



CGHC010099182017

Reserved on – 22.04.2026

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NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPS No. 3894 of 2017**

Vijay Kumar Thakur S/o Dukhava Ram Thakur, Aged About 33 Years R/o Village Manpur, Post And Tehsil Manpur, District Rajnandgaon, Chhattisgarh., Chhattisgarh
... Petitioner

versus

1 - State Of Chhattisgarh Through The Secretary, Department Of Revenue, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh., Chhattisgarh

2 - Divisional Commissioner, Division Durg, Chhattisgarh., District : Durg, Chhattisgarh

3 - Collector Rajnandgaon, Land Record District Rajnandgaon, Chhattisgarh., District : Rajnandgaon, Chhattisgarh

4 - Sub Divisional Officer Revenue Mohala, Rajnandgaon, District Rajnandgaon, Chhattisgarh., District : Rajnandgaon, Chhattisgarh

... Respondent(s)

For Petitioner : Mr. Jitendra Pali, Advocate

For Respondents : Mr. Rohitashwa Singh Dy. GA

Hon'ble Shri Justice Sachin Singh Rajput**CAV Order**

1. This writ petition has been filed by the petitioner seeking for the following reliefs.

i. To kindly call for the records of the case from the respondents.

ii. To kindly quash the order passed by the Collector, Rajnandgaon dated 13-10-2015 (ANNEXURE P/2).

iii. To kindly quash the order passed by the Sub Divisional Officer, Mohla vide order no. A.VI.A/KANOO./PAT. /2015 dated 13-03-2015 (ANNEXURE P/1).

iv. To Kindly direct the respondents to reinstate the petitioner in service with all consequential benefits.

V. Any other order that may be deemed fit and just may also kindly be made including cost of the petition.

2. Facts of the case in a brief is that the petitioner was appointed by the Collector vide order dated 04.01.2007 to the post of Patwari and was posted at Tehsil Khairagarh. The petitioner discharged his duties sincerely and diligently, and there was no complaint whatsoever regarding his conduct or performance during his tenure as Patwari. On 06.02.2015, respondent No. 4 passed an order suspending the petitioner on the alleged ground of his unauthorized absence from duty on 27.01.2015. Thereafter, respondent No. 4 issued a memorandum dated 09.02.2015, calling upon the petitioner to state whether he desired a hearing in respect of the order of suspension. The petitioner was alleged to have failed to perform the Government work assigned to him and to have disobeyed the directions of his superior authorities in connection with the Panchayat General Election, 2015. The petitioner was also served with a charge-sheet alleging that he had failed to cooperate in the election-related work and had remained absent from duty on 27.01.2015, which was alleged to constitute non-compliance with the instructions of the superior authorities. The petitioner submitted his reply on 11.02.2015, categorically denying all the allegations levelled against him. The Sub-Divisional Officer, however, did not find the petitioner's explanation satisfactory and proceeded to institute a departmental enquiry against him with a view to imposing a major penalty. He appointed the Tehsildar, Mohla, as the Presenting Officer vide order dated 24.02.2015, purportedly under Rules 14(2) and 14(5) of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter referred to as the "Rules, 1966"). The petitioner was directed to appear before the Enquiry Officer

on 04.03.2015 to participate in the departmental enquiry. Thereafter, the Sub-Divisional Officer, allegedly without following the procedure prescribed under the Rules, 1966 and without affording the petitioner a proper and effective opportunity of hearing, arrived at the conclusion that the petitioner was neither competent nor willing to discharge his duties as Patwari. Consequently, the petitioner was dismissed from service by invoking Rule 10(8) of the Rules, 1966. Aggrieved by the order of dismissal, the petitioner preferred a departmental appeal before the Collector, Rajnandgaon. In the appeal, the petitioner specifically contended that the order passed by the Sub-Divisional Officer was contrary to the provisions of the Rules, 1966 and was also in violation of the principles of natural justice. The petitioner further submitted in his written arguments that the Sub-Divisional Officer was not his appointing authority and, therefore, was not competent to impose the penalty of dismissal from service. It was specifically contended that the impugned order was in violation of Article 311(2) of the Constitution of India and was consequently liable to be set aside. The Collector, however, without duly considering the constitutional objection raised by the petitioner as well as the alleged procedural irregularities committed during the departmental proceedings, rejected the appeal vide order dated 13.10.2015. Thereafter, on legal advice, the petitioner preferred a second appeal before the Divisional Commissioner, Durg. The said appeal was, however, rejected vide order dated 25.05.2017 on the ground that the same was not maintainable. Hence this petition.

3. Learned counsel for the petitioner submits that the impugned order dated 13.03.2015 passed by the Sub-Divisional Officer (Revenue) dismissing the petitioner from service is wholly without jurisdiction, as the Sub-Divisional Officer was not the competent authority to impose the major penalty of dismissal upon the petitioner. He submits that the departmental enquiry was conducted by the Sub-Divisional Officer under Rule 14 of the Rules, 1966 despite there being no authority vested in him to conduct such enquiry, rendering the entire proceedings and the consequential order of dismissal legally unsustainable. He further submits that the

petitioner was not supplied with the enquiry report dated 27.01.2015 and other relevant documents which were relied upon in the charge-sheet dated 09.02.2015. Non-supply of such material documents deprived the petitioner of an effective opportunity to defend himself and constitutes a violation of the principles of natural justice. He further submits that the Sub-Divisional Officer, without any authority under the applicable service rules, directed the petitioner to work continuously for five days in his office and further threatened dismissal from service in the event of non-compliance. Such direction, according to learned counsel, was wholly unauthorized, arbitrary and contrary to the governing service rules. He submits that the Collector, while considering the appeal of the petitioner, failed to appreciate that Section 104 of the Chhattisgarh Land Revenue Code, 1959 vests the statutory power to appoint Patwaris in the Collector. Consequently, in the absence of a valid statutory delegation, the Sub-Divisional Officer could not have exercised the power of dismissal. He submits that Instruction/Rule 8 of the Chhattisgarh Land Records Manual cannot override or operate contrary to the statutory mandate contained in Section 104 of the Code and, being subordinate in nature, must remain subject to the provisions of the statute. No delegation or sub-delegation of the statutory power vested in the Collector under Section 104 could, according to the petitioner, be legally presumed in favour of the Sub-Divisional Officer. He further submits that the appellate authority failed to appreciate that the impugned order of dismissal was passed in violation of the constitutional protection guaranteed under Article 311(2) of the Constitution of India and also in breach of the principles of natural justice. He further submits that the alleged misconduct was not duly established against the petitioner in accordance with law, yet the Sub-Divisional Officer proceeded to impose the extreme penalty of dismissal. He submits that the impugned order is mechanical, non-speaking and does not disclose proper consideration of the defence of the petitioner or the material available on record. The Collector while deciding the appeal failed to cure these fundamental defects and mechanically affirmed the action of the Sub-Divisional Officer. Therefore, he submits that the

entire disciplinary proceedings and the consequential order of dismissal dated 13.03.2015 are vitiated in law and liable to be quashed.

4. Opposing the submission learned counsel for the respondents submits that the petitioner was appointed as a Patwari on 17.11.2004 and, owing to misconduct and negligence in the discharge of his duties during the Panchayat General Elections was placed under suspension and issued a charge-sheet along with the list of witnesses and documents. His reply was found unsatisfactory and a departmental enquiry was accordingly instituted in accordance with the prescribed procedure. He submits that after considering the material on record and affording due opportunity to the petitioner, respondent No. 4 passed the order dated 13.03.2015 removing him from service. The appeal preferred by the petitioner was thereafter rejected by respondent No. 3 by a reasoned and speaking order. He further submits that under the applicable Chhattisgarh Land Records Rules, the Sub-Divisional Officer is competent to remove/dismiss a Patwari from service and is also competent to institute and conduct the departmental enquiry under the Rules, 1966. Thus, the challenge to the jurisdiction of respondent No. 4 is misconceived. He further submits that the scope of judicial review is confined to examining the legality and fairness of the decision-making process and not the correctness of the decision on merits. Since the disciplinary proceedings were conducted by the competent authority in accordance with the prescribed procedure and after affording adequate opportunity of hearing to the petitioner, no interference under Article 226 of the Constitution of India is warranted. Therefore, prays for dismissal of this writ petition.

5. Heard the learned counsel for the parties and perused the record with great care.

6. The present writ petition calls in question the order dated 13.03.2015 whereby the petitioner who was working on the post of Patwari, was removed from service by exercising the power under Rule 10 of the Rules of 1966. The petitioner

has also called in question the order dated 13.10.2015 passed by the Collector **(Annexure P/2)** whereby the appeal preferred by him against the order of removal from service has been rejected.

7. The record of the departmental proceedings was summoned by this Court and has been produced by the respondents for its perusal. The material available on record has been carefully examined.

8. The petitioner was appointed on the post of Patwari on 17.11.2004 vide (Annexure P/4). It appears that he continued to discharge his duties in the said capacity. Thereafter, he was placed under suspension vide order dated 06.02.2015 (Annexure P/6). Subsequently, a communication dated 09.02.2015 was issued to the petitioner requiring him to indicate whether he desired a personal hearing or whether he intended to submit his explanation in writing. It appears from the record that a charge-sheet was thereafter issued to the petitioner alleging *inter alia* that he had failed to remain present for election duty, had not cooperated in the distribution of election material and had failed to extend necessary assistance to the polling party. The precise charges framed against the petitioner are reproduced hereinbelow:

“1/ कार्यालय तहसीलदार मोहला के पत्र कमांक क्यू/तह./पं.नि./2015 दिनांक 27 जनवरी 2015 के अनुसार त्रिस्तरीय पंचायत आम निर्वाचन कार्य से अनुपस्थित रहने, निर्वाचन सामग्री वितरण एवं मतदान दल खानगी में कोई सहयोग नहीं करने एवं निर्वाचन कार्य से संबंधित सुरक्षा व्यवस्था संबंधी कोई जानकारी प्रस्तुत नहीं की गई (जबकि सम्पूर्ण मोहला तहसील नक्सल प्रभावित क्षेत्र है) फलस्वरूप आपको कारण बताओ नोटिस जारी किया जाकर पत्र प्राप्त होते ही जवाब प्रस्तुत करने हेतु निर्देशित किया गया था। आपके द्वारा कार्यालय में उपस्थित नहीं होना एवं मुख्यालय में नहीं होने के फलस्वरूप दिनांक 31/1/2015 तक नोटिस तामिल नहीं हुई। चैनमेन श्री नंदकिशोर रजक द्वारा कार्यालयीन नोटिस में यह टीप लेख कर वापस किया गया कि दिनांक 27/1/2015 से आज दिनांक तक (31 जनवरी 2015 तक) प्रतिदिन नोटिस तामिल हेतु मुख्यालय गया किन्तु मुख्यालय में न मिलने पर अदम तामिल वापस

2/ चैनमेन श्री नंदकिशोर रजक के टीप अनुसार आप मुख्यालय में निवास नहीं कर रहे हैं। शासन / उच्चाधिकारियों के आदेश / निर्देश की अवहेलना की गई।

2/ पदीय दायित्वों के निर्वहन में कोताही बरती गई जबकि राजस्व निरीक्षक मोहला एवं तहसीलदार मोहला द्वारा आपको बार-बार समझाईस दी जाती रही है।

3/ उच्चाधिकारियों द्वारा दिये गये आदेश / निर्देश का पालन नहीं किया गया।”

9. The petitioner submitted his reply to the charge-sheet. Since the reply was not found satisfactory by the disciplinary authority, an order dated 24.02.2015 (Annexure P/9) was passed initiating departmental enquiry against him. The Tahsildar, Mohla was appointed as the Presenting Officer in terms of Rules 14(2) and 14(5) of the applicable Rules of 1966. A perusal of the note-sheets forming part of the departmental record reveals that certain other Patwaris namely Komal Chand Ravte, Heeralal Kosre and Nitin Motghare were also proceeded against in respect of allegations substantially similar to those levelled against the petitioner i.e. absence from election duty, failure to cooperate in the distribution of election material and failure to assist the polling party. The record further indicates that the conduct attributed to the concerned employees was treated as a violation of the directions/orders issued by the superior authorities and was considered punishable under Rule 3 of the Chhattisgarh Civil Services (Conduct) Rules, 1965. The concerned employees including the petitioner were placed under suspension and were afforded an opportunity to submit their respective replies. It is significant that in the case of another Patwari namely Komalchand Ravte who was proceeded against on allegations of a similar nature, his reply was considered and he was ultimately subjected to the penalty of stoppage of one annual increment with cumulative effect. The record shows that he appeared on 04.03.2015 and submitted his reply, whereafter the aforesaid minor penalty was imposed upon him. However, the case of the petitioner's proceeded on an entirely different course. Though the petitioner had denied the allegations levelled against him, the record does not disclose that the Enquiry Officer conducted the departmental enquiry to its logical conclusion or recorded a finding on the basis of the evidence and material brought on record, as to whether the charges stood proved or not proved.
10. On the contrary, the note-sheet dated 04.03.2015 indicates that instead of completing the enquiry in accordance with the procedure prescribed under the Rules, the petitioner was directed purportedly on humanitarian grounds to work for five days in the office of the Sub-Divisional Officer (Revenue). It was further recorded that in

the event of non-compliance with the said direction, proceedings would be taken *ex parte* and he would be removed from service. The subsequent note-sheet records that the petitioner appeared in the office for two days but thereafter did not attend the same. On that basis, and by relying upon the earlier charge-sheet, the petitioner was removed from service.

11. The aforesaid sequence of events makes it abundantly clear that the departmental enquiry initiated against the petitioner was not brought to its logical conclusion in accordance with the procedure prescribed under Rules 14 and 15 of the Rules of 1966. The record does not disclose any duly conducted enquiry culminating in a reasoned finding by the Enquiry Officer that the charges levelled against the petitioner stood proved.
12. The scheme of Rule 14 mandates that a delinquent employee must be afforded a reasonable and effective opportunity to defend himself against the charges. The enquiry is required to be conducted upon consideration of the evidence and material brought on record and the Enquiry Officer is required to record a finding on each charge as to whether the same has been proved or not proved. Upon submission of the enquiry report, the delinquent employee is required to be afforded an opportunity to submit his representation against the findings recorded therein. Thereafter, the disciplinary authority is required to consider the enquiry report and the reply of the delinquent employee and take an appropriate decision in accordance with Rule 15 of 1966 before imposing any penalty.
13. The procedure prescribed under Rules 14 and 15 of 1966 is not an empty formality. It constitutes an essential safeguard against arbitrary exercise of disciplinary power and ensures that a government servant is not visited with a major penalty without being afforded the procedural protections guaranteed under the applicable service rules. In the present case, the respondents have failed to demonstrate that the mandatory procedure contemplated under Rules 14 and 15 of 1966 was followed. There is no material on record showing that the Enquiry Officer after conducting the

enquiry, recorded findings on the charges. There is equally no material to show that any enquiry report holding the petitioner guilty of the charges was supplied to him or that he was afforded an opportunity to submit his reply thereagainst before the order of removal was passed.

14. What is particularly striking is that, in the midst of the purported departmental proceedings, the respondents adopted an altogether different course by directing the petitioner to work for five days in the office of the Sub-Divisional Officer (Revenue) with a stipulation that failure to comply with such direction would result in his removal from service. Such a course of action cannot substitute the statutory procedure prescribed for conducting a departmental enquiry. In effect, the respondents proceeded on the premise that failure to comply with the direction to attend the office for five days would itself furnish the basis for removing the petitioner from service. Therefore, the disciplinary proceedings ceased to be an adjudication of the charges contained in the charge-sheet and were converted into proceedings founded upon the petitioner's alleged non-compliance with an administrative direction issued during the pendency of the enquiry. Such a procedure is plainly impermissible. Once the respondents had chosen to initiate a departmental enquiry against the petitioner under Rule 14 of 1966, they were bound to conduct and conclude the same in accordance with the procedure prescribed by the said Rules. The disciplinary authority could not circumvent the statutory procedure by adopting a course which effectively predetermined the penalty to be imposed upon the petitioner. The record further discloses another significant aspect of the matter is that the allegations against the petitioner were substantially similar to those levelled against other Patwaris i.e. Komal Chand Ravte, Heeralal Kosre and Nitin Motghare. Yet, while another employee namely Komalchand Ravte facing similar allegations was imposed with the penalty of stoppage of one annual increment with cumulative effect. The petitioner was subjected to the major penalty of removal from service. No material has been brought on record to explain the markedly different treatment meted out to the petitioner. The petitioner had entered service in the year 2004 and had rendered

more than ten years of service by the time the impugned order came to be passed. There is also nothing placed before this Court to indicate that the petitioner had any previous adverse disciplinary record of such nature.

15. The principle of proportionality in matters relating to disciplinary punishment requires the disciplinary authority to bear in mind the nature and gravity of the misconduct, the surrounding circumstances, the past service record of the employee and the punishment imposed in comparable cases. While the Court ordinarily does not substitute its own view with regard to finding recorded by the disciplinary authority in the matter of punishment, interference is warranted where the punishment is shockingly disproportionate or where relevant considerations have been ignored. In the present case, the issue is not merely one of proportionality of punishment. The more fundamental infirmity lies in the fact that the punishment of removal was imposed without completion of the departmental enquiry in accordance with the mandatory procedure prescribed under Rules 14 and 15. The disparity in punishment between the petitioner and another employee facing substantially similar allegations further reinforces the conclusion that the impugned action cannot be sustained.
16. This Court has also considered the principle laid down in the matter of **Kamlesh Kumar Sen Vs. State of CG and Anr.** in ***W.P.(S) No. 1432 of 2020*** order dated **17.09.2024** in paragraphs 8 to 10 has observed as under:

8. For ready reference, the provision contained Article 311 of Constitution of India is quoted below:-

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State

(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges; Provided

that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed: Provided further that this clause shall not apply--

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

9. From bare reading of Article 311 of Constitution of India, it is crystal clear that it gives safety/ security of the tenure to the Government servant and provides constitutional protection to the persons employed in civil capacity under union and States against Arbitrary dismissal, removal and reduction in rank. The protection can be summarized in the following manner:-

A. against removal or dismissal by an authority subordinate to that by which the employee was appointed and

B. against dismissal, removal or reduction in rank without giving the employee her reasonable opportunity of being heard in an enquiry without complying with the principles of natural justice.

10. Article 311 (2) of Constitution of India talks about an enquiry is required to be conducted before the employee is dismissed or reduced in rank and it should have been given a reasonable opportunity of being heard in respect of the charges which have been informed to him in the enquiry. It also indicates that the employee must be given a reasonable opportunity of being heard in respect of the charges made against him/ her."

17. The respondents initiated disciplinary proceedings against the petitioner, but before the enquiry could be completed, the proceedings were diverted to an entirely different course. No finding of guilt was recorded by the Enquiry Officer in

accordance with the Rules. Neither enquiry report was supplied to the petitioner nor he was afforded opportunity of hearing to represent against any finding of guilt. Nevertheless, the petitioner was visited with the major penalty of removal from service. Such an exercise amounts to bypassing the very procedure which the Rules require the disciplinary authority to follow. Administrative discretion cannot be exercised in disregard of statutory safeguards. The existence of power does not dispense with the obligation to exercise that power in the manner prescribed by law.

18. The petitioner being a civil servant was also entitled to the constitutional protection guaranteed under Article 311(2) of the Constitution of India. A major penalty resulting in removal from service cannot be sustained where the procedure prescribed by law, consistent with the constitutional mandate of Article 311(2), has not been followed. Way back in 1976 ***Nazir Ahmad v. King-Emperor***, 1936 SCC OnLine PC 41 : AIR 1936 PC 253, the Privy Council enunciated the salutary principle that:

“where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all.”

The said principle has repeatedly been approved and applied by the Supreme Court.

19. The principle is founded upon a basic rule of administrative law: where the statute or statutory rules prescribe a particular procedure for exercise of a power, the authority entrusted with that power cannot disregard the prescribed procedure and adopt a different method of achieving the same result. The prescribed safeguards are intended to prevent arbitrary exercise of power and to secure fairness in decision-making.
20. After considering the facts and circumstances of the present case and also perusal of inquiry report, this Court has no hesitation in holding that the respondents could not have initiated a departmental enquiry under Rules 14 and 15 of 1966 and thereafter abandon the procedure prescribed thereunder by resorting to an administrative direction, non-compliance with which was treated as sufficient ground for removal from service. In other words, once the respondents elected to proceed

against the petitioner under the statutory disciplinary mechanism, they were bound to follow that mechanism to its logical conclusion. They could not do indirectly what the Rules did not permit to do directly. The disciplinary jurisdiction could not be exercised on the basis of an *ad hoc* procedure devised during the pendency of the enquiry. Therefore, the action of the respondents, suffers from violation of the statutory procedure, breach of principles of natural justice and non-compliance with the constitutional protection available to the petitioner under Article 311(2) of the Constitution of India, the impugned order of removal is consequently rendered unsustainable in law.

21. For the reasons aforesaid, the order dated 13.03.2015 (Annexure P/1) whereby the petitioner was removed from service and the appellate order dated 13.10.2015 (Annexure P/2) passed by the Collector, cannot be sustained and are hereby set aside. The respondents are directed to reinstate the petitioner in service with continuity of service and all consequential benefits, in accordance with law.

22. The writ petition is accordingly **allowed**. There shall be no order as to costs.

Sd/-

(Sachin Singh Rajput)

JUDGE

H. Ansari

HIFZURRAHMAN
ANSARI

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HIFZURRAHMAN
ANSARI
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