

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 2132 of 2011**

Meghnath Gota S/o. Shri Kanchan Singh Gota, Aged about 48 years,
Ex-Constable 5th Battalion, Chhattisgarh Sashatra Police, Chhattisgarh,
Jagdalpur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through Secretary, Home Department, D.K. Bhawan, Raipur, Chhattisgarh.
2. Deputy Inspector General of Police, Chhattisgarh Sashatra Police, Bhilai, District Durg, Chhattisgarh
3. Senani, 5th Batalion Chhattisgarh Sashttra Police, Jagdalpur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. N.K. Vyas, Advocate
For State	:	Ms. Shriya Mishra, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****06/03/2020**

1. The challenge in the present writ petition is to the order of termination from service dated 01.08.2001 passed by the respondent no.3. The challenge also is to the order dated 19.11.2020, wherein the Appellate Authority had vide (Annexure P/1) rejected the departmental appeal that the petitioner had preferred.
2. Brief facts relevant for the adjudication of the present writ petition is that the petitioner was working as a Constable under the respondents and was posted at Jagdalpur at the relevant point of time. On 14.03.2001 a charge-sheet was issued to the petitioner (Annexure P/3) and subsequently vide order dated 27.04.2001, an Inquiry officer, the Company Commander Mr. L.P. Singh was appointed. The Inquiry officer conducted the inquiry and submitted his report on 31.05.2001.

Based on the report of the Inquiry officer, the respondent no.3 issued Annexure P/2, the termination order dated 01.08.2001. Against the said order, the petitioner had preferred a departmental appeal, however the Appellate Authority had not decided the appeal, within a reasonable time, which led to the petitioner filing a petition before the State Administrative Tribunal and subsequently on abolition of the Tribunal, the matter stood transferred to the High Court, wherein it was registered as WPS No. 5174/2005. The said writ petition finally stood disposed on 27.07.2009 directing the Appellate Authority to decide the appeal at the earliest. Subsequently, the Appellate Authority decided the appeal vide Annexure P/1 on 19.11.2010 and which was communicated to the petitioner vide order dated 08.12.2010 which has led to the filing of the present writ petition.

3. Apart from challenging the impugned action of the respondents on the merits stating that the allegations leveled against the petitioner has not been sufficiently proved before the Inquiry officer, the learned counsel raises a preliminary issue as to whether the departmental enquiry conducted against the petitioner itself is sustainable or not. That according to the petitioner, the entire inquiry proceeding stands vitiated on the ground of the principles of natural justice not being followed. According to the counsel for the petitioner, the inquiry deserves to be vitiated only on the ground that the inquiry was conducted without appointment of a Presenting Officer. He further submits that from the documents enclosed along with the writ petition, it would be evidently clear that it was the Inquiry officer alone, who had examined all the witnesses of the Department and also examined the petitioner-the delinquent employee. Thus, the Inquiry officer has acted as a

prosecutor as well as a defense counsel in addition of his discharging the role of a Judge in an inquiry proceeding. Thus, the dismissal order consequent to the vitiated inquiry deserves to be set-aside for the same reason.

4. The State counsel on the other hand submits that the petitioner had voluntarily participated in the departmental enquiry without raising any objection so far as the inquiry being conducted by the Inquiry officer without a Presenting Officer. She further submits that such ground has not been raised by the petitioner either before the Inquiry officer or before the departmental Appellate Authority and therefore the petitioner would not be entitled to raise such a ground at this belated stage. Moreover, the State counsel submitted that the findings given by the Inquiry officer would reveal that there has been sufficient opportunity of hearing provided to the petitioner and as such the petitioner's right has not been prejudiced on the inquiry being conducted without a Presenting Officer. For all the aforesaid reasons, the State counsel prayed for the rejection of the writ petition.
5. Having heard the contentions put forth on either side and on perusal of record, this Court proceeds to decide the preliminary issue, which the petitioner has raised, as to "whether the inquiry proceeding conducted in the case of the petitioner is proper, legal and justified or not". Further, as to whether in the absence of appointment of a Presenting Officer, the inquiry and the findings given by the Inquiry officer would be sustainable or not.
6. The facts which are undisputed in the instant case was that the petitioner working as a Constable on 14.03.2001 was issued with a

charge-sheet. The charges were in respect of the certain dereliction of duty on the part of the petitioner committed on 05.12.2000. The proceedings further show that on 27.04.2001, the Inquiry officer was also appointed. From the documents enclosed along with the writ petition, it is evidently clear that no Presenting Officer was as such appointed for presenting the case on behalf of the Department. Further, from the documents available in the writ petition, it is also evidently clear that it was the Inquiry officer alone who had examined the departmental witnesses as also the petitioner-the delinquent charge sheeted employee .

7. Given the said admitted facts, this Court proceeds to decide as to what would be the effect of non-appointment of a Presenting Officer in a departmental enquiry is concerned.
8. So far as the non-appointment of Presenting Officer is concerned, undisputedly the record shows that no Presenting Officer was in fact appointed. The law so far as non appointment of Presenting Officer is concerned, it would be relevant at this juncture to refer to the judgment of the Supreme Court in 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** wherein paragraph-7 the Hon'ble Supreme Court dealing with the issue 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.”

9. A similar view has been taken by the Supreme Court in the case of **Moni Shankar (supra)** where in paragraph-30 it has been held as under:

“30. For the aforementioned purpose, the manner in which the enquiry proceeding was conducted was required to be taken into consideration by the High Court. The trap was not conducted in terms of the Manual; the Enquiry Officer acted as a prosecutor and not as an independent quasi-judicial authority; he did not comply with Rule 9 (21) of the Rules, evidently, therefore, it was not a case where the order of the Tribunal warranted interference at the hands of the High Court.”

10. The Supreme Court had again in a similar situation in the case of **State of Uttaranchal and others v. Kharak Singh** reported in **(2008) 8 SCC 236** in paragraph-17 has held as under:

“17. On the other hand, one Mr. P.C. Lohani, Dy. Divisional Forest Officer, Nandhaur acting as an inquiry officer after putting certain questions and securing answers submitted a report on 16/11/1985. No witnesses were examined. Apparently, there was not even a presenting officer. A perusal of the report shows that the inquiry officer himself inspected the areas in the forest and after taking note of certain alleged deficiencies secured some answers from the delinquent by putting some questions. It is clear that the inquiry officer himself has acted as the investigator, prosecutor and judge. Such a procedure is opposed to principles of natural justice and has been frowned upon by this Court.”

11. The Hon'ble Supreme Court again in the case of **State of Uttar Pradesh and others vs. Saroj Kumar Sinha** reported in **(2010) 2 SCC 772**, in paragraphs- 27 to 30 has held as under:

“27.....But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.

28. An enquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above by virtue of Article 311 (2) of the Constitution of India the departmental inquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in punishment being imposed on the employee.

30. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”

12. This High Court also had the occasion of dealing with the similar situations. This Court in WPS No. 1691/2011 decided on 13.01.2016 in the case of **Vinod Kumar Kori v. State of Chhattisgarh & others** considering the aforesaid judgments of the Supreme Court has held

that non appointment of Presenting Officer and the enquiry being conducted entirely by Enquiry Officer himself and submitted an enquiry report had struck down the disciplinary action. This Court again in WPS No. 1019/2017 decided on 01.03.2017, WP No. 1828/2003 decided on 10.01.2018 and also WPS 6418/2007 decided on 06.04.2018 have reiterated the aforesaid position laid down by the Supreme Court wherein the enquiry proceeding and the action taken subsequently have been struck down on the ground of non appointment of Presenting Officer and the Enquiry Officer acting both as Presenting Officer as well as Enquiry Officer.

13. Given the aforesaid legal positions as it stand, this Court has no hesitation in reaching to the conclusion that the entire departmental enquiry stands vitiated only on the ground of there being no Presenting Officer appointed on behalf of the Department, to present the case. Since this Court has reached to the conclusion that the inquiry gets vitiated on the aforesaid technical grounds, the consequential order of termination (Annexure P/1) dated 14.03.2001 and the order passed by the Appellate Authority on 19.11.2010 both also would not be sustainable and as a result, both these orders stand set-aside/quashed.
14. Since this Court is quashing the termination order and the Appellate Authority's order only on the technical ground of the inquiry getting vitiated for non-appointment of the Presenting Officer, the petitioner would as a consequence be entitled for reinstatement in service. However right of the State Government stands reserved, if they so want to conduct an inquiry in respect of the charge-sheet dated

14.03.2001 afresh after due appointment of a Presenting Officer and the inquiry being conducted in accordance with [law](#).

15. Taking into consideration the fact that since the date of termination i.e. from 2001 till date the petitioner for the period of more than 21 years is out of service. Coupled with the fact that from the impugned order Annexure P/2 dated 01.08.2001, it reveals that the petitioner in the past also had been subjected to many punishments, this Court is of the opinion that the petitioner in the given facts applying the principle of “No Work No Pay” would not be entitled for back-wages for the said intervening period, however the petitioner would be entitled for the notional benefits for the entire period.
16. With the aforesaid observations, the present writ petition stands allowed. The petitioner stands reinstated in service without back-wages with notional benefits.

Sd/-
(P. Sam Koshy)
Judge

Ved