



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 5065/2002

Mahendra Singh, S/o Shri Jagmal Singh, 83-C, Bal Vihar Colony,
Joshi Marg, Kalwar Road, Jaipur.

----Petitioner

Versus

1. Union of India Through Secretary, Ministry Of Home Affairs, North Block, New Delhi
2. Deputy Inspector General Of Police, C.R.P.F Bhubaneshwar.
3. Director General, C.R.P.F. C.G.O. Complex, Lodhi Road, New Delhi.
4. Commandant, 66 BN., C.R.P.F. Through, C.G.O. Complex, Lodhi Road, New Delhi.

----Respondents

For Petitioner(s) : Mr. Sandeep Singh Shekhawat
For Respondent(s) : Ms. Manjeet Kaur

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND
Order

31/07/2024

1. The instant petition has been filed against the impugned order dated 16.03.2002 passed by the respondents by which the petitioner has been removed from service. Learned counsel for the petitioner submits that a charge-sheet was served upon the petitioner, and thereafter the disciplinary enquiry was conducted against him by the Enquiry Officer but at the time of conducting the enquiry, the Enquiry Officer has played the role of Presenting Officer/Prosecutor. Counsel submits that the Enquiry Officer himself has put all the questions to the witnesses and thereafter submitted the Enquiry Report against the petitioner. Counsel



submits that by conducting such enquiry, as a Presenting Officer/Prosecutor, he became biased against the petitioner and because of such act of the Enquiry Officer, the principles of natural justice have been grossly violated. Counsel submits that a similar situation was noticed by the Apex Court in the case of **Union of India vs. Ram Lakhan Sharma** reported in **2018(7) SCC 670**, wherein the Apex Court has held that if the Enquiry Officer has himself led the examination-in-chief of the prosecution witnesses by putting questions, then under these circumstances the entire enquiry stand vitiated. Counsel submits that in the instant case also the Enquiry Officer has himself led the examination-in-chief of the prosecution witnesses by putting questions, as a Presenting Officer/Prosecutor. Hence, under these circumstances, the entire disciplinary proceedings stands vitiated and the order impugned passed by the authorities is not legally sustainable in the eyes of law and the same is liable to be quashed and set aside.

2. *Per contra*, learned counsel for the respondents opposed the arguments raised by the counsel for the petitioner and submitted that grave charges were levelled against the petitioner wherein he not only produced fabricated mark-sheet containing two different dates of birth, but also submitted a mark-sheet of Class 10th of an institution which was not recognised by the Central Board of Secondary Education. Counsel further submits that due opportunity of hearing was afforded to the petitioner during the course of enquiry and all the charges were proved and established against the petitioner and accordingly, the order impugned was passed whereby the petitioner has been removed from service. Counsel submits that since there was no Presenting Officer,





appointed by the authorities, hence, under these circumstances the Enquiry Officer was supposed to conduct the enquiry and that is why the questions were put to the witnesses in their examination-in-chief by him and after conducting the entire enquiry, the conclusion was drawn by the Enquiry Officer on the basis of the evidence led before him and on the basis of the Enquiry Report, the order impugned has been passed by the disciplinary authority, which requires no interference of this Court.

3. Counsel submits that the judgment relied on by the counsel for the petitioner in the case of **Ram Lakhan Sharma** (supra) has been dealt with by the Madhya Pradesh High Court in the case of **Pramod Kumar Sharma vs. State of M.P. & Ors. (S.B. Civil Writ Petition No.3432/2016)** decided on 17.01.2019. Counsel submits that in the aforesaid judgment the Madhya Pradesh High Court has taken a contrary view and has held that any procedural infirmity in conducting the Departmental Enquiry, not prejudicial to the employee, cannot be a ground to set aside the enquiry proceedings when the Enquiry Officer has acted as a Prosecutor/Presenting Officer.

4. Heard and considered the submissions made at Bar and perused the material available on the record.

5. Perusal of the record indicates that after serving of the charge-sheet upon the petitioner, the Enquiry Officer was appointed to conduct the enquiry against the petitioner. Perusal of the record further indicates that certain questions were formulated by him and the same were put to the witnesses in the examination-in-chief and on the basis thereof, the conclusion was drawn against the petitioner and the Enquiry Report was placed





before the disciplinary authority and on the basis of the said Enquiry Report, the order impugned has been passed by which the petitioner has been removed from service. The Hon'ble Apex Court in the case **Ram Lakhan Sharma (supra)** has dealt with the identical question and situation which reads as under:-

"30. This Court had occasion to observe in *Workmen v. 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 prescribed 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 on his own statements recorded by himself. The Manager did not keep his function as the enquiry officer distinct but became witness, prosecutor and Manager in turns. The record of the enquiry as a result in staccato and unsatisfactory.

31. A Division Bench of the Madhya Pradesh High Court speaking through R.V. Raveendran, C.J. (as he then was) had occasion to consider the question of vitiation of the enquiry when the Inquiry Officer himself acting as prosecutor in **Union of India v. Mohd. Naseem Siddiqui** reported in ILR 2004 MP 821 the Court considered Rule 9(9)(c) of the Railway Servants (Discipline and Appeal) Rules, 1968. The Division Bench while elaborating fundamental principles of natural justice enumerated the seven well-recognised facets:-

"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 the 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."

6. Para 31 of the judgment indicates that it is a fundamental principle of natural justice that no man shall be a judge in its own cause and hence, the 7 principles were laid down by the Apex Court, that the adjudicator shall be impartial and free from bias, he shall not act as a prosecutor/adjudicator, a witness cannot become an adjudicator, an adjudicator must not include his personal knowledge to the facts of the case while conducting the enquiry and the adjudicator shall not decide on the dictates of his superiors or others.

7. Herein the instant case, the enquiry officer has acted as a prosecutor, who put several questions to the witnesses in examination-in-chief and on the basis of the same the enquiry was conducted and the charges were found to be proved against the petitioner and accordingly, the final order was passed by the disciplinary authority for removing the petitioner on the basis of the conclusion drawn by the Enquiry Officer. The Apex Court finally in the case of **Ram Lakhon Sharma** (supra) held which reads as under:-

"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 case.

38. In result, all the appeals are dismissed subject to the liberty as granted by the High Court that it shall be open for the appellants to proceed with the inquiry afresh from the stage as directed by the High Court and it shall be open for the appellant to decide on arrear pay and allowances of the respondents."

8. Following the proportion and ratio, as propounded by the Apex Court in the case of Ram Lakhan (supra), in the instant case, the Court finds that the entire enquiry, initiated against the petitioner by the enquiry officer, stands vitiated.

9. Accordingly, the writ petition stands allowed and the order impugned dated 16.03.2002 stands quashed and set aside. The matter is remitted back to the authorities for conducting fresh enquiry against the petitioner. The respondents are directed to conclude the enquiry within a period of six months from the date of receipt of certified copy of this order, after affording due opportunity of hearing to the petitioner

10. In case the petitioner is not found guilty, then he would be reinstated in service, with all consequential benefits.

(ANOOP KUMAR DHAND),J

GARIMA /14

