

(1)
C.F. 100

Division Bench

IN THE HON'BLE HIGH COURT OF CHHATTISGARH

AT BILASPUR

Writ Appeal No. 967 / 2012

APPELLANT
PETITIONER

.R.No. WA 967/12
Presented by Shri M. Gaddigui
dated 8.8.12

: Arvind Kumar Pandey
Aged about 45 years,
S/o Rajiv Lochan
R/o Village & Post- Khadgwan
District- Korba (C.G.)

VERSUS

RESPONDENTS

1. State of Chhattisgarh,
Through Secretary,
Home Department,
D.K.S. Bhawan, Mantralaya,
Raipur (C.G.).
2. Director General of Police
Police Mukhalaya Chhattisgarh
Raipur (C.G.).
3. Commandant
VII Battalion
Chhattisgarh Arms Police
33B, Bhiali (C.G.)



Handwritten signature

2

WRIT APPEAL UNDER SECTION 2 OF SUB - SECTION
(1) OF THE CHHATTISGARH HIGH COURT (APPEAL TO
DIVISION BENCH) ACT, 2006.



AFR

(53)

HIGH COURT OF CHHATTISGARH, BILASPUR

**DB: HON'BLE SHRI NAVIN SINHA, ACTING C.J. &
HON'BLE SHRI P. SAM KOSHY, J.**

Writ Appeal No. 967 of 2012

APPELLANT

Arvind Kumar Pandey

Versus

RESPONDENTS

State of Chhattisgarh and others

**WRIT APPEAL UNDER SECTION 2 OF SUB-SECTION(1) OF THE
CHHATTISGARH HIGH COURT (APPEAL TO DIVISION BENCH)
ACT, 2006**

Appearance :

Shri Mateen Siddique, Advocate for the Appellant.
Shri B. Gopa Kumar, Dy. Advocate General for the State.

**ORDER
(15.01.2015)**

NAVIN SINHA, ACTING C.J.

1. Heard Learned Counsel for the Appellant and the State.
2. The present appeal arises from order dated 14.12.2011 dismissing Writ Petition No. 980 of 2002. The Learned Single Judge declined to interfere with the order for dismissal of the Appellant from the post of Constable passed by the Disciplinary Authority and affirmed by the Appellate Authority as also by the Director General of Police in a mercy appeal.
3. Learned Counsel for the Appellant submits that once pursuant to



(5)

departmental proceedings an order of punishment had been passed on 16.8.1998 withholding two increments with non-cumulative effect for a period of two years and the Appellant had not questioned the order, the punishment attained finality. If the authority superior to the Disciplinary Authority was not agreeable with the same, he could have issued a second show cause notice for difference of opinion at that stage itself under Rule 29 of the Madhya Pradesh Civil Services (Classification and Control) Rules, 1966 (hereinafter referred to as 'the Rules'). No such action was taken. The successor Commandant had no jurisdiction to reopen and review the order of his predecessor Commandant as the order was not passed by the individual occupant but by the office of the Commandant. If the subsequent order dated 1.2.1999 by the successor Commandant dismissing him from service and that too without a show cause notice with a general observation that his superiors had objected to the nature of punishment, is founded on illegality, the Respondents cannot found a cause of action based on illegality to have passed the subsequent order for dismissal on 28.11.2000, more than two years later.

4. Learned Counsel for the State also relied on Rule 29 to submit that the Deputy Inspector General of Police as the appellate authority could *suo motu* exercise powers to call for the records of any enquiry and review any order. He could confirm, reduce, enhance or set aside the penalty imposed also. The punishment was enhanced by him after

due opportunity to the Appellant. Any irregularity committed by the successor Commandant in ordering the dismissal on 1.2.1999, without a show cause notice stood rectified.

5. We have considered the submissions on behalf of the parties. The Appellant, a Constable, is alleged to have pulled a loaded Rifle on the chest of a colleague threatening to shoot. He was proceeded with departmentally and an order of punishment passed on 16.8.1998 withholding two increments with non-cumulative effect for a period of two years. The Appellant did not challenge this order for punishment which attained finality. The authority superior to the disciplinary authority if he was dissatisfied with the nature of punishment imposed, could easily have differed with the same and proceeded in accordance with law under Rule 29 (1) by giving a show cause notice to the Appellant. No such action was taken.

6. After the Commandant, who had passed the order of punishment was replaced by the successor Commandant, the latter passed an order on 1.2.1999, dismissing the Appellant from service. This order was passed in violation of the principles of natural justice without any show cause notice to the Appellant or having any authority in the law to do so. The order simply states that the higher authorities had objected to the nature of the punishment imposed. No name, much less any designation of the superior authority was mentioned in the order. Nothing prevented the superior authorities from *suo motu* exercise of

review powers with the statutory period of six months under Rule 29. If under the proviso to Rule 29, the superior authority could not have done so without a show cause notice, we fail to understand how the Commandant, who had absolutely no jurisdiction in the matter could have proceeded without a show cause notice, if at all he could do so.

7. The government functions as an entity. Successor officers do not constitute a separate authority. The power is vested in the seat and not in the individual. The present was not purely an administrative order, but was quasi judicial order having consequences for the Appellant. If successor officers are permitted to reopen orders of their predecessors on the same seat, it would lead to complete anarchy rather than the government accordance with the Rule of law. This aspect of the matter we find has not been considered by the Learned Single Judge. We are therefore of the opinion that the order dated 1.2.1999 itself is not sustainable. If the edifice itself collapses of all subsequent actions based on the same leading to the dismissal automatically collapse.

8. Disapproving the same in (1976) 1 SSC 234 (State of Assam and another Vs. J.N. Roy Biswas) it was observed at paragraph 2 as follows:

"2. It is noteworthy that no reasoned findings were recorded. That particular officer retired and his successor wrote to the Joint Secretary to Government

that from the materials of the case the 'delinquent' merited punishment and the proceedings be reopened. This was done and as the *de novo* recording of evidence progressed the respondent moved the High Court under Article 226 for a writ of prohibition as, in his submission, there was no power to reopen a case concluded by exoneration and reinstatement and the illegal vexation of a second enquiry should be arrested. This grievance was held good by the High Court which granted the relief sought."

9. The Deputy Inspector General of Police (hereinafter referred to as 'the D.I.G.') himself opined that the order dated 1.2.1999 was not in accordance with the law and had ordered reinstatement. Thereafter he assumed unto himself jurisdiction wrongly under Rule 29. The only question before him was the correctness of the order dated 1.2.1999. If that order had not been passed there would have been no occasion for him to have assumed jurisdiction in the matter. He was not exercising *suo motu* powers by calling for records against the order of punishment dated 16.8.1998.

10. The D.I.G. assumed jurisdiction in the matter on 23.6.2000 purportedly under Rule 29. The submission that the D.I.G. could exercise *suo motu* powers under Rule 29 leaves us totally unimpressed as even that power was to be exercised within six months from the date of punishment dated 16.8.1998. We are therefore unable to sustain the order of dismissal. All subsequent orders automatically



58

collapse. The Appellant is relegated to the original punishment for stoppage of two increments as ordered.

11. In so far as back wages are concerned we grant liberty to the Appellant to represent before the authorities disclosing his status in the interregnum and the authorities will decide the claim for back wages after an enquiry to their satisfaction. The period in interregnum shall count for all other purposes of service except back wages.

12. The order under appeal is set aside and the appeal is allowed.

Sd/-
Acting Chief Justice

Sd/-
P.Sam Koshy
Judge

Sunita