

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 317 of 2016**

1. State Of Chhattisgarh Through The Secretary, Department Of Home, D K S Bhawan, Mantralaya, Raipur (Chhattisgarh) [Now Mahanadi Bhawan, Mantralaya, Naya Raipur (Chhattisgarh)]
2. The Director General Of Police, State Of Chhattisgarh, Raipur (Chhattisgarh)
3. The Additional Director General Of Police, Special Armed Forces/Training/ Telecommunication, P H Q, Raipur (Chhattisgarh)
4. The Inspector General Of Police, Special Armed Forces, Bhilai, District Durg (Chhattisgarh)
5. Senani, 2nd Battalion, Special Armed Forces, Sakri, Bilaspur (Chhattisgarh)

---- Appellants**Versus**

Santosh Shukla (Dead) Through Legal Representative Nandita Shukla W/o Late Shri Santosh Kumar Shukla, Aged About 36 Years R/o Near Home Guard Office Kududand, Bilaspur, P. S. Civil Lines, Tahsil And District Bilaspur (Chhattisgarh)

---- Respondent

For Appellant/State	: Shri Yashwant Singh Thakur, Deputy Advocate General.
For Respondent	: Shri Abhishek Pandey, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay K. Agrawal, J.

Order on Board**Per Deepak Gupta, Chief Justice****25/07/2016**

1. This appeal by the State is directed the against judgment dated 29.3.2016 delivered by the learned Single Judge of this Court in Writ Petition (S) No.6402 of 2008 whereby he allowed the writ petition and directed that the widow of the writ Petitioner be paid back wages.
2. The undisputed facts are that the original writ Petitioner Santosh Shukla was appointed as Constable in the 2nd Battalion, Chhattisgarh Armed Forces. It is alleged that on 30.1.2003 when he was posted at Police Station Pamed,

District Bastar, there was a quarrel between him and Assistant Platoon Commander and Head Constable. Because the writ Petitioner had misbehaved with his superior officers, the Commandant of 2nd Battalion vide order dated 6.5.2003 imposed punishment of 'censure' upon the Petitioner. This order was sent to the Deputy Inspector General of Police (in short 'DIG') for information. The DIG also happens to be Revising Authority and he felt that the order of punishment of 'censure' was very lenient and directed that departmental enquiry be initiated against the Petitioner. The Learned Single Judge has allowed the writ petition mainly on the ground that order sending the matter for fresh enquiry has been passed without giving opportunity of hearing to the Petitioner.

3. The DIG has exercised his powers vested in him under Section 270 of the Chhattisgarh Police Regulations, which reads as follows:-

270. (1) Every order of punishment or exoneration, whether original or appellate shall be liable to revision suo motu by any authority superior to the authority making the order.

(2) Every appellate order by a Final Appellate Authority shall be liable to revision by such Final Appellate Authority, on application made in that behalf by the person against whom the order has been passed.

Explanation: For the purposes of this clause, the expression "Final Appellate Authority" means the final authority empowered to hear an appeal under Police Regulation 262.

(3) The provisions of Regulations 266, 267, 268 and 271 shall, as nearly as may be, apply to an application for revision.

(4) The revising authority may for reasons to be recorded in writing exonerate or may remit, vary or enhance the punishment imposed or may order a fresh enquiry or the taking of further evidence in the case:

Provided that it shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard."

4. Clause (1) of Regulation 270 makes every order of punishment subject to revision by the DIG even in exercise of his suo motu powers. This will include an order imposing minor penalty also. For imposing a minor penalty a detailed enquiry is not required to be held. However, if the DIG feels that minor

penalty is too lenient and the major penalty has to be imposed , then he has to issue an order for fresh enquiry.

5. The submission of Shri Yashwant Singh Thakur, appearing on behalf of the State is that since the writ Petitioner had a right of hearing in the enquiry proceedings, there is no need of hearing him before passing the order ordering a fresh enquiry. We are not in agreement with this submission.

6. Proviso to Clause (4) of Regulation 270 clearly laid down that no order shall be varied or reversed unless notice has been served on the parties interested and opportunity given to them for being heard. The rules of natural justice have been incorporated in the Regulation itself. The employee who has been visited with the minor penalty has a right to urge before the Revising Authority that this is not a fit case to exercise suo motu powers. An order which is passed quashing an order of imposition of minor penalty, directing that fresh enquiry be held and if found guilty, the employee be visited with major penalty, is an order which affects the right of the employee.

7. As far as this case is concerned, the Regulations themselves clearly envisage that opportunity has to be given to the concerned party. In this view of the matter, the Learned Single Judge was absolutely right in quashing the order.

8. As far as the relief is concerned, the original Petitioner died during the pendency of the writ petition. Now, no enquiry can be done and remanding the matter back would be an exercise in futility. Therefore, the learned Single Judge was fully justified in ordering that the original writ Petitioner deemed to be in service. However, widow of the writ Petitioner shall be entitled to payment of back wages from the date of termination till the date of his death.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(Sanjay K. Agrawal)
JUDGE