

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 6 of 2006

Girdhari Lal Rahi, son of Shri Ram Gulam Rahi, aged 48 years, R/O C/O Superintendent Land Record, Sagar

---- Petitioner

Versus

1. State Of Madhya Pradesh (now C.G.) through the Secretary, Revenue Department, Vallabh Bhawan, Bhopal
2. Disciplinary Authority and Commissioner, Land Records and Settlement, Madhya Pradesh, Gwalior
3. Shri Satya Prakash, Disciplinary Authority & Commr. Land Record & Settlement, M.P. Gwalior

---- Respondents

For Petitioner	:	Shri Vinod Deshmukh, Advocate
For State	:	Ms. Sunita Jain, Panel Lawyer

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

Order On Board

31/10/2017

Heard.

1. The petitioner has assailed legality and validity of the notice of disagreement dated 29.11.1995 as also the order of the penalty passed by the State Govt. on 7.7.1997 by which the State Govt. has imposed upon the petitioner, a penalty of reversion to lower post for a period of 3 years at the minimum of pay scale with a direction that during the period of reversion, the petitioner shall not earn increments and other allowances.
2. The petitioner filed an Original Application before the State Administrative Tribunal challenging aforesaid orders. During pendency of Original Application, the Tribunal was abolished and the case was received on

transfer by this Court and registered as WPS No.6 of 2006.

3. The charge sheet was issued to the petitioner instituting departmental enquiry against him vide letter dated 7.11.1992 (Annexure A-1) on as many as seven charges. The petitioner submitted his reply. The Enquiry Officer was appointed. The Enquiry Officer prepared and submitted a report on 17.6.1993 before the Disciplinary Authority in which the petitioner was exonerated of the allegation of misconduct. The Disciplinary Authority, however, appointed a new Enquiry Officer on 23.9.1993 and required him to submit their report. The new Enquiry Officer again submitted a report on 25.7.1994, again exonerating the petitioner. The Disciplinary Authority, thereafter, gave a notice of disagreement to the petitioner vide notice dated 29.11.1995 both on first and second enquiry report. It appears that after receiving petitioner's reply to the notice of disagreement, the Commissioner having tentatively found it to be a case fit for imposing major penalty, forwarded the case to the State Govt. The State Govt. issued a fresh notice and heard the petitioner on 22.4.1997 and thereafter passed the impugned order on 7.7.1997 imposing penalty as stated above. The petitioner did not prefer any appeal on the understanding that as the order has been passed by the State Govt., there is no remedy of appeal available to him under the Law and filed Original Application before the Tribunal.
4. Leaned counsel for the petitioner argues that the State and the Commissioner both have acted in illegal and arbitrary manner as also in violation of statutory Rules inasmuch as, once the petitioner was exonerated by the Enquiry Officer vide first report dated 17.6.1993, it was not permissible under the Rules to appoint a new Enquiry Officer only to obtain the report favorable to the desire of the Disciplinary Authority. He submits that even a second enquiry report was also in favour of the petitioner as he was fully exonerated by the authorities. Though notice of disagreement of the Disciplinary Authority as against the two enquiry reports dated 17.6.1993 and 25.7.1994 was given to the petitioner to which the petitioner replied also, the Commissioner instead of passing an order,

forwarded the case to the State Govt. and the State Govt. passed impugned order which is illegal because the State Govt. was the appellate authority. Therefore, the order could not be passed by the State Govt.

5. Learned counsel for the petitioner would further argue that even though the notice of disagreement was served upon the petitioner, after the petitioner had submitted his reply to the notice of disagreement, before passing final order of penalty, the notice proposing penalty ought to have also been given to the petitioner so as to afford him an opportunity to satisfy the authority why penalty proposed should not be inflicted. In support of his submission, learned counsel for the petitioner relied upon the judgment in the case of **Lav Nigam Vs. Chairman & MD, ITI Ltd. and Anr.** (2006) 9 SCC 440. Learned counsel for the petitioner also argues that the findings which were recorded against the petitioner by the Disciplinary Authority are not proper and if evidence is duly and properly re-assessed, the petitioner would be exonerated of all the charges. In essence, this ground is with regard to re-assessment of evidence on record.
6. Per contra, learned counsel for the State submits that the petitioner was afforded full opportunity of hearing. Though the Disciplinary Authority appointed a new Enquiry Officer and obtained another enquiry report, it would not vitiate the final order because both the reports were given to the petitioner along with the reasons of disagreement with the finding recorded in two reports. Therefore, only on that ground, the petitioner may not get any relief. Learned counsel for the State further submits that under the Civil Services (Classification, Control and Appeal) Rules, 1966 (in short "*the Rules of 1966*") the Commissioner is competent authority for the purpose of imposing minor penalty as enumerated in clause (i) to clause (iv) of Rule 10 of the Rules of 1966. In the present case when it was tentatively found that the petitioner deserves major penalty, the records were transmitted to the State Govt. and thereafter, the State Govt. again afforded the petitioner an opportunity of personal hearing and passed the order, therefore, there is neither any illegality nor violation of principles of

natural justice warranting interference. Learned State counsel would further submit that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India may not embark upon re-assessment of evidence as an appellate authority.

7. I have considered the rival submissions made by learned counsel for the parties and perused the records.
8. Admitted position on record is that in the departmental enquiry initiated against the petitioner, the Enquiry Officer had submitted a report on 17.6.1993. In this report, the petitioner was fully exonerated of all the charges. At that stage, if the Disciplinary Authority did not agree with the finding recorded by the Enquiry Officer, either it had to give a notice of disagreement or to hold further enquiry as envisaged under Rule 15 (2) of the Rules of 1966. He proceeded to appoint a new Enquiry Officer and also obtained a new enquiry report, which is not at all permissible under the Rules. The Rule does not contemplate such a course of action to be adopted even in a case where the Disciplinary Authority is not agreeing with the finding recorded by the Enquiry Officer. Rule 15 of the Rules of 1966 makes provision with regard to action that is permissible to be taken upon receipt of inquiry report. Following course of action are open under the Rules once enquiry report is submitted before the Disciplinary Authority:
 - (A) It may remit the case to the Enquiry Authority for further enquiry and report.
 - (B) It may disagree with the finding of the Enquiry Authority on any article of charge, record its reason for such disagreement and records its own finding on such charge, if the evidence on record is sufficient for the purpose.
 - (C) In case of agreement with the enquiry report and having regard to its finding on all or any other articles of charge is of the opinion that any of the penalties specified in Rule 10 should be imposed, it may proceed to make an order imposing such penalty.

In case where consultation of Public Service Commission is necessary, the Disciplinary Authority is required to forward the records of enquiry and obtain the advice before passing an order of penalty.

9. Except this, no other course of action is permissible under the law. The Disciplinary Authority, in the matter of Govt. service, does not enjoy unlimited power but can exercise only those powers which have been expressly conferred on it or which flow by necessary implication. While acting as a Disciplinary Authority, the power which could be exercised in that respect have been exhaustively enumerated in the Rules of 1966 and the power are exercisable strictly within the four-corners of the Rules and not beyond the same.
10. Though no specific reason has been assigned either in the order of appointing new Enquiry Officer or in the report filed by the State, it appears that as the Disciplinary Authority was not in agreement with the finding of exoneration, it proceeded to appoint a new Enquiry Officer in the hope of getting a report to suit his desire. This was not at all permissible under the Law. According to the Rules in a contingency where the Disciplinary Authority disagrees with the finding of Enquiry Officer, the course of action that may be adopted in such a case has been very clearly stated under Rule 15 (2) of the Rules of 1966 referred to herein-above. In such cases, the Disciplinary Authority was required to record reason of his disagreement and record its own finding on charges in respect of which it disagrees. Therefore, in such an eventuality, the Rule obliged the Disciplinary Authority to record its reason of disagreement and record its own finding instead of appointing a new Enquiry Officer and obtain new enquiry report. The order of appointment of new Enquiry Officer and second enquiry report dated 25.7.1994 were therefore clearly contrary to and in violation of the statutory Rules of 1966.
11. However, what I find is that the Disciplinary Authority vide memo dated 29.11.1995, forwarded to the petitioner, reasons for disagreement and his

own finding not only as against the first enquiry report dated 17.6.1993 but also the second enquiry report dated 25.7.1994. It is not a case where a notice of disagreement and new finding was only with reference to second enquiry report. Considering that notice of disagreement was with reference to first enquiry report dated 17.6.1993, the exercise of appointing new Enquiry Officer and obtaining new report would not vitiate the exercise because in substance the Rule was complied with inasmuch as requirement of recording reasons of disagreement and own finding as required in Rule 15 (2) of the Rules of 1966 was complied with.

12. At this juncture, it would be apposite to note that the Supreme Court in the case of **Punjab National Bank & Ors. Vs. Kunj Behari Misra** (1998) 7 SCC 84 followed by subsequent decision in the case of **Yoginath D. Bagde Vs. State of Maharashtra & Anr.** (1999) 7 SCC 739 and **State Bank of India and Ors. Vs. K.P. Narayanan Kutty** (2003) 2 SCC 449 has settled the legal position that notice of disagreement would be necessary to fulfill the requirement of principles of natural justice.

13. In the present case, the petitioner was given an opportunity of hearing. The reasons of disagreement and the finding of guilt recorded by the Disciplinary Authority were duly communicated to the petitioner and his reply was also obtained.

14. Learned counsel for the petitioner vehemently submitted that the State Govt. being the constituted appellate authority could not have passed an order of penalty. This submission, upon close scrutiny, must be rejected on the peculiar setting of statutory scheme of the Rules of 1966. The Rules of 1966 specify two Disciplinary Authorities, one Settlement Commissioner, Land Records and the other State Govt. in the matter of disciplinary action against the Assistant Settlement Officer as reflected in the Schedule appended to the Rules, which are reproduced herein-under:

X. Record of Right Officer's office

1. Class III Executive

1.	Junior Assistant Settlement Officer	State Govt.	(a) Settlement Commissioner and Director of Land Records (b) State Govt.	(i) to (iv) except withholding of promotion All	State Govt. Governor
	X	X	X	X	X
	X	X	X	X	X

- 15.The Settlement Commissioner is competent to impose penalty specified in clause (i) to (iv) of Rule 10 of the Rules of 1966 whereas the State Govt. is competent to impose all the penalties. Therefore, the State Govt. as well as the Commissioner both can exercise disciplinary power. The Settlement Commissioner being the Disciplinary Authority, was empowered to issue charge sheet as provided under Rule 13 of the Rules of 1966 and institute departmental enquiry against the petitioner. It was only when tentative finding was recorded in the files (as reflected from impugned order dated 7.7.1997) that it could be a case requiring imposition of major penalty, that the Commissioner forwarded the case to the State Govt. In the considered opinion of this Court, this course of action is not prohibited in the Rules. As the Commissioner was not competent to impose major penalty though procedure for imposition of major penalty was followed by issuance of charge sheet and holding detailed enquiry under Rule 14 of the Rules of 1966, it was only towards fulfillment of statutory requirement that records were forwarded to the State Govt. It was only thereafter, the State Govt. passed final order imposing major penalty as provided under clause (v) of Rule 10 of the Rules of 1966.
- 16.Learned counsel for the petitioner also raised a submission that the requirement of second show cause notice against the proposed penalty was not complied with. For this purpose, reliance has been placed on the decision of the Supreme Court in the case of **Lav Nigam** (supra).
- 17.Irrespective of the legal position which has been declared by the Supreme

Court in the aforesaid decision, for want of factual foundation in the petition, I am not required to examine this ground. This is more so because in the impugned order dated 7.7.1997, it has been recorded that the petitioner was afforded with opportunity of hearing before passing final order. This factual contents of the impugned order has not been disputed in the pleadings. In fact it was all the more necessary in view of such a finding recorded, to raise this ground specifically by making categoric pleadings so as to invite respondent's reply as to whether this requirement, if at all necessary, was complied with. It has to be noticed that by Forty-Seventh constitutional amendment, requirement of second show cause notice was deleted from Article 311 of the Constitution of India and the learned counsel for the petitioner failed to bring to the notice of this Court any such requirement under the Rules of 1966. Judgment in the case of **Lav Nigam** (supra) is on the issue of requirement of giving a notice of disagreement with reasons in a case where Disciplinary Authority does not agree with the findings given by the Enquiry Officer. Therefore, none of the ground raised by the petitioner to assail legality and validity of impugned order are made out so as to warrant interference by this Court.

18. Learned counsel for the petitioner submits that the petitioner had filed Original Application before the State Administrative Tribunal without filing any appeal before the Govt., therefore, at this stage he should be allowed to prefer appeal only on facts of the case.

After giving my anxious consideration, the petitioner having chosen not to prefer an appeal before the Departmental Authority and taken recourse to the proceedings before the Court, at this stage, it would not be appropriate to give any such liberty to the petitioner to re-agitate the matter.

19. The petition is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge