

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.577 of 2003

D. C. Upadhyay, aged 46 years, S/o Shri R.C. Upadhyay, the then Assistant Director Sericulture: Ambikapur, Now at Janjgir, Distt. Janjgir Champa (CG)

----Petitioner

Versus

State of Chhattisgarh through the Secretary to the Government of Chhattisgarh, Gramodyog Vibhag: D.K.S. Bhawan: Mantralay: Raipur (CG)

---- Respondent

For Petitioner : Mr.Anurag Dayal Shrivastava, Advocate
For Respondent : Mr. U.N.S.Deo, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

03/05/2017

1. By way of this writ petition, the petitioner calls in question the order dated 31.12.2002 (Annexure P/1) by which penalty of withholding of four increments with cumulative effect together with recovery of an amount of ₹ 74,697/- has been imposed against the petitioner by disciplinary authority in the departmental enquiry conducted against him under Rule 14 of the C.G. Civil Services Classification, Control and Appeal Rules, 1966 (hereinafter called as 'CCA Rules')
2. Brief facts of the case necessary to judge the correctness of the plea raised at the Bar are as under:-

2.1 The petitioner was charge-sheeted while working as Assistant Director, Sericulture for four charges served to him on 23.3.1998. The petitioner has refuted all the charges levelled against him and objected the initiation of departmental enquiry as also. Thereafter, regular departmental enquiry was initiated by appointing Enquiry Officer and Presenting Officer. The department adduced their evidence lastly on 11.9.2000, then the Enquiry Officer admittedly closed the case and submitted enquiry report on 28.9.2000 to the Commissioner, Sericulture, Bhopal and thereafter no opportunity to place his case/defend himself was granted to the petitioner and the said enquiry report was served to him by the new State of Chhattisgarh on 5.9.2001.

2.2 In the reply, the petitioner raised a specific contention that no opportunity to lead defence evidence as contemplated under sub-rule (16) & (17) of Rule 14 of the CCA Rules was afforded to him. The Disciplinary Authority by its order dated 31.12.2002 (Annexure P/1) imposed penalty withholding four annual increments with cumulative effect and also directed for recovery of ₹ 74,697/-.

3. In the writ petition filed by the petitioner, the main ground for challenge is that the impugned order of penalty is vitiated for non-compliance of sub-rule (16) & (17) of Rule 14 of the

CCA Rules as Rule 14 is mandatory in nature relying upon the judgment of the Supreme Court in **Kulvant Singh Gill Vs. State of Punjab**¹.

4. Return has been filed by the respondent opposing the writ petition.
5. No rejoinder has been filed.
6. Mr. Anurag Dayal Shrivastava, learned counsel appearing for the petitioner, would submit that the Enquiry Officer on 11.9.2000 after recording the evidence of the department abruptly closed the case and submitted the enquiry report on 28.9.2000 to the Commissioner, Sericulture, Bhopal and the petitioner was not allowed to lead evidence in his defence by which he has suffered serious prejudice. He would further submit that sub-rule (16) & (17) of Rule 14 of the CCA Rules are mandatory in nature and therefore, the impugned order deserves to be set aside.
7. On the other hand, learned State Counsel would oppose the writ petition and support the impugned order.
8. I have heard learned counsel appearing for the parties, considered their rival submissions made herein and also gone through the record with utmost circumspection.
9. Undisputedly, 11.9.2000 was the date fixed for recording evidence of the department and on that day department adduced their evidence, but thereafter no opportunity to lead evidence in his defence was given to the petitioner as required under sub-rule (16) & (17) of Rule 14 of the CCA

¹ 1991 Supp (1) SCC 504

Rules and enquiry report was submitted thereafter on 28.9.2000 and the petitioner was found guilty on the basis of evidence adduced by the department.

10. In **Kulvant Singh Gill** (supra), the Supreme Court has clearly held that imposition of withholding of two increments with cumulative effect is major penalty. In **Meenglas Tea Estate Vs. The Workmen**², the Supreme Court has held that delinquent must be given a chance to rebut the evidence led against him.
11. Likewise, similar proposition has been laid-down by the Supreme Court in **D.K. Yadav Vs. J.M.A. Industries**³.
12. In State of **Uttaranchal & others Vs. Kharak Singh**⁴ the Supreme Court has enumerated basic principles regarding conducting the departmental inquiry, which are as under:-

“i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.”

² AIR 1963 SC 1719

³ (1993) 3 SCC 259

⁴ (2008) 8 SCC 236

13. Applying the principle of law laid down by the Supreme Court in the above-stated judgments (supra) along with sub-rule (16) & (17) of Rule 14 of the CCA Rules, if the facts of the present case are examined, it is quite vivid that the petitioner has not been afforded an opportunity to lead his evidence in his defence as the enquiry officer has proceeded abruptly on 11.9.2000 after recording the evidence of the department and then admittedly closed the case and submitted enquiry report on 28.9.2000 to the Commissioner, Sericulture, Bhopal and as such, it is the case where sub-rule (16) & (17) of Rule 14 of the CCA Rules has not been complied with in its true spirit. The petitioner has not been allowed to lead evidence in his defence and he has suffered prejudice and order imposing major penalty has been passed, which deserves to be quashed.
14. As a fallout and consequence of the aforesaid discussion, the writ petition is allowed and the impugned order is hereby quashed. The petitioner is entitled for all consequential service benefits. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-