

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

W.P.S.T.57 of 2016

**Hemayet Mia
VS.
The State of West Bengal & ors.**

For the Writ Petitioner : Mr. Sandeep Sanyal,
Mr. Chandrachur Lahiri
Advocates

For the State : Ms. Chaitali Bhattacharjee,
Sr. Government Advocate
Mr. Manas Kumar Sadhu
Advocate

Hearing concluded on : 28.06.2023

Judgment on : 28.06.2023

DEBANGSU BASAK, J.:-

1. The writ petition is directed against an order dated June 9, 2015 passed in O.A. No.348 of 2013 by the West Bengal Administrative Tribunal.

2. By the impugned order, the Tribunal negated the challenge launched by the writ petitioner to a final order passed in a disciplinary proceeding.

3. Learned advocate appearing for the writ petitioner submits that, in the departmental proceeding as against writ petitioner, no presenting officer was appointed. Enquiry Officer acted as the presenting officer as also the enquiry officer. He draws attention of the Court to the pages 22 and 47 of the writ petition which are records of proceeding of the disciplinary proceeding. He submits that, the enquiry officer recorded that, he examined the prosecution witnesses during such examination. The enquiry officer, however, did not tabulate the questions put by the enquiry officer to the prosecution witnesses. According to him, the enquiry officer cannot put questions to the prosecution witnesses. If the enquiry officer does so as the presenting officer, he necessarily imbibes in entire proceeding with an element of biasness which vitiates the departmental proceeding. In support of his contentions he relies upon **(2010) 2 Supreme Court Cases 772 (State of Uttar Pradesh and others vs. Saroj Kumar Sinha)**.

4. Learned Senior Government Advocate appearing for the State submits that, non appointment of a presenting officer in a disciplinary proceeding *ipso facto* does not vitiate the proceeding. She submits, relying upon **(2018) 7 Supreme Court Cases 670 (Union of India and others vs. Ram Lakhan Sharma)** that, appointment of a presenting officer is not a must in every disciplinary proceeding unless specifically provided in the relevant Rules. It is upon the writ petitioner to establish by cogent evidence that, there was any element of biasness which vitiated the proceeding. In the facts of the present case the prosecution witnesses tendered their evidence which were recorded by the enquiry officer. Such prosecution witnesses were cross-examined by the delinquent officer without any reservation as to the quality of the examination-in-chief. She submits that, the contention of biasness as against the enquiry officer is unfounded.

5. The writ petitioner suffered a disciplinary proceeding. In the disciplinary proceeding, no presenting officer was appointed. The issue is whether, non-appointment of a presenting officer vitiates the departmental proceeding or not.

Such issue received consideration of the Supreme Court in **Ram Lakhan Sharma (supra)**. There, the Supreme Court held as follows:

“33. Then Division Bench after elaborately considering the issue summarised the principles in para 16 which is to the following effect:

“16. We may summarise the principles thus:

- (i) The Enquiry 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 Enquiry 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 Enquiry 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 Enquiry 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 Enquiry 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 Enquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Enquiry 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 Enquiry Officer has merely acted only as in Enquiry 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.”

34. *We fully endorse the principles as enumerated above, however, the principles have to be carefully applied in fact situation of a particular case. There is no requirement of appointment of Presenting Officer in each and every case, whether statutory rules enable the authorities to make an appointment or are silent. When the statutory rules are silent with regard to the applicability of any facet of principles of natural justice the applicability of principles of natural justice which are not specifically excluded*

in the statutory scheme are not prohibited. When there is no express exclusion of particular principle of natural justice, the said principle shall be applicable in a given case to advance the cause of justice. In this context, reference is made of a case of this Court in Punjab National Bank v. Kunj Behari Misra. In the above case, this Court had occasion to consider the provisions of the Punjab National Bank Officer Employee's (Discipline and Appeal) Regulations, 1977. Regulation 7 provides for action on the enquiry report. Regulation 7 as extracted in para 10 of the judgment is as follows:

“10. ...’7. Action on the enquiry report.-(1) *The disciplinary authority, if it is not itself the enquiring authority, may, for reasons to be recorded by it in writing, remit the case to the enquiring authority for fresh or further enquiry and report and the enquiring authority shall thereupon proceed to hold the further enquiry according to the provisions of Regulation 6 as far as may be.*

(2) The disciplinary authority shall, if it disagrees with the findings of the enquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in Regulation 4 should be imposed on the officer employee, it shall, notwithstanding anything contained in Regulation 8, make an order imposing such penalty.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer employee concerned.’”

36. *Thus, the question as to whether the Enquiry Officer who is supposed to act independently in an inquiry has acted as prosecutor or not is a question of fact which has to be decided on the facts and*

proceedings of a particular case. In the present case we have noticed that the High Court had summoned the entire inquiry proceedings and after perusing the proceedings the High Court came to the conclusion that the Enquiry Officer himself led the examination-in-chief of the prosecution witness by putting questions. The High Court further held that the Enquiry Officer acted himself as prosecutor and Judge in the said disciplinary enquiry. The above conclusion of the High Court has already been noticed from paras 9 and 10 of the judgment of the High Court giving rise to Civil Appeal No. 2608 of 2012.”

6. In the facts and circumstances of the present case, the record of proceeding, attention of which was drawn to the Court at the instance of the petitioner as also by the State, demonstrates that, the enquiry officer recorded the evidence of the prosecution witnesses. The recording of the evidence in chief was done. The delinquent officer was allowed to cross-examine the prosecution witnesses. There is nothing on record

to suggest that the enquiry officer put leading questions to the prosecution witnesses or cross examined the defence witnesses or put suggestions to the defence witnesses to establish the case of the prosecution.

7. Before the Superintendent of Police who is the disciplinary authority, the delinquent stated that, he was given all the opportunity to defend himself and that he did not carry any grievance against the process in the enquiry proceeding conducted by the enquiry officer. This satisfaction is recorded in the order dated March 19, 2012 passed by the Superintendent of Police. Nothing is placed on record on behalf of the writ petitioner to suggest that, such recording of satisfaction at the behest of the disciplinary authority with regard to the conduct of proceeding by the enquiry officer was assailed either contemporaneously or even now.

8. **Saroj Kumar Sinha (supra)** dealt with a disciplinary proceeding. It observed that when the departmental proceeding is conducted it cannot be treated as a casual exercise. The enquiry proceeding also cannot be conducted with a closed mind. The enquiry officer is required to be

unbiased. Rules of natural justice are required to be observed to ensure not only justice is done but be manifestly seen to be done.

9. As noted above, the facts and circumstances of the present case does not accommodate a charge of bias against the enquiry officer, as sought to be levelled at this stage by the writ petitioner.

10. In such circumstances, we find no merit in the present writ petition.

11. **W.P.S.T. 57 of 2016** is therefore **dismissed** without any order as to costs.

20. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

21. I agree.

(Md. Shabbar Rashidi, J.)

