

**(2019) 10 CHH CK 0081**  
**In the Chhattisgarh High Court**  
**Case No : Writ Appeal No. 393 Of 2019**

|                               |    |            |
|-------------------------------|----|------------|
| State Of Chhattisgarh And Ors | Vs | APPELLANT  |
| Suresh Kumar Dhruv            |    | RESPONDENT |

**Date of Decision :** 16-10-2019

**Acts Referred:**

Chhattisgarh Civil Services (Classification, Control And Appeal) Rules, 1966 — Rule 14, 14(8)

**Citation :** (2019) 10 CHH CK 0081

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

**Bench :** Division Bench

**Advocate :** Gagan Tiwari, Sunil Verma

**Final Decision :** Dismissed

## Judgement

P. R. Ramachandra Menon, CJ

1. The verdict passed by the learned Single Judge, virtually granting the relief sought for by the writ Petitioner with regard to challenge raised against

the order passed by the Enquiry Officer, whereby the Defence Assistant engaged by the writ Petitioner in a disciplinary proceeding was denied

permission to represent the writ Petitioner, is put to challenge in this appeal.

2. Heard Shri Gagan Tiwari, the learned counsel representing the Appellants/ State as well as Shri Sunil Verma, the learned counsel appearing for the

Respondent.

3. Sequence of events is as follows: The Respondent herein, who was working as a Constable in the Police Department was proceeded against by the

authorities for some delinquency noted in connection with the service. A domestic enquiry was sought to be conducted and an Enquiry Officer was

appointed in accordance with the relevant provisions of law and the matter was being proceeded accordingly. In the said proceedings, the Respondent

sought to avail the assistance of a person by name Shri Birendra Kumar Sinha who was a former employee in the Police Department. The Enquiry

Officer passed an order dated 30.08.2018 (Annexure P/5) denying permission to the delinquent employee to be represented by the aforesaid Defence

Assistant, which made the aggrieved person to approach this Court by filing a writ petition, seeking to set aside the order passed by the Enquiry

Officer and to permit the delinquent employee to participate in the proceedings.

4. The Appellants herein, who were the Respondents before the learned Single Judge took up a contention that the Defence Assistant by name Shri

Birendra Kumar Sinha, who was sought to be engaged by the delinquent employee, was not a Government employee as on date and as such, it was

not possible to permit the delinquent employee to avail his assistance. The said contention was considered and it was repelled by the learned Single

Judge holding that no provision of law was brought to the notice of the Court to sustain the stand. It was accordingly, that the writ petition was

allowed, setting aside the order under challenge, which made the Respondents in the writ petition to file the present appeal.

5. The learned counsel for the Appellants submits that, as pointed out in the grounds C and D of the memorandum of appeal, by virtue of the

Regulation 213 of the Police Regulations, the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short, 'Rules of 1996')

are applicable in the case of the disciplinary action of the Police officials as well. It is stated that by virtue of the mandate in Rule 14 of the Rules of

1996, only a Government servant can be engaged as Defence Assistant, whereas in the instant case, the Respondent/writ Petitioner wanted to engage

a person who is not a Government servant, and hence the grievance.

6. The relevant provisions as contained in the sub-rule 8 of Rule 14 of the Rules of 1966 which is sought to be relied by the Appellants reads as

follows:

14. Procedure for imposing penalties.-

xxx xxx xxx

(8) The Government servant may take the assistance of any other Government servant to present the case on his behalf, but may not engage a legal

practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority,

having regard to the circumstances of the case, so permits.

7. Even on a plain reading of sub-rule 8, it is seen that there is no absolute bar in getting the delinquent employee to be represented by a non-

government servant and in some cases, permission can also be granted to be represented by a legal practitioner, provided the Disciplinary Authority is

a legal practitioner or when the Disciplinary Authority, having regard to the circumstances of the case grants sanction. This means, the situation

envisaged under sub-rule 8 of Rule 14 of the Rules of 1966 is not to deny the right to be defended to the delinquent employee, but to facilitate such

engagement by making available the service of a Government employee at no cost. It is for the department to make necessary arrangement in this

regard and such assistance is to be rendered by a serving Government employee free of cost, as duty leave is granted and the salary is being paid by

the Government, besides extending such other facility in this regard. Where engagement is made by the delinquent employee of his own, if the

Defence Assistant is not a Government servant, then, the expenditure and such other requirements are necessarily to be satisfied by the delinquent

employee himself and not by the Government as it happens in the case of engagement of a legal practitioner (when permitted).

8. Another aspect to be noted is that the Respondent/writ Petitioner had a specific case that the person sought to be engaged by him by name Shir

Birendra Kumar Sinha was being permitted to be the Defence Assistant in various other cases as well and there was no objection in this regard at any

point of time for the Department. Even in the case of the Respondent-writ Petitioner, in respect of some other charges, it is seen from Annexure P/4

proceedings dated 26.04.2018 that the witnesses were cross-examined by the Defence Assistant by name Shri Birendra Kumar Sinha and the

proceedings bear the signature of the said Defence Assistant as well. The objection, if at all any, ought to have been brought to the notice of the

Disciplinary Authority and the Enquiry Officer, of his own was not correct or justified in rejecting the request of the Petitioner, when the very same

person was being permitted to act as Defence Assistant in some other context, as revealed from Annexure P/4.

9. Above all, the Appellants have not established any 'prejudice' to the State Government on granting the request of the delinquent employee to avail

the service of Defence Assistant named by him, in respect of the present charges as well. In the said circumstances, we are of the view that this is

not a fit case to call for the interference.

10. Appeal fails. It is dismissed accordingly.