



CGHC010210112019



2026:CGHC:38458

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5000 of 2019

Surendra Singh Kachhawah, S/o Shri Surat Singh, aged about 53 years, R/o Qtr. No. 2, Police Wireless Colony, Jagdalpur, Chhattisgarh.

... Petitioner

versus

1. Additional Director General of Police (Administration), Police Head Quarter, Raipur, Chhattisgarh.
2. Inspector General of Police (Tele Communication), Police Head Qurtter, Raipur, Chhattisgarh.
3. Shri Rakesh Tiwari, Inspector (Radio-T/C), Police Wireless Colony, Jagdalpur, Chhattisgarh.

... Respondents

For Petitioner : Mr. Bhuvneshwar Singh Rajput, Advocate.

For Respondents No.1 & 2 : Mr. Sharad Mishra, Panel Lawyer.

Single Bench:-
Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

31/08/2026

1. Invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner has called in question legality, validity and correctness of order dated 23-1-2004 (Annexure P-19) passed by respondent No.1, by which a penalty of removal from service has been imposed upon him, which has been affirmed by the

appellate authority – respondent No.1 by order dated 28-12-2018 (Annexure P-27).

2. The aforesaid challenge has been made on the following factual backdrop: -

Facts necessary for disposal of this Writ Petition

3. The petitioner was subjected to regular disciplinary proceeding on the charge that during the lifetime of his first wife Smt. Neelam Singh, without obtaining prior permission from the Department, he entered into second marriage with one Sunita Singh and thereby violated Rule 22(1) of the Chhattisgarh Civil Services (Conduct) Rules, 1965 (for short, 'the Conduct Rules of 1965'). After regular departmental enquiry, the disciplinary authority imposed a penalty of stoppage of two increments with cumulative effect upon the petitioner which was enhanced in appeal by the Additional Director General of Police (Administration) by order dated 23-1-2004 by imposing penalty of dismissal from service which he challenged before this Court in WP No.2075/2004 which this Court set aside and directed the appellate authority to hear and disposal of the appeal in accordance with law. Ultimately, again, by the impugned order dated 28-12-2018, the appeal was dismissed leading to filing of this writ petition.
4. Mr. Bhuvneshwar Singh Rajput, learned counsel appearing on behalf of the petitioner, would submit that since the petitioner is Constable (Radio/Telecommunication) in the Department of Police, Wireless

(Telecommunication), the provisions of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short, 'the Rules of 1966') would be applicable and by virtue of Rule 14(5)(c) of the said Rules, in absence of the first Presenting Officer, the Enquiry Officer has acted as the prosecutor, therefore, it is violation of the principles of natural justice and thus the impugned order is liable to be set aside.

5. Mr. Sharad Mishra, learned State counsel appearing on behalf of respondents No.1 and 2/State, would submit that looking to the fact that the petitioner has entered into second marriage with Sunita Singh during the lifetime of his first wife Neelam Singh and both the wives have been examined as prosecution witnesses and they have supported the case of the Department, the petitioner has rightly been dismissed from service which calls for no interference in exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India and, therefore, the writ petition deserves to be dismissed.
6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the material available on record with utmost circumspection.
7. The first question for consideration would be, whether the Rules of 1966 govern departmental/disciplinary proceedings against the petitioner herein/subordinate police personnel, including Police Constables, and, if so, to what extent do the said Rules operate in conjunction with the Chhattisgarh Police Regulations?

8. The issue is no longer res integra. The Madhya Pradesh High Court in the matter of **Premchandra Dhalpuria, Ex-Sub-Inspector, Police, Guna, M.P. v. State, through the Inspector General, Police, Bhopal**¹ has clearly held that the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 are applicable to disciplinary proceedings against subordinate police personnel, including Police Constables, by virtue of Regulation 213 of the Chhattisgarh Police Regulations. It has further been held by the M.P. High Court that the Police Regulations do not exclude the application of the CCA Rules; rather, both operate alongside each other, and observed as under: -

“The Police Regulations which have the status of statutory rules framed in exercise of powers under section 46(2) read with sections 2 and 7 of the Police Act, 1861 provide for the manner of appointment of police officers. As such, the matters concerning members of the police force will primarily be governed by the Police Act, 1861 or any similar local enactments and the Police Regulations. Civil Service Regulations, or for the matter of that, fundamental rules framed under those Regulations will be attracted in case they have been adopted by the State Government so as to be applicable to the member of the Police force and further if those provisions do not come in conflict with the specific provisions of the Police Regulations.”

9. The principle of law laid down by the M.P. High Court in **Premchandra Dhalpuria** (supra) has been followed with approval by the M.P. High Court in the matter of **Mahesh Kumar Shrikishan Tiwari v. State of Madhya Pradesh and others**² in which it has been held by the M.P. High Court as under: -

¹ 1967 SCC OnLine MP 119 : 1970 MP LJ 430

² 1985 SCC OnLine MP 72 : 1985 MP LJ 516

(WPS No.5000/2019)

“22. There is another aspect involved in the petition as there were common proceedings. It may be pointed out that despite the Police Regulations governing a Departmental Enquiry against a Police Officer in subordinate service and rule 3(1)(d) of the M.P. Civil Services (Classification, Control & Appeal) Rules, 1966 (for short ‘the Control & Appeal Rules), which reads thus:

“3(1) These rules shall apply to every Government servant but shall not apply to—

(d) any person for whom special provision is made, in respect of matters covered by these rules, by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the Governor before or after the commencement of these rules, in regard to matters covered by such special provisions.”

the applicability of the Control & Appeal Rules is not altogether excluded. According to the ratio of the decision in *Premchandra's case* [1970 MPLJ 430.] where the Police Regulations are silent, the provisions of the Control & Appeal Rules would apply in departmental inquiries against subordinate Police Staff. This is what has been laid down in the aforesaid decision:

“Civil Service Regulations, as in force in the State are applicable to all civil Departments including the police. Within that Department, there are the Police Regulations which naturally prevail wherever there is conflict between them and the Civil Service Regulations; but in a field like temporary-employment, for which there is no special police Regulation, the Civil Service Regulations as in force in this State, apply. A probationary Sub-Inspector can be removed without a proceeding under Article 311, unless he has been confirmed during the interval. Of course if a probationary Officer is to be sent away with a black-mark, then proceedings would be necessary.”

(Emphasis supplied).

10. As such, the Rules of 1966 would apply to departmental/disciplinary proceedings against subordinate police personnel, including Police Constables.

11. Admittedly, in the instant case, no presenting officer was appointed in the present disciplinary proceedings in compliance of Rule 14(5) (c) of the Rules of 1966 and it is the case of the petitioner that the Enquiry Officer himself has acted as prosecutor and therefore it is violation of the principle of natural justice, as such, the enquiry is vitiated.
12. The question would be, whether the Enquiry Officer, in absence of a Presenting Officer, could assume the role of adjudicator/prosecutor by cross-examining the material prosecution witnesses through leading and suggestive questions and thereby the disciplinary proceeding/enquiry is vitiated?
13. In this regard, Rule 14(5)(c) of the Rules of 1966 may be noticed herein profitably, which states as under: -

**“14. Procedure for imposing penalties.”-(1) to (4) xxx xxx
xxx**

(5) (a) and (b) xxx xxx xxx

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the “Presenting Officer” to present on its behalf the case in support of the articles of charge.

xxx xxx xxx”

14. A careful perusal of the aforesaid provision would make it evident that it provides for the appointment of a Presenting Officer to present, on behalf of the Disciplinary Authority, the case in support of the articles of charge during the departmental enquiry. The

provision thus contemplates that the case in support of the charges is to be presented by the Presenting Officer, while the Enquiry Officer is required to remain impartial and adjudicate upon the evidence placed before him. However, appointment of a Presenting Officer in a disciplinary proceeding is not mandatory and furthermore, mere non-appointment of a Presenting Officer does not, by itself, vitiate the enquiry, provided that the Enquiry Officer acts fairly, reasonably and independently and conducts the proceedings in accordance with the principles of natural justice. Moreover, where, in the absence of a Presenting Officer, the Enquiry Officer assumes the role of the Department's prosecutor by cross-examining material witnesses and putting leading or suggestive questions to elicit evidence in support of the charges, he ceases to remain an impartial adjudicator. Such conduct amounts to an impermissible assumption of the prosecutorial role, resulting in bias and denial of a fair and impartial enquiry, and consequently vitiates the disciplinary proceedings.

15. In this regard, the landmark decision rendered by the Division Bench of the M.P. High Court in the matter of **Union of India, Through Its Secretary, Ministry of Railway and others v. Naseem Siddiqui**³ deserves to be noted profitably in which R.V. Raveendran, C.J., as His Lordship then was, after elaborately considering the issue summarised the principles as under: -

“We may summarise the principles thus:

3 2004 SCC OnLine MP 678

(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 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.”

16. The decision rendered by the M.P. High Court in **Naseem Siddiqui's** case (supra) was noted with approval by the Supreme Court in the matter of **Union of India and others v. Ram Lakhani Sharma**⁴ in which it has been held by their Lordships of the Supreme Court that the disciplinary proceedings are quasi-judicial proceedings and the Enquiry Officer is in the position of an independent adjudicator and is obliged to act fairly, impartially. It

4 (2018) 7 SCC 670

has further been held by their Lordships that the authority exercising quasi-judicial power has to act in good faith without bias, in a fair and impartial manner. Their Lordships observed in paragraph 28 of the report as under: -

“**28.** When the statutory rule does not contemplate appointment of Presenting Officer whether non-appointment of Presenting Officer ipso facto vitiates the inquiry? We have noticed the statutory provision of Rule 27 which does not indicate that there is any statutory requirement of appointment of Presenting Officer in the disciplinary inquiry. It is thus clear that statutory provision does not mandate appointment of Presenting Officer. When the statutory provision does not require appointment of Presenting Officer whether there can be any circumstances where principles of natural justice can be held to be violated is the broad question which needs to be answered in this case. We have noticed above that the High Court found breach of principles of natural justice in Enquiry Officer acting as the prosecutor against the respondents. The Enquiry Officer who has to be independent and not representative of the disciplinary authority if starts acting in any other capacity and proceeds to act in a manner as if he is interested in eliciting evidence to punish an employee, the principle of bias comes into place.”

17. Relying upon the decision of the M.P. High Court in **Naseem Siddiqui's** case (supra), it has been held by their Lordships of the Supreme Court in **Ram Lakhan Sharma's** case (supra) that where the Enquiry Officer acts as Presenting Officer, bias can be presumed. Their Lordships of the Supreme Court further, while endorsing the principles enumerated in **Naseem Siddiqui's** case (supra) held that there is no requirement of appointment of Presenting Officer in each and every case, whether statutory rules enable the authorities to make an appointment or are silent, and observed as under: -

“34. We fully endorse the principles as enumerated above, however, the principles have to be carefully applied in fact situation of a particular case. There is no requirement of appointment of Presenting Officer in each and every case, whether statutory rules enable the authorities to make an appointment or are silent. When the statutory rules are silent with regard to the applicability of any facet of principles of natural justice the applicability of principles of natural justice which are not specifically excluded in the statutory scheme are not prohibited. When there is no express exclusion of particular principle of natural justice, the said principle shall be applicable in a given case to advance the cause of justice.
...

36. Thus, the question as to whether the Enquiry Officer who is supposed to act independently in an inquiry has acted as prosecutor or not is a question of fact which has to be decided on the facts and proceedings of a particular case. In the present case we have noticed that the High Court had summoned the entire inquiry proceedings and after perusing the proceedings the High Court came to the conclusion that the Enquiry Officer himself led the examination-in-chief of the prosecution witness by putting questions. The High Court further held that the Enquiry Officer acted himself as prosecutor and Judge in the said disciplinary enquiry. The above conclusion of the High Court has already been noticed from paras 9 and 10 of the judgment of the High Court giving rise to Civil Appeal No. 2608 of 2012.

37. The High Court having come to the conclusion that the 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.”

18. Coming to the facts of the present case, in light of the aforesaid legal proposition, it is quite vivid that the appointment of Presenting Officer is directory in nature and a disciplinary enquiry is a quasi-judicial proceeding in which the Enquiry Officer acts as an

independent and impartial adjudicator and is required to conduct the proceedings fairly, reasonably and in accordance with the principles of natural justice. It is further held that the Enquiry Officer cannot act as a representative of the Department or conduct the enquiry with a closed or biased mind. The subsequent decisions, particularly in **Naseem Siddiqui's** case (supra) and in **Ram Laxhan Sharma's** case (supra) specifically deal with the effect of non-appointment of a Presenting Officer. These judgments clarify that mere non-appointment of a Presenting Officer does not, by itself, vitiate an enquiry; however, in such a situation, the Enquiry Officer must continue to remain impartial and cannot assume the role of the prosecutor. While he may put questions to witnesses for clarification or to ascertain the truth, he cannot conduct the examination or cross-examination in a manner that advances or establishes the Department's case, including by putting leading or suggestive questions to the witnesses. It is thus, clear that while non-appointment of a Presenting Officer, by itself, does not vitiate a disciplinary enquiry, the Enquiry Officer is required to maintain complete impartiality and cannot assume the role of the prosecutor. However, in the present case, though the Presenting Officer was not appointed, the Enquiry Officer himself has cross-examined the material prosecution witnesses namely, Surendra Singh Kachhawaha (PW-7) i.e. the petitioner herein and Smt. Sunita Singh (PW-8) – second wife of the petitioner on 19-12-2002, and put leading and suggestive questions to elicit evidence in support of the charges.

Relying upon the statements of the said witnesses, the Enquiry Officer proceeded to hold the petitioner guilty of entering into second marriage with Sunita Singh during the subsistence of first marriage/lifetime of first wife Neelam Singh. Such conduct goes beyond mere clarification and amounts to the Enquiry Officer assuming the prosecutorial role, thereby compromising his position as an independent adjudicator and giving rise to a clear apprehension of bias. As such, the disciplinary proceedings having been conducted in breach of the principles of natural justice and fair play, require to be annulled in light of the decision of the Supreme Court in **Ram Lakhan Sharma's** case (supra).

19. Accordingly, the order dated 23-1-2004 (Annexure P-19) as affirmed by the order dated 28-12-2018 (Annexure P-27), both, deserve to be quashed and are hereby quashed. The petitioner be reinstated in service, if not completed the age of superannuation, and he is entitled for all the consequential benefits except back-wages and for back-wages, he will be at liberty to make representation before the competent authority within six weeks from today, which shall be considered and decided by the said authority, expeditiously, in accordance with law. However, it is open for the respondents to proceed with the enquiry afresh in accordance with law, from the stage of evidence.

(WPS No.5000/2019)

20. The writ petition is allowed to the extent indicated herein-above. In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
(Sanjay K. Agrawal)
JUDGE

Soma