

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 5547 of 2012**

- Nand Kumar Thakur, S/o Paklu Singh Thakur, Aged About 48 Years, Ex-Head Constable No.1124, Polic Chowki Dhadi, Durg, R/o Kongiya Kala Via Gandai Pandariya Block Saja, Distt. Bemetara, C.G. PS Parpodi Durg, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary Home Deptt. State Govt. C.G. Dks Bhawan Raipur, PS Golbazar, Chhattisgarh
2. Directorate General Of Police, Police H.Q. Raipur C.G., PS Civil Line, District : Raipur, Chhattisgarh
3. Inspector General Of Police, Durg Range, Chhattisgarh
4. Superintendent Of Police Durg P.S. City Kotwali Durg, Chhattisgarh
5. Addl. Superintendent Of Police Durg P.S. City Kotwali Durg, Chhattisgarh

---- Respondents

For Petitioner

Mr. Ajay Shrivastava, Advocate

For Respondent-State

Mr. Ali Asgar, Dy. AG

Hon'ble Smt. Justice Rajani Dubey**Order on Board****30/11/2023**

1. The petitioner has preferred the present writ petition praying for the following reliefs:-

"10.1 That the impugned order dated 03-11-2012 by the Inspector General of Police Durg Chhetra and order of punishment dated 21-06-91 of dismissal from service Annexure P-2 may kindly be quashed and the respondents may kindly be ordered to reinstate the petitioner in service with all consequential benefits.

10.2 That cost of the litigation and any other relief which the Hon'ble Court deems fit and proper may kindly also be allowed.”

2. Brief facts of the case are that the petitioner was Head Constable in the respondent Department at the relevant point of time. He was charge sheeted due to his misconduct in not performing his duties sincerely, which was replied by the petitioner, but the same being not found satisfactory, the disciplinary proceedings were initiated and departmental enquiry was conducted and thereafter the petitioner was dismissed from service vide order dated 21.06.1991 (Annexure-P/2), against which an appeal was preferred before the DIG, Raipur, but the same was also dismissed vide order dated 19.09.1991, against which a writ petition bearing WP No.562/2005 was preferred by the petitioner before this Court on the ground that his appeal has been rejected by a non speaking order, which was disposed of vide order dated 04.09.2012 (Annexure-P/4) directing the respondent authorities to consider and decide the appeal of the petitioner by a reasoned and speaking order. In furtherance of the said order, the order impugned dated 03.11.2012 (Annexure-P/1) has been passed dismissing the appeal of the petitioner by a speaking and reasoned order, against which the present writ petition has been preferred by the petitioner.
3. Learned counsel for the petitioner submits that the impugned orders are bad, illegal and contrary to the settled principles of law. The charges framed against the petitioner are not specific

and the same are vague and against the rules of natural justice. The Appointing Authority of the petitioner is the Superintendent of Police, as such the charges framed by the Additional Superintendent of Police, who is not the appointing/punishing authority, are illegal and without jurisdiction. As per Rule 14 (5) of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966, the appointment of 'Presenting Officer' is essential. In case of non appointment of presenting officer, the order of punishment is illegal. He further submits that the case of the petitioner is squarely covered by the order passed by this Court in the matter of **Smt. Anita Thakur vs State Government of Chhattisgarh and others**, passed in WPS No.1166/2011, decided on 01.10.2018. The appeal filed by the State has also been dismissed by the Division Bench of this Court in the matter of **State of Chhattisgarh and others vs Smt. Anita Thakur**, passed in WA No.500/2019, decided on 31.08.2021. He also placed his reliance on the judgment rendered by the Hon'ble Supreme Court in the matter of **Union of India Vs Ram Laxhan Sharma**, reported in 2018 CJ(SC) 557.

4. Learned State counsel strongly opposes the prayer made by the petitioner's counsel and submits that before terminating the petitioner, ample opportunity of hearing was afforded to the petitioner during departmental enquiry and even he has admitted that all the documents and copy of charges were supply to him, as such the writ petition is without any merit and is liable to be

dismissed.

5. Heard learned counsel for the parties and perused the material available on record.
6. This Court in the matter of **Smt. Anita Thakur** (supra) passed in WA No.500/2019 held in paras 7,8 & 9 as under:-

“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."

xxx xxx xxx

xxx xxx xxx

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 6 WA No. 500 of 2019 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.”

7. In this case also, admittedly no presenting officer was appointed by the Department and it is clear that the Enquiry Officer, who is the superior officer, conducted all examinations and cross examination. It is a well settled proposition of law that the Enquiry Officer cannot act as a presenting officer, who is in the position of prosecutor.
8. Considering the facts and circumstances of the case as well as the order passed by this Court and the law laid down by the Hon'ble Supreme Court in this regard, the impugned orders dated 03.11.2012 and 21.06.1991 are not sustainable in the eyes of law. Consequently, the impugned orders dated 03.11.2012 and 21.06.1991 are hereby set aside.
9. At this stage, learned State counsel submits that the petitioner is not entitled for back wages. In contention of his submission, he placed his reliance on the order passed by this Court in the matter of **Chhatrapal Singh vs State of Chhattisgarh and others**, passed in WPS No.2192/13, decided on 10.07.2020.
10. Considering the facts and circumstances of the case, it is ordered that the petitioner would be reinstated in service along with 50%

back wages and other consequential benefits. However, liberty is reserved in favour of the respondents to proceed against the petitioner, if they intend to do so by appointing presenting officer to represent the Department and conducting departmental enquiry by affording proper opportunity of hearing to the petitioner or may take further recourse available under the law.

11. The writ petition stands allowed to the extent indicated herein above. No order as to costs.

Sd/-

Rajani Dubey
Judge

Nirala