

**HIGH COURT OF CHHATTISGARH, BILASPUR****WP No.5989 of 2006**

Ravishankar Jaiswal S/o Dwarika Prasad Jaiswal, Aged about 28 years, Panchayat Karmi, Gram Panchayat Dhabaipur, Tehsil Katghora, District Korba (CG)

**-----Petitioner**

**Versus**

1. State of Chhattisgarh Through the Secretary, Department of Panchayat & Social Welfare, D.K.S. Building, Mantralaya, Raipur, Chhattisgarh
2. Director (Panchayat), Government of Chhattisgarh, Raipur (CG)
3. Collector, Korba (CG)
4. Deputy Director, Panchayat & Social Welfare, Korba (CG)
5. Chief Executive Officer, Janpad Panchyat, Katghora, District Korba (CG)
6. Gram Panchayat Dhabiapur, Tehsil Katghora, District Korba, Through its Sarpanch

**----- Respondents**

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| For Petitioner    | : | Mr.B.D.Guru, Advocate |
| For Res.No.1 to 4 | : | Mr.Arvind Dubey, P.L. |

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order on Board**

**28/08/2017**

1. The petitioner was holding substantive post of Panchayat Karmi appointed on 29.9.2000 and he was also confirmed with the powers of Panchayat Secretary by order dated 16.2.2006. His power and jurisdiction to work as Panchayat Secretary has been withdrawn. Feeling aggrieved against that order, this writ petition under Article 226/227 of the Constitution of India has been filed.

2. Mr.B.D.Guru, learned counsel for the petitioner, would submit that the impugned orders were not passed in accordance with the statutory provisions as prescribed in Rule 7 of the Chhattisgarh Service (Discipline and Appeal) Rules, 1999 (hereinafter called as 'Rules of 1999') and the respondents have not conducted any enquiry as envisaged in Rule 7 of the Rules of 1999, therefore, the impugned orders deserve to be set aside.
3. On the other hand, learned State Counsel would support the impugned orders.
4. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
5. Rule 7 of the Rules of 1999 provides as under:-

**“7. Procedure for imposing major penalties.-**

(1) No order, imposing on a member of the Panchayat Service, any of the penalties specified in clauses (iv) to (via) of Rule 5 shall be passed except after a formal inquiry is held as far as may be, in the manner hereinafter provided.

(2) When an order for formal inquiry has been made, the disciplinary authority shall frame Definite charges on the basis of allegations and shall communicate such charges, alongwith the statement of the allegations, to the member of the Panchayat Service and also require him to submit, within such time as may be specified a written statement of defence and also to state whether he desires to be heard in person.

(3) The person against whom inquiry is to be held shall, for the purpose of preparing to defence, be permitted to inspect and take extracts from such

records as he may specify :

Provided that such permission may be refused if, for reasons to be recorded in writing, in the opinion of the Enquiry Officer such records are not relevant for the purpose or it is against the public interest to allow his access thereto.

(4) On receipt of the written statement of defence or if any such statement is not received within the time specified, the disciplinary authority may himself enquire into such of the charges as are not admitted or appoint an Enquiry Officer to hold the inquiry and forward to him his report and, if advised, his recommendation alongwith all the inquiry papers.

(5) The disciplinary authority may nominate any person to present the case in support of the charges before the Enquiry Officer. The member of the Panchayat Service may present his case with the assistance of any other Panchayat Servant of State Government Servant approved by the Enquiry Officer but may not engage a legal practitioner for the purpose, unless the person nominated by the disciplinary authority as aforesaid is a legal practitioner or unless the disciplinary authority having regard to the circumstances of the case so permits.

(6) If the servant of the Panchayat Service desires to be heard in person, he shall be so heard. If he so desires or if the disciplinary authority so directs, an oral enquiry shall be held by the Enquiry Officer. At such inquiry, evidence shall be heard as to such of the allegations as are not admitted and the person charged shall be entitled to cross examine the witness, to give evidence in person, to produce documentary evidence, if any and to have such witness called as he may wish :

Provided that the Enquiry Officer may, for reasons to be recorded in writing, refuse to call a witness.

(7) At the conclusion of the inquiry, the Enquiry Officer shall prepare a report of the inquiry, recording his findings on each of the charges together with reasons therefor.

(8) The proceedings conducted against the

persons charged shall contain a sufficient record of :-

(i) the charges framed against such person and the statement of allegations;

(ii) the written statement of defence if any;

(iii) the oral evidence taken in the course of the inquiry;

(iv) the documentary evidence considered in the course of the inquiry;

(v) the orders, if any, made by the Enquiry Officer or the disciplinary authority, as the case may be, with regard to the inquiry;

(vi) a report setting out the findings on each charge and the reasons therefor.

(9) The Enquiry Officer, if he is other than the disciplinary authority, shall submit the records of the proceedings mentioned in clause (8) above to the disciplinary authority without recommendation relating to the penalty to be imposed. The disciplinary authority shall consider the record of the enquiry and its findings on each charge, having regard to the findings on the charges and the record (if the proceedings) if he is of the opinion that any of the penalties specified in clauses (iv) to (vii) of Rule 5 should be imposed, it shall furnish to the person charged a copy of the report of the Enquiry Officer, and where the disciplinary authority is not the Enquiry Officer a statement of its findings together with brief reasons for disagreement, if any, with the findings of the Enquiry Officer.

(10) The disciplinary authority shall consider the representation, if any, made by the person charged in response to the notice and determine the penalty, if any, should be imposed and shall pass appropriate order on the case.

(11) The orders passed by the disciplinary authority shall be communicated to the member of the Panchayat Service, who shall also be supplied with a copy of the report of the Enquiry Officer and where disciplinary authority is not the Enquiry Officer, a statement of its findings together with the brief reasons for disagreement, if any, with the findings of the Enquiry Officer,

unless they have already been supplied to the person charged.”

6. A careful perusal of the aforesaid provision would show that only the petitioner has only issued show-cause notice and thereafter departmental enquiry has not been conducted, no charges were found proved, no opportunity of hearing was given to the petitioner (See **Dhaluram Kosaria Vs. State of C.G. & Others**<sup>1</sup>).
7. Rule 7 of the Rules of 1999 is mandatory. In view of non-compliance of Rule 7 of the Rules of 1999, the impugned orders dated 16.2.2006 (Annexure P/1) and 27.7.2006 (Annexure P/2) passed by respondent No.4 are hereby set aside.
8. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)  
Judge

B/-

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<sup>1</sup> 2006 (2) C.G.L.J. 186