

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

**ON THE 4<sup>th</sup> OF AUGUST, 2023**

**WRIT PETITION No. 5957 of 2009**

**BETWEEN:-**

**SMT.REKHA KUMRE W/O LATE MANARAM  
KUMRE, AGED ABOUT 38 YEARS, M.NO. 480  
PATEL MANGAL BHAWAN POLAGROUND DISTT  
CHHINDWARA (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI DEVENDRA KUMAR DIXIT – ADVOCATE)***

**AND**

- 1. THE STATE OF MADHYA PRADESH  
THROUGH : CHIEF SECRETARY VALLABH  
BHAWAN BHOPAL (MADHYA PRADESH)**
- 2. DIRECTOR GENERAL OF POLICE  
JAHANGIRABAD, BHOPAL (M.P.) (MADHYA  
PRADESH)**
- 3. THE DY. INSPECTOR GENERAL OF POLICE  
HOSHANGABAD ZONE, POLICE WIRELESS  
BUILDING BHADBHADA ROAD, BHOPAL  
(M.P. (MADHYA PRADESH)**
- 4. SUPERINTENDANT OF POLICE DISTT.  
BETUL (M.P.) (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI MOHAN SAUSARKAR – GOVERNMENT ADVOCATE)***

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*This petition coming on for admission this day, the court passed  
the following:*

**ORDER**

This petition under Article 226 of the Constitution of India has been filed against the order dated 02.02.2006 passed by Deputy Inspector General of Police, Hoshangabad in File No.UMN/HO.Kh./P.A./Bij/5985A/2006 by which the husband of the petitioner was removed from the service.

2. It is the case of the petitioner that husband of the petitioner was earlier posted as A.S.I. at Police Station Jhallar, District Betul. A Departmental Enquiry was initiated against her husband. In the departmental enquiry, no Presenting Officer was appointed and the husband of the petitioner was found guilty for charge leveled against him and accordingly a major penalty of removal from service was imposed. A departmental appeal was filed by the petitioner. However, the husband of the petitioner died. It is submitted that a departmental appeal has not been decided so far.

3. The respondents have filed their return and denied the averments made in the petition.

4. Challenging the order of removal from service, it is submitted by counsel for the petitioner that no Presenting Officer was appointed and in fact the enquiry officer had acted as a Presenting Officer and thus the entire enquiry was vitiated. However, it is submitted by counsel for the State that the aforesaid defense has not been taken by the petitioner in the writ petition and therefore, it cannot be said that any prejudice was caused to the husband of the petitioner.

5. Considered the submissions made by counsel for the parties.
6. First question for consideration is as to whether non-appointment of Presenting Officer would vitiate the enquiry by itself or not ?
7. The aforesaid question is no more res-integra.
8. The Supreme Court in the case of **Union of India v. Ram Lakhan Sharma** reported in **AIR 2018 SC 4860** has held as under:

“23. 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. The authority exercising quasi-judicial power has to act in good faith without bias, in a fair and impartial manner.

24. Rules of natural justice have been recognised and developed as principles of administrative law. Natural justice has many facets. All its facets are steps to ensure justice and fair play. This Court in *Suresh Koshy George v. University of Kerala* [*Suresh Koshy George v. University of Kerala*, AIR 1969 SC 198] had occasion to consider the principles of natural justice in the context of a case where disciplinary action was taken against a student who was alleged to have adopted malpractice in the examination. In para 7 this Court held that the question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions. The following was held in paras 7 and 8:

“7. ... The rules of natural justice are not embodied rules. The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts

and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions.

8. In *Russell v. Duke of Norfolk* [*Russell v. Duke of Norfolk*, (1949) 1 All ER 109 (CA)] , Tucker, L.J. observed:

‘There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case.’ ”

**25.** A Constitution Bench of this Court has elaborately considered and explained the principles of natural justice in *A.K. Kraipak v. Union of India* [*A.K. Kraipak v. Union of India*, (1969) 2 SCC 262 : AIR 1970 SC 150] . This Court held that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. The concept of natural justice has undergone a great deal of change in recent years. Initially recognised as consisting of two principles, that is, no one shall be a judge in his own cause and no decision shall be given against a party without affording him a reasonable hearing, various other facets have been recognised. In para 20 the following has been held:

“20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has

undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely, (1) no one shall be a judge in his own case (nemo debet esse judex propria causa), and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and, that is, that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. ...”

**26.** In State of U.P. v. Saroj Kumar Sinha [State of U.P. v. Saroj Kumar Sinha, (2010) 2 SCC 772 :

(AIR 2010 SC 3131, Paras 26 and 28), this Court had laid down that Enquiry Officer is a quasi-judicial authority, he has to act as an independent adjudicator and he is not a representative of the department/disciplinary authority/Government. In paragraphs 28 and 30 the following has been held:

“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.

30. When a departmental 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.”

**27.** 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.

**30.** 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 inquiry when the Enquiry Officer starts himself acting as prosecutor in Union of India v. Mohd. Naseem Siddiqui [Union of India v. Mohd. Naseem Siddiqui, ILR 2004 MP 821] . In the above case 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 in para 7 of the judgment which is to the following effect:

“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.”

**31.** The Division Bench further held that where the Enquiry Officer acts as Presenting Officer, bias can be presumed. Para 9 is as follows:

“9. A domestic inquiry must be held by an unbiased person who is unconnected with the incident so that he can be impartial and objective in deciding the subject-matters of inquiry. He should have an open mind till the inquiry is completed and should neither act with bias nor give an impression of bias. Where the Enquiry Officer acts as the Presenting Officer, bias can be presumed. At all events, it clearly gives an impression of bias. An Enquiry Officer is in position of a judge or adjudicator. The Presenting Officer is in the position of a prosecutor. If the Enquiry Officer acts as a Presenting Officer, then it would amount to Judge acting as the

prosecutor. When the Enquiry Officer conducts the examination-in-chief of the prosecution witnesses and leads them through the facts so as to present the case of the disciplinary authority against the employee or cross-examines the delinquent employee or his witnesses to establish the case of the employer/disciplinary authority evidently, the Enquiry Officer cannot be said to have an open mind. The very fact that he presents the case of the employer and supports the case of the employer is sufficient to hold that the Enquiry Officer does not have an open mind.”

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

“16. We may summarise the principles thus:

(i) The Enquiry 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 Enquiry 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 Enquiry 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 Enquiry 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 Enquiry 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 Enquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Enquiry 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 Enquiry Officer has merely acted only as an Enquiry 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.”

**33.** 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. In this context, reference is made of a case of this Court in *Punjab National Bank v. Kunj Behari Misra* [*Punjab National Bank v. Kunj Behari Misra*, (1998) 7 SCC 84 : 1998 SCC (L&S) 1783] . In the above case, this Court had occasion to consider the provisions of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977. Regulation 7 provides for action on the enquiry report.

Regulation 7 as extracted in para 10 of the judgment is as follows:

“7. *Action on the enquiry report.*—(1) The disciplinary authority, if it is not itself the enquiring authority, may, for reasons to be recorded by it in writing, remit the case to the enquiring authority for fresh or further enquiry and report and the enquiring authority shall thereupon proceed to hold the further enquiry according to the provisions of Regulation 6 as far as may be.

(2) The disciplinary authority shall, if it disagrees with the findings of the enquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in Regulation 4 should be imposed on the officer employee, it shall, notwithstanding anything contained in Regulation 8, make an order imposing such penalty.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer employee concerned. ”

9. Thus, non-appointment of a Presenting Officer will not by itself vitiate the enquiry but the only requirement is that Enquiry Officer who is in the position of judge shall not act as Presenting Officer, who is in the position of **prosecutor**.

10. This Court in the case of **Ramnaresh Sharma v. State of M.P.** decided on **25.02.2020** in **W.P.No.7634/2013** (Gwalior Bench) after considering the law laid down by the Supreme Court in the case

of **Ramlakhan Sharma** (supra) has held that since the record of departmental enquiry does not indicate that the Enquiry Officer has acted as a Presenting Officer and asking few questions to a witness by Enquiry Officer will not vitiate the enquiry because an Enquiry Officer can always put a question for clarification to the witnesses. Therefore, it was held that enquiry will not stand vitiated by itself merely because Presenting Officer was not appointed.

11. However, in the present case, it appears that the entire cross-examination of the husband of the petitioner was done by Enquiry Officer but unfortunately the petitioner has not raised ground in the writ petition claiming any prejudice to the husband of the petitioner. Unless and until prejudice is pleaded, this Court cannot give a finding of fact that any prejudice was caused to the husband of the petitioner. Furthermore, husband of the petitioner is no more and the respondent cannot be directed to conduct a departmental enquiry afresh.

12. Furthermore, the report of Enquiry Officer is based on the evidence of complainant and some other witnesses. The complainant *Fakira* was cross-examined by husband of the petitioner in detail. Not a single question was put by the Enquiry Officer to departmental witness *Fakira*. Constable *Baliram* had turned hostile although certain questions were put to him by the Enquiry Officer. *Balu @ Bhalu* had also supported the prosecution case and no question was put to him by the Enquiry Officer.

13. Smt. *Ruchu* was not an eye witness. Constable *Parvej* was not cross-examined by the Enquiry Officer and he had also turned hostile. Certain questions were put to the husband of the petitioner and

the husband of the petitioner was cross-examined by the Enquiry Officer. Since, the findings recorded by the Enquiry Officer is primarily based on the evidence of *Fakira, Laxman, Balu @ Bhalu* and no question was put by the Enquiry Officer to these witnesses. Under these circumstances, this Court is of the considered opinion that in absence of any claim that any prejudice was caused to the husband of the petitioner on account of non-appointment of Presenting Officer, no case is made out warranting interference in the petition.

14. Accordingly, the petition fails and is hereby **dismissed**.

**(G.S. AHLUWALIA)**  
**JUDGE**

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