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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 3380 of 2011

1. Ram Narayan Sahu, S/o Late Gendram Sahu, aged about 67 years, Retired Patwari R/o Jabdapara, Sarkanda Tahsil and District: Bilaspur, (CG).

---Petitioner

Versus

1. State of Chhattisgarh through the Collector, Bilaspur (CG).
2. The Commissioner, Revenue Division, Bilaspur (CG).
3. The Sub Divisional Officer (Revenue), Bilaspur (CG).

---Respondents

For Petitioner	:	Shri Shrawan Kumar Chandel, Advocate.
For State	:	Mrs. Sunita Jain, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

21.07.2020

1. The challenge in the present writ petition is to the order Annexure P/1 dated 15.05.1997; whereby the Sub Divisional Officer, Bilaspur, has inflicted an order of punishment of compulsory retirement to the petitioner. Challenge is also to the order Annexure P/2 and P/3 passed by the Collector and the Commissioner respectively, both of whom have rejected the departmental appeal preferred by the petitioner against the order of compulsory retirement.
2. The brief facts relevant for the adjudication of the present dispute is that the petitioner was appointed as a Patwari under the State Govt. way back on 04.01.1965. The petitioner remained to work on the said post till the impugned order Annexure P-1 dated 15.05.1997

was passed. The impugned order dated 15.05.1997 (Annexure P/1) has been passed as a disciplinary measure after conducting of a departmental enquiry. That while the petitioner was working as a Patwari for certain alleged misconducts, he was issued with a show cause notice and placed under suspension. Subsequently, he was issued with a charge sheet on 23.12.1996. The petitioner immediately gave a reply to the charge sheet on 30.12.1996. Along with the reply of the charge sheet, the petitioner had also moved an application specifically seeking for the documents which the respondents would be using against him in the departmental enquiry and the list of which was produced along with the charge sheet, the petitioner had also sought for permission to take the assistance of a defence assistance. Thereafter, it is said that the Tehsildar, Bilha, District Bilaspur, has initiated a departmental enquiry and submitted his enquiry report to the disciplinary authority. Based upon the said enquiry report, the petitioner was inflicted with the order of compulsory retirement on 15.05.1997.

3. The petitioner immediately challenged the order of compulsory retirement before the Collector who rejected the appeal on 27.03.2002, against which the petitioner approached the Commissioner by way of a further appeal. The said appeal also was rejected by the Commissioner vide order dated 14.05.2009, leading to the filing of the present writ petition.
4. During the course of argument, the learned counsel for the petitioner submitted that the entire enquiry has been conducted in total

violation of the basic principles of natural justice. In addition, the counsel for the petitioner also argued that the enquiry also has been conducted in total violation of the provisions of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (in short, the Rules, 1966).

5. Lastly, it was contended that the entire disciplinary proceedings initiated against the petitioner gets vitiated only on the ground of the enquiry being conducted without appointment of the presenting officer and it was the enquiry officer alone, who has acted both as a prosecutor as also as an adjudicator. Moreover, the contention of counsel for the petitioner is that the petitioner has also not been granted a fair and reasonable opportunity of defence in the enquiry proceedings inasmuch as neither was he supplied with the documents which he had asked and which was being relied upon by the respondents in the enquiry, nor was he permitted to appoint a Defence Assistant inspite of specific request being made by the petitioner.
6. Opposing the petition, the State counsel submitted that a bare perusal of the enquiry report would show that the petitioner had fully participated in the department enquiry and that he had not produced any evidence in support of his contention or his defence before the enquiry officer. Therefore, now at this stage the petitioner cannot cry foul of the proceedings drawn at that point of time. Moreover, no prejudice as such has been caused in the enquiry proceedings being conducted without appointment of the presenting officer. The learned

State counsel relied upon the judgment of ***Supreme Court in the case Union of India & Ors. Vs. Ramlakhan Sharma, 2018(7)SCC 670***, to harp on the ground that only on account of non appointment of the presenting officer, the enquiry proceedings would not get vitiated.

7. The learned State counsel in support of her contentions submits that from the records, it appears that the petitioner had refused to cross examine the witnesses who were examined on behalf of the department and therefore, sufficient opportunity of hearing was granted to the concerned employee, hence no prejudice to his right has been caused.
8. Having heard the contentions put-forth on either side and on perusal of records, it would be relevant at this juncture to take note of certain dates in the present case. The show cause notice was issued to the petitioner on 04.12.1996, thereafter the petitioner was placed under suspension. Subsequently, a charge sheet was issued on 23.12.1996 to which the petitioner had submitted his detailed reply on 30.12.1996. After the petitioner has submitted his reply to the disciplinary authority, there does not seem to be any official order appointing Tahsildar Bilha as an enquiry officer, neither is there any order appointing a presenting officer to present the case on behalf of the disciplinary authority. The enquiry proceeds, statement of witnesses were recorded on 06.02.1997 on which date, two witnesses were examined namely, Maha Singh Shyam and Kaushal Prasad. In the statement of Maha Singh Shyam, the petitioner was

said to be not available for cross-examination of Maha Singh Shyam, whereas in the evidences recorded on the same date of Kaushal Prasad, it would reflect that the petitioner delinquent charge sheeted employee has stated that he does not want to cross-examine. These two findings or entries in the enquiry proceedings held on 06.02.1997 is by itself is self-contradictory.

9. Another aspect which needs consideration is that on 30.12.1996 when the petitioner submitted a detailed reply to the charge sheet categorically denying the entire allegations and charges. The petitioner had also submitted another detailed application (Annexure P-7) specifically seeking for documents which are being relied upon by the department and the list of which was enclosed along with the charge sheet. In addition, there was also a specific prayer made for permitting the petitioner to appoint a Defence Assistant to represent him before the enquiry officer. From the documents available in the records, it appears that the disciplinary authority has not considered the reply submitted by the petitioner to the charge sheet nor was the application Annex.P7 dt.30-12-96 considered or decided. He had already made up his mind for getting the matter departmentally enquired. Though there is no order of appointment of enquiry officer available on record, it appears that he had instructed Tahsildar of Bilha to conduct the departmental enquiry.
10. The enquiry officer on the first day of hearing itself even before reading to the charges levelled against the petitioner or the delinquent employee straightaway ordered for issuance of notice to

witnesses on behalf of the department. Whereas in a departmental enquiry, when the matter first comes before the enquiry officer, the normal procedure is that the enquiry officer reads the charges levelled to the delinquent employee and ask the delinquent to either plead guilty or not guilty of the charges. It is only then when he pleads not guilty, the requirement for examining the departmental witnesses arise. No such proceedings have been drawn in this case. That straightaway the EO had ordered for examining of the witnesses, some of whom were examined on 06.02.1997 with contradictory views. So far as the presenting officer is concerned, admittedly, no presenting officer was appointed and all the witnesses were examined by the enquiry officer himself.

11. So far as the service rules governing the filed is concerned, Chhattisgarh Civil Services (Classification Control and Appeals) Rules, 1966 applies in the instant case or which has been adopted by the respondents for imposing him the punishment of compulsory retirement. Rule 14 of the said rules, 1966 specifically laysdown the procedure for conducting the departmental enquiry for the purpose of imposing major penalty. Rule 14 (5) (c) clearly envisages the requirement of appointment of a presenting officer which is missing in the present case. Likewise, Rule 14 (8) also provides for a delinquent employee to appoint a Defence Assistant to represent before the enquiry officer. This also has not been considered by the enquiry officer in-spite of there being a specific request made by the employee.

12. From the admitted factual position as is reflected from the preceding paragraphs, it is evident that the entire proceedings has been conducted without appointment of a presenting officer and the witnesses have been examined by the enquiry officer himself, who otherwise is expected to act as an independent adjudicator and not as a prosecutor and adjudicator together. It is here, that the principles of bias comes into play. The enquiry officer has to be an independent person and is not supposed to act as a representative of the department or of the disciplinary authority. That it is under these circumstances that there is a requirement of appointment of a presenting officer. In case if the disciplinary authority himself decides to conduct the departmental enquiry there may not be a requirement of appointment of presenting officer, as he himself would be scrutinizing/appreciating all the evidences and he himself has to take a decision. However, if he delegates his power of enquiry by appointing an enquiry officer, it is at that situation the appointment of a presenting officer becomes necessary to represent the department as well as the disciplinary authority before the enquiry officer. The role of the presenting officer is more of a prosecutor in a case who produces the witnesses and the evidences before the enquiry officer or on behalf of the department to establish the charges.
13. Coming to the legal position; so far as non-appointment of a presenting officer in a departmental enquiry is concerned, the law by now is well settled wherein it has been emphatically and repeatedly laid down by the Supreme Court that for any departmental enquiry,

which is conducted other than by the disciplinary authority, there has to be a presenting officer to be appointed to represent the case on behalf of the disciplinary authority. In the instant case Rule 14 (5) of the Rules of 1966 also lays down the same procedure based on such a requirement.

14. 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 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 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.”

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 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.”

11. 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.”

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 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.”

13. 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.”

15. In the light of the decision of this Court in the case of S. R. Chhari (supra), this Court is of the view that the facts of the instant case would be squarely covered by the decision rendered in the said case. In the instant case also, since the entire enquiry has been conducted without appointment of a presenting officer and the enquiry officer himself has examined all the witnesses on behalf of the department as well as the delinquent employee, the departmental enquiry gets vitiated on this ground alone and thereby the subsequent disciplinary action also stands vitiated for the same reason.
16. In addition to that, this Court is of the opinion that the disciplinary authority as also the enquiry officer in the instant case also ought to have considered the request made by the petitioner; so far as the demand of the documents relied upon in the course of enquiry. So also there was a requirement on considering the request of appointment of a Defence Assistant to represent his case. The

appointment of Defence Assistant also has been provided under the Rules of 1996. Rule 14(8) specifically deals with the said issue.

17. Having not considered the aforesaid request of either providing documents or permitting the petitioner to engage a Defence Assistant amounts to denial of fair opportunity of defence. Coming to the judgment which has been relied upon by the State Counsel in the case of Ram Lakhan Sharma (Supra). If we look at the facts of those cases, it would clearly reveal that the Hon'ble Supreme Court had laid down said principle dealing with a matter where statutory rules are silent with regard to appointment of a present officer.

18. The Hon'ble Supreme Court however in the same judgment in paragraph 28 held as under:-

“We have noticed above that the High Court found breach of principles of natural justice in Enquiry Officer acting as the prosecutor against the respondents. The Enquiry Officer who has to be independent and not representative of the disciplinary authority if starts acting in any other capacity and proceeds to act in a manner as if he is interested in eliciting evidence to punish an employee, the principle of bias comes into place”

19. In paragraph 29 of the same judgment referring to the case of ***Bharath Electronics Ltd. v. K. Kasi ILR 1987 KAR 366***, it was mentioned as under:-

“As far as the position in law is concerned, it is common ground that if the inquiring authority plays the role of a prosecutor and cross-examines defence witnesses or puts leading questions to the prosecution witnesses clearly exposing a biased state of mind, the inquiry would be opposed to principles of natural justice. But the question for consideration in this case is: whether the Enquiry Officer did so? It is also settled law that an inquiring authority is entitled to put questions to the witnesses for clarifications wherever it becomes necessary and so long the delinquent employee is permitted to cross-examine the witnesses after the inquiring authority questions the witnesses, the inquiry proceedings cannot be impeached as unfair (See *Mulchandani Electrical and Radio Industries Ltd. v. Workmen*⁷.)”.

7 (1975) 4 SCC 731 : 1975 SCC (L&S) 429

20. The Hon'ble Supreme Court in the very same judgment again in paragraphs 31 & 32 has further held as under:-

“ 31. A Division Bench of the Madhya Pradesh High Court speaking through R.V. Raveendran, C.J. (as he then was) had occasion to consider the question of vitiation of the inquiry when the Enquiry Officer starts himself acting as prosecutor in *Union of India v. Mohd. Naseem Siddiqui*⁹ In the above case the Court considered Rule 9 (9)(c) of the Railway Servants (Discipline and Appeal) Rules, 1968. The Division Bench while elaborating fundamental principles of natural justice enumerated the seven well-recognised facets in para 7 of the judgment which is to the following effects:

“ 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.

32. The Division Bench further held that where the Enquiry Officer acts as Presenting Officer, bias can be presumed. Para 9 is as follows:

“9. A domestic enquiry must be held by an unbiased person who is unconnected with the incident so that he can be impartial and objective in deciding the subject-matters of inquiry. He should have an open mind till the inquiry is completed and should neither act with bias nor give an impression of bias. Where the Enquiry Officer acts as the Presenting Officer, bias can be presumed. At all events, it clearly gives an impression of bias. An Enquiry Officer is in position of a judge or adjudicator. The Presenting Officer is in the position of a prosecutor. If the Enquiry Officer acts as a Presenting Officer, then it would amount to Judge acting as the prosecutor. When the Enquiry Officer conducts the examination-in-chief of the prosecution witnesses and leads them through the facts so as to present the case of the disciplinary authority against the employee or cross-examines the delinquent employee or his witnesses to establish the case of the employer/disciplinary authority evidently, the Enquiry Officer cannot be said to have an open mind. The very fact that he presents the case of the employer and supports the case of the employer is sufficient to hold that the Enquiry Officer does not have an open mind.”

21. That referring to the aforesaid judgment and the principles laid down, in paragraph 34, the Hon'ble Supreme Court has in very categorical terms held, that they fully endorse the principles as enumerated above. Thus, this court is of the opinion that the judgment in the case of Ramlakhan Sharma would not be applicable in a straight jacket formula in every case where there is no appointment of a presenting officer and is therefore distinguishable. The facts of each case would have to be considered and the manner in which the Enquiry Officer has conducted himself has to be appreciated and then reach to a specific conclusion whether the principles of bias have played a role in the disciplinary proceedings or not.
22. In view of the aforesaid legal position as it stands, the impugned order of compulsory retirement dated 15.05.1997 Annexure P-1 is not sustainable and the same deserves to be and is accordingly, set-aside/quashed. It has been informed by the counsel for the petitioner that the petitioner has crossed the age of retirement as early as on 31.03.2002.
23. Given the said facts, since the order of compulsory retirement has been set-aside/quashed, the petitioner has to be treated to have been taken back in service and continued to remain in service till he reached the age of superannuation that is 31.03.2002. It is made clear that the period from the date of issuance of compulsory retirement till the date, he reached the age of superannuation, the petitioner would not be entitled for any monetary benefits except for grant of notional benefits applying the principles of no work no pay. However, the petitioner would be entitled for all actual benefits including monetary benefits so far as retiral dues and also the monetary benefits are concerned. Let this order be implemented by authorities at the earliest, considering the fact that the petitioner as on date is more than 75 years of age. Let order be executed as early as

possible, preferably within a period of 120 days from the date of receipt of copy of this Order.

24. With the aforesaid observation and direction, the writ petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

inder/rahul/jyoti