

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No.3253 of 2003**

C.L. Sao S/o Shri H.R. Sao, aged about 55 years, occupation-Service, presently posted as In-charge Deputy Director, Mandi Board, Bastar Division, Jagdalpur, Distt. Bastar (Chhattisgarh).

---- Petitioner**Versus**

1. Chairman, Madhya Pradesh Rajya Krishi Vipnan Board, 26, Arera Hills, Kisan Bhawan, Bhopal (MP).
2. Managing Director, Madhya Pradesh Rajya Krishi Vipnan Board, 26, Arera Hills, Kisan Bhawan, Bhopal (MP).
3. Managing Director, Chhattisgarh Rajya Krishi Vipnan Board, Raipur (CG).

---- Respondents

For Petitioner	:	Shri Anurag Verma, Advocate.
For Respondents No.1&2	:	None, though represented.
For Respondent No.3	:	Shri R.S. Marhas, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****Passed on 21/06/2017**

1. Challenge in the present writ petition is to the order dated 24.10.2000 (Annexure P/9) by which disciplinary action of punishment of stoppage of three annual increments with cumulative effects was passed against the petitioner by the respondent No.2. Against the said order, an appeal was preferred before the respondent No.1, Chairman, Madhya Pradesh Rajya Krishi Vipnan Board, which too got decided and rejected on 29.03.2003 (Annexure P/5), leading to

filing of present writ petition.

2. Learned counsel appearing for the petitioner assailing the two orders at the very outset submits that the present petitioner was initially working under the respondents No.1&2 and was subsequently allocated to the State of Chhattisgarh. He assails the order of appellate authority on the ground of competency and jurisdiction. According to him, since the order of punishment was passed on 24.10.2000 and the State of Chhattisgarh was carved out on 01.11.2000 and immediately thereafter on 01.12.2000 Chhattisgarh Rajya Krishi Vipnan Board was also constituted, for all practical purposes, the appellate authority so far as petitioner is concerned, became the Chairman of respondent No.3-Board. Since on that date, his appeal was pending before the respondent No.1 and was not decided finally, it ought to have been transferred to the appellate authority in the State of Chhattisgarh. It is further alleged that the allegation against the petitioner is that while working at Baloda Bazar, Distt. Raipur in the capacity of Secretary, he had not collected Mandi fees from one Arjun Lal Kedia in spite of there being instructions from the higher authorities and therefore there is negligence amounting to misconduct on his part causing loss to the Mandi.
3. Counsel for the petitioner submits that for the said allegation, initially show cause notice was issued on 25.11.1999 by the Joint Director (Complaint), Madhya Pradesh Rajya Krishi Vipnan Board, to which, the petitioner immediately wrote back and sought for certain

document with which the allegations could be disproved. The respondents, however, did not provide any document to the petitioner. Subsequently, another notice was issued by the respondents on 10.12.1999 to the petitioner, to which the petitioner gave a reply on 29.03.2000 (Annexure P/5). The respondent, however, did not take into consideration the submissions made by the petitioner and on 09.03.2000 called for an explanation from the petitioner with regard to alleged misconduct of non recovery of Mandi fees. Since the petitioner had not got the document that he had sought for, he could not reply effectively to the show cause notice and finally the respondent No.2 vide order dated 24.10.2000 passed the order of punishment of stoppage of three annual increments with cumulative effects.

4. Counsel for the petitioner assails the said order on the ground that the said action taken by the Managing Director was without conducting any sort of inquiry as is required. It is further contended that the authorities have also not conducted any preliminary investigation so far as whether there was any lapse or fault on the part of the petitioner. It was further contended that the petitioner had infact worked as Secretary at Krishi Upaj Mandi Samiti at Baloda Bazar for a very brief period from 06.08.1988 to 30.06.1989. He submits that the alleged non recovery was not of the period when he was working at that place. Therefore, he could not be saddled with the responsibility or charge of alleged misconduct.
5. It was also contended by the petitioner that a perusal of record would

show that non recovery of Mandi fees was of the period much prior to 1988. First show cause notice in the present case was issued only on 25.11.1999 i.e. after a period of more than 11 years and as such action on the part of the respondents suffers from delay and laches. It was lastly contended that in fact the appellate authority of the State of Madhya Pradesh, after the creation of the State of Chhattisgarh and a separate Board in the State of Chhattisgarh, could not have exercised the power of appellate authority and the impugned order is bad in law for this reason also. Thus, sought for quashing of the punishment order and to further direct that the petitioner shall be entitled for all consequential benefits.

6. Learned counsel appearing for the respondent No.3 submits that it is the action of the respondents No.1&2 which has been assailed by the petitioner and as such it is for the respondents No.1&2 to take action. So far as the respondent No.3 is concerned, the petitioner got employed under the respondent No.3 only after its creation in the month of December, 2000 and since then the petitioner has discharged his duties. Now he is retired. He has also been paid all retiral dues and there is no any pending claim of the petitioner as such with the respondent No.3. He, however, technically opposes the petition on the ground of scope of judicial review in a case of punishment particularly stoppage of annual increment. He further submits that the lis between the parties has been resolved in due course of time as the petitioner was granted further promotion to the higher post and assigned the duty attached upon the promoted post

and from where he has retired.

7. Having considered the rival contentions put forth on either side and on perusal of records, some of the admitted facts are that, the petitioner was posted at the relevant place between 06.08.1988 to 30.06.1989. The alleged misconduct of non recovery of Mandi fees was for the period prior to 1988 i.e. of the period when the petitioner was infact not posted at the relevant place. Further admitted fact is that there does not appear to have been any preliminary investigation conducted by the disciplinary authority before imposition of order of punishment to ascertain whether there has been any lapse on the part of the petitioner or whether the alleged misconduct was infact committed by the petitioner.
8. The sole allegation against the petitioner is that he has not complied with/obeyed the instructions received from the higher authorities. However, there is no specific detail given by the department or for that matter the appellate authority as to when and who had issued this instruction on behalf of the higher authorities to the petitioner who have not obeyed/complied with the said instructions. If at all if there was certain non recovery, the document sought for by the petitioner was required to be given to him so that he could have explained the said circumstances and could have narrated the facts with the aid of those documents, in the absence of which, the action taken by the respondent against the petitioner can not be said to be just and proper.
9. Further, what is more important is the fact that stoppage of annual

increment with cumulative effects is always considered to be a major punishment for the reason that it has a recurring effect at the time of retirement of the delinquent employee as it affects the pension and other retiral benefits payable to the delinquent employee. It is always a settled position of law that for passing major punishment, it was necessary for the department to hold a departmental enquiry which in the instant case has not been done.

10. Given the factual situation as narrated in the preceding paragraphs and also taking note of the trivial nature of the charge alleged against the petitioner, this court is of the opinion that the impugned order of punishment of stoppage of three annual increments with cumulative effect is too harsh and disproportionate. Further, the order impugned is also not passed after conducting any enquiry to ascertain the misconduct as such has been committed, in violative of the basic principles of natural justice, and the same therefore, deserves to be and is accordingly set aside.

11. The impugned orders dated 24.10.2000 (Annexure P/9) and 29.03.2003 (Annexure P/5) thus stand quashed. As a consequence, the petitioner would be entitled for all consequential benefits.

12. The petition is allowed.

Sd/-
(P. Sam Koshy)
Judge