

HIGH COURT OF CHHATTISGARH AT BILASPUR**W.P.S. NO. 1166 OF 2011**

Smt. Anita Thakur, aged 58 years, Wd/o Late Shri Kamal Ram Thakur, Ex. Constable No.96, Mohan Nagar, Police Thana, Durg, Tahsil Durg, District Durg (CG)

... **Petitioner**

versus

1. The State Government of Chhattisgarh, through the Secretary, Home Department, D.K.S. Bhawan, Raipur (CG)
2. Inspector General of Police, 32 Bunglow, Bhilai Nagar, Durg, District Durg (CG)
3. District Superintendent of Police, Durg (CG)

... **Respondents**

For Petitioner	:	Mr. Ajay Shrivastava, Advocate.
For Respondents	:	Mr. Ratan Pusty, Dy. Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

01/10/2018

1. Challenge in the present writ petition is to the order of the departmental appellate authority dated 28.7.2010, Annexure P-1, whereby the appeal of the petitioner against the order of termination dated 29.12.2000, Annexure P-2, has been rejected.

2. Brief facts of the case are that the petitioner while working as a constable was subjected to departmental enquiry for a major misconduct and on the finding of the inquiry officer's report, the disciplinary authority terminated the services of the petitioner on 29.12.2000 vide Annexure P-2.

3. Against the said order of termination, the petitioner preferred an appeal before the appellate authority who decided his appeal rejecting the same on 23.2.2001. The order of the appellate and the termination order was subjected to challenge before the State Administrative Tribunal vide O.A. No. 207/2001 which was on the abolition of the Tribunal transferred to the High Court of the Chhattisgarh and renumbered as W.P.S. No. 3614/2005.

4. The High Court vide its order dated 23.3.2010 partly allowed the writ petition to the extent that the order of the appellate authority was found to be erroneous and was not found to be a speaking order and therefore the order of the appellate authority dated 23.2.2001 was set aside and the matter stood remitted back to the appellate authority to take a fresh decision.

5. Subsequently, the matter stood remitted back to the appellate authority for a fresh decision in the light of the observations made by the High Court in its order dated 23.3.2010. Meanwhile, the delinquent employee, Constable Kamal Ram Thakur, expired on 2.6.2010 and thereafter the appeal and the present writ petition is being prosecuted by the wife of the deceased employee and meanwhile vide impugned order dated 28.7.2010, Annexure P-1, the appellate authority has decided the appeal rejecting the same, leading to the filing of the present writ petition.

6. Contention of the petitioner is that in the absence of there being a presenting officer appointed it was the inquiry officer who had examined the witnesses and cross-examined the witnesses particularly when the evidence on behalf of the delinquent employee and his witnesses were produced during the course of the enquiry.

7. The State Counsel however opposing the writ petition submits that merely because the presenting officer has not been appointed should not prejudice the interest of the employee in any manner as he has been granted sufficient opportunity for cross-examination of the prosecution witnesses and he could have extracted all relevant materials from these witnesses. Therefore it cannot be said that the interest of the petitioner has been prejudiced. Moreover, the State Counsel has also tried to submit that merely because a couple of questions have been put by the inquiry officer to the witnesses by itself cannot be presumed of his being biased. Role of the inquiry officer according to the State Counsel was to extract actual facts

for reaching to the conclusion as to whether the charges have been proved or not. According to the State Counsel, when the prosecution witnesses were examined the inquiry officer has not cross-examined. It is only when the witnesses of the delinquent employee were examined then the inquiry officer has cross-examined.

8. Undisputedly, the department while appointing the inquiry officer had not appointed the presenting officer. The witnesses were examined before the inquiry officer and the witnesses particularly the witnesses of the delinquent employee and the delinquent himself was cross-examined by the inquiry officer. In the light of the aforesaid admitted position, all that this Court is to consider is what would be effect of enquiry which has been conducted in the absence of presenting officer.

9. So far as the non-appointment of the Presenting Officer is concerned, the law by now is well settled by a series of decisions and the latest decision in this regard by the Hon'ble Supreme Court being the case of **Union of India & others Vs. Ram Lakhan Sharma** decided on **2nd July, 2018** in **Civil Appeal No. 2608 of 2012**, wherein the Hon'ble Supreme Court in paragraphs 29 and 36 has held as follows:

"29. This Court had occasion to observe in *Workmen of Lambabari Tea Estate vs. Lambabari Tea Estate*, 1966 (2) LLJ 315, that if Inquiry Officer did not keep his function as Inquiry Officer but becomes prosecutor, the inquiry is vitiated. Following was observed:

"The inquiry which was held by the management on the first charge was presided over by the manager himself. It was conducted in the presence of the assistant manager and two others. The enquiry was not correct in its procedure. The manager recorded the statements, cross-examined the labourers who were the offenders and made and recorded his own statements on facts and questioned the offending labourers about the truth of his own statements recorded by himself. The manager did not keep his function as the enquiring officer distinct but became witness, prosecutor and manager in turns. The record of the enquiry as a result is staccato and unsatisfactory."

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36. The High Court having come to the conclusion that Inquiry Officer has acted as prosecutor also, the capacity of independent adjudicator was lost which adversely affecting his independent role of adjudicator. In the circumstances, the principle of bias shall come into play and the High Court was right in setting aside the dismissal orders by giving liberty to the appellants to proceed with inquiry afresh. We make it clear that our observations as made above are in the facts of the present cases.”

10. The same view has further been relied upon by this Court in WPS No. 1019/2017 decided on 1.3.2017 in the case of *Bablu Mishra v. State of Chhattisgarh & Ors.* and again in WPS No. 6418/2007 decided on 6.4.2018 in the case of *Ashok Kumar Dwivedi v. State of Chhattisgarh & Others* so also in WPS No. 4539/2012 decided on 11/05/2018 in the case of *Lachchhan Ram Giri v. State of Chhattisgarh & Others.*

11. A similar view also has been taken in WPS No. 1828/2003 decided on 10.1.2018 in the case of *M.M.Mishra v. State of Chhattisgarh & Others*, that is the case of a person who was in the police department of the rank of Assistant Sub Inspector.

12. In all these aforesaid orders, this Court had relied upon the judgment of the Hon'ble Supreme Court in the case of ***Union of India & Others Vs. Mohd. Naseem Siddiqui, 2005 (1) LLJ 931***, wherein this Court has held as under:

“4. The leading decision of which is the case of Union of India through its Secretary, Ministry of Railway, New Delhi and Others v. Mohd. Naseem Siddiqui reported in 2005 (1) LLJ 931 where in the Supreme Court in paragraph 7 has held as under :-

“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.

Further, in paragraph-16, Their Lordships summarized the legal position by observing as under:-

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

13. In addition to this, there is a decision of Karnataka High Court in the case of **N. R. Dhananjayan v. Management of Indian Overseas Bank & Another, 2006 LLR 726**, wherein in paragraph 8 it has been held as under:

“8. From a reading of the entire proceedings what is clear to us is that the Enquiry Officer seemed to be under the impression that he was representing the management as is evident from these proceedings. The way in which the proceedings were conducted by the Enquiry Officer and the way in which the questions were posed by him, witnesses were examined prove in unmistakable terms that the Enquiry Officer has assumed the role of a prosecutor and a Judge in the case on hand. Law is fairly well-settled that the Enquiry Officer can only seek clarification. Clarification has to be a real clarification in the real sense but not examination-in-Chief/cross-examination etc., as is done in the present case.”

14. In view of the aforesaid legal position as it stands in the admitted factual background where the enquiry appears to have been conducted without a Presenting Officer appointed, this Court is of the opinion that the entire enquiry stands vitiated on this ground alone and it stands vitiated from the stage of the enquiry proceeding being conducted without appointment of a Presenting Officer. Reserving the right of the respondent-employer in proceeding further with the enquiry from the stage of appointment of a Presenting Officer onwards, the impugned order of termination and the order of appeal both being unsustainable and the same deserve to be and are accordingly set aside/quashed with consequences to follow.

15. In the light of the subsequent development of the delinquent employee being expired on 2.6.2010, the petitioner would be entitled for the monetary benefits so far as the wages and other benefits which the

delinquent employee would have got had he been in service from the date of termination till his death and thereafter the present petitioner would be entitled for all consequential benefits and the death cum retiral dues.

16. The writ petition accordingly stands allowed and disposed of.

**Sd/-
(P. Sam Koshy)
Judge**

/sharad/

