between May, 2004 till his retirement. The petitioner however would be entitled for all the actual retiral dues that he was entitled for after giving him notional fixation of all the benefits that he would be entitled for from the date of issuance of the order of compulsory retirement till his retirement.

19. The writ petition accordingly stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge