

(2019) 08 CHH CK 0158

Chhattisgarh High Court

Case No: Writ Petition (S) No. 298 Of 2011

Keshav Singh Yadav

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision: Aug. 23, 2019

Acts Referred:

- Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966 - Section Rule 14
- Constitution Of India, 1950 - Article 311(2)

Hon'ble Judges: P. Sam Koshy, J

Bench: Single Bench

Advocate: Sushil Dubey, Chandresh Shrivastava

Final Decision: Allowed

Judgement

P. Sam Koshy, J

1. Challenge in the present writ petition is to the order dated 26.9.2009, Annexure P-5, passed by the Commandant and the order dated 13.9.2010,

Annexure P-1, passed by the Deputy Inspector General.

2. Vide Annexure P-5, the services of the petitioner have been terminated and the appeal against which preferred by the petitioner stood rejected vide

Annexure P-1.

3. The core legal issue raised by the petitioner at the outside is that the entire departmental enquiry conducted against the petitioner on the basis of

which his services have been terminated stands vitiated as the same is in clear violation of the requirements under Rule 14 of the Chhattisgarh Civil

Services (Classification, Control & Appeal) Rules, 1966.

4. According to the petitioner, it is the Inquiry Officer himself who has acted as an Inquiry Officer as also the Presenting Officer and he has himself conducted the enquiry without there being any Presenting Officer on behalf of the department. According to the petitioner, once when there was no Presenting Officer, the entire enquiry has been conducted by the Inquiry Officer, the witnesses were examined by the Inquiry Officer and as such there is clear violation of the principles of natural justice. Further, perusal of the departmental enquiry would also show that it was the Inquiry Officer himself who had examined/cross-examined the delinquent employee, the petitioner, also.

5. So far as the aforesaid fact that the Presenting Officer was not appointed in the course of the departmental enquiry is concerned, it is not in dispute by thorough verification of the proceedings. Neither has the presence of the Presenting Officer reflected in the order-sheets and the proceedings drawn by the Inquiry Officer.

6. In view of the fact that the enquiry proceedings have been conducted without there being a Presenting Officer, without further entering into the merits of the case this Court would like to decide this issue whether the enquiry was proper, legal and justified in the absence of there being a Presenting Officer.

7. So far as the non-appointment of Presenting Officer is concerned, undisputedly the record shows that no Presenting Officer was in fact appointed.

The law so far as non appointment of Presenting Officer is concerned, it would be relevant at this juncture to refer to the judgment of the Supreme

Court in 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 wherein paragraph-7 the Hon'ble Supreme Court dealing with the issue 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.

8. A similar view has been taken by the Supreme Court in the case of Moni Shankar (supra) where in paragraph-30 it has been held as under:

30. For the aforementioned purpose, the manner in which the enquiry proceeding was conducted was required to be taken into consideration by the

High Court. The trap was not conducted in terms of the Manual; the Enquiry Officer acted as a prosecutor and not as an independent quasi-judicial

authority; he did not comply with Rule 9 (21) of the Rules, evidently, therefore, it was not a case where the order of the Tribunal warranted

interference at the hands of the High Court.

9. The Supreme Court had again in a similar situation in the case of State of Uttaranchal and others v. Kharak Singh reported in (2008) 8 SCC 236 in

paragraph- 17 has held as under:

17. On the other hand, one Mr. P.C. Lohani, Dy. Divisional Forest Officer, Nandhaur acting as an inquiry officer after putting certain questions and

securing answers submitted a report on 16/11/1985. No witnesses were examined. Apparently, there was not even a presenting officer. A perusal of

the report shows that the inquiry officer himself inspected the areas in the forest and after taking note of certain alleged deficiencies secured some

answers from the delinquent by putting some questions. It is clear that the inquiry officer himself has acted as the investigator, prosecutor and judge.

Such a procedure is opposed to principles of natural justice and has been frowned upon by this Court.

10. The Hon'ble Supreme Court again in the case of State of Uttar Pradesh and others vs. Saroj Kumar Sinha reported in (2010) 2 SCC 772, in

paragraphs- 27 to 30 has held as under:

27.....But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer.

This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.

28. An enquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of

the department/disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the

delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above by virtue of Article 311 (2) of the Constitution of India the departmental inquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in punishment being imposed on the employee.

30. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

11. This High Court also had the occasion of dealing with the similar situations. This Court in WPS No. 1691/2011 decided on 13.01.2016 in the case of Vinod Kumar Kori v. State of Chhattisgarh & others considering the aforesaid judgments of the Supreme Court has held that non appointment of Presenting Officer and the enquiry being conducted entirely by Enquiry Officer himself and submitted an enquiry report had struck down the disciplinary action. This Court again in WPS No. 1019/2017 decided on 01.03.2017, WP No. 1828/2003 decided on 10.01.2018 and also WPS 6418/2007 decided on 06.04.2018 have reiterated the aforesaid position laid down by the Supreme Court wherein the enquiry proceeding and the action taken subsequently have been struck down on the ground of non appointment of Presenting Officer and the Enquiry Officer acting both as Presenting Officer as well as Enquiry Officer.

12. Given the aforesaid legal position as it stands, the order of punishment as well as the order passed by the appellate authority, i.e., Annexure P-5

and Annexure P-1, respectively, would not be sustainable under law and the same deserve to be and are accordingly set aside/quashed.

13. Since this Court is setting aside the order of termination and the order passed in the appeal on the technical ground of non-appointment of the

Presenting Officer, this Court only directs that the petitioner would be entitled for reinstatement forthwith, reserving the right of the respondent-

management to proceed further, if they so want, from the stage of non-appointment of the Presenting Officer.

14. So far as consequential benefits is concerned, since admittedly the petitioner is out of employment from 26.9.2009 till date, applying the principles

of 'no work no pay' the petitioner would not be entitled for monetary benefits for the intervening period. However, for all practical purposes, the said

intervening period would be treated as continuous service for the purpose of seniority and other incidental benefits which shall all be prospective.

15. The writ petition accordingly stands allowed with consequences to follow.