

S/L 5
28.01.2026
Court No.04
B.K.N

**F.M.A. 677 of 2020
With
CAN 5 of 2025**

Union of India & Ors.

Vs.

**A. Prabhakaran & Ors. (Force No. 8607880071) since
deceased, substituted by his legal heirs and
representatives, P. Navanethem and Others**

Mr. Arijit Majumdar

...for the Appellants/U.O.I.

*Mr. Anup Kr. Lahiri,
Mr. Dr. Bishnupada Dutta*

...for the Respondents.

1. Heard the learned advocate for the Union of India.
2. The substituted writ petitioners are also represented by Mr. Arup Kr. Lahiri.
3. The Union of India has put to challenge the order dated 17.05.2016 passed by the Hon'ble Single Judge disposing of the writ petition. He has allowed the writ petition interfering with the punishment awarded by the appellants in a departmental proceeding against the writ petitioner/respondent, a Cook in the Force. The Hon'ble Single Judge found the award of punishment to be unsustainable on the ground that the Enquiry Officer had proceeded in the enquiry performing the role of a Presenting Officer. Relying upon decision of the Apex Court in the case of ***State of Uttar Pradesh and Others –Vs.- Saroj Kumar Sinha*** reported in **2010 (2) SCC 772** the Hon'ble Single Judge was of the view that non-appointment of a Presenting Officer, coupled with the fact that the Enquiry Officer discharged the

duties of a Presenting Officer, vitiated the departmental proceeding for want of fairness. The order of dismissal was thus set aside and the Hon'ble Single Judge reserved the liberty of the appellants to proceed against the writ petitioner/respondent *de novo*.

4. The learned advocate for the appellants submits that there was serious allegation of corruption against the writ petitioner that he indulged in selling of uniform articles in the CRPF barrack and other allied allegations. The allegations have been brought home in the proceeding which was conducted under the Central Civil Services (Classification, Control and Appeal) Rules, 1965 [hereinafter referred to as CCS (CCA) Rules].
5. He submits that the point urged by the writ petitioner regarding the absence of a Presenting Officer was devoid of any substance. The Rule 14(5)(c) provides discretion to the disciplinary authority to appoint or not to appoint a Presenting Officer. In view thereof the submission regarding the proceedings being vitiated for want of a Presenting Officer required no consideration. The order of the Hon'ble Single Judge relying on such issue to interfere with the punishment order is, therefore, unsustainable.
6. He further submits that a relevant development, subsequent to filing of the present intra court appeal is passing away of the writ petitioner on 01.11.2019. The appellants, therefore, are not in a position to avail the

liberty for launching a *de novo* enquiry against the writ petitioner.

7. The learned advocate for the substituted respondents submits that the judgment of the Hon'ble Single Judge does not require any interference. The fact that the employee is no more is admitted. Therefore, it is obligatory on the part of the appellants to extend the consequential benefits of the judgment of the Hon'ble Single Judge whereby the dismissal has been set aside. In support of such submission he has relied upon a decision of the Apex Court in the case of ***Basudeo Tiwary – Vs.- Sido Kanhu University and Others*** reported in ***1998 (8) SCC 194***.
8. Having considered the rival submissions we find no force in submission of the learned advocate for the Union of India relying upon Rule 14(5)(c) of the CCS (CCA) Rules. The law in this regard is by now settled by decision/s of the Apex Court, including judgment passed in the case of ***Saroj Kumar Sinha (supra)***, which held that absence of the Presenting Officer could not be countenanced as an Enquiry Officer performs a quasi judicial function and, therefore, he cannot step into the shoes of the Presenting Officer who is a representative of the department. If such a situation arises, as in the present case, the findings of the Enquiry Officer would stand vitiated.
9. We find that the present writ petitioner's case was rightly decided by the Hon'ble Single Judge, relying upon

decision of the Apex Court in the case of **Saroj Kumar Sinha** (*supra*). The findings, therefore, requires no interference.

10. Insofar as demise of the writ petitioner/respondent during the pendency of the present proceeding, we are of the considered view that the same, by itself cannot be a ground to interfere with the order of the Hon'ble Single Judge. Moreso, since the respondents had at least about three years prior to passing away of the employee, to avail the liberty granted by the Hon'ble Single Judge to proceed against him, *de novo*, which they have chosen not to do. Thus, we find no reason to interfere with the order of the Hon'ble Single Judge dated 17.05.2016 passed in W.P. 12658 (W) of 2005.
11. However, before parting with the judgment we would observe that since the dismissal was set aside, and the substituted legal heirs of the employee/writ petitioner are before this Court, now there is no basis to deprive them of the benefits of the writ petitioner's service till the date of his demise, in accordance with law.
12. It is expected that the authorities would proceed go give the consequential benefits to the writ petitioner's legal heirs in accordance with law expeditiously and preferably within three months from the date of receipt/production of copy this order.
13. The appeal is dismissed in these terms. Pending application/s, if any, stand disposed of.

14. Urgent Photostat Certified copy of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(Madhuresh Prasad, J.)

(Prasenjit Biswas, J.)