

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3555 of 2017

Sakhi Ram Sidar S/o Late Shri Mehar Singh Sidar, Aged About 57 Years
Presently Posted and Working As Assistant Statistic Officer, District Planning &
Statistics Office, Janjgir, District Janjgir- Champa, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Finance, Planning & Statistics, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh.
2. Commissioner- Cum- Director, Finance & Statistics, Indrawati Bhawan, Naya Raipur, District Raipur, Chhattisgarh.
3. Collector, (Planning & Statistics), District Baloda Bazar- Bhatapara, Chhattisgarh.
4. Deputy Registrar, (Planning & Statistics), District Baloda Bazar- Bhatapara, Chhattisgarh.
5. Deputy Director, (Planning & Statistics), District Baloda Bazar- Bhatapara, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri D.R. Patel, Advocate
For State	:	Shri Manish Nigam, Panel Lawyer

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

Order On Board

12/12/2017

Heard.

1. This petition is directed against the impugned order dated 13.7.2016 by which a penalty of withholding two annual increments with cumulative effect has been imposed upon the petitioner.
2. Petitioner's main grievance is based on procedural impropriety inasmuch as the petitioner's reply was not considered by respondent and by a perfunctory

order, penalty was imposed.

3. According to learned counsel for the petitioner though a very short period of three days was granted to file reply, the petitioner had duly submitted his reply in the office whereas impugned order wrongly records that the petitioner did not submit any reply. It is thus clear that without considering petitioner's defence, the impugned order has been passed.
4. Learned counsel for the State submits that the affidavit of the concerned dealing Clerk Prakash Chandra Sharma has been filed along with the return who has stated that though the petitioner had submitted his reply under acknowledgement, later on, the petitioner withdrew the reply by stating that the reply requires amendment and thereafter reply was never submitted. The facts stated in the return have been traversed by the petitioner by filing a rejoinder.
5. Once it is not in dispute that the petitioner had submitted a reply as is clear from affidavit of the concerned dealing Clerk, it is most unusual that the concerned Clerk would give back the reply without taking any acknowledgment by the petitioner. In any case, this fact does not find place in the impugned order. Therefore, it is quite apparent that the petitioner's reply was submitted but it was not given any consideration. In fact, this is a fit case where the Collector should initiate departmental enquiry against the concerned dealing Clerk who is filing this kind of affidavit in the Court without supported by any material on record of having taken any acknowledgment from the petitioner that reply submitted by the petitioner is being returned to him.
6. The penalty cannot be imposed unless defence of the employee is properly considered. This Court is also at pains to see that only three days time was granted to the petitioner to file reply. Imposition of penalty on a Govt. servant has deleterious effect on his entire service career apart from financial loss, further promotion and other service benefit. Three days of notice cannot be said to be sufficient and adequate to give an employee opportunity to submit his defence. Even though there is alternative remedy available to the petitioner, considering that present is a case of non-consideration of petitioner's reply despite submitted in the office of the Disciplinary Authority, I

am inclined to exercise discretion in favour of the petitioner as it is a case of violation of principles of natural justice.

7. In the result, the petition is allowed. The impugned order is set aside. It would be open for the Disciplinary Authority to issue fresh show cause notice to the petitioner giving him adequate period to file reply in accordance with provision contained in Rule 16 of the Civil Services (Classification, Control & Appeal) Rules, 1966 and consider his defence and then pass order in the matter.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen