

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 2192 of 2013

1. Chhatrapal Singh, S/o Lt. P. Singh, Aged About 49 Years, R/o Village-Majhgaon Chinnu, Post Nawagaon, P.S. Mungeli, Tehsil And District: Mungeli, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh and Ors. S/o Through Secretary, Department of Home DKS Bhawn Raipur, Chhattisgarh
2. Director General of Police, Police Headquarters Raipur, District : Raipur, Chhattisgarh
3. Inspector General of Police, Police Headquarters Raipur Area, Raipur, District : Raipur, Chhattisgarh
4. Superintendent of Police, Kabirdham, District: Kawardha (Kabirdham), Chhattisgarh

---Respondents

For Petitioner	:	Mr. Ali Asgar, Advocate.
For State	:	Mr. Jitendra Pali, Dy. Adv. General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

10.07.2020

1. The present writ petition is questioning the order passed by the Director General of Police rejecting the appeal preferred by the petitioner dated 28.04.2012 (Annexure P-3) and also the order of dismissal from service dated 28.05.2011 passed by the Superintendent-of-Police which again was later confirmed in a

Departmental Appeal on 11.07.2011, wherein the appeal to the Inspector General stood rejected vide Annexure P-1 and Annexure P-2 respectively.

2. The facts in nut-shell relevant for the adjudication of the present writ petition is that the petitioner was working as a Constable under the respondents from the time of his appointment dated 09.09.1986. In due course of time, he was promoted as a Head-Constable in the year 2007 while the petitioner was posted at Police Station at Pandatarai, District: Kabirdham. The present case arose out of a dispute between the ex-husband, namely Rajju Chandrawanshi and the Mandakini Bai and therefore, the complainant had approached for lodging of an FIR but the petitioner is said to have been refused. However, later on it is alleged that the petitioner is said to have asked bribe for registering the FIR. A complaint was also in this regard was lodged by the complainant, namely Smt. Mandakini Bai to the Police Department; so far as the bribe demanded by the petitioner is concerned.
3. Meanwhile, FIR was lodged under Section 294, 323 and 506 of the I.P.C. and now the second allegation against the petitioner was that, in order to add the offence u/s 307 of the IPC, the petitioner is again is said to have demanded further bribe. On the complaint that was made by the complainant to the department, the SDOP was ordered to conduct a preliminary enquiry and submit his report vide order dated 13.08.2009. The SDOP is said to have conducted the

preliminary enquiry and have recorded statement of witnesses and thereafter submitted his report on 09.09.2009.

4. Based upon which, a charge-sheet was issued to the petitioner on 29.10.2009. The Enquiry Officer was also appointed to conduct a detailed departmental enquiry against the mis-conduct, as alleged in the charge sheet. The Enquiry Officer also submitted his Enquiry Report on 29.03.2011, based upon which, the Disciplinary Authority is said to have issued the order of punishment of dismissal from service vide order dated 28.05.2011. Against which, the petitioner preferred a first appeal to the Inspector General of Police, which too stood rejected vide order Annexure P-2 dated 11.07.2011, against which a Mercy Appeal was preferred by the Director General of Police, which too stood rejected vide order dated 28.04.2012 i.e., Annexure P-3. These are three orders, which are under challenge in the present writ petition.
5. The foremost objection, which the petitioner has raised questioning the action on the part of the respondents is that the entire departmental enquiry is totally bad-in-law and deserves to be vitiated on the sole ground that in the course of enquiry being conducted, no Presenting Officer was appointed to firstly represent the Department and secondly, place the case of the Department before the Enquiry Officer. Another technical ground also raised by the petitioner is that the Enquiry Officer during the course of enquiry has not in-fact called upon the witnesses for examination afresh but rather has relied-upon

their statements recorded in the course of preliminary enquiry. So far as the merits is concerned, the counsel for the petitioner tried to canvass the case to be one where there was malafides on the part of the complainant in lodging/making the complaint against the petitioner and that without properly appreciating the ground reality by the Department, particularly the dispute that the complainant was having with her ex-husband and the development that took place in between the department has mechanically acted upon the complaint so lodged by the complainant. The Department ought to have duly considered the same before initiating disciplinary proceedings.

6. The learned Deputy Advocate General for the State submits that so far as the technical ground raised by the petitioner of the departmental enquiry is concerned, the same has not caused any prejudice to the petitioner. According to the State counsel, the petitioner was given an ample opportunity of defence, he had thoroughly participated in the departmental enquiry, he has also cross-examined the witnesses and that during the course of enquiry, he had never raised any such objection, that which he is now raising at the time of the final hearing of the present writ petition. The State counsel further drew the attention of the Court to the petition where neither is there any such pleadings in the present petition; so far as the departmental enquiry not being conducted properly. The State counsel, therefore, said that new grounds cannot be permitted to be raised at the time of final arguments. The State counsel also referred

to the allegations levelled in the charge-sheet and submitted that the nature of allegation are quite serious and the departmental action taken after granting ample opportunity to the petitioner does not warrant interference and on all these grounds, the State counsel prayed for rejection of the writ petition.

7. Having heard the contentions put-forth on either side and on perusal of records, the dates reflected while discussing the facts of the case are not in dispute. Dealing with the technical ground that has been raised by the petitioner, this Court is of the view that these technical objections need to be dealt-with on the first occasion, before entering into the merits of the case, if required. From the perusal of the enquiry report as also from the documents available with the writ petition, it appears that the entire enquiry was conducted by the Enquiry Officer without there being any Presenting Officer nor is there any document to show that Presenting Officer was appointed.
8. At this juncture, it would be relevant to consider the legal position as it stands, so far as a departmental enquiry conducted without appointment of a presenting officer. This Court recently in the case of **S. R. Chhari Vs. State of Chhattisgarh and others decided on 11.05.2018 in WPS No. 6729 of 2010** dealing with the issue of non appointment of the presenting officer has referring to various judgments of the Hon'ble Supreme Court held that the departmental enquiry and the subsequent actions would get vitiated on the ground of non appointment of the presenting officer. It would be relevant at

this juncture to refer to paragraphs – 9 to 13 of the said judgment of this Court which is reproduced here-in-under:

“9. 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 enquiry 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.”

10. 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 quasijudicial 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.”

11. The Supreme Court had again in a similar situation in the case of *State of Uttaranchal and others v. Kharak Singh* 5 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.”

12. 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 unrebutted 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."

13. This High Court also had the occasion of dealing with the similar situation 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."

9. Having discussed the legal position as it stands and the judgment passed by the Supreme Court and this Court under similar circumstances, this Court is compelled to take the same view in the present case also where the departmental enquiry has been conducted without appointment of a Presenting Officer. That for the said reasons, the entire disciplinary action and the enquiry officers report and the disciplinary proceedings gets vitiated. That only on this technical ground the order of dismissal from service and rejection of two appeals also would not sustain. The three impugned orders Annexure P-1, P-2 and P-3 accordingly stands set-

aside/quashed, leaving it open for the respondents to proceed further, if they intend to act against the petitioners by proceeding further with the charge sheet by appointing a Presenting Officer to represent the Department and to take further recourse available under law.

- 10.** Since this Court finds the entire process malafide and the disciplinary action gets vitiated on the technical ground for non-appointment of a Presenting Officer, this Court is not inclined to consider the other grounds that the petitioner has raised. It would be left open for the Department to consider in the course of conducting a fresh enquiry, if any.
- 11.** As regards, the consequential relief that the petitioner is entitled for, considering the totality of the facts and circumstances, particularly the nature of allegation that have been levelled against the petitioner, this Court is not inclined to grant the actual consequential benefits to the petitioner. However, since the impugned order of dismissal from service and the order rejecting the two appeals, getting set-aside the petitioner would be entitled for reinstatement in service by granting of only notional fixation and the said reinstatement in service also would be subject to the outcome of the departmental enquiry, if the State intends to conduct any further. If the State Government intends to conduct the enquiry, nothing precludes the State Government even in placing the petitioner under suspension, if they so want.

12. The writ petition, therefore, stands allowed and the three impugned orders stand set-aside/quashed. The petitioner would be reinstated in service without backwages and the actual consequential benefits would be prospective except for the notional fixation that he would be entitled.

13. The writ petition accordingly, stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge