

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No. 1755 of 2018
In
Civil Writ Jurisdiction Case No.6035 of 1997

=====

The Union Of India and Ors

... .. Appellant/s

Versus

Most. Usha Choudhary and Ors

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Awadesh Kumar Pandey, Sr. panel Counsel Mr. Ravindar Kumar Sharma, CGC Mr. Lokesh, Advocate
For the Respondent/s	:	Mr. Surya Nilambari, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 23-02-2023

The present L.P.A. is filed by Union of India and Ors. against the order of the learned Single Judge dated 02.08.2018 passed in C.W.J.C. No. 6035 of 1997.

2. Deceased Ram Bilas Choudhary who was working as a Constable in Central Industrial Security Force (for short “CISF”) organization was subjected to disciplinary proceedings and it was concluded in imposition of penalty of dismissal from service on 30.03.1996 and it has been affirmed by the Appellate and Revisional Authority on 12.08.1996 and 10.05.1997 respectively.

3. Feeling aggrieved by the impugned actions of the appellant, deceased Ram Bilas Choudhary filed writ petition and it was admitted for hearing on 17.11.1997. During the pendency



of the writ petition, deceased Ram Bilas Choudhary died and legal heirs of deceased employee were brought on record *vide* order dated 28.07.2003.

4. Following issues are taken note of by the learned Single Judge:-

“(a) Whether it was mandatory for the disciplinary authority to appoint a Presenting Officer to lead the case on behalf of the Department before the Enquiry Officer.

(b) Whether non appointment of the Presenting Officer has invalidated the entire disciplinary proceedings as in his absence, none could have led evidence against the petitioner.

(c) Whether in absence of any such provision, the Enquiry Officer himself could have taken up this duty which fell on the department.

(d) Whether the Enquiry Officer can become a prosecutor or spokesman for the Department.

(e) Whether the enquiry report was served upon the petitioner together with second show cause as stated in paragraph 27 of the counter affidavit but which is not supported with any documentary proof.”

5. Learned counsel for the appellant submitted that learned Single Judge has committed error insofar as holding that Inquiry Officer has acted in dual role both as Presenting Officer on behalf of the department and also an Inquiring Officer.

6. On this point, learned counsel for the appellant vehemently contended that Central Industrial Security Force Rules, 1969 (for short Rules, 1969) do not provide in appointing



a Presenting Officer in respect of a departmental inquiry to present the departmental version before the Inquiring Authority. Therefore, cited decision namely, ***Union of India vs. Ram Lakhan sharma*** in ***Civil Appeal No. 2608 of 2012*** has no assistance. The disciplinary authority is required to abide by whatever the regulations governing the employees of CISF. Therefore, learned Single Judge has committed error in taking note of the assistance of Union of India Vs. Ram Lakhan Sharma's case cited (supra). Rule 34 of Rules, 1969 is relevant for the purpose of procedure for imposing major penalty.

7. Sub Rule 4 of Rule 34 of Rules, 1969 reads as under:-

“On receipt of the written statement of defence or if no such statement is received within the time specified, the disciplinary authority may itself inquire into such of the charges as are not admitted or if it considers it necessary so to do appoint a supervisory officer or an officer not lower in rank than an inspector, or a board of Inquiry as the Inquiring Authority to conduct the inquiry.”

8. In the light of the aforesaid provision, question of appointing a Presenting Officer is not warranted, thus, learned Single Judge has committed error.

9. *Per Contra*, learned counsel for the respondent submitted that there is no infirmity in the order of the learned



Single Judge. It is submitted that even though, Rules, 1969 is silent in respect of appointment of Presenting Officer in a departmental inquiry, in that event, Inquiring Authority cannot act as both Presenting Officer and Inquiring Officer. Therefore, there is no infirmity in the order of the learned Single Judge. Further, it is submitted that learned counsel for the appellant had admitted that Presenting Officer was not appointed. Therefore, once concession/undertaking is given by a counsel or conceding, in that event, L.P.A. is not maintainable. On this issue, learned counsel for the respondent relied on Apex Court's decision namely,

(I) (1982) 2 SCC 463 (State of Maharashtra vs. Ramdas Shrinivas Nayak and Anr) (Para 1 to 4)

(II) (2020) 13 SCC 188 (Om Prakash vs. Suresh Kumar) (para 2, 12 and 13)

(III) (2011) 12 SCC 658 (Vimalleshwar Nagappa Shet vs. Noor Ahmed Shariff and Ors) (para 12 to 14), in the result, L.P.A. is not maintainable.

10. Heard learned counsel for the respective parties.

11. Question for consideration in the present L.P.A. are (i) whether L.P.A. is maintainable or not in the light of submissions made by Mr. Anjani Kumar Sharan, the then learned Assistant Solicitor General on behalf of the



appellant before the learned Single Judge or not?

(ii) whether in not appointing a Presenting Officer in a departmental Inquiry whether entire proceedings are vitiated or not?

12. Facts are not disputed insofar as initiation and completion of inquiry against respondent and further order of the disciplinary authority insofar as imposition of penalty of dismissal from service, and its affirmation by the Appellate and Revisional Authority.

13. Learned counsel for the respondent insisted that the maintainability of L.P.A. on the sole issue that the then Assistant Solicitor General has fairly submitted that the present matter is identical to that of Union of India vs. Ram Lakhan Sharma.

14. The then learned Assistant Solicitor General and being officer of the Court, he has explained the legal position insofar as appointing a Presenting Officer and Inquiring Officer that does not lead to giving concession before the Court of law so as to uphold the contention of the respondent that there was a concession or an undertaking/statement made by the then learned Mr. Anjani Kumar Sharan, Assistant Solicitor General on behalf of the appellant in the writ petition. Therefore, learned counsel for the respondent's contention that L.P.A. is not maintainable,



is hereby rejected.

15. Question of Presenting Officer is to be appointed to defend the case of the department before the Inquiring Authority is necessary, otherwise, Inquiring Officer cannot play dual role of Presenting and Inquiring Officer. Quite natural, if he is acting as a Presenting Officer, he would be biased and he cannot take different view as an Inquiring Authority. No doubt Rules, 1969 in particularly Sub Rule 4 of Rule 34 do not provide for appointment of Presenting Officer to present the case on behalf of the department before the Inquiring Authority.

16. As soon as Presenting Officer was appointed. He has to receive the following information:-

- A.** His appointment order as a Presenting Officer.
- B.** Charge Sheet along with the enclosures.
- C.** Written Statement of defence submitted by the Charged Officer.
- D.** In case the Charged Officer has not filed any Statement of Defence, a confirmation to the above effect and a confirmation to the effect that the Charge Sheet has been served on the Charged Officer.
- E.** A copy of the order of appointment in respect of the Inquiry Officer.

17. Brief functions of the Presenting Officer are:-

- a.** Presenting the documentary evidence
- b.** Leading the oral evidence on behalf of the disciplinary authority
- c.** Cross examining the defence witness
- d.** Preparation and presentation of the written brief



18. At the same time, in the absence of provision for appointment of Presenting Officer in a departmental inquiry cannot be ignored in the light of Apex Court's decision in the case of *Managing Director, ECIL V. B. Karunakar* reported in *(1993) 4 SCC 727*.

19. Para 30[i] of *Managing Director, ECIL V. B. Karunakar* reads as under:-

“[i] Since the denial of the report of the enquiry officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.”

(Underline emphasis)

20. One of the principles laid down by the Apex Court in the case of *Managing Director, ECIL V. B. Karunakar* that if there is no provision in providing show cause notice along with the Inquiring Officer's report, even in such circumstances, disciplinary authority has bounden duty to provide an Inquiring Officer's report along with show cause notice and in seeking explanation of the concerned person, the same principle would be attracted in the present case insofar as appointment of an officer to present a case on behalf of department before the



Inquiry Officer in producing relevant documents and adducing evidence on behalf of the department. In other words, the above function cannot be undertaken by the Inquiry Officer.

21. Accordingly, in non-appointing a Presenting Officer to present the departmental case and Inquiring Officer acting dual role of Presenting Officer and Inquiring Officer, would vitiate entire proceedings. Therefore, we find no infirmity in the order of the learned Single Judge dated 02.08.2018 passed in C.W.J.C. No. 6035 of 1997 read with Union of India vs. Ram Lakhan Sharma cited (supra).

22. Accordingly, the appellants have not made out a case, hence, the present L.P.A. stands dismissed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

shoaib/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.03.2023.
Transmission Date	NA

