

AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 1356 of 2011****Judgment Reserved on 06.02.2017****Judgment Delivered on 03.05.2017**

C.R. Tandya S/o Heeralal Tandya, aged about 66 years, Retd. Town Inspector, Masturi, District Bilaspur, Chhattisgarh.

**---- Petitioner****Versus**

1. State Of Chhattisgarh through the Secretary, Home Department, D.K.S. Bhawan, Raipur, Chhattisgarh.
2. Director General Of Police, Police Headquarters, Raipur, Chhattisgarh.
3. Inspector General Of Police Bilaspur Range, District Raipur, Chhattisgarh.
4. Superintendent Of Police Bilaspur, District Raipur, Chhattisgarh.

**---Respondents**


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| For the Petitioner        | : | Shri H.S. Ahluwalia, Advocate.   |
| For the Respondent/ State | : | Shri R.K. Jaiswal, Panel Lawyer. |

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant****CAV ORDER**

1. This writ petition is brought under Article 226 of the Constitution of India for issuance of a writ quashing the impugned appellate order dated 14.1.2004 and the order dated 23.9.2003 passed by the disciplinary authority.

2. Briefly stated facts of the case are that the petitioner was employed under the State Government in Police Department. At the relevant time, he was working as Town Inspector at Masturi Police Station, District Bilaspur. On 22.8.2002, Crime No. 212 of 2002 was registered for the offence under

Sections 294, 323/34 of the IPC on the basis of a report lodged by one Pardesi Ram along with injured Jagannath, who suffered head injury and during the course of his treatment in MMI Hospital, Raipur, he died on 3.9.2002 and thereafter Section 302 of the IPC was also added to the registered offences. On the basis of a report dated 04.09.2002 sent by Deputy Superintendent of Police to respondent No.4 – Superintendent of Police, to the effect that the petitioner has deliberately registered Crime No.212 of 2002 for minor offences and thereupon a departmental enquiry was held against the petitioner on the charges mentioned as under:

**'8.7 (A)** In Masturi Police Station, complainant Pardeshiram, S/o Jatiram Kaivert aged about 23 years, R/o Pendri had lodged a report on the basis of which Crime No. 212 of 2002 for offences under Section 294 and 323/ 34 of IPC was registered, which are very minor offences and thus showed the doubtful character and did illegality.

(B) In the aforesaid case, no query about the nature of injuries sustained by the Jagannath Prasad, S/o Jatiram Kaivert was sought from the C.H.C. Masturi and thus showed the grave dereliction towards the duty.

(C) In Crime No. 212 of 2002 under Sections 294 and 323/34 of the IPC of police station, Masturi you failed to discharge proper duty of your post in registration of crime and in important preliminary investigation of offence and thus showed misconduct against rules 3(1)(ii), 3(1)(iii) and 3(2)(ii) of the M.P. Civil Services (Conduct) Rules, 1965.'

3. Enquiry Officer submitted a report dated 30.7.2003 whereby none of the charges were found proved against the petitioner. The Disciplinary Authority i.e. respondent No.3 – Inspector General of Police did not agree

with the findings of the Enquiry Officer and after setting aside the findings arrived at in the enquiry report, held the petitioner guilty of the charges framed against him by order dated 23.9.2003. By the said order, the petitioner was punished with major penalty by reducing the pay-scale of the petitioner to the basic pay-scale of a Police Inspector, to be effective from the pay to be paid in the month of October 2003, till the date of retirement of the petitioner. The petitioner retired from service on 21.5.2004. He preferred an appeal before the appellate authority/Respondent No.2 – Director General of Police which was rejected vide order dated 14.1.2004 maintaining the findings of the Disciplinary Authority.

4. The grounds in this petition are that the respondents - authorities have acted arbitrarily and against the principles of natural justice and no preliminary enquiry was held before issuance of charge-sheet against the petitioner. The report of the Enquiry Officer was a detailed and elaborated one, which was set aside by the Disciplinary Authority in a biased manner and that too, without assigning any reasons. There was no proof in the enquiry that the petitioner was interested to favour the accused person or he had any such intention. Just because he had registered minor offences against the accused persons does not amount to misconduct. The provisions of Section 154 of the Cr.P.C. and the police regulations clearly directs that the offence has to be registered on the basis of contents of FIR only. Only because the victim was unconscious cannot be a ground to register the crime under Section 307 of the IPC. The punishment awarded to the petitioner has effect on his pensionary benefits because of which his pension has been reduced. Hence, issuance of writ is prayed for.

5. The respondents, in reply, have submitted that the order dated 23.9.2003 of the Disciplinary Authority and order dated 14.1.2004 of the Appellate Authority were passed considering the entire facts, documents and material on record, on the basis of which the charges against the petitioner were found proved. A sympathetic view was taken while imposing penalty on the petitioner by merely punishing him with reduction in pay-scale.

6. Denying the contentions made in the petition, it is submitted that the petitioner had option of alternative statutory remedy, however without resorting to the same, he has filed this petition. Rule 2 of the M.P. Police Regulations very clearly provides that after rejection of the appeal by the Appellate Authority, consequent appeal has to be preferred before the State Government and hence under these circumstances, this petition cannot be entertained. It is further submitted that the present writ petition has been filed prematurely and accordingly a prayer has been made for dismissal of the writ petition.

7. First of all, the issue with regard to maintainability of this writ petition needs to be examined. This writ petition was filed on 1.3.2011. After summoning the respondents, the petition was heard and admitted on 20.11.2014. No objection was raised by the counsel representing the respondents as to the maintainability of this petition at the stage of admission of the petition. It is well settled that only because of the reason that alternative efficacious remedy was available, a writ petition under Article 226 of the Constitution cannot be dismissed, if the facts and circumstances of the case are such that requires the exercise of jurisdiction under Article 226 of the Constitution by the High Court. {See **State of Himachal Pradesh**

**V/S Raja Mahendra Pal and Others** reported in **1999 (4) SCC 43, 1999 AIR(SC) 1786**}. In the case of **State of Tripura vs Manoranjan Chakraborty and Others** reported in **2001 (10) SCC 740**, the Apex Court observed in paragraph 4 as follows:

'[4] For the reasons contained in the said decisions, we hold that the impugned provisions are valid. It is, of course, clear that if gross injustice is done and it can be shown that for good reason the court should interfere, then notwithstanding the alternative remedy which may be available by way of an appeal under Section 20 or revision under Section 21, a writ court can in an appropriate case exercise its jurisdiction to do substantive justice. Normally of course the provisions of the Act would have to be complied with, but the availability of the writ jurisdiction should dispel any doubt which a citizen has against a high-handed or palpable illegal order which may be passed by the assessing authority.'

In the case of **Somani Steels Ltd vs Collector of Central Excise** reported in **2001 AIR(SCW) 5069**, the Apex Court observed in paragraph 2 as follows:

'[2] In 1983 the writ petition out of which this appeal arose, was filed by the appellants, claiming certain relief's which we need not advert to here; the High Court dismissed the same on the ground that the appellants had alternative remedy of appeal. In our view, the ground of alternative remedy does not oust the jurisdiction of the High Court under Article 226 of the Constitution. It is a factor which has to be taken into consideration while exercising the jurisdiction under Article 226 of the Constitution by the High Court and, therefore, dismissing the writ petition after 8 years on the ground of alternative remedy would not be a proper exercise of jurisdiction. The learned Additional Solicitor General has fairly submitted that on this ground it

is not possible to sustain the order under challenge. Accordingly, the order under challenge is set aside. The Writ petition is restored to the file of the High court. The case is remitted to the High court for disposal in accordance with law by allowing this appeal. No costs.'

In the case of **Chambal Ghati Shiksha Prasar Samiti V/S State Of Madhya Pradesh** reported in **1995 MPLJ 969**, it is observed in paragraph 6 as follows:

'[6] The preliminary objection with regard to the availability of alternate remedy be examined.

The petitioner has placed reliance on C. A. Abraham v. Income Tax Officer, Kottayam, AIR 1961 SC 609 and Jai Singh v. Union of India, AIR 1977 SC 898. There is no dispute with the proposition that when an alternate remedy is available then normally aggrieved party should be relegated to his ordinary remedy provided under the statute. But there is another well known principle of law enunciated by the Supreme Court. In Hirday Narain v. Income Tax Officer, Bareilly, AIR 1971 SC 33, the Supreme Court has held in categorical terms that if a petition is entertained and during the pendency of the petition the remedy for seeking alternate remedy expires then the petitioner should be heard on merits and the parties should not be relegated to remedies under the statute. This precise question was dealt with in para 12 of the judgment and the relevant observation reads as under :

"If the High Court had not entertained his petition Hirday Narain could have moved the Commissioner in revision, because at the date on which the petition was moved the period prescribed by Section 33-A of the Act had not expired. We are unable to hold that because a revision application could have been moved for an order correcting the order of the Income-Tax Officer under Section 35, but was not moved, the High Court would be justified in dismissing as not maintainable the petition, which was entertained

and was heard on the merits."  
In view of the above, the preliminary objection taken on behalf of respondents is overruled.'

In the case of **M.P. Bijlee Karmachari Mahasangh and Others vs. Registrar of Representative Unions and Others** reported in **1985 MPLJ 481**, it is observed in paragraph 16 as follows:

[16] Learned counsel for the petitioners has also placed reliance on a decision of this Court in *Singh Engineering Co. v. Regional Director, ESIC*, 1983 MPLJ 261, in support of his contention that the petition having been admitted for hearing, is not liable to be thrown on the ground of alternative remedy, the availability of which was not free from doubt. He also relied on yet another decision in *Rajya Parivahan Karmachari Mahasangh, Ujjain and another v. State of M.P. and others*, 1983 MPLJ 68, which is also a case arising from an order of the Registrar passed on an application for recognition as a representative Union under the Act. In that case it has been held that the petition cannot be thrown on the ground of availability of alternative remedy because in the circumstances of that case the petitioners were justified in believing that they had no right of appeal. The circumstances in the present case are not different in this regard. As such this petition also cannot be thrown on the ground of availability of alternative remedy as urged by the learned counsel for the respondents.'

Hence, for these reasons, the preliminary objection raised by the respondents cannot be entertained and the same is dismissed accordingly.

8. Perused the material on record for consideration of merits of the case. The report submitted by the Enquiry Officer dated 30.7.2003 discloses that the evidence was recorded in the departmental enquiry. The first doctor who

examined the injured Jagannath reported that the injuries founds on his body are simple in nature although X-Ray test was advised and the injured was referred to the District Hospital, Bilaspur for further treatment. It is mentioned in the report that the radiologist conducted the X-Ray and reported that no bony injury was found on the head of injured Jagannath. Injured Jagannath never came to consciousness and he died on 3.2.2002 and thereafter inquest was conducted and Section 302 of the IPC was added to the diary of investigation in this case. It was alleged that the petitioner did not take any step to send queries to the examining doctor and treating doctor about the condition of the injured Jagannath. Even then, it was the petitioner who completed the investigation and charge-sheeted the accused persons in this case.

9. It is submitted by counsel for the petitioner that on the basis of the material and facts on record, no case of misconduct was made out and Enquiry Officer has rightly given the finding that the charges against the petitioners were not proved.

10. After submission of enquiry report, respondent No.2 passed the order under challenge dated 23.9.2003 by rejecting the findings of the Enquiry Officer, holding the petitioner guilty and awarding penalty and the same has been upheld by the Appellate Authority/ Respondent No.3. On perusal of these orders, no special reasons seem to have been assigned for rejecting the findings of the enquiry officer.

11. On perusal of the order dated 23.9.2003, it appears that no opportunity of hearing was given to the petitioner before holding him guilty,

and also no opportunity was given to make submissions before imposition of penalty. It was alleged in the grounds of the appeal that the rules of departmental enquiry were not valid and the petitioner was not heard in accordance with the principles of natural justice before passing such orders, which has not been considered in the impugned order dated 14.1.2004 passed by the Appellate Authority/ respondent No.3.

12. Reliance has been placed on the judgment of the Apex Court in **Rajinder Kumar Kindra vs. Delhi Administration through Secretary (Labour) and Others** reported in **[1984] AIR (SC) 1805** has observed in paragraph 17 as under:

'17. It is equally well settled that where a quasi judicial tribunal or arbitrator records findings based on no legal evidence and the findings are either his ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated. The industrial tribunal or the arbitrator or a quasi-judicial authority can reject not only such findings but also the conclusion based on no legal evidence or if it is merely based on surmises and conjectures unrelated to evidence on the ground that they disclose total nonapplication of mind. Viewed from either angle, the conclusion of the enquiry officer as well as of the arbitrator Mr. Kakkar are wholly perverse and hence unsustainable. The High Court, in our opinion, was clearly in error in declining to examine the contention that the findings were perverse on the short, specious and wholly untenable ground that the matter depends on appraisal of evidence.'

Further it has been held in the judgment of the Apex Court in the case of **Yoginath D. Bagde vs. State of Maharashtra and Another** reported in **(1999)7 SCC 739** has observed in paragraph 31 as under:

'31. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry officer into the charges levelled against him but also at the stage at which those findings are considered by the disciplinary authority and the latter, namely, the disciplinary authority forms a tentative opinion that it does not agree with the findings recorded by the enquiry officer. If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reason on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or service rule including

rules made under Article 309 of the Constitution.'

13. As it is evident from the facts of this case that disciplinary authority did not give any opportunity to the petitioner before taking a final decision on the report submitted by the Enquiry Officer and also no opportunity of being heard was given to the petitioner before awarding penalty. It is very clear that principles of natural justice have not been followed and the findings of the Enquiry Officer were set aside and penalty was imposed on the petitioner. This shows that the procedure of departmental enquiry conducted against the petitioner was perverse and that too without following the rules of departmental enquiry and principles of natural justice.

14. In the result and for the reasons mentioned hereinabove, this writ petition is allowed. The orders of the Disciplinary Authority dated 23.9.2003 and the Appellate Authority dated 14.1.2004 are hereby quashed. It is further directed that the monetary benefit in salary withdrawn after imposing penalty till the date of retirement and the monetary benefit withdrawn in the matter of pension after the date of retirement shall be made good by the respondents at the earliest. The petitioner is also entitled for all other benefits consequent to his superannuation. Compliance of this order be made within a period of four months.

**Sd/-**

**(Rajendra Chandra Singh Samant)**  
Judge