

**NAFR****HIGH COURT OF CHHATTISGARH, BILASPUR****WA No. 500 of 2019**

[Arising out of order dated 01.10.2018 passed by the learned Single Judge in WPS No.1166 of 2011]

1. State Of Chhattisgarh Through Secretary, Home Department D.K.S. Bhawan Raipur District Raipur Chhattisgarh.
2. Inspector General Of Police 32 Bunglow , Bhiali Nagar, Durg, District - Durg Chhattisgarh.
3. District Superintendent Of Police Durg, District Durg Chhattisgarh.

**---- Appellants****Versus**

- Smt. Anita Thakur Wd/o Late Shri Kamal Ram Thakur Aged About 66 Years Ex- Constable No. 96, Mohan Nagar, Police Station - Durg Tahsil And District Durg Chhattisgarh.

**---- Respondent**

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| For Appellant-State | :- | Mr. Sudeep Agrawal, Dy. A.G.   |
| For Respondent      | :- | Mr. Ajay Shrivastava, Advocate |

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**Proceedings through Video Conferencing****Hon'ble Shri Prashant Kumar Mishra, Ag.CJ****Hon'ble Smt. Rajani Dubey, J****Judgment On Board****By****Prashant Kumar Mishra, Ag.CJ**

**31/08/2021**

1. The State of Chhattisgarh has preferred this intra Court appeal to call in question the order passed by learned Single Judge allowing the writ petition preferred by the respondent to quash the departmental enquiry proceedings against the late husband of the respondent and direct payment of consequential monetary benefits from the date the deceased delinquent employee would have got the same from the date of termination till his death and thereafter the respondent would be entitled for all consequential benefits and death-cum-retiral benefits.
2. The short issue on which the departmental enquiry was questioned was that in absence of Presenting Officer having been appointed in the departmental enquiry conducted against her late husband, the Enquiry Officer himself examined and cross-examined the witnesses when evidence on behalf of the delinquent employee and his witnesses were produced, therefore, the enquiry is vitiated.
3. The deceased husband of the respondent was subjected to departmental enquiry for a major

misconduct and on culmination of enquiry he was terminated from service vide order dated 29.12.2000. The Appellate Authority also dismissed his appeal vide order dated 23.2.2001. These orders were assailed before the SAT (State Administrative Tribunal) in OA No.207 of 2001, which came to be transferred to the High Court and re-numbered as WPS No.3614/2005. The said writ petition was partly allowed by order dated 23.3.2010 and the matter was remitted back to the Appellate Authority to take a fresh decision. In the meanwhile, the delinquent employee, constable Kamal Ram Thakur expired on 02.6.2010, therefore, his widow, the respondent herein, prosecuted the appeal, which was dismissed on 28.7.2010.

4. Shri Sudeep Agrawal, learned Dy. Advocate General appearing for the State/appellants would refer to Rule 14 of the C.G. Civil Services (Classification, Control and Appeal) Rules, 1966 to argue that the Enquiry Officer is also entitled to put questions to the witnesses, therefore, there is no such illegality committed by the Enquiry Officer, which would vitiate the enquiry.

5. Per contra, Shri Ajay Shrivastava, learned counsel for the respondent (writ petitioner) would support the impugned order.
6. Having heard learned counsel for the parties, we are not convinced with the arguments advanced by the learned State counsel for the reason that when the Disciplinary Authority itself decides to conduct the enquiry, it may put questions but in a case where an Enquiry Officer is appointed, he is not entitled to examine a delinquent or his witnesses. The same can be done only by the Presenting Officer appointed by the Disciplinary Authority. In the case at hand, it is an admitted position that when the witnesses of the delinquent employee were examined, they were cross-examined by the Enquiry Officer.
7. In the matter of **Union of India and Others Vs. Ram Lakhan Sharma**, [(2018) 7 SCC 670 : 2018 CJ (SC) 557] the Hon'ble Supreme Court has held thus at paras 30 and 37:

“30. This Court had occasion to observe in *Workmen of Lambabari Tea Estate* that if the Enquiry Officer did not keep his function as Enquiry Officer but becomes prosecutor, the inquiry is vitiated. The following was

observed: (FLR p.362)

"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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37. The High Court having come to the conclusion that Enquiry Officer has acted as prosecutor also, the capacity of independent adjudicator was lost while 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."

8. In **Ram Lakhan Sharma** (supra) at para 31 the Hon'ble Supreme Court referred to the law laid down by the High Court of Madhya Pradesh in the matter of **Union of India**

**Vs. Mohd. Naseem Siddiqui, [2005-I-LLJ 931 MP].**

9. The law is, thus, well settled that the Enquiry Officer cannot act as a Presenting Officer, who is in the position of a prosecutor. Whether or not in a given case the enquiry is vitiated would depend on the facts and circumstances of the case.
10. In the case at hand, the Enquiry Officer has cross-examined the witnesses of the delinquent employee which he could have not done, therefore, the learned Single Judge has rightly held that the entire enquiry is vitiated.
11. As a result, no case for interference with the order passed by the learned Single Judge is made out in this intra Court appeal. Accordingly, the appeal is dismissed.

Sd/-

**(Prashant Kumar Mishra)**  
Acting Chief Justice

Sd/-

**(Rajani Dubey)**  
Judge