

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2688 of 2015**

Suniti Kumar Chatterjee S/o Shri Sudhir Kumar Chatterjee, Aged about 66 years, R/o Rly. Qtr. No. 150/4, WRS Colony, Type III P.O. WRS Colony, Raipur (C.G.) Presently residing at Kashi Kutir Sahu Para Khamtarai Raipur, Chhattisgarh.

---- Petitioner**Versus**

1. Union of India, Through the General Manager, South East Central Railway, Bilaspur, Chhattisgarh.
2. Chief Works Engineer, Now Chief Mechanical Engineer, South East Central Railway, Bilaspur Chhattisgarh.
3. Chief Works Manager, WRS South East Central Railway, Raipur, Chhattisgarh.
4. Works Manager, WRS South East Central Railway, Raipur, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Sudhir Bajpai, Advocate.
For Respondents	:	Shri Abhishek Sinha, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Order on Board**Per Navin Sinha, Chief Justice****03/08/2015**

1. The present writ petition assails order dated 13.8.2014 passed by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting, Bilaspur, in Original Application No. 488 of 2008. The Tribunal declined to interfere with the order for removal from service dated 16.12.1994 with effect from 19.12.1994.
2. Learned Counsel for the Petitioner submitted that the earlier order for removal dated 10.8.1994 was found to be vitiated because the Works

Manager was not competent to issue the same. Therefore, by the same reasoning, the memo of charges issued to the Petitioner also stood vitiated for lack of jurisdiction in the Works Manager to do so. It was next submitted that after the order dated 10.8.1994 was set aside for lack of jurisdiction and the matter was then placed before the Chief Works Manager, before passing the impugned order for removal, the Chief Works Manager never gave a second opportunity of hearing to enable the Petitioner to convince the Disciplinary Authority that on the enquiry report dismissal was not justified or that he may have been entitled to lesser punishment. If the Petitioner has been deprived of that valuable opportunity, the subsequent order by the Chief Works Manager, though within jurisdiction, nonetheless, stands disqualified on that ground. It was lastly submitted that departmental proceedings was not held in accordance with law. Merely because the Petitioner may have admitted the charge, merely by reference to documentary evidence a conclusion of guilt was arrived at without independent application of mind and evaluation of evidence as also proving of the charges by prosecution witnesses.

3. Learned Counsel for the Respondents opposing the writ application submitted that no reply was filed to the memo of charges and no objection was taken for lack of jurisdiction in the Works Manager to issue the charge sheet. This question has also been considered by the appellate authority holding that the Works Manager was competent to issue the charge sheet. The Petitioner has not been able to demonstrate any prejudice caused to him because of the charge sheet having been issued by the Works Manager. If the Petitioner admitted the charge with regard to withdrawals in respect of 48 employees of festival advance and unsanctioned leave salary contrary to the rules, nothing remained to be proved, as in a departmental proceeding charges have to be proved on preponderance of probabilities only.

4. We have considered the submissions on behalf of the parties.

5. The charges against the Petitioner were serious with regard to

fraudulent withdrawal by manipulation of Rs. 1,37,800/- towards festival advance and of Rs. 2,51,251.99 towards unsanctioned leave salary with regard to 48 staff spread over the period from June, 1998 to September, 1991. The memo of charges were issued by the Works Manager. The Petitioner did not file any reply to the charges. Nothing prevented him from filing his reply to the memo of charges including taking of the objection that it was without jurisdiction. On the contrary, he participated in the departmental proceedings without protest. The objection, if any, in that regard stood waived by him. Additionally, nothing has been demonstrated on behalf of the Petitioner as to what prejudice was caused to him because the charge sheet may have been issued by the Works Manager. It is not every irregularity in a departmental proceeding which will vitiate an order of punishment. The Courts are required to be circumspect and not to strike down an order of punishment on the slightest of errors. Prejudice to the government servant by the alleged error has to be demonstrated vitiating the order of punishment.

6. In a departmental proceeding, charges are to be proved on preponderance of probabilities. If the charge was with regard to manipulation of records and payments made to ineligible persons, documents had to be the primary evidence so long as Petitioner did not dispute the contents of the documents. Moreover, once the Petitioner admitted the charge, there was nothing left to be proved. Reference may be made to Section 58 of the Evidence Act and (1971) 1 SCC 1 (Channabasappa Basappa Happali v. State of Mysore) that admitted facts need not be proved. A departmental proceeding is not a criminal trial where the onus rests on the prosecution to prove the charges beyond all reasonable doubts. The useless formality theory therefore applies in the facts of the case.

7. The last submission that the Petitioner was not heard before the Chief Works Manager who passed the fresh order on 16.12.1994 also merits no consideration once the charges stood admitted. Moreover, we find from the

order of the Tribunal that the order dated 16.12.1994 was never placed on record before it. It is not appropriate for any Court or Tribunal to interfere with an order which has not been brought on record before it though it may have been challenged. The reason and purpose is salutary. Unless the Court has an opportunity to apply its mind first as to what is written in the order, the question of the Court either striking down the order or upholding the order becomes academic and it will not be safe to decide a lis on academic presumptions.

8. In conclusion, we find no reason to interfere with the order under challenge. The writ petition is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE