

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 91 of 2005**

1.N.K. Pandey (died) through LRs. :-

(i) Nalin Pandey, Aged 27 years, S/o Late Shri N.K. Pandey, R/o 91, M.P. Nagar, Sector 2, Kothra House, Satna, Madhya Pradesh.

(ii) Smt. Nand Kumari Pandey, W/o Late N.K.Pandey, Aged about 69 years, R/o House No. H-21, Saddu, Rajdhani Vihar, P.S. Mova, Raipur, Distt. Raipur, Chhattisgarh.

---Petitioner

Versus

1.The State of Madhya Pradesh through the Secretary Tribal and Harijan Welfare Vallabh Bhavan, Bhopal.

2.The Commissioner, Tribal Development, Satpura Bhavan, Bhopal.

3.Additional Commissioner, Tribal Development, Nehru Nagar, Bilaspur, M.P.

4.Collector, Bilaspur.

5.District Organisor, Harijan Vikas Bilaspur, M.P.

---Respondents

For Petitioner :- Mr. Rajkamal Singh and

Mr. Suryapratap Yuddhveer Singh, Advocates

For Respondent 1 :- None

For Respondents 2 to 4 :- Mr. Siddharth Dubey, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

16/09/2021

"It is a settled principle of law that justice must not only be done but must be seen to be done."

1. The aforesaid principle of law laid down by Their Lordships of the Supreme Court in the matter of **Registrar of Cooperative Societies, Madras and Another v. F.X. Fernando**¹ aptly applies to the facts of the present case.
2. The original writ petitioner, who died during the pendency of this writ petition, was appointed as Circle Organisator in Tribal Welfare Department in the year 1966 in accordance with Madhya Pradesh Tribal, Scheduled Caste and Backward Classes Welfare Subordinate Service (Class III-Non-ministerial) Recruitment Rules, 1994. During the continuance of his service, he was subjected to charge-sheet on 25/01/1982 (Annexure -3) alleging seven charges comprising of embezzlement and violation of Rule 3 of Madhya Pradesh Civil Services (Conduct) Rules, 1965 to which he submitted his reply on 14/05/1982 (Annexure -4) and on 30/06/1982 (Annexure -6) Mr. M.R. Sarthi,

¹ (1994) 2 SCC 746

Project Officer, Integrated Tribal Development Project was appointed as Inquiry Officer and the District Coordinator, Tribal Development, Bilaspur was appointed as Presenting Officer and the enquiry proceeding proceeded against the petitioner. In the meanwhile, petitioner developed certain doubt with respect to the Inquiry Officer which led him to file application dated 29/09/1982 (Annexure -7) for change of Inquiry Officer but his representation was not entertained and no order was passed in this regard. Thereafter, the enquiry was conducted ex-parte and ultimately, the order of termination was passed against the petitioner on 01/11/1987 (Annexure -11) against which he preferred a writ petition before the Madhya Pradesh High Court wherein by order dated 23/04/1988 (Annexure -13), petitioner was relegated to avail appropriate remedy against the order of his termination after which he filed departmental appeal on 13/05/1988 (Annexure -14), however, in this writ petition, it has been stated that the appeal preferred by the petitioner was not decided by the Appellate Authority, which could not be controverted by the other side by placing material on record that petitioner's appeal has been decided, therefore,

this application was entertained by the State Administrative Tribunal and also by this Court. In the meanwhile, order dated 18/05/1988 (Annexure -15) was passed stating that petitioner is not entitled for salary from 15/07/1987 to 20/11/1987 on the principle of 'no work no pay'.

3. Finally, the petitioner filed original application before the Madhya Pradesh Administrative Tribunal on 14/12/1988 which has now been converted into this writ petition which has been preferred by the petitioner mainly on the ground that there is violation of principles of natural justice in conducting the departmental enquiry as the Inquiry Officer was totally biased against which petitioner also filed application for change of Inquiry Officer but it was not entertained and the departmental enquiry was concluded ex-parte by which petitioner has suffered serious prejudice. It is the case of the petitioner that even subsistence allowance was not paid to him and he was also not being allowed to take defence assistance as provided under Rule 14(8) of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966.

4. Return has been filed by the respondents/State stating that subsistence allowance was paid to the petitioner and Mr. C.L. Dhivar and Mr. V.R. Shinde were nominated as defence assistance by the petitioner and the order of termination passed against the petitioner is in accordance with law.
5. Rejoinder has also been filed by the petitioner and additional return has also been filed on behalf of the respondents/State.
6. Mr. Rajkamal Singh, learned counsel for the petitioner, would submit that departmental enquiry was conducted in violation of principles of natural justice as reasonable opportunity was not afforded to the petitioner to defend himself and the Inquiry Officer was also biased which is apparent from memo dated 29/09/1982 (Annexure -7). Even the application filed by the petitioner for change of Inquiry Officer was not entertained and the same Inquiry Officer proceeded to conduct the enquiry and concluded it ex-parte. Moreover, the relevant documents were also not provided to the petitioner and even inspection of the said documents was not allowed. As such, the Inquiry Officer conducted the entire enquiry proceeding

in complete violation of principles of natural justice. He would further submit that no time was allowed to the petitioner to file defence statement and a copy of the enquiry report was also not served to the petitioner after conclusion of the enquiry, which is illegal and bad in law, therefore, the entire departmental enquiry conducted against the petitioner, being arbitrary and illegal, is liable to be set aside.

7. Mr. Siddharth Dubey, learned State counsel, would submit that enquiry was conducted in consonance with the principles of natural justice and subsistence allowance was paid to the petitioner and defence assistance were also allowed to be nominated by the petitioner, therefore, the instant writ petition is liable to be dismissed.

8. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

9. It is quite apparent from the record that the original petitioner (now demised) was subjected to charge-sheet dated 25/01/1982 (Annexure -3) alleging seven charges including embezzlement and violation of Rule 3 of the Rules of 1965 to which

petitioner submitted his reply on 14/05/1982 (Annexure -4) and thereafter, Mr. M.R. Sarthi, Project Officer, Integrated Tribal Development Project departmental enquiry was appointed as Inquiry Officer and the District Coordinator, Tribal Development, Bilaspur was appointed as Presenting Officer and departmental enquiry was conducted against the petitioner in accordance with the Rules of 1966. In the departmental proceeding, the petitioner was present upto 15/09/1982 and thereafter, it appears that he entertained certain doubt about impartiality of the Inquiry Officer for which he made an application to the competent authority on 29/09/1982 (Annexure -7) for changing the Inquiry Officer but his application has not been entertained. For the sake of convenience, the aforesaid application filed by the petitioner is reproduced herein-below :-

प्रति,

संचालक,

आदिम जाति कल्याण विभाग,

म०प्र० भोपाल ।

विषय:- विभागीय जाँच का स्थानांतरण ।

महोदय,

सेवा में नम्र निवेदन है कि आवेदक दिनांक-21.5.81 को सेवा से निलंबित किया गया तथा आरोप पत्र उसे दि० 29.4.82 को प्राप्त हुआ । तदनुसार आवेदक ने अपनी सामर्थ्य एवं शक्ति के अनुसार आरोपों का समुचित उत्तर दिया ।

(2) विभाग के स्थानीय अधिकारियों का विद्वेष इस तथ्य से स्पष्ट होता है कि आवेदक को निलंबन की तिथि से आज तक निर्वाह भत्ता नहीं दिया गया ।

(3) प्रकरण में श्री एम आर सारथी परियोजना अधिकारी कोरबा को जाँच अधिकारी नियुक्त किया गया । जो नियुक्ति स्वमेव अवैधानिक है क्योंकि श्री बलवान सिंह क्षेत्रीय उप संचालक आ०जा०क० स्वयं इस प्रकरण में एक प्रमुख साक्षी है तथा जाँच अधिकारी उन्हीं के अधीनस्थ कार्यरत हैं ।

(4) यह कि आवेदक यह कथन कि उसके विरुद्ध संपूर्ण कार्यवाही विद्वेष से पूर्णवित है । निम्नलिखित तथ्यों से स्पष्ट होगी:-

(क) यह कि जिस तिथि में प्रकरण में साक्ष्य ग्रहण की उस तिथि को प्रस्तुतिकर्ता अधिकारी को कार्यवाही में भाग नहीं लेने दिया गया तथा उनके कर्तव्य का निर्वाहन स्वयं जाँच अधिकारी ने अपने ऊपर ले लिया । इस प्रकार जाँच ने दो पदों की भूमिका निभाई जो न्याय के विपरीत है । कृपया म०प्र० सिविल सेवा (विभागीय, नियंत्रण एवं अपील) नियम 1966 के नियम 14(14) का अवलोकन करें ।

(ख) यह कि जब जाँच अधिकारी ने प्रस्तुतिकर्ता अधिकारी का भार अपने ऊपर लिया तो वे साक्षियों से ऐसे सांकेतिक प्रश्न करने लगे जिसे साक्षीगण केवल हामी भरते जाये ।

(ग) यह कि वस्तुतः साक्षीगणों ने जो बयान दिया व देना चाहा वह अभिलिखित नहीं किया गया वरन ऐसे अवसरों पर जब वे आवेदक के पक्ष में कुछ बोल देते थे तो उन्हें धमका कर खामोश कर दिया जाता था ।

(घ) यह कि विधि अनुसार यह आवश्यक था कि साक्षीगणों को उनका बयान या तो पढ़कर सुनाया जाता या उन्हें पढ़ने का अवसर दिया जाता परन्तु फिर भी जाँच अधिकारी द्वारा यह टीप अंकित की गई कि बयान उन्हें पढ़कर सुनाया गया ।

(ङ) यह कि साक्षीगण के बयानों में आवेदक के सामने न तो प्रस्तुतिकर्ता अधिकारी के हस्ताक्षर लिये गये और न मेरे ही हस्ताक्षर लिये गये ।

(च) यह कि साक्षीगणों के बयान में केशबुक के इन्द्राजों का हवाला है, परन्तु वस्तुतः जाँच के दौरान केशबुक उपलब्ध नहीं थी । संबंधित इन्द्राजों के संबंध में जाँचकर्ता अधिकारी ने स्वयं साक्षीगणों को इसके बारे में बताया । तदनुसार आवेदक के सहायक द्वारा आपत्ति किया गया किन्तु वह भी अभिलिखित नहीं की गई ।

(छ) यह कि आवेदक ने समय शपथ 2 पर संबंधित अभिलेखों के अवलोकन हेतु जाँच कर्ता अधिकारी से अनुमति चाही किन्तु उसे प्रकरण से संबंधित सभी अभिलेख उपलब्ध नहीं कराये गये ।

(ज) यह कि चूंकि श्री बलवान सिंह क्षेत्रीय उप संचालक आदिम जा० क० विभाग के अधीन ही जाँचकर्ता अधिकारी कार्यरत हैं और उनके प्रभाव में हैं, प्रकरण का स्थानांतरण किसी ऐसे अधिकारी को प्रेषित किया जाना चाहिये जो उनके प्रभाव से मुक्त हों, विशेष कर जब वे इस प्रकरण के मुख्य साक्षी हैं ।

(5) यह कि उपरोक्त से स्पष्ट है कि वर्तमान जाँच नैसर्गिक न्याय की दृष्टि से सर्वथा त्रुटिपूर्ण है तथा उसका रुख सिर्फ प्रक्रिया संबंधी खानापूती करने के अलावा और कुछ नहीं है।

तदनुसार प्रार्थना है कि संबंधित विभागीय जाँच वर्तमान जाँच अधिकारी से किसी निष्पक्ष जाँच अधिकारी को स्थानांतरित की जावे। व साक्ष्य ग्रहण की प्रक्रिया फिर से नये सिरे से आरंभ किया जावे।

आवेदक
सही/-
एन.के. पाण्डेय

10. A careful perusal of the aforesaid application moved by the petitioner before the Director, Tribal Welfare Department (Disciplinary Authority) would show that petitioner has clearly informed that till the date of the said application, subsistence allowance has not been paid to him. He has further informed that the appointment of Mr. M.R. Sarthi, Project Officer, Korba as Inquiry Officer is arbitrary and illegal as he is subordinate to Mr. Balwan Singh, Regional Deputy Director (Senior Officer to Inquiry Officer), who is a witness in the enquiry instituted against him. It has also been informed by the petitioner that the Inquiry Officer has acted as Presenting Officer as on some dates, the Presenting Officer did not participate in the enquiry proceeding and his duty and responsibility was performed by the Inquiry Officer himself as he is one who asked leading

questions from the witnesses which is contrary to Rule 14(14) of the Rules of 1966. It has further been stated by the petitioner that the statement of the witnesses has not been recorded correctly and the statement of the witnesses were not read over and without reading their statements, it was stated by the Inquiry Officer that the statements have been read over to the parties. Moreover, the signatures of the presenting officer and the petitioner were also not taken and the documents were neither allowed to be inspected nor they were supplied to the petitioner which is in violation of principles of natural justice, therefore, the enquiry be transferred to some other Inquiry Officer.

11. At this stage, it would be appropriate to notice the role of an Inquiry Officer and the duties performed by him in a departmental proceeding. The Supreme Court in the matter of Union of India v. Prakash Kumar Tandon² has held that an Enquiry Officer is a quasi-judicial authority and he, therefore, must perform his functions fairly and reasonably which is even otherwise the requirement of the principles of natural justice. In the matter of State of U.P. v. Saroj Kumar

² (2009) 2 SCC 541

Sinha³ Their Lordships of the Supreme Court have held that the 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 and his function is to examine the evidence presented by the department.

12. In the instant case, after some amount of evidence was led, the original petitioner filed an application for change of Inquiry Officer levelling serious charges of misconduct against the Inquiry Officer stating that he has not given proper opportunity of hearing to the petitioner which is in violation of principles of natural justice and he also undertook the job of the Presenting Officer as it is not the job of Inquiry Officer to ask leading question to the witnesses. The petitioner has also levelled serious charges of not recording the enquiry proceeding correctly upon the Inquiry Officer by his application dated 29/09/1982 (Annexure -7) which has been noticed herein-above, and as recorded in the order of termination dated 01/11/1987 (Annexure -11), the Inquiry Officer did not await any direction from the Disciplinary

Authority and proceeded to enquire the matter and concluded the departmental enquiry ex-parte.

13. In the matter of Indrani Bai (SMT) v. Union of India and Others⁴, the Supreme Court considered the question of request made to change the enquiry officer on the ground of being biased against the delinquent and held that it ought to have been acceded by the competent authority and observed as under :-

"5. ... It is seen that right through, the delinquent officer had entertained a doubt about the impartiality of the enquiry to be conducted by the enquiry officer. When he made a representation at the earliest, requesting to change the enquiry officer, the authorities should have acceded to the request and appointed another enquiry officer, other than the one whose objectivity was doubted. Unfortunately, that was not done. Even after the Director General had given an opportunity to the delinquent to participate in the enquiry, the enquiry officer obviously was expected to recall the ex parte order and give the delinquent an opportunity to cross-examine the witnesses already examined and to adduce his evidence in rebuttal. However, the enquiry officer did not adopt the said procedure which would have been just, fair and reasonable."

14. Reverting to the facts of the instant case in light of the principle of law laid down by the Supreme Court in the matter of Indrani Bai (supra) which squarely applies to the facts of

⁴ 1994 Supp. (2) SCC 256

the present case. The original petitioner entertained a serious doubt about the impartiality of the Inquiry Officer which he has clearly stated in his application dated 29/09/1982 (Annexure -7) that the Inquiry Officer undertook the job of the Presenting Officer by asking leading questions to the management witnesses and neither the statement of witnesses were recorded correctly nor the signatures of the Presenting Officer and the petitioner were taken. It has further been stated that the Inquiry Officer also did not supply the copies of the documents to the petitioner and neither did he allow the petitioner to inspect those documents, therefore, the Inquiry Officer acted in a biased and impartial manner which is in violation of principles of natural justice. The principle of law laid down in the matter of Indrani Bai (supra) qua the change of Inquiry Officer squarely applies to the present case, as such, the entire enquiry proceeding is liable to be quashed as the petitioner was not afforded opportunity to defend himself and it has been conducted in complete violation of principles of natural justice. Apart from that, there is one more reason for not upholding the order of

termination. It is well-settled law that the Inquiry Officer cannot undertake the job of a Presenting Officer and he has to be unbiased and impartial so that he can be fair and reasonable and keep an open mind till the enquiry is complete. Thus, it is quite established that the petitioner/delinquent, who was a Class III employee, had not been afforded a fair opportunity, much less reasonable opportunity to defend himself which has resulted in violation of principles of natural justice and fair play offending Articles 21 and 311(2) of the Constitution.

15. Consequently, the order of termination dated 01/11/1987 (Annexure -11) passed against the petitioner is hereby quashed. Since the original petitioner has already died on 08/05/2004, the question of further departmental proceeding de novo and reinstatement of the writ petitioner does not arise.

16. Now, the question would be as to what consequential benefits the legal heirs of the petitioner would be entitled to ?

17. So far as consequential benefits are concerned, respondents No. 3, 4 and 5 are directed to grant

pensionary benefits to the legal heirs of the petitioner according to rules and they are also directed to pay all the service benefits payable to the deceased delinquent to the legal heirs of the petitioner till the date on which he would have attained superannuation or the date of his death, whichever is earlier (if not already paid) within two months from the date of receipt of a copy of this order.

18. Accordingly, the writ petition is allowed to the extent indicated herein-above. No cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

Harneet