

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3923 of 2020

=====

Keshav Kumar, S/O Sh. Sudama Kumar, Ex Constable No. 041706976,
Village- Bhavnathpur, P.O.- Rannuchak, Mukundpur, P.S.- Akbarnagar,
District- Bhagalpur.

... .. Petitioner/s

Versus

1. The Union of India, represented by the Secretary, Ministry of Home Affairs, North Block New Delhi.
2. The Director General, Central Reserve Police Force, Block No. - 1 C.G.O. Complex, Lodhi Road, New Delhi- 110003.
3. The Inspector General (Training), CRPF Directorate, Central Reserve Police Force, Block NO.- 1, C.G.O. Complex, Lodhi Road, New Delhi- 110003.
4. The Deputy Inspector General, RTC, C.R.P.F., Rajgir, Nalanda.
5. The Commandant, RTC, C.R.P.F., Ragir, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Maruth Nath Roy, Adv
For the Respondent/s : Mr.S.D.Sanjay (ASG)

=====

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

9 26-09-2024 Heard Learned Counsel for the petitioner and

Learned Counsel for the State.

2. The present writ petition has been filed for issuance of a writ in the nature of Certiorari to quash the order passed by the Commandant, RTC, C.R.P.F., Rajgir vide Letter No. P. VIII -1/2016- Estt.-II (KK) dated 23.08.2016 by which the petitioner has been dismissed from service and further to quash the order passed by the Deputy Inspector General, RTC, C.R.P.F., Rajgir, Vide Memo No. R-XIII-1/2016- Estt.-2(K.K.) dated 20.11.2016 by which the appeal of the petitioner has been rejected. Further



prayer has been made to quash Letter No. P. VIII -1/2019- DA-21 dated 05.09.2019 by which the petitioner has been informed that his revision application has been rejected by the Inspector General (Training), CRPF Directorate, Central Reserve Police Force as time barred. The petitioner has also prayed for reinstatement in service with all consequential benefits.

3. Learned Counsel for the petitioner submits that the entire departmental proceedings including the appellate order have been passed without following the due procedure of law. He further submits that upon bare reading of the enquiry report, it becomes crystal clear that the departmental proceeding has been conducted *ex-parte* without appointing of Presenting Officer which is not sustainable in the eyes of law which is apparent from second page of Annexure-6. He further submits that from the order passed by the Appellate Authority dated 20.11.2016, which is annexed as Annexure-10, it transpires that the Appellate Authority had accepted the fact in paragraph 10 of the order that there is no requirement of Presenting Officer in this case, as this case was proceeded as *ex-parte* and there shall be no effect on the enquiry. Learned Counsel for the petitioner further submits that he has expressly pleaded this point in Paragraph Nos. 25 and 40 of the writ petition that the enquiry



has been conducted without appointment of the Presenting Officer, as such, the said inquiry proceeding is *null and void*.

4. Learned Counsel for the petitioner further submits that Union of India has filed a counter affidavit para-wise. The statement made in Paragraph Nos. 25 of 40 of the writ petition has been made in paragraph 36 of the counter affidavit where it has not been denied that the Presenting Officer was not appointed rather an evasive reply has come. Learned counsel for the petitioner to substantiate this case has relied on a Judgment of the Hon'ble Division Bench of this Court in the case of ***Union of India through Director General, C.R.P.F., New Delhi & Ors Vs. Sudhanshu Sekhar Deo*** in L.P.A. No. 955 of 2014 on 12.09.2018. Paragraph No. 6 whereof clearly says that *Non-appointment of the Presenting Officer in the facts of the present case strikes at the root of fairness*. In addition to that, Learned Counsel for the petitioner further relied on another Judgment dated 02.07.2018 passed by Hon'ble Supreme Court in the case of ***Union of India & Ors. Vs. Ram Lakhan Sharma*** reported in AIR (2018) SC 4860 whose Paragraph No. 35 is relevant and submits that in any view of the matter, the Departmental Proceeding which has been conducted in absence of the Presenting Officer may not be sustainable in the eyes of law,



and therefore, the report of the Enquiry Authority, Disciplinary Authority and the Appellate Authority be set aside.

5. Learned Counsel for Union Of India vehemently opposes the argument made by the Learned Counsel for the petitioner and submits that it is a unique case in which the petitioner was declared deserter and he was absent from his service for 319 days in-spite of the fact that leave was granted to him only for five days. Learned Counsel further submits that opportunity was granted to the petitioner repeatedly, but he has not opted to participate in the departmental proceeding due to which Officials have left with no option but to conduct the Departmental Proceeding *ex-parte* and this aspect has to be taken into consideration by this Court. Learned Counsel for Union further submits that as the proceeding was going on *ex-parte*, therefore, there was no requirement for the Presenting Officer. Hence the departmental proceeding conducted in absence of presenting Officer shall not result into vitiation of the result of the proceeding.

6. After hearing the parties, it transpires to this Court that from the pleadings, particularly enquiry report which is annexed as Annexure-6 and decision of the Appellate Authority which is annexed as Annexure-10, as well as the pleadings made



in paragraph 25 and 40 the present writ petition about the conduction of the departmental proceeding in absence of Presenting Officer, and keeping in view the reply of the Learned Counsel for the Union of India from its Counter affidavit i.e Paragraph No 36 and 37, it becomes crystal clear to this Court that enquiry proceeding has been conducted without the appointment of the Presenting Officer in the case of ***Union of India through Director General, C.R.P.F., New Delhi (Supra)***

7. With a view to decide this case, it is necessary to quote the relevant Paragraph Nos. 6 and 7 of the Judgment rendered in the case of ***Union of India through Director General, C.R.P.F., New Delhi, (Supra)*** as under:

6 Non-appointment of Presenting Officer in the facts of the present case strikes at the root of fairness.

7 In view of the facts emanating from the enquiry proceedings, the punishment awarded to the petitioner is not sustainable. The observations made by the Hon'ble Apex Court in paragraph 35 of the judgment in the case of Union of India & Others -Versus- Ram Laxhan Sharma (supra), which has been relied upon by the learned Additional Solicitor General of India; in fact disapproves of such procedure in an enquiry wherein the Enquiry Officer has assumed the role of a Presenting Officer and acted as a Prosecutor and Judge in the proceedings. The observations of the Hon'ble Apex Court in paragraph 35 of the said judgment are being reproduced herein below:

"35. Thus, the question as to whether Inquiry 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 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 Inquiry Officer himself led the examination-in-chief of the prosecution witnesses by putting questions. The High Court further held that the Inquiry Officer acted himself as prosecutor and Judge in the said disciplinary enquiry. The above conclusion of the High Court has already been noticed from paragraphs 9 and 10 of the judgment of the High Court giving rise to Civil Appeal No 2608 of 2012."

8. This Court further feels it necessary to quote relevant paragraph No. 35 of the Judgment rendered in the case of Ram Lakhan Sharma (Supra) as under:-

Thus, the question as to whether Inquiry 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 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 Inquiry Officer himself led the examination in chief of the prosecution witness by putting questions. The High Court further held that the Inquiry Officer acted himself as prosecutor and Judge in the said disciplinary enquiry. The above conclusion of the High Court has already been noticed from paragraphs 9 and 10 of the judgment of the High Court giving rise to Civil Appeal No.2608 of 2012.

9. Upon perusal of the aforesaid paragraphs of the Judgment relied upon by the Learned Counsel for the petitioner, this Court is of the firm view that the orders under challenged is not sustainable in the eyes of law. As such, order passed by the Commandant, RTC, C.R.P.F., Rajgir vide Letter No. P. VIII



-1/2016- Estt.-II (KK) dated 23.08.2016, the order passed by the Deputy Inspector General, RTC, C.R.P.F., Rajgir, Vide Memo No. R-XIII-1/2016- Estt.-2(K.K.) dated 20.11.2016 and the Letter No. P. VIII -1/2019- DA-21 dated 05.09.2019 are hereby set aside.

10. Accordingly, the present writ petition stands allowed.

(Dr. Anshuman, J)

Sunnykr/-

U			
---	--	--	--

