

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 4761 of 2007**

Ajit Kumar Gupta aged 48 years, son of Shri Krishna Kumar Gupta, Fishery Inspector, Narayanpur (Bastar) Chhattisgarh.

---- **Petitioner****Versus**

1. The State Government of Chhattisgarh, Through the Secretary, Krishi Sahkarita Matsodyog, DKS Bhawan, Raipur, Chhattisgarh.
2. The Director of Matsyodyog, Telibandha, Raipur, Chhattisgarh.

---- **Respondent**

For Petitioner	:	None.
For Respondent/State	:	Shri Vivek Sharma, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice**Order on Board****09/10/2015**

1. This writ petition is pending since the year 2007 questioning the punishment of censure and denial of salary for the period of suspension imposed pursuant to a departmental proceeding.

2. There is no representation on behalf of Petitioner. Considering that it is an old matter, the Court has taken up the writ application for consideration with the assistance of the State Counsel.

3. Two charges were framed against the Petitioner for (a) failing to have joined at the transferred place of posting from Durg to Narayanpur, and (b) bringing undue political influence with regard to the transfer. By enquiry report dated 9.9.2004, both the charges were held not to have been proved. The Disciplinary Authority did not agree with the Enquiry Officer and on 4.12.2004, directed him to re-examine the evidence with regard to charge No. 1 and submit a fresh report. This led to a fresh enquiry report dated 1.5.2005 holding

that the defence was tenable for a part of the period of non-joining only.

4. The writ petition asserts that no second show cause notice for difference of opinion with the enquiry report dated 9.9.2004 was given to the Petitioner. The communication of the Disciplinary Authority to the Enquiry Officer on 4.12.2004 also does not make any statement to that effect and neither is a copy of the same marked to the Petitioner.

5. If the enquiry report dated 9.9.2004 was not acceptable to the Disciplinary Authority, the proper procedure to be followed was to give a second show cause notice to the Petitioner for a difference of opinion with the enquiry report after which the Disciplinary Authority could have proceeded to pass final order. It is not a case where the Petitioner did not participate in the first enquiry or no evidence was led on behalf of the prosecution. The Disciplinary Authority was not satisfied with the fact that the Enquiry Officer had exonerated the Petitioner. He therefore directed the Enquiry Officer to submit a fresh report on the same materials, quite obviously requiring a report to his satisfaction. This is clearly unsustainable in law.

6. In AIR 1971 SC 1447 (K.R.Deb v. Collector of Central Excise, Shillong) it was observed as follows:

"13. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reasons, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusions under rule 9."

7. Similarly, in (2002) 10 SCC 471 (Union of India v. K.D.Pandey) it was observed as follows:

5....Indeed this resulted in second inquiry and not in a further inquiry on the same set of charges and the material on record. If this process is allowed the inquiries can go on perpetually until the view of the inquiry authority is in accord with that of the disciplinary authority and it would be abuse of the process of law..."

8. The order of punishment dated 5.5.2005 is therefore held to be not sustainable. It is set aside. The Petitioner is entitled to full salary for the period of suspension also.

9. The writ petition is allowed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE