

(2019) 09 CHH CK 0150

Chhattisgarh High Court

Case No: Writ Appeal No. 295 Of 2019

Deputy Inspector General Of
Police And Ors

APPELLANT

Vs

Harish Kumar Pateriya

RESPONDENT

Date of Decision: Sept. 25, 2019

Acts Referred:

- Central Reserve Police Force Act, 1949 - Section 11(1)
- Constitution Of India, 1950 - Article 226

Hon'ble Judges: P.R. Ramachandra Menon, CJ; Parth Prateem Sahu, J

Bench: Division Bench

Advocate: Bhupendra Singh, Neeraj Choubey

Final Decision: Allowed

Judgement

Parth Prateem Sahu, J

1. The appellants/employer has challenged the legality, validity and propriety of impugned order dated 27/10/2018 passed in Writ Petition (S)

No.5345/2008 by the learned Single Judge whereby the order of punishment imposed upon the respondent/ petitioner has been quashed.

2. The case of the appellants is that the respondent/ petitioner was employed as Constable bearing No.891191334 and posted at Group Centre, Central

Reserve Police Force, Bharni, Bilaspur (C.G.). The respondent/petitioner was served with a charge-sheet imputing the charges levelled against the

petitioner with respect to disobeying the orders of Assistant Commandant, unauthorized absence, disregard to order for medical examination, apathy in

discharge of duty, unwillingness to participate in parade etc. attracting the provisions of Section 11(1) of the Central Reserve Police Force Act, 1949

(hereinafter referred to as 'the Act of 1949'). The Enquiry Officer was appointed, who conducted the enquiry and after completion of enquiry, he submitted enquiry report on 19/06/2007 to Disciplinary Authority. The Disciplinary Authority on the basis of enquiry report submitted before it, passed an order of punishment of compulsory retirement of respondent/petitioner vide order dated 06/09/2007.

3. The aforementioned order of punishment of compulsory retirement was made to challenge by respondent/petitioner by filing appeal before the Appellate Authority, which came to be dismissed on 06/11/2007. Thereafter, second appeal was preferred by respondent/petitioner, which also came to be dismissed on 02/04/2008.

4. Against the dismissal of second appeal dated 02/04/2008, respondent/petitioner filed writ petition before the High Court. The learned Single Judge allowed the writ petition and quashed/set-aside the order of punishment on the ground that departmental enquiry is vitiated for non-appointment of 'Presenting Officer'. It is this order, which is under challenge in this appeal.

5. Learned counsel appearing for the appellants submits that learned Single Judge allowed the writ petition mainly on the ground that while appointing Enquiry Officer to conduct a departmental enquiry against the petitioner, no Presenting Officer has been appointed, which is contrary to the procedure of holding an enquiry as prescribed under the Act of 1949. He further submits that under the Act of 1949, there is no provision for appointment of Presenting Officer, but it provides only for an appointment of Enquiry Officer, who has to conduct an enquiry and submit its report before the Disciplinary Authority. He further submits that even if learned Single Judge arrived at a conclusion that enquiry itself is vitiated on the ground of non-

appointment of Presenting Officer, which is a technical ground, therefore, learned Single Judge ought to have directed for a fresh enquiry to be conducted in accordance with law after appointment of Presenting Officer. He lastly submits that subsequent circular has been issued for appointment of Presenting Officer at the time of appointment of Enquiry Officer and in view of that, it may be directed to hold fresh enquiry against the respondent/petitioner as charges levelled against the respondent/petitioner are grievous in nature looking to the department under which, he was

employed.

6. Per contra, learned counsel appearing for respondent/ petitioner submits that learned Single Judge has taken into consideration that the Judge cannot act as a Prosecutor and relying upon the verdicts passed by Hon'ble Supreme Court, rightly set-aside the order of punishment imposed upon the petitioner. He further submits that looking to the passage of time in prosecuting the case, fresh enquiry may not be directed.

7. We have heard learned counsel appearing for the parties and perused the records.

8. Issuance of charge-sheet and appointment of Enquiry Officer is not in dispute. It is true that the general order does not provide that the Judge should also act as a Prosecutor while conducting an enquiry. In this case, Enquiry Officer has examined witnesses of Department to prove the charges levelled against the respondent/petitioner. Though he has been provided an opportunity to cross-examine the same, but the fact remains that Enquiry Officer himself cross-examined the witnesses.

9. Learned Single Judge has taken into consideration the judgments passed by Hon'ble Suprme Court in the matters of Union of India through its Secretary, Ministry of Railway, New Delhi and Others v. Mohd. Naseem Siddiqui (2005) 1 LLJ 931, State of Uttaranchal and Others v. Kharak Singh (2008) 8 SCC 236, and State of Uttar Pradesh and others v. Saroj Kumar Sinha (2010) 2 SCC 772 Â held that departmental enquiry proceeding was vitiated.

10. In the case at hand, Enquiry Officer who has to judge the case and to arrive at a conclusion in his report to be submitted before the Disciplinary Authority, himself examined the witnesses by putting questions to them. We do not find any error in the order passed by learned Single Judge in quashing the order of punishment imposed upon the respondent/petitioner because principles of natural justice requires that the Judge should not act as a Prosecutor and he should pass judgment/order on the basis of materials placed before him by the Prosecutor as well as by the defence.

11. The next argument which was advanced by learned counsel appearing for the appellants is that direction can be made for initiation of a fresh

enquiry appears to be reasonable prayer because learned Single Judge without passing any order on merit of the case, allowed the writ petition only on

the ground that enquiry proceeding vitiates on account of non-appointment of Presenting Officer.

12. The issue of vitiating of Departmental enquiry on technical ground was considered by Hon'ble Supreme Court in the matter of Union of India and

Others v. Mohd. Ibrahim (2004) 10 SCC 87 Â held as under:-

2. The Union of India is in appeal against the order of the Tribunal setting aside an order of dismissal of the respondent as well as the order of the

High Court refusing to interfere in its jurisdiction under Article 226 of the Constitution. In a disciplinary proceeding against the respondent, a set of

charges levelled against whom appear to be grave and serious, the ultimate conclusion of the enquiring officer having been based upon statement of

persons made in the course of preliminary enquiry, the Tribunal came to hold that the conclusion is vitiated since the same was based upon the

statement of persons examined in the preliminary enquiry and accordingly the Tribunal set aside the order of dismissal. The High Court on being

approached has refused to interfere with the order in an application under Article 226 of the Constitution. When the matter was listed for admission,

learned ASG requested that the power of the employer to start a fresh proceeding should not be whittled down in any manner, particularly in view of

the nature of charges against the delinquent. He however fairly stated that in the procedure adopted in the case in hand, the order cannot be found

fault with. Pursuance to the notice, the respondent has entered appearance and the learned counsel for the respondent vehemently contested on the

ground that 17 long years have elapsed and it will cause great hardship to start a proceeding afresh.

We are unable to be persuaded to agree with the submission of the learned counsel for the respondent, particularly looking at the charges leveled

against. In that view of the matter, though we are of the considered opinion that the order of dismissal was vitiated as the findings have been based on

consideration of statement of the persons examined during the preliminary enquiry but the power of the employer to start a fresh proceeding cannot be

taken away. Therefore, we dispose of the matter with the observation that it will be open to the competent authority to start a fresh disciplinary proceeding and conclude the same in accordance with law.

13. Further, the Hon'ble Supreme Court in the matter of State of Punjab and Others v. Chander Mohan (2005) 13 SCC 81 Â held as under :-

4. The High Court has misdirected itself. The fresh enquiry referred to by the first Appellate Authority as well as by the High Court in the first round

of proceedings related to a fresh enquiry to be held by the enquiry officer. It did not pertain to a fresh proceeding being initiated altogether by a

competent authority. Since the earlier proceeding was really dismissed on the basis of a technicality, it was open to the competent authority to

reinitiate the same. This has been so held by a Constitutional Bench of this Court in Devendra Pratap Narain Rai Sharma v. State of U.P., [1962 Supp

(1) SCR 315] in AIR paras 7 and 8. In that view of the matter, we allow the appeal and set aside the order of the High Court. The proceedings

initiated by the Inspector General of Â Police may be carried on from the stage at which it was stopped.

14. Recently, Hon'ble Supreme Court in the matter of Allahabad Bank & ors v. Krishna Narayan Tewari (2017) 2 SCC 308, while considering issue

with respect to remand of case to the Enquiry Officer/Competent Authority has observed as under:-

8. There is no quarrel with the proposition that in cases where the High Court finds the enquiry to be deficient, either procedurally or otherwise, the

proper course always is to remand the matter back to the authority concerned to redo the same afresh. That course have been followed even in the

present case. The matter could be remanded back to the disciplinary authority or to the enquiry officer for a proper enquiry and a fresh report and

order.

15. It is not in dispute that the respondent/petitioner in a service, which is a disciplined and uniform service. The service, in which,

respondent/petitioner was appointed requires to maintain higher degree of discipline and orders of the Superior Officers are to be followed.

16. Looking to the totality of the case, charges levelled against respondent/petitioner and also in the light of the law laid down by Hon'ble Supreme

Court, we think it appropriate to direct the appellants to initiate a fresh enquiry from the stage of appointment of Enquiry Officer and to conclude the enquiry Â proceeding in accordance with law. The enquiry proceeding may be concluded at the earliest, but not later than four months from the date of passing of this order.

17. In view of above, appeal is allowed in part and the appellants are directed to initiate fresh enquiry from the stage of appointment of Enquiry Officer in accordance with law after appointing Presenting Officer. It is made clear that the respondent shall not take any unnecessary adjournment and will co-operate in conclusion of the enquiry within the time frame.