

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3666 of 2005

Sita Ram Verma, S/o Shri Jilao Ram Verma, Retired Sahayak
Vikas Vistar Adhikari, Vikaskhand-Baikunthpur, Distt. Korla

---- **Petitioner**

Versus

1. State of Madhya Pradesh, Ministry of Panchayat and Vikas
Vibhag Through Secretary, Vallabh Bhawan, Bhopal (MP)
2. State of Chhattisgarh, Ministry of Panchayat Avam Vikas Vibhag,
Through Secretary, D.K.S. Bhawan, G.E. Road, Raipur (C.G.)
3. The Commissioner (Development) Panchayat Avam Gramin
Vikas Vighag, D.K.S. Bhawan.
4. Commissioner (Revenue), Division-Bilaspur
5. Collector, Korla, Distt. Korla

---- **Respondents**

For Petitioner	:	Mr. Sudeep Johri, Advocate
For State/Respondents	:	Mr. Manish Nigam, Panel Lawyer

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

20/10/2016

Heard.

1. By this petition, under Article 226 of the Constitution of India, the petitioner has assailed validity and correctness of order dated 19.06.2000 by which the disciplinary authority has imposed penalty that the petitioner would not be entitled to salary except what has already been paid to him during the period of suspension as subsistence allowance and it shall be treated as penalty.
2. Facts necessary for decision of the controversy involved in the petition are that the petitioner while working as Village Assistant, was proceeded against in a departmental enquiry by placing him on suspension

on 19.08.1985. It simultaneously followed issuance of charge-sheet, on that very day, containing as many as five charges. The petitioner submitted his reply, enquiry officer was appointed and the enquiry proceeded against the petitioner. In the meantime, in respect of the allegations constituting charge No.4, a criminal case was also registered against the petitioner on the allegation of having committed offences under Section 409, 420, 468 read with Section 120(B) IPC. The criminal charge and the misconduct alleged under Charge No.4 was that the petitioner facilitated a fraud played upon the Bank in getting an application of loan in the name of certain villagers sanctioned for purchase of cattle which was actually not purchased. While the criminal case proceeded with snail's pace, the enquiry proceedings were expeditiously concluded and the Enquiry officer submitted enquiry report to the disciplinary authority in the year 1986 itself. Undisputedly, the enquiry officer exonerated the petitioner from all the charges. But then, on the ground that the criminal case is pending against the petitioner, the departmental enquiry was not finalized and the disciplinary authority kept the matter in abeyance awaiting decision of the criminal case. It is also to be noted that the petitioner's suspension was revoked vide order dated 26.05.1995 reinstating the petitioner and he continued until he retired upon attaining the age of superannuation with effect from 31.07.1997.

3. The criminal case which was instituted against the petitioner way back in the year 1985 eventually culminated in his acquittal vide judgment passed by the Criminal Court on 10.05.1999 in Criminal Case No.32/1986.

4. However, even though the petitioner exonerated from all charges by E.O and acquitted of the criminal case which related to charge No.4 of the charge-sheet against the petitioner, the disciplinary authority passed the impugned order. It is this order which is under challenge. The petitioner did not prefer any appeal against the order of penalty passed by disciplinary authority and filed petition before the State Administrative Tribunal which was admitted and remained pending till it was transferred to this Court upon abolition of the Tribunal.

5. Learned counsel for the petitioner raises manifold contention to assail the validity of the order. The first contention of learned counsel for the petitioner is that the disciplinary authority was wholly unjustified in keeping the departmental enquiry in abeyance for long 15 years without

any rhyme or reason. It is submitted that the petitioner was subjected to agony of departmental action for 1½ decades. Therefore, only on this count, the impugned order of penalty deserves to be set aside. The second contention of learned counsel for the petitioner is that the petitioner was duly exonerated of all the charges by the enquiry officer from which the disciplinary authority disagreed. It is submitted that the disciplinary authority did not consider the oral and documentary evidence collected during enquiry by the enquiry officer, upon assessment of which the enquiry officer found the charges not proved. In the notice of disagreement dated 22.11.1999, the disciplinary authority has perfunctorily arrived at a different conclusion only with a prejudged mind to somehow punish the petitioner. This is apparent from the fact that even on charge No.4, despite petitioner acquitted by the Criminal Court, the disciplinary authority held that charge proved. Therefore, the findings of disciplinary authority are not only in ignorance of the material on the record of departmental enquiry but contrary to it so, liable to be set aside. The third contention of learned counsel for the petitioner is that the disciplinary authority has imposed a penalty which is unknown to law. He submits that the disciplinary authority could impose only those penalties which are specified under Rule 10 of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short "the Rules of 1966") and no other penalty. The order to restrict the monetary benefit only to subsistence allowance in respect of the period during which the petitioner remained under suspension is nowhere found. In support of contentions, learned counsel for the petitioner, places reliance upon the decisions of the Supreme Court in the case of **State Bank of Hyderabad and another Vs. P. Kata Rao [(2008) 15 SCC 657]**, and **Gurpal Singh Vs. High Court of Judicature of Rajasthan [(2012) 13 SCC 94]**.

6. Per contra, learned counsel appearing for the State supported the order by submitting that the petitioner never raised any grievance against the action of the departmental authority in keeping the departmental enquiry in abeyance for obvious reason that the petitioner, himself, was not interested in facing the result of departmental enquiry. It was only when the punishment was imposed on the petitioner that, while challenging the order of penalty, the petitioner has wrecked up the stale issue that the disciplinary authority was unjustified in keeping the enquiry in abeyance. Learned State counsel submits that otherwise also, taking into consideration that one of the charges leveled against the petitioner under

charge No.4 was substantially the same which constituted the criminal charge, the disciplinary authority was fully justified in awaiting the decision of the criminal Court because the enquiry could not be split to keep it pending in respect of one charge and decide in respect of other charges. According to him, the petitioner cannot be heard raising this grievance after suffering an order of penalty as he has acquiesced in the said action of withholding enquiry without any demur and has also derived the benefit of the same in avoiding penalty, as long as, he was in service. Therefore, it is argued, right, if any, to challenge the same is waived by conduct.

7. On the second issue, learned counsel for the State submitted that the contents of notice of disagreement clearly show due and proper application of mind by the disciplinary authority. He has not only referred to the material available on record but also prosecution evidence to satisfy himself, that the charges are proved against the petitioner. It is submitted that the standard of proof of a charge of misconduct are only preponderance of probability whereas for proof of criminal charge, much more higher degree of proof beyond reasonable doubt is required, therefore, even in a case where there is an acquittal from criminal charges, it is within the domain of power of disciplinary authority to hold the charges proved, if there are evidence available on record to sustain findings by application of principal of preponderance of probability.

8. Learned State counsel then submits that as far as the penalty part is concerned, even though such penalty has not been very specifically provided under Rule 10 of the Rules of 1966, it is in the nature of withholding some monetary benefit of salary and therefore, it is traceable to Rule 23 of the Madhya Pradesh Civil Services (Pension) Rules, 1976 which is minor penalty only.

9. There can be no quarrel with the settled legal position that mere institution of a criminal case by itself, does not operate as stay of departmental action. In plethora of decisions, the Supreme Court has succinctly laid down and reiterated these principle. It was held in the case of **State of Rajasthan v Sh. B.K. Meena & Ors, 1996 (6) SCC 417** that in law there is no bar to, or prohibition against, initiating simultaneous criminal proceedings and disciplinary proceedings. It was also held that there may be cases in which it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. Whether, in the facts

and circumstances of a particular case, there should or should not be such simultaneity of the proceedings, may be a subject matter of consideration on judicial side and when occasion so arise, the Court will decide in the given circumstances of a particular case as to whether, the disciplinary proceedings should be interdicted, pending trial. In another decision in the case of **Depot Manager, A.P. State Road Transport Corporation V. Mohd. Yousuf Miya and Ors., 1997 SCC (L&S) 548**, it was held that it is not desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent employee. Each case requires to be considered in the backdrop of its own facts and circumstances. It was also held that there would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law.

10. In a later decision of the Supreme Court in the case of **Capt. M. Paul Anthony v Bharat Gold Mines Ltd., 1999 (3) SCC 679**, various parameters were laid down whether in a given case, the departmental proceedings and criminal proceedings may or may not proceed simultaneously. It was held -

- “(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
- (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
- (iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.
- (iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

- (v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of them at the earliest.”

This legal position has been settled and followed in subsequent decision in the cases of **Kendriya Vidyalaya Sangathan v. T. Srinivas, 2004 (7) SCC 442, Hindustan Petroleum Corporation Ltd. V Sarvesh Berry, 2005 (10) SCC 471, NOIDA Entrepreneurs Association v NOIDA, AIR 2007 SC 1161, Indian Overseas Bank, Anna Salai v P. Ganesan, 2007 (13) JT 113.**

The legal position as adumbrated in aforesaid decision leaves no manner doubt that the departmental enquiry and criminal case may go on simultaneously. Therefore, it has to be held that the disciplinary authority always has the power to continue with the departmental enquiry despite pendency of a criminal case and at the same time, in an appropriate case, depending upon nature and gravity of allegation, identity of facts and transactions leading to criminal case and departmental enquiry witnesses, to withhold departmental enquiry. Therefore, it is within the discretion of the disciplinary authority to withhold departmental enquiry on the ground that a criminal case has also been instituted and it will have to be decided on the facts and circumstances of each case whether the exercise of this power is just, proper and rational and warranted in the situation of the case, applying the principles judicially evolved.

11. In the present case, as has been advanced by learned counsel for the respondents, as one of the charges of misconduct in respect of departmental enquiry, initiated against the petitioner was also subject matter of criminal case, therefore disciplinary authority thought it prudent not to proceed with the disciplinary enquiry. True, it is that out of five charges, one of the charges related to preparation of false loan cases and petitioner was alleged to have facilitated false preparation, all other charges against the petitioner had nothing to do with the criminal case. Most of the charges against the petitioner were wholly unconnected with the criminal case. Secondly, one could justify withholding of departmental enquiry for certain reasonable period. However, in the present case, the disciplinary authority did not take care to review the situation periodically

whether the departmental enquiry is required to be kept in abeyance only on the ground of pendency of a criminal case. Present is a case where the charge-sheet was issued against the petitioner in the year 1985, enquiry report exonerating the petitioner was submitted in the year 1986. This is nothing on record to show that the disciplinary authority had any material placed before it to come to the conclusion that the petitioner was responsible for delay in finalization of criminal case. Not only this, the petitioner suffered hardship as the petitioner was continued in suspension for long 10 years until he was reinstated in the year 1995. This was the period during which an enquiry report exonerating the petitioner from one of the charges was lying with the departmental authority. Even if, it is held that in appropriate cases, it is open for the disciplinary authority to keep in abeyance departmental enquiry on the ground of pendency of criminal case, such withholding for indefinite period without periodical review by taking into consideration relevant circumstances would partake the nature of arbitrary exercise of power, if reasonable time elapses and the criminal case is not concluded for no fault of the employee. On the facts of the present case, where out of five charges, only one charge related to criminal case and further that the enquiry officer fully exonerated the petitioner, on facts, I come to the conclusion that the continuance of departmental enquiry against the petitioner and simultaneously keeping him under suspension for long 10 years, the petitioner was made to suffer more than what could be imposed on him as penalty in the departmental enquiry. It has to be seen that the disciplinary authority has chosen to impose a pecuniary penalty which certainly cannot be said to be a major penalty. This penalty could be imposed even at an early stage of proceeding if the departmental authority was of the opinion that the entire case of the petitioner requires only a minor penalty to be imposed. In that case, at least, the petitioner would have secured early reinstatement in service. Therefore, the effect and impact of keeping the petitioner in suspension and under the agony of facing departmental enquiry for a long period of 10 to 15 years resulted in penalty more than what he deserved.

12. Merely, because the petitioner did not assail withholding of departmental enquiry, the petitioner is not disentitled to challenge the same on this ground because everyday, departmental enquiry was kept in abeyance, it gave the petitioner fresh cause of action against withholding departmental enquiry and is a continuing wrong. The contention of the State counsel therefore, that the petitioner having not challenged this

withholding until final order, is not entitled to challenge the same, is liable to be rejected.

13. I find that the disciplinary authority has chosen to impose a pecuniary penalty which does not find place anywhere in Rule 10 of the Rules of 1966. The penalty which can be imposed on a Government servant could be only those which have been specified under the relevant Rules. The disciplinary authority is required to act within the four corners of the Rules in the matter of imposing penalty. It does not depend upon the whims and fancies of the disciplinary authority to impose any kind of penalty which he chooses. The penalty has to be one of those specified in Rule 10 of the Rules of 1966. The relevant Rule 10 of the Rules of 1966 specifying penalty is extracted herein below -

“10. Penalties – The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely :-

Minor Penalties :-

- (i) Censure;
- (ii) Withholding of his promotion;
- (iii)** recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of order;
- (iv)** Withholding of increments of pay or stagnation allowance;

Major Penalties :-

(v) reduction to a lower stage in the time scale of pay for a specified period with further directions as to whether or not, the Government servant will earn increments of pay or the stagnation allowance, as the case may be, during the period, on such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the further increments of his pay or stagnation allowance.

(vi) reduction to a lower time scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government servant to the time scale of pay, grade,

post or service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service;

(vii) Compulsory retirement;

(viii) removal from service which shall not be a disqualification for future employment under the Government;

(ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government;”

A perusal of the Rule would show that the kind of punishment which has been imposed on the petitioner is not referable to any of the provisions of Rule 10 of the Rules of 1966. The submission of learned counsel for the State that as the order is in the nature of restricting monetary benefit and therefore referable to clause (iii) is also not acceptable because clause (iii) provides for recovery from pay of the whole or part of any pecuniary loss caused by delinquent employee to the Government by negligence or breach of order. None of the charges in the present case even remotely refer to any pecuniary loss caused to the Government. Therefore, there is no occasion to come to this conclusion that by restricting the salary to subsistence allowance only, the State only intended to recover financial loss caused to the Government.

14. The relationship of master and servant is governed by contract of employment. In public employment and in the matter of employment to Government service, the relationship of master and servant is statutory in nature. The terms and conditions of service are governed by statutory Rules framed by the Governor in exercise of powers conferred under Article 309 of the Constitution of India. The relationship is *de-jure* as well as *de facto*. It, therefore, follows as a necessary corollary that the power exercisable by the disciplinary authority are those which are circumscribed by the statutory Rules governing not only the employer but also the employee. Therefore, logically, only those penalties could be imposed which the Rules permits and not otherwise. The impugned penalty imposed on the petitioner is that of denial of full salary in respect of the

period during which the petitioner was placed under suspension, to be treated as penalty. This Court is unable to trace such nature of penalty to any of the clauses contained in Rule 10 of the Rules of 1966.

15. Even assuming that the disciplinary authority had complied with the requirement of principles of natural justice in communicating to the petitioner, the reasons of disagreement in view of the finding recorded on other issues herein above, I am of the view that the impugned penalty order cannot be sustained in law. It is not the case of the State that the order intended to regulate the period of suspension. In fact, the impugned order, does not seek to give a treatment to the period of suspension in exercise of power under Rule 54 of the Madhya Pradesh fundamental Rules but to it impose, as measure of penalty. The impugned penalty is therefore set aside.

16. The question which now arises for consideration is whether in the peculiar facts and circumstances of the present case, the matter should be remanded to the disciplinary authority to reconsider the issue with regard to appropriate penalty to be imposed on the petitioner. The Supreme Court in the case of **G. Vallikumari vs Andhra Education Society & Ors, [(2010) 2 SCC 497]**, laid down the guidelines regarding the course of action to be adopted in case where situation arises for remanding the case upon recording a finding that for some reason, the penalty order is liable to be set aside and a case of remand is made out. The competing interest of the administration and individual interest was balanced in following manner:

“21. Since the order of punishment passed by the Chairman of the Managing Committee is vitiated due to violation of the statutory rules and the principles of natural justice, we may have remitted the matter to the Tribunal with a direction to consider whether or not the penalty of removal from service imposed upon the appellant was disproportionate to the misconduct found against her or the action taken by the management was wholly arbitrary or unjust but keeping in view the fact that the appellant was removed from service more than 13 years ago, we do not consider it proper to adopt that course.

22. In Supdt. (Tech I) Central Excise v. Pratap Rai, 1978 (3) SCC 113, this Court held that if an order passed by the disciplinary authority is annulled on a technical ground, the concerned authority is free to pass fresh order but, at the same time, the Court declined to give such liberty to the administration on the ground that

a period of 15 years had elapsed since the framing of charge.

23. In *Bhagwan Lal Arya v. Commr. of Police*, (2004) 4 SCC 560, a somewhat similar approach was adopted by this Court by recording the following observations:

"14. Thus, the present one is a case wherein we are satisfied that the punishment of removal from service imposed on the appellant is not only highly excessive and disproportionate but is also one which was not permissible to be imposed as per the Service Rules. Ordinarily we would have set aside the punishment and sent the matter back to the disciplinary authority for passing the order of punishment afresh in accordance with law and consistently with the principles laid down in the judgment. However, that would further lengthen the life of litigation. In view of the time already lost, we deem it proper to set aside the punishment of removal from service and instead direct the appellant to be reinstated in service subject to the condition that the period during which the appellant remained absent from duty and the period calculated up to the date on which the appellant reports back to duty pursuant to this judgment shall not be counted as a period spent on duty. The appellant shall not be entitled to any service benefits for this period. Looking at the nature of partial relief allowed hereby to the appellant, it is now not necessary to pass any order of punishment in the departmental proceedings in lieu of the punishment of removal from service which has been set aside. The appellant must report on duty within a period of six weeks from today to take benefit of this judgment."

17. Applying the aforesaid principles to the facts of the present case, I find that the petitioner has suffered for a very long period undergoing the agony of departmental enquiry and a very long suspension for a period of 10 years. He was also facing the criminal action which ended in his acquittal in the year 1999. The petitioner retired from service more than 19 years before. Therefore, in these circumstances, it would be in the interest of justice to close the chapter without any further proceeding against the petitioner who is living a retired life for the last almost 20 years. Further, the petitioner would be entitled to 75% of salary from the date of submission of enquiry report till the date of his retirement.

18. In the result, the petition is allowed. Impugned order of penalty is quashed.

Sd/-
(Manindra Mohan Shrivastava)
Judge