

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 24.02.2020

Judgment pronounced on 22.05.2020

Writ Appeal No. 210 of 2020

(Arising out of Order dated 06.02.2020 passed by Hon'ble Single Judge
in WPS- 830 of 2020)

- Om Prakash Kurre S/o Raj Kumar Kurre, Aged About 39 Years Presently Posted And Working As Sub Inspector, Police Station Kotwali, District Janjgir - Champa Chhattisgarh,, District : Janjgir-Champa, Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh Through The Secretary, Department of Home, Mahanadi Mantralaya, Naya Raipur, Post Office And Police Station Naya Raipur, District Raipur Chhattisgarh,, District : Raipur, Chhattisgarh
2. Director General of Police, Police Headquarters, Chhattisgarh, Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. Inspector General of Police, Surguja Range, Surguja Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh

-----Respondents

For Appellant	: Shri Vivek Shrivastava, Advocate
For Respondents/State	: Shri Sidharth Dubey, Deputy Government Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
CAV Judgment

Per Parth Prateem Sahu, J.

1. Correctness and sustainability of the order dated 06.02.2020 passed in WPS No.830 of 2020 is put to challenge in this writ appeal whereby learned Single Judge dismissed the writ petition in which issuance of charge-sheet against petitioner was challenged.
2. Facts of the case in nutshell are that the appellant was posted as Sub-Inspector, Police Station-Battoli, Dist:Surguja. One Siyaram

Ekka made a written complaint on 03.10.2018 against the appellant mentioning therein that the appellant demanded Rs.40,000/- from him for extending some illegal benefit to complainant in a case registered against him in Crime No.91 of 2018 for offences punishable under Sections 304A of IPC and 135 of the Electricity Act. The complaint was enquired into and thereafter, charge-sheet was issued on 28.11.2019 (Annexure P1) imputing two charges. Appellant challenged issuance of charge sheet against him by way of filing Writ Petition, mainly on the ground that Respondent 3 is not the competent authority to issue charge-sheet (Annexure-P1) against him amongst others. In the Writ Petition, appellant has made Regulation 228 of the Chhattisgarh Police Regulations (for short, 'Police Regulations') in support of his pleadings as main ground in the writ petition.

3. Learned Single Judge upon hearing the submissions of learned counsel for appellant as well as the learned counsel for the State, dismissed the Writ Petition by accepting the argument of learned counsel for the state that Regulation 228 of Police Regulations was amended on 28.11.2018, wherein the word "Superintendent" is substituted by the word "Officer not below the rank of Superintendent of Police".

4. Dismissal of Writ Petition made the appellant to file this writ appeal. Learned counsel for the appellant raised the same argument

as raised before learned Single Judge and submitted that Regulation 228, specifically envisages that in case of removal from service, compulsory retirement or reduction of rank, grade pay or withholding of increment proceeding must be recorded by the “Superintendent of Police” in the prescribed form which includes issuance of charge-sheet also. It is further contended that in the present case charge-sheet has been issued by Inspector General of Police, who, under Regulation 262 of the Police Regulations is the Appellate Authority and thereby he will lose a chance of appeal. Learned counsel for the appellant also pointed out that in one of the order passed by learned Single Judge in the WPS-830 of 2020, wherein, vide order dated 08.01.2020 interim relief was granted in favour of the petitioner therein by accepting similar ground raised in the petition that charge-sheet has been issued by the Inspector General of Police de-horse the Regulation 228 of the Chhattisgarh Police Regulations (in short, “Police Regulations”).

5. Per contra, learned counsel for the state submits that the Police Regulations stood amended on 28.11.2018 and in amended Regulation 228 in place of word “Superintendent”, “Officer not below the rank of Superintendent of Police” is substituted. He further contended, the effect of amendment is that, any officer, not below the rank of “Superintendent”, means, other higher official is competent to issue charge-sheet. He also pointed out that it is not the case that charge-sheet has been issued by an officer below the rank of

“Superintendent”. As per the provisions of Regulation 262 of Police Regulations, appeal can be preferred before any immediate higher officer and submissions of the learned counsel for the appellant that he is deprived of the appeal is not correct. Learned counsel for the state also submitted that interim relief on which learned counsel for the appellant is placing reliance is of no help to him because in that case, it was not brought to the notice of learned Single Judge that Regulation 228 of the Police Regulations was amended and the learned Single Judge considering the un-amended provisions of Regulation 228 has passed the order (Annexure P2) in the Writ Petition No.830/2020 whereas learned Single Judge while taking note of the amendment in Regulation 228 in the month of November 2018 has passed the impugned order which do not call for any interference.

6. We have heard learned counsel for the respective parties and also perused the record and relevant provisions of Chhattisgarh Police Regulations as well. For better understanding relevant portion of Regulation 228 is extracted here below:

“228- DE. When and how held – in every case of removal, compulsory retirement from service, reduction in rank grade or pay or withholding of increment for a period in excess of one year a formal proceeding must be recorded by the Superintendent in the prescribed form, - setting forth, (a) the charge; (b) the evidence on which the charge is based; (c) the defense of the accused; (d) the statements of his witnesses (if any); (e) the finding of Superintendent, with the reasons on which it is based; (f) the

Superintendent's final order or recommendations, as the case may be:

Provided that it shall not be necessary to record a formal proceeding, if, due to exigencies of service and not by reason of any misconduct or fault on his part, a Police officer is transferred from a post carrying a special or specialist pay in the Special Armed Force, Motor Transport or Radio Telegraphy Sections to a post not carrying such pay and reduction in his pay is caused by reason of such transfer”.

7. State of Chhattisgarh vide Gazette notification dated 28.11.2018, amended Regulation 228 of Police Regulations which reads as under (Annexure A3):

“In Regulation 228, for the word “Superintendent”, the words “Officer not below the rank of Superintendent of Police” shall be substituted.”

8. From perusal of amended part of Regulation 228, it is amply clear that in pre-amended provision of Regulation 228, only Superintendent of Police has been shown to be the Competent Authority for initiating department proceedings against police officers of rank of Inspector and below, whereas, after amendment restricted jurisdiction with only Superintendent has been made open to the Superintendent and other higher officials.

9. The case law relied upon by learned counsel for appellant in **Yogendra Vs State of MP and others**, 2015 (4) CGLJ as also the orders passed in WPS 4209/2015 and connected cases, WPS 2905 /

2016 and WPS 4212/2016 by learned Single Judge of this Court quashing the issuance of charge-sheet given by IG of Police, considering Regulation 228 of Police Regulations of CG Police, wherein Superintendent of Police has been held to be the Competent Authority for issuance of charge-sheet.

10. From perusal of the case law relied upon by learned counsel for the appellant, it clearly reveals that orders have been passed in WP 2905/2016 and 4212/2016 by taking note of pre-amended provisions of Regulation 228 of Police Regulations and therefore, in the facts of present case, appellant would not get any benefit of the above case laws relied upon by appellant.

11. So far as the other ground raised by learned counsel for the appellant that he has been deprived of his right of appeal is concerned, Regulation 262 envisages right to appeal. Regulation 262 mentions in categorical terms that appeal can be preferred against any order, to the authority immediately superior to the officer who passed the order of punishment. The appellant can very well prefer an appeal to the immediate superior officer to the IG of Police and he will not be deprived of his chance of preferring an appeal in any manner.

12. The last ground raised by learned counsel for the appellant that learned Single Judge passed an interim order in other case, the facts

of which are identical to this case is concerned, perusal of the interim order would reveal that it was not brought to the notice of learned Single Judge in that case, about the amendment brought into the Regulation 228 of CG Police Regulations.

13. For the foregoing reasons, we do not find any force in the submission made by learned counsel for the appellant. The appeal being devoid of any substance, which is liable to be and is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge