

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on : 14.12.2023

Order passed on : 07.03.2024

WPS No.3314 of 2011

Tapash Choudhary :

---- Petitioner

Versus

1. Director General, Central Reserve Police Force, Block No.1, CGO Complex, Lodhi Road, New Delhi.
2. Inspector General, CoBRA Sector, Central Reserve Police Force, Old Secretariat, Civil Lines, Delhi-54.
3. Deputy Inspector General, Central Reserve Police Force, 204-Combat Battalions for Resolute Action (CoBRA) Group, Jagdalpur (CG)
4. Commandant, 204 Special Action Force (SAF), Central Reserve Police Force, Masgaon, Jagdalpur (CG)

---- Respondents

WPS No.4410 of 2011

Mohammad Matiur Rahman

---- Petitioner

Versus

1. Director General, Central Reserve Police Force, Block No.1, CGO Complex, Lodhi Road, New Delhi.
2. Inspector General, CoBRA Sector, Central Reserve Police Force, Old Secretariat, Civil Lines, Delhi-54.
3. Deputy Inspector General, Central Reserve Police Force, 204-Combat Battalions for Resolute Action (CoBRA) Group, Jagdalpur (CG)

4. Commandant, 204 Special Action Force (SAF), Central Reserve Police Force, Masgaon, Jagdalpur (CG)

---- Respondents

For Petitioners	:	Mr. R.S. Baghel, Advocate
For Respondents	:	Ms. Annapurna Tiwari, CGC/ASG.

Hon'ble Smt. Justice Rajani Dubey, J

C A V Order

Since the issue to be decided in these petitions is common, they are heard analogously and being decided by this common order.

02. Petitioner Tapash Choudhary in WPS No.3314/2011 filed under Article 226 of the Constitution of India is challenging the legality and validity of the order dated 4.8.2010 (Annexure P/1) whereby the petitioner has been removed from service by respondent No.4 and the order dated 3.3.2011 (Annexure P/4) whereby respondent No.2 dismissed his appeal. Likewise, petitioner Mohammad Matiur Rahman in WPS No.4410/2011 has challenged the order dated 27.7.2010 (Annexure P/1) passed by respondent No.4 removing him from service and the order dated 14.2.2011 (Annexure P/4) whereby his appeal has been dismissed by respondent No.2.

03. Facts, in brief, as narrated in these petitions are that the petitioners Tapas Choudhary and Mohammad Matiur Rahman were enrolled members of Central Reserve Police Force (CRPF) on the post of Constable in the year 2000 and 2003 respectively. They served in sensitive areas like Jammu and Kashmir. Later on they were inducted into Combat Battalions for Resolute Action (CoBRA) which has been raised for tackling naxalism in India. The petitioners were posted with

204 SAF, Masgaon, Jagdalpur (CG) and for joining the battalion, the petitioners were sent to Training Centre, Shivpuri (MP) for advance training for CoBRA. However, on 23.8.2009 an unfortunate incident took place at Shivpuri where a motley group of force members acted violently and sabotaged the regimental property. The petitioners were issued charge sheet in respect of the said incident on two counts, first for consuming liquor and fighting with civilians in the market and second, for instigating the force members to mutiny due to which uncontrollable situation arose and the mob sabotaged the property.

In the departmental enquiry conducted under Section 11(1) of the Act and Rule 27 of the Rules, the Enquiry Officer found charge No.1 proved partially whereas charge No.2 was fully proved against the petitioners and submitted his report accordingly vide Annexure P/2. Based on the enquiry report, respondent No.4 removed the petitioners from service vide impugned orders dated 4.8.2010 and 27.7.2010 respectively vide Annexure P/1. Thereafter, the petitioners preferred appeals under Rule 28 of the Rules of 1955, however, respondent No.2, who is not the prescribed authority in the rules for deciding such appeals, vide impugned orders dated 3.3.2011 and 14.2.2011 (Annexure P/4) dismissed the appeals. Hence these petitions for the following reliefs:

WPS No.3314/2011

“1. Honourable Court may be kind and gracious enough to call for the records of the departmental enquiry from the office of the

respondent no.4.

2. Honourable Court may be kind enough to grant a writ of mandamus or any other suitable writ/writs, direction/directions and quash the order of removal dated 04/08/2010 with no. P-Eight-7/2010-204-Estt.-Two and passed by the respondent no.4(P-1) by holding it unlawful.
3. Honourable Court may kind enough to grant a writ of mandamus or any other suitable writ/writs, direction/directions and quash the order dated 03/03/2011 passed in appeal with no. R.XIII-1/10(9)-CoBRA-Adm.II and passed by the respondent no.2 by holding it unlawful. (P-4)
4. Honourable Court may be kind enough to grant a writ of mandamus or any other suitable writ/writs, direction/directions and reinstate the petitioner in the service on his original rank and post with all the consequential benefits.
5. Any other relief/relief's which honourable court may deem fit in the facts and circumstances of the instant case.”

WPS No.4410/2011

- “1. Honourable Court may be kind and gracious enough to call for the records of the departmental enquiry from the office of the respondent no.4.
2. Honourable Court may be kind enough to grant a writ of mandamus or any other suitable writ/writs, direction/directions

and quash the order of removal dated 27/07/2010 with no. P-Eight-8/2010-204-Estt.-Two and passed by the respondent no.4(P-1) by holding it unlawful.

3. Honourable Court may kind enough to grant a writ of mandamus or any other suitable writ/writs, direction/directions and quash the order dated 14/02/2011 passed in appeal with no. R.XIII-1/10(7)-CoBRA-Adm.II and passed by the respondent no.2 by holding it unlawful. (P-4)
4. Honourable Court may be kind enough to grant a writ of mandamus or any other suitable writ/writs, direction/directions and reinstate the petitioner in the service on his original rank and post with all the consequential benefits.
5. Any other relief/relief's which honourable court may deem fit in the facts and circumstances of the instant case."

04. Learned counsel for the petitioners submits that procedure given in Section 11 of the Act is for minor punishment whereas the respondent authorities have awarded major punishment thereunder by removing the petitioners from service. Both the impugned orders are not reasoned and speaking orders; they are based upon extraneous grounds and are fraught with apparent bias and prejudice as undue weightage has been given to the statements of the prosecution witnesses whereas the statements of the defence witnesses have been discarded on flimsy unsustainable grounds. The Enquiry Officer also acted as Presenting Officer by cross-examining the witnesses, which

itself vitiates the whole enquiry proceedings. The punishment imposed upon the petitioners is shockingly disproportionate to the alleged misconduct. The findings of the Enquiry Officer, disciplinary authority and the appellate authority are highly perverse and against the ordinary course of human conduct. The impugned orders have been passed without proper consideration of the material on record as respondent No.2 has acted recklessly while considering appeals of the petitioners as it has given a finding regarding fight of the petitioners with civilians whereas in the enquiry report and the order of removal, both the authorities have exonerated the petitioners of the said act. Further, respondent No.2 was not the competent authority to decide the appeals of the petitioners. The respondent authorities were biased against the petitioners is evident from the fact that despite the order of removal being not a bar for future employment in government service except CRPF, copy of the same was sent to the authorities in home town of the petitioners and also to District Employment Officer with an oblique motive to deprive the petitioners of future employment with government.

Reliance has been placed on the decisions in the matters of **Ex. Naik Sardar Singh Vs. Union of India, AIR 1992 SC 417; Jai Bhagwan Vs. Commissioner, AIR 2013 SC 2908; Union of India Vs. Ram Lakhon Sharma, AIR 2018 SC 4860** and the order dated **10.1.2018** of this Court in **MM Mishra Vs. State of CG and others, WP No.1828/2003.**

05. On the other hand, learned counsel for the respondents vehemently opposes the prayer of the petitioners and submits that on 23.8.2009 being Sunday, permission to visit the market was given to the petitioners along with other Jawans to procure essential personal items. As reported, some of the Jawans consumed liquor in the local market and started fighting among themselves which was video-recorded by the locals and media persons and the matter was reported to the office of respondent authorities. On the same day, at about 15:30 hours, a roll-call was called by the Shri Arun Bharti, Second-in-Command of the Battalion (seniormost officer in the camp on that day) for identification of the miscreants where the petitioners and one Constable R. Kalita were identified and their medical examination was ordered. However, medical examination was objected to by them knowing its consequences. All of a sudden, Constable R. Kalita ran towards a wireless antenna pole and tried to strangulate himself with a telephone wire which was intervened by the other Force personnel. During this process R. Kalita fell down on the ground and Force personnel picked him up. But the Jawans in the roll-call wrongly presumed that the Force personnel are bashing up R. Kalita at the behest of Shri Bharti. So, the petitioners herein and some other Constables instigated the other Jawans, shouted and created high indiscipline leading to potentially dangerous situation where they started abusing and manhandling their seniors, stone pelting, injuring their superior officers, beating up the Force personnel and destroying the government property at various places in the campus. The group

led by the petitioners reached the Quarter Guard (Armory) but the warning given by the Guards to open fire, compelled them to leave. It was due to incessant efforts of the officers and trainers and reduction of influence of liquor, the situation was brought under control.

She further submits that after proper departmental enquiry where reasonable opportunity of hearing/defence was afforded to the petitioners, the charges were found to be proved against them and therefore, the disciplinary authority looking to the gravity of the misconduct and the findings of the Enquiry Officer, passed order of their removal from service. As in CoBRA set up, the concept of Range DIGP is not available, hence the appeals of the petitioners were considered and decided by IGP by taking into account all the aspects of the matter. The impugned orders are strictly in accordance with law and as such, both these petitions being devoid of any substance are liable to be dismissed.

06. Heard learned counsel for the parties and perused the material available on record.

07. It is not in dispute in both the cases that the petitioners were working as Constable in CRPF and in the departmental enquiry conducted against them they were found guilty and accordingly, the disciplinary authority imposed penalty of removal from service on them and that their appeals were also dismissed by respondent No.2.

08. The main objection of the petitioners is that the Enquiry Officer acted as Presenting Officer and cross-examined the witnesses. The

conduct of the Enquiry Officer is against the principle of natural justice. He cannot act as a prosecutor and judge both.

09. The Hon'ble Supreme Court in the matter of **Ram Lakhan Sharma** (supra) held in para 32 of its judgment as under:

"32. The Division Bench after elaborately considering the issue summarised the principles in paragraph 16 which is to the following effect:

"16. We may summarise the principles thus:

(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.”

10. This Court in the matter of **MM Mishra** (supra) after referring to various judgments of the Hon'ble Supreme Court, held in paras 9 10 & 11 of its order as under:

“9. Given the aforesaid legal position as it stands if we peruse the record available in the Writ Petition it reflects that, the prosecution in the instant case has examined one Shankar Lal, a constable to prove the mis-conduct alleged against the present petitioner. However, further perusal of the record would show that, the enquiry officer in the instant case had cross-examined the witness of the prosecution extensively which runs into pages.

10. This act on part of the enquiry officer goes to show that, he was trying to cover up the loop-holes which was extracted in the course of the cross-examination conducted by the enquiry officer. The enquiry officer in the instant

case has acted both as a presenting officer and as an inquiry-officer which is not sustainable in the eye of law and the enquiry officer stands vitiated on this ground.

11. Another ground on which the two impugned orders would not be sustainable is that, the order of Appellate Authority is not a speaking order. That the ground that the enquiry officer could not have acted as a presenting officer has not been considered by the Appellate Authority while passing the appellate order-Annexure-P/1. That perusal of Annexure-P/1 would show that, it is being passed without application of mind and only after recording the facts of the case so also findings of the disciplinary authority, the Appellate Authority has only affirmed the findings without giving any reasons to reach to the conclusion. The order of the Appellate Authority is therefore not sustainable.”

11. In light of the above decisions, if the facts of the present case are seen, it is clear that here also the Enquiry Officer conducted the whole enquiry and acted as Presenting Officer. From the evidence of witnesses GD Pintu and GD B. Boro it is clear that the Enquiry Officer cross-examined both the witnesses and thus, acted as a prosecutor. The appellate authority while deciding the appeals of the petitioners also did not consider this aspect of the matter as also the other grounds raised by the petitioner.

12. Having regard to the facts and circumstances of the case, keeping in mind the principles of laid down in the above-referred decisions and the manner in which the whole departmental enquiry was conducted against the petitioner where major penalty of removal from service was imposed on the petitioner, which necessarily requires

a fair and impartial enquiry and proper opportunity of hearing to the delinquent, the impugned orders being not sustainable in law are liable to be set aside.

13. In the result, the impugned orders dated 4.8.2010, 3.3.2011, 27.7.2010 and 14.2.2011 are hereby set aside. The respondent authorities are directed to reinstate the petitioners with all consequential benefits including 30% back-wages. However, liberty is reserved with the respondents to conduct departmental enquiry against the petitioners for the alleged misconduct from the stage of appointment of Presenting Officer, in accordance with law.

Sd/
(Rajani Dubey)
Judge