

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Appeal No. 509 of 2015**

K.P. Dewangan S/o Shri K.R. Dewangan, Aged About 43 Years Ex Joint Collector, District Jashpur Chhattisgarh

**---- Appellant****Versus**

1. State Of Chhattisgarh Through The Secretary, General Administration Department, Mantralaya, Mahandi Bhawan, Naya Raipur, District Raipur Chhattisgarh
2. Principal Secretary, Panchayat & Social Welfare Department, Mantralaya, Mahanadi Bhawan, Naya Riapur, District Raipur Chhattisgarh
3. Sudhir Agrawal, Enquiry Officer And The Then Special Secretary, Panchayat And Social Welfare Department Presently Posted As Chief Executive Officer, P.M.G.S.Y, Vikas Bhawan Raipur Chhattisgarh

**---- Respondents**


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| For Appellant:         | Shri Anup Mazumdar, Advocate.       |
| For Respondents/State: | Shri UNS. Deo, Government Advocate. |

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**Hon'ble The Chief Justice**  
**Hon'ble Shri Justice P. Sam Koshy**  
**Order On Board**

**Per Navin Sinha, Chief Justice**

**16/12/2015**

1. The present appeal arises from order dated 20.8.2015 disposing Writ Petition (S) No.6095 of 2014. The Learned Single Judge declined to entertain challenge to termination from service dated 27.10.2014 on the ground that it was amenable to appeal under Rule 23 of the Chhattisgarh Civil Services (Classification, Control and Appeal), Rules 1966 (hereinafter referred to as 'the Rules') leaving it open for the Appellant to pursue the appellate remedy.

2. Learned Counsel for the Appellant submitted that the impugned order of termination relies upon consultation and the advice tendered by the Chhattisgarh Public Service Commission (hereinafter referred to as 'the

Commission') under Article 320 (3) (c) of the Constitution. Originally the authorities had proposed punishment for stoppage of three increments with cumulative effect for one year. Relying on Rule 32 it was submitted that it was mandatory for the Respondents to provide him a copy of the Commission's recommendation with an opportunity to persuade the authorities not to impose the extreme punishment of termination. In absence of this procedure having been followed the Appellant has been denied the opportunity to defend himself causing him serious prejudice. It is further submitted that the administrative circulars dated 13.8.1963, 17.6.1965 and reiterated on 20.9.1965 requiring compliance with the Rules have also been ignored. The Appellant had specifically asserted in para 8.11 of the Writ Petition that the copy of the recommendation of the Commission was not provided to him with opportunity of defence. The counter affidavit in reply to it at paragraph-17 avers that there was no such requirement under the Rules. A contention was also raised that persons similarly situated and proceeded with on like grounds have been exonerated thus displaying non-compliance with Rules 14(17) , (18) and 18 in the departmental proceedings.

3. Learned Counsel for the State submits that in the departmental proceedings, full opportunity of defence had been provided. Some charges were held proved, others partially proved and some were held not to have been proved. This fact alone is sufficient to demonstrate fairness in the departmental inquiry. There has been no procedural infirmity in the departmental proceedings. Second show cause notice for the proposed punishment was also given. Merely because copy of the recommendation of the Commission may not have been given, will not vitiate the punishment as it cannot be said that the Appellant has been prejudiced in any manner.

4. We have considered the submissions on behalf of the parties and are satisfied that the order of termination in its present form is not sustainable. It

is evident that the Department had originally proposed imposition of punishment by stopping three increments with cumulative effect for one year. Based on the consultation with the Commission, it was enhanced to termination. Apparently the mind of the State Government was persuaded and swayed by the opinion of the Commission. If a lesser punishment was proposed by the State authorities and the Commission recommended a higher punishment, we are of the considered opinion that an opportunity had to be furnished to the Appellant for satisfying the State authorities not to impose the higher punishment. In the absence of such an opportunity having been provided prejudice to the Appellant is writ large and does not need elaborate discussion. The question is not if the State authorities would have accepted his defence not to impose the higher punishment, but the opportunity to do so, irrespective of the final conclusion that may have been arrived at.

5. Had the Commission recommended a lesser punishment and the State authorities would then have opined a higher punishment, the considerations would have been entirely different.

6. The view taken by us finds support from Rule 32 which reads as follows:-

“32. Supply of copy of commission's advice.- Whenever the Commission is consulted as provided in these rules, a copy of the advice by the Commission, and where such advice had not been accepted also a brief statement of the reasons for such non-acceptance, shall be furnished to the Government servant concerned alongwith a copy of the order passed in the case, by the authority making the order.”

The pleadings in paragraph-17 of the counter affidavit ignoring Rule 32 are therefore completely erroneous and unsustainable.

7. If consultation was held with the Commission and the recommendation of the Commission is adhered to by the Government to the prejudice of the

employee, furnishing of a copy of the recommendation with opportunity of defence by supply of a copy of the recommendation before punishment was considered in (2014) 7 SCC 340 (Union of India v. R.P Singh) observing as follows :-

“12..... The said decision in *S.N. Narula case* is an authority for the proposition that the advice of UPSC, if sought and accepted, the same, regard being had to the principles of natural justice, is to be communicated before imposition of punishment.

13.....After so stating the two-Judge Bench opined that when the disciplinary authority does not rely on the report of UPSC then it is not necessary to supply the same to the employee concerned. However, when it is relied upon then the copy of the same may be supplied in advance to the employee concerned, otherwise, there would be violation of the principles of natural justice. To arrive at the said conclusion, reliance was placed upon the decision in *S.N. Narula case*.”

8. The order of punishment dated 27.10.2014 is set aside and the matter is remanded to the State authorities to proceed afresh from the stage that they referred the matter to the Public Service Commission for consultation and taking a fresh decision in accordance with law after compliance with Rule-32.

9. In view of the discussion and the express non-compliance with a statutory provision, the availability of an alternate remedy of appeal becomes irrelevant.

10. The appeal is allowed.

Sd/-  
(Navin Sinha)  
**CHIEF JUSTICE**

Sd/-  
(P. Sam Koshy)  
**JUDGE**