

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

Present:

The Hon'ble Justice Partha Sarathi Sen

WPA 17915 of 2017

**Sk. Abdul Karim
Vs.
Union of India & Ors.**

For the petitioner	:	Mr. Arup Kumar Lahiri Mr. Udayan Datta
For the Union of India	:	Mr. Pradip Kumar Das Ms. Sayani Roy Chowdhury Mr. Chirantan Sarkar
Heard on	:	08.02.2024
Judgement on	:	08.02.2024

PARTHA SARATHI SEN, J.:

1. Mr. Lahiri, learned Advocate for the writ petitioner and Mr. Das, learned Advocate for the respondents are present.
2. At the very outset it has been submitted by Mr. Das that the affidavit-in-opposition as directed to be filed is somehow misplaced from his brief though copy of which has been served upon the learned Advocate for the writ petitioner.

- 3.** In view of such, this Court granted liberty to file an authenticated copy of the affidavit-in-opposition for avoiding any further delay. In accordance with the request as made by this Court, Mr. Das has handed over an authenticated copy of the affidavit-in-opposition and the same be taken on record.
- 4.** This Court has heard Mr. Lahiri, learned Advocate for the writ petitioner and Mr. Das, learned Advocate for the respondents/Union of India and its officials at length.
- 5.** By filing the instant writ petition under Article 226 of the Constitution of India the writ petitioner has prayed for issuance of writ of mandamus directing/commanding the respondents to withdraw/revoke/cancel and/or rescind the order No. 272/2015 dated 30.09.2015 as passed by the respondent No. 3 and the order dated 09.01.2017 as passed by the respondent No. 2 whereby and whereunder the present writ petitioner was awarded punishment to the extent reduction of five stages lower in present scale of pay, (i.e. from Pay Rs. 13,500/- + GP Rs. 4,200/- = Rs. 17,700/- to pay Rs. 11,050/ + GP Rs. 4,200/- = Rs. 15,250/-) for a period of three years with cumulative effect. The punishment was directed to be operated from 01.10.2015.

- 6.** In course of his submission Mr. Lahiri at the very outset draws attention of this Court to the memorandum of charges as leveled against the present petitioner a copy of which has been annexed with the mark-P1 at page 50 of the writ petition. Attention of this Court is also drawn to the finding of the enquiry officer being Annexure-X to the supplementary affidavit, the punishment awarded by the respondent No. 3 being Annexure-P5 of the writ petition and the copy of the finding of the appellate authority being Annexure-P10 to the instant writ petition.
- 7.** It is further submitted by Mr. Lahiri that while conducting the departmental enquiry no presenting officer was appointed by the authority. However, from the minutes of the enquiry it would reveal that the enquiry officer not only examined the prosecution witnesses but also cross-examined the self-same prosecution witnesses in utter violation of the principles of natural justice which seriously affects the merit of the disciplinary proceeding. It is submitted by Mr. Lahiri that in a departmental proceeding an enquiry officer is supposed to act impartially and in the event it is found he acted as a prosecutor it can be safely contended that the said enquiry officer acted with utter biasness. Mr. Lahiri, thus, submits that on the aforesaid two grounds the instant writ petition may

be allowed by setting aside the impugned orders of punishment. In course of his submission Mr. Lahiri places his reliance upon a reported decision of ***Union of India & Ors. vs. Ram Lakhan Sharma*** reported in ***(2018) 7 SCC 670***.

8. *Per contra* attention of this Court is drawn to the reply as filed by the respondents/Union of India as against the supplementary affidavit of the writ petitioner. It is contended by Mr. Das that from the minutes of the enquiry proceeding it would reveal that the writ petitioner was given ample opportunity to cross-examine the prosecution witnesses but he had not availed the same for the reason best known to him. It is further contended that as per provision laid down in Rule 153 of RPF Rules, 1987 there is no provision for appointing any presenting officer. It is further contended by Mr. Das that, however, there is a provision in the said rules being Rule 153.8 that the charged officer may be allowed took assistance of any other member of the force. It is further argued by Mr. Das that on close scrutiny of the entire minutes of the enquiry proceeding it would reveal that there occurred no violation of principle of natural justice as wrongly claimed by the writ petitioner and, therefore, the instant writ petition may be dismissed in limini.

9. Mr. Das, learned Advocate for the respondents in course of his argument also places his reliance upon paragraphs 18 and 19 of the judgment of **Ram Lakhan Sharma** (Supra).

10. On perusal of the entire materials as placed before this Court and after hearing the learned Advocate for the contending parties it appears to this Court that it is the grievance of the writ petitioner before this Court that in course of the departmental enquiry proceeding, the enquiry officer had violated of principle of natural justice and he has also acted with utter biasness in view of the fact that the enquiry officer not only examined all the prosecution witnesses by himself but he himself also cross-examined the self-same witnesses.

11. According to the writ petitioner such an act on the part of the enquiry officer tantamounts to an act of a prosecutor which the enquiry officer is not supposed to do in order to show his fairness in conducting the enquiry. At this juncture this Court proposes to look to the relevant portion of the reported decision of Ram Lakhan Sharma and those are reproduced hereinbelow in verbatim:

“31. A Division Bench of the Madhya Pradesh High Court speaking through R.V. Raveendran, C.J. (as he then was) had occasion to consider the question of

vitiation of the inquiry when the Enquiry Officer starts himself acting as prosecutor in Union of India v. Mohd. Naseem Siddiqui (ILR 2004 MP 821). In the above case the Court considered Rule 9(9)(c) of the Railway Servants (Discipline and Appeal) Rules, 1968. The Division Bench while elaborating fundamental principles of natural justice enumerated the seven well-recognized facets in para 7 of the judgment which is to the following effect:

“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.”

32. The Division Bench further held that where the Enquiry Officer acts as Presenting Officer, bias can be presumed. Para 9 is as follows:

“9. A domestic inquiry must be held by an unbiased person who is unconnected with the incident so that he can be impartial and objective in deciding the subject matter of inquiry. He should have an open mind till the inquiry is completed and should neither act with bias nor give an impression of bias. Where the Enquiry Officer acts as the Presenting Officer, bias can be presumed. At all events, it clearly gives an impression of bias. An Enquiry Officer is in position of a judge or adjudicator. The Presenting Officer is in the position of a prosecutor. If the Enquiry Officer acts as a Presenting Officer, then it would amount to Judge acting as the prosecutor. When the Enquiry Officer conducts the examination-in-chief of the prosecution witnesses and leads them

through the facts so as to present the case of disciplinary authority against the employee or cross-examines the delinquent employee or his witnesses to establish the case of the employer/disciplinary authority evidently, the Enquiry Officer cannot be said to have an open mind. The very fact that he presents the case of the employer and supports the case of the employer is sufficient to hold that the Enquiry Officer does not have an open mind.”

33. The 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 an 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 an 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.....”

12. In view of the proposition of law as enunciated in the case of **Ram Lakhhan Sharma** it thus, reveals that while conducting a domestic enquiry, if the enquiry officer cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case (as has been done in this case) the enquiry proceeding stands vitiated by such conduct of the enquiry officer.
13. On perusal of the entire minutes of the enquiry proceeding it reveals that though the enquiry officer had given sufficient opportunity to the delinquent to cross-examine the prosecution witnesses but on his refusal to cross-examine such witnesses, the enquiry officer himself proceeded to cross-examine self-same witnesses violating the principle of natural justice which also shows his utter biasness to such proceeding which in

considered view of this Court cannot be condoned. The submission of Mr. Das relying upon the reported decision of **Ram Lakhon Sharma** (Supra) that sufficient opportunity was given to the delinquent to cross-examine the prosecution witnesses cannot, however, cure the defect as occurred in course of the enquiry proceeding.

14. In view of such, this Court thus finds sufficient merit in the instant writ petition and accordingly the instant writ petition is hereby allowed.

15. Accordingly, the respondents are directed to withdraw/revoke/cancel and/or rescind the impugned order No. 272/2015 dated 30.09.2005 as passed by the respondent No. 3 and order dated 09.01.2017 as passed by the respondent No. 2 with immediate effect and thus the punishment as imposed upon the writ petitioner by the respondents herein stands hereby cancelled.

16. It is submitted by Mr. Lahiri that in the meantime the writ petitioner has retired on his superannuation. Such being the position, the respondents are directed to clear all his arrears of pay and retiral benefits within six months from the date of communication of this order holding that the writ petitioner has not been punished.

17. With the aforementioned observations, the instant writ petition being **WPA 17915 of 2017** is disposed of.

18. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(PARTHA SARATHI SEN, J.)

Suvayan Ghosh
A.R. (Court)