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HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1530 of 2013

- Devendra Singh Kashyap S/o Late Kailash Singh Kashyap, Occupation : Service, Age 51 yrs., Posted As Coordinator, (Technical), MGNREGA Zila Panchayat, Bilaspur, R/o Opp. Dr. Luthra Hospital Chhadawadi, Ward No.3, Bilaspur, PS Civil Lines, Bilaspur, Civil & Revenue District Bilaspur, (CG) PIN: 495001

---- Petitioner

Versus

1. The State Of Chhattisgarh Through Secretary, Panchayat & Rural Development Department, Mantralaya, DKS Bhawan, Raipur, District Raipur, (CG) 492001
2. The Collector District Collectrate, Bilaspur, District Bilaspur, 495001
3. The Executive Engineer Rural Engineering Services, Bilaspur, District Bilaspur, 495001
4. The Disciplinary Authority Through District Office At Bilaspur, District Bilaspur, 495001

---- Respondent

For Petitioner : Shri Amiyakant Tiwari, Advocate.
For Respondents : Shri Sangharsh Pandey, Deputy Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

01/10/2015

1. This writ petition under Article 226 of the Constitution of India has been preferred for quashment of the show cause notice dated 24.11.97 (Annexure-P/2) and the subsequent order dated 10.8.1998 (Annexure-

P/1) by which the Collector (Development Branch) Bilaspur has constituted a departmental enquiry against the petitioner in terms of Rule 14 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966.

2. At the relevant time, the petitioner was posted as Sub Engineer, RES, Block Masturi. On allegation that he did not value the construction work properly, a show cause notice was issued to him on 24.11.97 vide Annexure-P/2 and thereafter charge sheet was issued on 18.3.1998.
3. The order Annexure-P/1 by which enquiry has been constituted records that when the charge sheet was issued to the petitioner on 18.3.98, the petitioner did not submit any reply, therefore, departmental enquiry is constituted, although, according to the petitioner, he had submitted reply to the show cause notice Annexure-P/2.
4. Learned counsel for the petitioner would submit that enquiry for which show cause notice was issued in November, 1997 and charge sheet was issued in March, 1998 and thereafter departmental enquiry was constituted in August, 1998, has not yet been concluded and in the meanwhile, the petitioner is suffering loss of promotion. Placing reliance on the judgment rendered by this Court in the matter of **Kaleshwar Singh Rajput Vs. The State of Chhattisgarh and others** {WP No.6534/2005, decided on 9.2.2012}, learned counsel would submit that when the enquiry remains pending for indefinite period

without there being any fault on the part of the delinquent, the same deserves to be quashed.

5. Learned State counsel would draw attention of the Court to the memo issued from the office of District Panchayat (Development Branch), Bilaspur on 5.9.2001 addressed to the Commissioner, Bilaspur Division mentioning that charges against the petitioner have been found proved and the record of the enquiry is sent to the Commissioner, Bilaspur Division for imposing major penalty on the petitioner.
6. In course of hearing on 22.6.2015, this Court directed the respondents to produce the entire record of the pending enquiry proceeding against the petitioner. When the record was not produced, this Court directed the Collector, Bilaspur either to produce the record or submit affidavit with respect to whereabouts of record of departmental enquiry proceeding. The affidavit filed by the Collector, Bilaspur on 4.7.2015 mentions the following in paras-6 to 9:-

“6. It is most respectfully submitted that sincere efforts have been made to trace the records with respect to the records of the enquiry and recommendations but unfortunately the same could not be found, however, again a 3 members team has been constituted by the Deputy Commissioner, Bilaspur Division, Bilaspur vide order dated 30/06/2015 to find out the records. The copy of the order dated 30/06/2015 is annexed as **Annexure-D-1**.

7. Similarly, Chief Executive Officer, Zila Panchayat, Bilaspur has also constituted team to trace the records with respect to the petitioner, copy of which is annexed as **Annexure-D-2**.

8. It is further submitted that deponent has also instructed all the Offices and its subordinate officials to find out or trace the record in respect to the petitioner and has further requested the Commissioner, Bilaspur Division, Bilaspur to make every efforts to find out the record. Copy of the communication dated 01/07/2015 is annexed as **Annexure-D-3** collectively.

9. It is most respectfully submitted that serious efforts have been made and are still undergoing to trace the record and the deponent assures the Court that as soon as the records are traced the same will produced before this Hon'ble Court for its kind perusal.”

7. Another application for taking document on record supported with affidavit of Officer-in-Charge has been filed mentioning the following in para-6 to 9:-

“6. It is respectfully submitted that the Collector, Bilaspur through various communications dated 01/07/2015 has instructed all the officers and its subordinate officials to find out or trace the record in respect to the petitioner. Copy of which has already been annexed in the affidavit as Annexure D/3. It is respectfully submitted that in compliance of the direction/instruction given by the Collector vide letter dated 01/07/2015 the officers and the team constituted thereby have responded with respect to the status of the record. It is respectfully submitted that vide letter dated 24/07/2015 Office of the Commissioner Bilaspur Division, Bilaspur has informed to the Collector, Bilaspur (C.G.) that the records of the departmental enquiry could not be found or traced even after making all the efforts. A copy of letter dated 24/07/2015 is being filed herewith as **ANNEXURE R/6**.

7. It is further submitted that vide letter dated 10/07/2015 the Executive Engineer, Rural Engineering Services, Division Bilaspur has also informed that the team has made all the efforts to search the record relating to departmental enquiry of the petitioner. However, after making all the efforts to search out the records the records could not be traced. Copy of letter dated 10/07/2015 is annexed herewith as **ANNEXURE**

R/7.

8. It is respectfully submitted that vide letter dated 03/07/2015 and a certificate dated 13/07/2015 it has been stated that the records of the pending departmental enquiry against the petitioner was searched in the Office of Departmental Enquiry Section, District Office, Bilaspur, however, no records or document relating to the departmental enquiry of the petitioner can be found. Copy of certificate dated 13/07/2015 alongwith communication dated 03/07/2015 is being collectively filed herewith as **ANNEXURE R/8.** It is respectfully submitted that vide letter dated 15/09/2015, the Chief Executive Officer, Zila Panchayat, Bilaspur has also informed to the Collector, Bilaspur (C.G.) that the records of the departmental enquiry against the petitioner could not be traced. Copy of letter dated 15/09/2015 is annexed herewith as **ANNEXURE R/9.**

9. It is respectfully submitted that it appears from perusal of the above mentioned documents that sincere efforts have been made by the answering respondents as well as by the Collector, Bilaspur to trace the records of the departmental enquiry against the petitioner at all levels. Unfortunately, in spite of all the efforts made by the answering respondents the records relating to departmental enquiry against the petitioner could not be traced.”

8. Since the record was not traceable and the enquiry proceeding is pending for the last about 17 years, this Court on 15.9.2015 directed the State counsel to seek instructions from the competent authority about disposal of the enquiry proceeding against the petitioner. The application dated 23.9.2015 has been filed in compliance of this order.

9. In **Kaleshwar Singh Rajput**, referred to above, this Court relying on judgment of the Supreme Court in **State of Andhra Pradesh Vs. N. Radhakishan**, {AIR 1998 SC 1833} as also the judgment of this Court in **S.K. Tigga Vs. State of CG & Others** {2008 (3) CGLJ 267} held as

under:-

“(13). The pending enquiry is in violation of petitioner's right to claim annual increment and to be considered for promotion to the next higher post. It is also to be kept in mind that had the charges been so serious, the petitioner would not have been reinstated in services within a period of less than three months. In the absence of any reply having been submitted by the State, there is no material available before this court from which it can be deduced that the enquiry proceedings have been delayed because of petitioner's non-cooperation or delaying tactics adopted by him.”

10. In the case at hand, the enquiry is almost complete as would be reflected from the document Annexure-R/1 and only final order was to be passed by the competent authority i.e. the Commissioner, Bilaspur Revenue Division. However, the order could not be passed by the said officer on account of the fact that after creation of the State of Chhattisgarh with effect from 1.11.2000 the office of Commissioner was abolished, which was later on reconstituted sometimes in the year 2004-05. During the period when the office remained abolished, the records were not properly kept.

11. However, since the respondents have stated on affidavit that efforts are still going on to trace the records, the writ petition is disposed of in the following terms:-

- (i) The competent authority who is empowered to pass final order in the enquiry proceeding against the petitioner shall pass appropriate final order within a period of 3 months from today.

(ii) In view of the judgment rendered by this Court in Kaleshwar Singh Rajput, referred to above, if the respondents fail to pass final order within the aforestated period of 3 months, the enquiry proceeding against the petitioner shall stand quashed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve