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HIGH COURT OF CHHATTISGARH BILASPUR**Writ Appeal No.12 of 2020**

1. Union of India through The Secretary, Ministry of Home Affairs, New Delhi
2. DIG, CISF Unit BSP, Bhilai, District Durg, Chhattisgarh
3. CISF Bhilai, Supela Bhilai, Tahsil and District Durg, Chhattisgarh

---- Appellants**Versus**

Hari Om Sharma, S/o Shri Harish Chandra Bhardwaj, Age 45 years (as per order sheet) Constable No.914524616 CISF, BSP Bhilai, Rolling Mill Gate, R/o 90C, Camp-1, BSP Bhilai, Tahsil and District Durg, Chhattisgarh

---- Respondent

For Appellants	: Mr. Rajkumar Gupta, Advocate
For Respondent	: Mr. Ajay Shrivastava, Advocate
Date of hearing	: 09.11.2021
Date of Judgment	: 10.12.2021

Hon'ble Shri Arup Kumar Goswami, Chief Justice**Hon'ble Shri Goutam Bhaduri, Judge****C A V Judgment****Per Arup Kumar Goswami, Chief Justice**

This writ appeal is presented against an order dated 19.07.2019 passed by the learned Single Judge in Writ Petition No.450 of 2006, whereby, while allowing the writ petition, respondents/ appellants were directed to reinstate the petitioner forthwith without

back wages, but providing that the intervening period shall be counted as continuous service for all other purposes and that the petitioner be given benefits by notional fixation.

2. The challenge in the writ petition was to an order dated 26.06.2003 issued by the Commandant, Central Industrial Security Force (for short 'CISF'), Bhilai, removing the petitioner from service and the order dated 29.09.2003 passed by the Deputy Inspector General of Police, CISF, Bhilai Steel Plant, Bhilai, rejecting the appeal. Prayer was also made for payment of arrears along with interest at the rate of 18% as well as damages and litigation charges of Rs.50,000/-.

3. The petitioner was appointed as a Constable in CISF, Bhilai on 22.03.1991. While working in CISF Unit, Bhilai Steel Plant, Bhilai, a charge-sheet dated 14.02.2003 was issued on three charges. The charge No.1 relates to an allegation that on 11.01.2003, in the second shift, he did not attend duty without prior permission of competent officer. The charge No.2 contains an allegation that on 11.01.2003, he was absent in the evening roll-call without permission of the competent officer and the charge No.3 is that on 11.01.2003, without any information/permission of the competent officer, he absconded from the government accommodation and Unit Line and thus, the aforesaid conduct shows negligence, indiscipline in duty and lack of responsibility as well as disobedience of orders of the superior officers.

4. The pleadings in the writ petition is very sketchy. No reply was also filed by the appellants.

5. In the writ petition, it is stated that after receiving a telegram dated 11.01.2003, through which he was intimated regarding “seriousness” of his mother, who was at Aligarh (U.P.), he submitted a casual leave application on 11.01.2003 wherein endorsement was made by his superior officer that “if the case is genuine spare him”. The petitioner had challenged the charge-sheet dated 14.02.2003 and departmental inquiry initiated against him by filing a writ petition, registered as Writ Petition No.1806 of 2003, and during the pendency of the writ petition, as the departmental inquiry had culminated in removal from service, the writ petition was dismissed as infructuous by an order dated 15.07.2005.

6. From the order of removal dated 26.06.2003, it appears that the petitioner had submitted his written statement, denying the allegations. Not being satisfied with the explanation furnished, an Inquiry Officer came to be appointed on 05.03.2003. It appears that five witnesses were examined on behalf of the Department and Inquiry Officer submitted his report on 17.05.2003 holding the charges to be proved. By a letter dated 23.05.2003, Inquiry Report was furnished to the petitioner asking him to respond to the same within a period of 15 days and the petitioner submitted his response vide his letter dated 09.06.2003 and thereafter, the Disciplinary Authority concurred with the findings recorded by the Inquiry Officer and resultantly, the order of removal dated 26.06.2003 came to be passed.

7. In the order of removal dated 26.06.2003, it is noted that the petitioner had returned to duty on 13.02.2003.

8. The appeal preferred by the petitioner came to be dismissed by an order dated 29.09.2003.

9. In the writ petition, it is pleaded that petitioner had submitted an application dated 28.04.2003 for summoning three defence witnesses. It is also stated that the Presenting Officer was not appointed and that the Inquiry Officer was discharging the role of the Prosecutor, which is contrary to the principles of natural justice. By another application dated 01.05.2003, petitioner also prayed for providing a Defence Assistant. By an application dated 04.04.2003, petitioner had requested to furnish him copy of documents, but they were also not furnished to him.

10. The learned Single Judge recorded that it is not in dispute that no Presenting Officer was appointed by the Department and that the Inquiry Officer alone had examined and cross-examined the witnesses including the petitioner. Relying upon Rule 36(5)(C) of the Central Industrial Security Force Rules, 2001 (for short 'CISF Rules'), which is framed under the Central Industrial Security Force Act, 1968 (for short 'CISF Act'), which provides for "Appointment of a member of the Force as Presenting Officer" to present the case on behalf of the Disciplinary Authority in support of the charges, it was held that on the ground of non-appointment of Presenting Officer alone, the inquiry stands vitiated. Reliance was placed upon various authorities including in the judgment of High Court of Madhya Pradesh in *Union of India and Others v. Mohd. Naseem Siddiqui*, reported in *2005 (1) LLJ 931*, to hold that the disciplinary proceeding initiated against the petitioner as

well as the inquiry proceeding stood vitiated. While setting aside the impugned orders challenged in the writ petition, liberty was granted to the respondents therein to initiate fresh proceeding, if so advised, in accordance with CISF Rules.

11. Mr. Raj Kumar Gupta, learned counsel for the appellants submits that the petitioner had submitted an application on 11.01.2003 applying for casual leave for 15 days w.e.f. 13.01.2003 on the ground of “serious illness” of his mother and in the said application, Deputy Commandant, CISF has endorsed that “if the case is genuine spare him” and accordingly, his leave was sanctioned from 20.01.2003 enabling the petitioner to proceed on leave w.e.f. 16.01.2003 after availing permission, but before sanction of leave, the petitioner left the Unit Line without any permission on 11.01.2003 itself and as such, the same was a serious act of indiscipline. Charges having been proved in the inquiry, he was removed from service. Learned counsel submits that Rule 36(5)(C) of CISF Rules came into effect from 09.06.2003, whereas the charge memo was issued on 14.02.2003 and therefore, at that relevant point of time, the extant CISF Rules did not prescribe appointment of a Presenting Officer and the learned Single Judge committed error of law in relying upon the amended Rule 36(5)(C) of CISF Rules and therefore, the impugned order passed by the learned Single Judge is not sustainable in law. It is submitted that merely because the Presenting Officer was not appointed, same is not enough to hold that the inquiry proceeding is vitiated or that there is failure of principles of natural justice. It is also submitted that the

petitioner has not pointed out as to how non-appointment of Presenting Officer had caused any prejudice to him and in absence thereof, at any rate, no case was made out for interference with the order of removal and the appellate order confirming the same. In the aforesaid facts and circumstances, the learned Single Judge was wholly wrong in holding that the disciplinary proceeding initiated against the petitioner is bad in law and such a finding cannot be sustained in law. Learned counsel places reliance on the decision of the Hon'ble Supreme Court in the case of *Union of India and Others v. Ram Lakhan Sharma*, reported in *(2018) 7 SCC 670* in support of his contention.

12. Mr. Ajay Shrivastava, learned counsel for the respondent/petitioner, while supporting the order of the learned Single Judge, submits that the appellants failed to point out before the learned Single Judge when Rule 36(5)(C) of CISF Rules came into force and therefore, such a plea cannot be raised in the appeal. It is submitted that the assertion of the petitioner that the Inquiry Officer was also discharging the role of the Prosecutor was not denied by filing any affidavit and that apart, denial of a Defence Assistant and refusal to summon the defence witnesses as well as refusal to supply documents vitiated the inquiry proceeding and therefore, no interference is called for with regard to the order of the learned Single Judge.

13. We have heard the learned counsel appearing for the parties and have perused the materials on record.

14. It is correct that the Rule 36(5)(C) had come into force on 09.06.2003. Neither of the parties had apprised the learned Single Judge about the aforesaid aspect and it was on the premise that there is a provision to appoint a Presenting Officer under the CISF Rules at the time of holding of inquiry, the learned Single Judge proceeded to hold that the inquiry proceeding is vitiated for non-appointment of the Presenting Officer. It is to be noted that the petitioner had challenged the charge-sheet in the earlier writ petition filed by him registered as Writ Petition No.1806 of 2003, but the same was dismissed as infructuous by an order dated 15.07.2005. Appointment of a Presenting Officer comes into picture after the decision is taken by the Disciplinary Authority to hold an inquiry. As such, for non-appointment of Presenting Officer, initiation of disciplinary proceeding cannot be held to be vitiated and therefore, we set aside the aforesaid finding recorded by the learned Single Judge.

15. Though Mr. Shrivastava had submitted that plea raised by Mr. Gupta that the learned Single Judge passed his judgment on the basis of a provision which was inserted after the inquiry was over ought not to be considered by us, we are of the opinion that the issue needs to be addressed for securing the ends of justice.

16. Rule 36(5)(C) of the CISF Rules reads as follows :

“36. Procedure for imposing major penalties -

	*	*	*	*
(5)	*	*	*	*

(c) Where the Disciplinary Authority itself inquires into any article of charge or appoints an Inquiring Authority for holding any inquiry into such charge, it may, by an order, appoint a member of the Force to be known as the 'Presenting Officer' to present on its behalf the case in support of the articles of charge.”

17. In case of *Union of India and Others v. T.B. Jankiraman*, reported in *(1991) 4 SCC 109*, Hon'ble Supreme Court held that a disciplinary proceeding commences against an employee when the charge-sheet is issued to the employee.

18. Though the learned Single Judge has reproduced paragraphs- 7 & 16 of *Mohd. Naseem Siddiqui* (supra), which was approved by the Hon'ble Supreme Court in the case of *Ram Lakhan Sharma* (supra), it is considered appropriate to reproduce the same in this judgment also for proper appreciation of the issue :

“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.

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16. We may summarise the principles thus :

(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 recognized 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.”

19. The disciplinary proceedings are quasi-judicial proceedings and Inquiry Officer is in the position of an independent adjudicator and he is obligated to act fairly, impartially and without any bias. Rules of natural justice have been recognized and developed as principles of administrative law. The rules of natural justice is meant for securing justice or to put it negatively, to prevent miscarriage of justice. The concept of natural justice has undergone changes over a period of time. In the past, it was thought that principles of natural justice included just two principles, namely, (1) no one shall be a judge in his own case and (2) no decision shall be given against a party without affording him a reasonable hearing. Later on, a third principle was envisaged, which prescribes that quasi-judicial inquiries must be held in good faith, without bias and not arbitrarily or unreasonably. In ***State of Uttar Pradesh and Others v. Saroj Kumar Sinha***, reported in (2010) 2 SCC 772, Hon'ble Supreme Court had laid down that Inquiry Officer is a quasi-judicial authority and that he has to act as an independent adjudicator and that he is not a representative of the Department / Disciplinary Authority.

20. In ***Ram Lakhan Sharma*** (supra), the question that had fallen for consideration was whether non-appointment of Presenting Officer

ipso facto vitiates the inquiry when the statutory rule does not contemplate appointment of a Presenting Officer. The said question had fallen for consideration in view of Rule 27(c) of the Central Reserve Police Force Rules, 1955, which while prescribing the procedure for conducting a departmental inquiry, did not contemplate appointment of a Presenting Officer. Further question that had fallen for consideration was whether there can be any circumstance where principles of natural justice can be held to be violated when statutory provision does not require appointment of a Presenting Officer. The Hon'ble Supreme Court in ***Ram Lakhan Sharma*** (supra) held that as the Inquiry Officer had to be independent and he is not a representative of the Disciplinary Authority, if he 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 principles of bias will come into play.

21. The legal position that emerges is that 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. 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, but he can with a view to arrive at the truth or to obtain clarifications, put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Inquiry Officer puts any question to the prosecution witnesses to elicit the facts, he should, thereafter, permit the delinquent employee to

cross-examine such witnesses on those questions/clarifications. 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 against the employee, the Inquiry Officer acts as Prosecutor and in that event, the inquiry gets vitiated. Whether or not the Inquiry Officer has acted as a Presenting Officer, however, has to be decided with reference to the manner in which the evidence was brought in and recorded during the course of the inquiry.

22. As in the instant case, the inquiry itself was concluded on 17.05.2003 before the amendment to Rule 36(5)(C) of CISF Rules, whereby requirement of appointment of a Presenting Officer was introduced to the CISF Rules on 09.06.2003, setting aside the order of removal and the order of the Appellate Authority on the ground of non-appointment of the Presenting Officer cannot be sustained.

23. But there is another aspect of the matter.

24. The learned Single Judge had also observed that the Inquiry Officer had examined the witnesses and also cross-examined the witnesses including the petitioner.

25. The averments of the petitioner in the writ petition that the Inquiry Officer was discharging the role of the Prosecutor was not denied by filing any affidavit. If the Inquiry Officer acts as a Presenting Officer, the principle of bias comes into play and that itself is prejudice

enough to vitiate the inquiry.

26. In view of the above discussion, we do not interfere with the order of the learned Single Judge directing reinstatement of the petitioner without any back wages. We also uphold the directions that the period from the date of his removal till his reinstatement shall be counted as continuous service for all other purposes and that the petitioner would be granted the benefits by notional fixation. However, we interfere with the order of the learned Single Judge granting opportunity to the appellants to initiate fresh proceeding, if so advised, but would grant liberty to the appellants to continue with the inquiry proceeding afresh from the stage of appointment of Inquiry Officer and Presenting Officer.

27. The writ appeal is, accordingly, disposed of. No cost.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(Goutam Bhaduri)
Judge