

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 2312 of 2019

Sanjeev Kumar Tiwari S/o Sheshnarayan Tiwari Aged About 48 Years
Presently Posted As Head Constable Reserve Police Line, Durg, District
Durg Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Principal, Secretary, Home Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Naya Raipur Chhattisgarh.
2. Superintendent Of Police Durg, District Durg Chhattisgarh.

---Respondents

For Petitioner	:	Mr. Tarendra Kumar Jha, Advocate
For State	:	Mr. Ishan Verma, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/04/2019

1. With the consent of the parties, the matter is heard finally and disposed of at the motion stage itself.
2. The challenge in the present writ petition is to the order Annexure P/4 dated 21.01.2019, whereby the respondent No.2 has remanded the departmental enquiry to the Inquiry Officer from the stage of cross-examination of the defense witness and further has directed the Inquiry Officer to submit a fresh report after due appreciation of the evidences adduced on behalf of the Department.
3. The contention of the counsel for the petitioner at the outset is that the impugned order is bad in law for the reason that first of all the Superintendent of Police i.e. the respondent No.2 could not have remanded the matter back without giving an opportunity of hearing to the petitioner. He further submits that even otherwise the finding of the respondent No.2 in not accepting the inquiry report submitted by the Inquiry officer on account of

the defense witnesses not being cross-examined by the Inquiry officer also is an illegal proceeding, as such is not the requirement of law and that cross-examinations are never to be done by the Inquiry officer, it has to be done only by the Presenting Officer as well as by the delinquent employee or his co-worker and not the Inquiry officer.

4. He further contended that the power, which is otherwise conferred with the Disciplinary Authority is only either to accept the finding of the Inquiry officer or to disagree with the finding of the Inquiry officer and after giving a show cause notice could have proceeded further against the delinquent employee afresh based upon his own finding on the basis of evidence which have come on record or could even have ordered for a fresh denovo enquiry. In the absence of such proceedings being drawn by the Disciplinary Authority and on the contrary the matter being remanded without affording a hearing to the petitioner and with specific directions to the Inquiry Officer to cross-examine the witnesses, would be detrimental to the interest of the delinquent employee.
5. The State counsel however opposing the petition submits that since the allegations leveled against the petitioner were of serious misconduct and that there were material evidences produced by the Department in the course of the evidence led by the Department, the finding of the Inquiry officer was also not appropriate and which has led to the matter being remitted back by the Disciplinary Authority to the Inquiry officer for a fresh inquiry report and thus submitted that there is hardly any scope of interference by this Court.
6. True it is that the scope of interference by the High Court in a writ jurisdiction, particularly in the departmental enquiry matters are too restricted, but where there is a procedural illegality or irregularity committed

in the course of conducting of an inquiry, this Court in exercise of its power of judicial review under Article 226 of the Constitution of India can definitely interfere with, to avoid substantial injustice being caused to the delinquent employee.

7. So far as an inquiry proceeding is concerned, it is by now a settled position of law that the Inquiry officer has to act as a Quasi Judicial Authority and his role prominently is that of a judge and he under no circumstances can act both as a judge as well as prosecutor. The Department in a departmental enquiry is represented through the Presenting Officer. The witnesses have to be examined by the Presenting Officer so appointed and the departmental witnesses would be examined only by the delinquent employee or his co-worker. Likewise, so far as the defense witnesses are concerned, the defense witnesses also can only be cross-examined by the Presenting Officer. Under no circumstances can the Inquiry officer be permitted to cross-examine the witnesses being adduced either by the Department or by the delinquent employee in defence.
8. It is another fact that the Inquiry officer in the course of inquiry proceeding may put one or two questions to clarify a statement or deposition of the witnesses, but the Inquiry officer cannot be permitted to conduct a detailed cross-examination of any of the witnesses. The approach of the respondent No.2 while remanding the matter therefore seems to be technically faulty and the order therefore is not sustainable. If at all, the respondent No.2 in the capacity of a Disciplinary Authority was not satisfied with the findings given by the Inquiry officer, he has all the powers to disagree with the same and proceed further on the basis of the evidences, which have come on record after giving due show cause notice to the delinquent employee. At the same, the Disciplinary Authority also has the power, if he disagrees with the

findings of the Inquiry officer and the evidences, which have been brought on record to disagree with the entire proceedings and could have ordered for a fresh inquiry from the stage where the Disciplinary Authority found the proceedings drawn by the Inquiry officer to be bad or faulty. The impugned order for these reasons, thus being in contravention to the aforesaid options, which were available to the Disciplinary Authority is therefore not sustainable and the same deserves to be set-aside/quashed and the matter stands remitted back to the Disciplinary Authority to take an appropriate fresh decision in accordance with the procedure prescribed for conducting a departmental enquiry.

9. With the aforesaid observations, the writ petition stands allowed.

Sd/-
(P. Sam Koshy)
Judge

Ved