

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP No. 450 of 2006

Hari Om Sharma S/o Shri Harish Chandra Bharadwaj Aged About 45 Years
Constable No. 914524616, CISF, B. S. P. Bhilai, Rolling Mill Gate, Residential
Address- 90c, Camp-1, BSP, Bhilai, Tahsil And District Durg, Chhattisgarh.

---- Petitioner

Versus

1. Union Govt. India Through The Secretary, Ministry Of Home Affairs New Delhi
2. The D. I. G. CISF (Home Ministry Affairs) Bhilai District Durg, Chhattisgarh
3. CISF Bhilai Supela, Bhilai, Tahsil And District Durg, Chhattisgarh.

---Respondents

For Petitioner	:	Mr. Ajay Shrivastava, Advocate
For Union of India	:	Mr. RajKumar Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/07/2019

1. The Challenge in the present writ petition is to the order dated 26.06.2003 whereby Commandant CISF has passed an order of punishment removal from service upon the Petitioner.
2. The facts of the case is that the Petitioner was working as a constable under the respondents and was posted at Bhilai Steel Plant during the relevant period. The petitioner was served with a charge-sheet on 14.02.2003 wherein the allegations were abruptly on 11.01.2003, in the second shift, the Petitioner left his duties without proper permission and approval of the Competent Authority in the department and left the place of work and it is said that thereafter he remained absent for a period of about 1 month, again without proper intimation, sanction and approval of the Competent Authority. The petitioner then submitted his detailed reply to the charge-sheet issued on 22.02.2003 and being not satisfied with the reply that the Petitioner had furnished, the Disciplinary Authority ordered for holding departmental enquiry against the Petitioner. One Shri Ajeet Singh, Inspector under the

respondent was appointed as an Enquiry Officer. Thereafter, the Petitioner is said to have conducted an enquiry and submitted his report to the Disciplinary Authority and on the basis of the report submitted by the Enquiry Officer, the Disciplinary Authority issued impugned order of punishment removal from service. Thereafter, the Petitioner preferred an appeal to the Appellate Authority in the department and the Appellate Authority also vide his order Annexure P/3 dated 29.09.2003 affirming the order of the Disciplinary Authority rejected the appeal leading in filing of the present writ petition.

3. The primary contention put forth by the petitioner is that the entire Departmental Enquiry conducted against the Petitioner stands vitiated only on the ground of the Departmental Enquiry being conducted without appointment of a Presenting Officer. The contention further of the Petitioner is that during the course of enquiry, he had moved an application before the commandant of the unit where he was posted for appointment of the Presenting Officer for conducting of the enquiry but no decision as such was taken by the commandant and it was the enquiry officer alone who conducted the enquiry all by himself and submitted the report.
4. The Counsel for the Petitioner refers to a couple of decision rendered by this Court wherein this Court had held that the enquiry conducted without appointment of a Presenting Officer and where the Enquiry Officer and Disciplinary Authority are different then the entire proceedings stands vitiated holding it to be bad.
5. The Counsel appearing for the respondent opposing the petition initially raises the objection of the petitioner having an alternative remedy which he has not availed and therefore, the writ petition was not maintainable. In

addition, the contention of the counsel for the respondent is that merely because Presenting Officer has not been appointed by itself would not be fatal to hold that the enquiry was bad. According to the counsel for the respondent, though the enquiry was conducted by the Enquiry Officer, the Petitioner as such was granted full opportunity of defense and therefore, there could not have been any prejudice caused to the interest of the Petitioner in the course of the enquiry.

6. The Counsel for the respondents further submits that because of the grave misconduct that he had committed on leaving the place of work apparently without proper, sanction of Competent Authority/ Higher Authorities, he was also declared as a deserter. Thus, taking into consideration the gravity of the misconduct and the facts that the petitioner belongs to uniformed force where the personnels are expected to maintain high order of discipline, the punishment imposed upon the Petitioner can not be said to be either disproportionate or bad in law thus prayed for rejection of the writ petition.
7. Having heard the contention put forth on either side and on perusal of records what is not disputed is that the petitioner was working as a constable under the respondents. The petitioner was issued with a charge-sheet on 14.02.2003, thereafter, the Enquiry Officer was appointed and enquiry report was furnished based on it, the petitioner stood terminated.
8. It is also not in dispute that for the purpose of conducting the departmental enquiry, no presenting officer was appointed by the department. It is the Enquiry Officer alone who had examined the witness and have also cross-examined the witness including the petitioner delinquent.
9. The service conditions of the petitioner are governed by the rules framed under the Central Industrial Security Force Act, 1968. The relevant rules

enacted under the said rules are, the Central Industrial Security Force Rule 2001, chapter 10 of the said rules deals with penalties and procedures, Rule 34 prescribes the nature of penalties, Rule 35 provides for imposition of petty punishment, Rule 36 lays down the procedure for imposing major penalties and Rule 36 (5)(C) for a ready refers reads as under:-

[(c) Where the Disciplinary Authority itself inquiries into any article of charge or appoints an Inquiring Authority for holding any enquiry into such charge, it may, by an order, appoint a member of the Force to be known as the 'Presenting Officer' to present on its behalf the case in support of the articles of charge.]

10. In view of the fact that the rules governing the filed also envisages a clause of appointment of a presenting officer in the course of any departmental inquiry being initiated against any of the personnel under the respondents without going into the merits of the charges levelled against the petitioner, prima facie it appears that the enquiry suffers from the defect of violation of Rule 36(5)(C) and thus stands vitiated on this ground alone. This Court in the recent past dealing with a constable from the Central Reserve Protection Force in the case of **Yadram Yadav Vs. Union Government of India, WPS 488 of 2009 decided on 24.09.2018**, under similar circumstances dealing with the issue of non appointment of a presenting officer allowed the writ petition holding the Departmental enquiry to be bad.
11. This Court in the said order had referred to various judicial pronouncements in this regard for ready reference Para. 15 to 20 has held as under.

“15. In WPS No. 1691/2011 decided on 13/01/2016 (Vinod Kumar Kori V. State of Chhattisgarh & Ors.) this Court has considered this aspect and relying upon a couple of decision of the Hon'ble Supreme Court in this regard reached to the conclusion that the enquiry proceedings conducted in the absence of presenting

officer would vitiate the entire enquiry proceedings itself and allowing the Writ Petition had set-aside the departmental enquiry proceedings and the punishment therein.

16. 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 Vs. 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.**

17. 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 and Ors.,** a person who was also in the police department holding the rank of Assistant Sub Inspector.

18. 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 recognized 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.”

19. 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.”

20. Given the aforesaid legal position as it stands on the basis of the judgment of the Supreme Court as also the judgment delivered by this Court in a series of decisions referred to in the preceding paragraph from the admitted factual matrix of the case, the impugned order of the departmental enquiry proceedings drawn against the petitioner in the present case would also stand vitiated on the same analogy of there being no presenting officer appointed.”

12. In view of the aforesaid legal position as it stands since this Court finds, there is a clear violation of Rule 36(5)(C). The disciplinary proceedings

initiated against the petitioner is held to be bad in law and the enquiry proceedings accordingly stands vitiated.

13. The impugned orders are therefore not sustainable and the same is therefore set aside/quashed. The impugned order of termination including the order passed by the Appellate Authority. Since, we have set aside only on the technical ground of the enquiry getting vitiated on technical ground, the respondents would be at liberty to initiate fresh proceeding against the petitioner if they feels so, in accordance with the rules governing the service condition of the petitioner.
14. The writ petition accordingly stands allowed. It is ordered that petitioner would be reinstated in service forth with and for the intervening period applying the principle of "No work No Pay", the petitioner would not be entitled for any back wages. However, the said period shall be counted as continuous service for all other purpose and the petitioner would be granted the benefits by notional fixation.

Sd/-

(P. Sam Koshy)
Judge

Jyotijha