

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.4354 of 2010**

Agamdas Manikpuri S/o Churamani Das Kabir, R/o Idgah Bhatha, Gali No.8,
Behind Vivekanand Ashram, Raipur, Distt.-Raipur (Cg)

---- Petitioner**Versus**

1. State Of Chhattisgarh through the Secretary, Department of Home Affairs, DKS Bhawan, Mantralaya, Raipur (C.G.)
2. Director General, Department Of Jail, Govt. Of Chhattisgarh, Raipur (CG)
3. Superintendent Central Jail, Raipur (CG)
4. Investigation Officer/sub-Jailer Central Jail, Raipur (Cg)

---- Respondent

For Petitioner	:	Shri Rajkamal Singh, Advocate
For Respondent/State	:	Shri S. P. Kale, Dy.A.G.

Order On Board**01/09/2015**

This petition is directed against order dated 18-05-2010 dismissing petitioner's departmental appeal and order dated 03-04-2010 passed by the respondent No.3-disciplinary authority, by which, a major penalty of dismissal from service has been imposed.

2. For the purpose of decision of the present case, quintessential facts necessary are stated infra.

3. During the period, the petitioner was posted as Jail Warder (Prahari) in Central Jail, Raipur, charge sheet was issued on 11-11-2009 (Annexure P-7) leveling as many as 10 charges of alleged misconduct along with the list of witnesses and documents. The petitioner filed his reply dated 25-11-2009 (Annexure P-8) and denied all the charges. Thereafter, the Enquiry Officer and Presenting Officer were

appointed, enquiry was held, evidence was recorded and after that, enquiry report was prepared on 15-03-2010 by the Enquiry Officer-cum-Deputy Jailor, Central Jail, Raipur. In the enquiry report, except charge No.6, 7 & 9, all other charges were found proved. A copy of the enquiry report along with notice to submit his reply/return submission was given to the petitioner and the petitioner submitted his reply. Thereafter, the disciplinary authority/respondent No.3 issued impugned order holding 7 out of 10 charges were found proved against the petitioner and imposed major penalty of dismissal from service vide impugned order dated 03-04-2010 (Annexure P-2). Aggrieved by the said order, the petitioner preferred an appeal before the appellate authority. The appellate authority, however, dismissed the appeal affirming the order of the penalty.

4. Assailing the correctness and validity of the impugned order, learned counsel for the petitioner argued that the charges of misconduct against the petitioner are not made out. He submits that as far as charge No.1 & 2 relating to purchase of vehicle is concerned, none of the provisions contained in Chhattisgarh Civil Services (Conduct) Rules, 1965 (In short "the Rules of 1965"), obliged him to obtain prior permission.

As far as charge No.3 is concerned, there is absolutely no material to record finding as to how the petitioner, while posted as Prahari played any role in the selection process, in which, the petitioner's brother had participated. The petitioner was not a member of the Selection committee and had nothing to do with the process of selection.

With regard to charge No.4, it is submitted that even if the allegations that the petitioner had withdrawn Rs.50,000/- from his G.P.F. Account for a particular stated purpose, but it was utilized for another purpose, is accepted as it is, does not make out a case of gross misconduct by itself so as to warrant imposition of any of the major penalties specified in Rule 10 of the C.G. Civil Services (Classification, Control and Appeal) Rules, 1966 (In short "the Rules of 1966"), read with penalty provided in

Police Regulations.

As far as charge No.5 is concerned, the same is not made out because the loan applications were forwarded by the Jail Superintendent himself.

As far as charge No.8 is concerned, mere appointment of the petitioner as Returning Officer in the matter of election of office bearer of Co-operative Housing Society of Police Personnel, did not require any specific information to be given to authority because there is no such requirement under Rule 16 of the Rules of 1965, moreover it being a co-operative society of police personnel.

As far as Charge No.10 of obtaining loan from brother is concerned, allegation that the information of that loan was not given to the higher authority is not the requirement of the Rules of 1965. Therefore, the impugned order of dismissal from service is highly illegal, arbitrary and unsustainable in law.

5. On the other hand, learned State counsel opposes the prayer and submits that the petitioner was required to obtain permission before purchase of automobile as required under Rule 19 of the Rules of 1965. Therefore, charge No.1 & 2 are clearly made out.

As far as charge No.3 is concerned, it is submitted that the petitioner was a member of disciplined force, therefore, he should have informed the authority that he cannot be posted in Central Jail at Durg, because, in that Central Jail, process of appointment on the post of Prahari was initiated. Had this been fact was informed by the petitioner, he would have posted elsewhere. This was an act unbecoming of a government servant.

As far as reply to charge No.4 is concerned, the petitioner could not satisfy as to why he diverted the purpose, for which, loan was obtained from his GPF account. This was, therefore, an act of unbecoming of a government servant.

In respect of charge No.5, the petitioner is not entitled to say that as his loan application was forwarded by the Jail Superintendent, separate information was not required to be submitted.

The petitioner did not inform the Jail Superintendent that he was appointed as Returning Officer in the matter of election of housing society of the Police Personnel. The discharge of duties and function as prescribed authority/Returning Officer in the election of housing Society was clearly in conflict with his duties as Prahari. Therefore, the petitioner ought to have informed this fact.

It is lastly submitted that the petitioner obtained loan of Rs.1,50,000/- from his brother, but no such information was given by the petitioner to the competent authority, which was required in view of the provision contained in Rule 17 and Government Circular dated contained in page 14 of the General Book Circular Page S.No.9.

6. Undoubtedly, the petitioner was a government servant and in that capacity, he is bound by the provisions contained in Rules of 1965. Therefore, charges are related to petitioner's alleged act which required to be examined in the light of the provisions contained in the Rules of 1965 applicable to a government servant.

7. Charges No.1 & 2 are related to purchase of vehicle and the allegations is that the petitioner purchased the vehicle without the permission of the Jail Superintendent. Neither in the charge sheet nor in the enquiry report or in the final order, any particular provision has been referred to, which required the petitioner to obtain prior permission before purchasing vehicle. Reliance placed by the learned State counsel on the provision contained in Rule 19 of the Rules of 1965, is misplaced on the facts of the case.

8. Admittedly, it is a case relating to purchase of movable property. In such a situation, provision of Rule 19(3) are applicable which require a government servant

to report to the prescribed authority, every transaction entered into by him either in his own name or in the name of a member of his family in respect of movable property, if the value of such property exceeds Rs.10,000/- in case of a government servant holding any Class-I & Class-II post or Rs.5,000/- in the case of government servant holding any Class III or Class IV post. Proviso to the aforesaid Rule states that previous sanction of the prescribed authority shall be obtained by the government servant, if any, such transaction is with a person having official dealings with him.

9. Rational, logical and fair reading of the aforesaid provision requires previous sanction only when the government servant had transaction with a person with whom he had official dealings. In the present case, it is not alleged that the petitioner entered into the transaction of sale with a person with whom he had official dealings. In charge No.1 & 2, there is no whisper to this effect. It is not the allegation in the charge sheet that the petitioner did not give intimation of such purchase as required under sub Rule(3) of Rule 19 of the Rules of 1965.

10. Reliance placed on the government instructions in General Book Circular is also not acceptable. The instructions (published in the book C.G. Civil Services (Conduct) Rules by N. H. Siddiqui by Suvidha Law House, 2006, 8th Edition) are only meant to fill gap in the Rules. The requirement of submitting application in prescribed Form (III) is referable and applicable only in those cases where the rule requires seeking prior permission. This executive instruction cannot be applied to mean that in every cases, permission would be necessary as this would amount to general requirement of seeking permission in respect of each and every transaction. Requirement of Rule 19(3) is only of intimation with an exception that where the government servant had an official dealing with a person, then in such a case, transaction with such person would require prior permission and nothing more.

11. In view of above analysis, this Court comes to the conclusion that as far as charge No.1 & 2 are concerned, they are not made out.

12. As far as charge No.3 is concerned, there is hardly any material led by the prosecution during enquiry to show that the posting of the petitioner in District Jail, Durg, could be made a basis to take any disciplinary action against the petitioner. The petitioner is only a Prahari (Constable). He was not a member of the Selection Committee. There is no material to show that during his posting, the petitioner made any effort to influence the members of the selection committee or did any other act so as to say that he extended undue benefit and advantage to his brother, who was a candidate in the matter of selection of Prahari. There is no provision in the Rules of 1965 or any other guidelines or instructions brought on record of the enquiry nor reflected from the enquiry report or order of penalty that the petitioner was under duty to inform the authorities to change his posting on the ground that his brother was participating in the process of selection as a candidate to the post of Prahari. Therefore, this charge is also not made out.

13. As far as Charge No.4 is concerned, it is found that the petitioner failed to prove that he utilized Part-final loan taken from his G.P.F., for the purpose for which, he was granted loan. In fact, the petitioner had only given evasive answer. It is, therefore, quite apparent that the petitioner utilized the loan from G.P.F. Amount other than the purpose, for which, it was taken. Hence, the charge No.4 is proved against the petitioner.

14. In so far as charge No.5 is concerned, the allegation that the petitioner suppressed the fact of obtaining loan from the State Bank of India, Branch Raipur, from his head of the office, is not at all made out. The reply of the petitioner and material on record would show that for the purpose of obtaining loan, Form No.16 was issued to the petitioner, in which, the petitioner applied for loan and the loan form was duly sealed and signed by the office head. This would thus clearly show that it was fully within the notice and knowledge of the head of the office while forwarding the loan application of the petitioner. Not a single instance could be brought on record by the respondent that any particular loan was obtained without loan application being

forwarded by the office head in the Form No.16. This charge is, therefore, not made out and finding in this regard are perverse and contrary to records.

15. Charge No.6, 7 & 9 have not been proved against the petitioner.

16. Charge No.8 that the petitioner was appointed as Prescribed Authority in the matter of conduct of election of housing society, by itself, does not make out a case of misconduct.

As per sub rule(1) of Rule 16 of the Rules of 1965, no government servant shall except with the previous sanction of the government, engage himself/herself directly or indirectly in any business or trade or undertake any other employment.

Proviso to sub rule(3) of Rule 16 of the Rules of 1965 makes it clear that the government servant may take part in registration, promotion or management of Co-operative society substantially for the benefit of the government servants, registered under the Madhya Pradesh Co-operative Societies Act, 1960 or any other law for the time being in force or of a literary, scientific or charitable society registered under the Madhya Pradesh Society Registration Act, 1959 or any other corresponding law in force. The society, as record shows, was meant for the benefit of the officers and employees of the police department and number of officers including Director General (Prison), Superintendent of Central Jail, Raipur, were members. Moreover, there is nothing on record to show that the petitioner's engagement as prescribed authority of the society, came in conflict with the discharge of duties and functions of a government servant. Therefore, only on the ground that the petitioner was made prescribed authority in the matter of conduct of elections of the managing body of the Co-operative society, by itself, without anything more, does not per se, constitute misconduct.

17. As far as Charge No.10 is concerned, the allegation is also not made out. It has been alleged that the petitioner obtained loan of Rs.1,50,000/- from his brother,

which was not informed to the competent authority/Jail Superintendent. It is alleged that such an act constitutes misconduct.

Investment, lending and borrowing are governed by the provisions contained in Rule 17 of the Rules of 1965. Provisions contained in sub rule(4) of Rule 17 make it clear that borrowing money from a private person may be misconduct where the government servant is likely to have official dealings with the borrower or trader or he is likely to place himself under any pecuniary obligation with such person. In the present case, the petitioner obtained loan from his brother. It has not been demonstrated as to how the petitioner was likely to have official dealings or otherwise place himself under any pecuniary obligation to his brother. Therefore, this charge is also not made out.

18. Thus, in view of above discussion, with respect to each charge, which have been found proved, on the basis of which, taking cumulative view, extreme penalty of dismissal from service, has been imposed, except charge No.4, no other charge is made out against the petitioner. These acts also cannot be termed as acts otherwise unbecoming of a government servant. The disciplinary authority as well as appellate authority, committed serious illegality in imposing such extreme penalty of dismissal from service on the petitioner.

19. In the result, order passed by the appellate authority in appeal as well as impugned order passed by the disciplinary authority, both are declared illegal. The petitioner is directed to be reinstated in service. The petitioner shall be entitled to all consequential benefits of seniority and continuity in service but as far as the period during which the petitioner remained out of employment, an enquiry shall be conducted by the disciplinary authority as to whether the petitioner was gainfully employed during the period he was out of employment. In case, it is found that the petitioner was gainfully employed, he would be entitled to backwages being the difference of the wages he would have drawn and the wages which he actually

earned through some other employment during the period of dismissal. If it is found that the petitioner was not gainfully employed, the respondents shall pay full back wages to the petitioner.

In so far as charge No.4 is concerned, as that charge is found proved against the petitioner, the respondent authority shall be at liberty to impose any minor penalty on the petitioner.

20. The petition is accordingly partly allowed in the manner and to the extent indicated above.

Sd/-
Manindra Mohan Shrivastava
Judge