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WPS-2493/01

IN THE MADHYA PRADESH ADMINISTRATIVE TRIBUNAL BENCH RAIPUR

O.A. NO. _____ OF 1998

APPLICANT

Baliyar Singh Rajput s/o Shri Mahadeo Singh aged about 37 years Ex.Forest Guard Shashkiya Kastagar Nagri under Forest Division (Production) Nagri Divisional Forest Office (Production) Dhamtari r/o Village Ghumarguda Post Office Sinapali Tahsil Gariaband Distt. Raipur

VERSUS

RESPONDENTS

1. State of Madhya Pradesh through Secretary Forest Department Mantralaya Vallabh Bhavan Bhopal
2. Conservator of Forest Raipur Circle Raipur
3. Divisional Forest Division Production Division Dhamtari Distt. Raipur
4. Assistant Conservator of Forest and Sub. Divisional Officer Forest South Nagri (Production) Sub Division Nagri
5. The Depot. Officer, Government Kasthagar Nagri Distt. Raipur

DETAILS OF APPLICATION

WPS-2493/01
20/10/14

- a. Smt. Laxmi Rajput Wd/o Baliyar Singh, aged about 48 years,
- b. Rajkishore Singh Rajput S/o Baliyar Singh, aged about 31 years,
- c. Anita Singh Rajput D/o Baliyar Singh, aged about 28 years,
- d. Devendra singh Rajput S/o Baliyar Singh, aged about 26 years,
- e. Sunita Rajput D/o Baliyar Singh, aged about 25 years,
- All are R/o Ghummarguda, Tahsil - Devbhog, Distt. Gariyabad (CG)

Baliy Singh
S/o G. Kishore
on 28.8.2014
Comptroller

For Mr. S. K. C.
30.8.2014

Attended



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NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2493 of 2005

- Smt. Laxmi Rajput And Ors.

---- Petitioner

Versus

- State And Ors.

---- Respondent

For Petitioner : Ms. Pritha Ghoshal, Advocate.
For Respondent/State : Shri Arvind Dubey, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

06/04/2017

1. The petitioner would call in question the order of termination dated 21.3.1996 and the appellate order dated 15.10.1997 whereby the petitioner has been dismissed from service as Forester in the Department of Forest.
2. The petitioner was initially appointed as Coupe Guard on a fixed pay of Rs.380/- per month by an order dated 24.2.1984 issued by the Conservator of Forest. He was posted under the DFO, Production Division, Dhamtari. In due course, the post of Coupe Guard was converted into the post of untrained and trained Forester, pursuant to which the petitioner's post was converted and was made regular untrained Forester in the pay scale of Rs.400-525/- by an order issued by the DFO, Production Forest Division, Dhamtari on 12.1.1987.



3. During his posting as Forester, the petitioner was suspended on 7.7.1995 and thereafter charge sheet was issued to him on 14.8.1995 imputing two charges of misconduct namely, (1) while working as Assistant In-charge of Sector No.1, he wrongly filled carting challans to change species of timber causing loss of Rs.1,63, 947/- to the Government and (2) by not preparing stack list of timber sent for disposal (Nistar), he permitted irregular supply of timber and in addition, he failed to maintain the record of receipt, distribution and disposal register of Sector No.1. Statement of charges along with list of witnesses and documents were also supplied to the petitioner along with charge sheet. The petitioner sought for some documents which, according to him, were not supplied, therefore, he was compelled to submit reply without being allowed to inspect the documents. The enquiry officer completed the enquiry and submitted the report (Annexure-A/10) finding charge No.1 to be fully proved and charge No.2 proved in part. The petitioner was supplied copy of the enquiry report along with show cause notice dated 17.1.1996 to which he replied on the same date vide Annexure-A/12 and thereafter the impugned order was passed on 21.3.1996.
4. It is argued that the petitioner was not allowed to inspect the documents at the time of filing reply to the show cause notice; he was not permitted to seek assistance of co-employee which was necessary because the petitioner was holding class-4 post; the documents were not exhibited in course of enquiry and yet they have been relied by the enquiry officer and finally, that the petitioner was appointed as Coupe Guard by the Conservator of Forest, however, his termination order has been issued under the signatures of DFO, which is an authority subordinate to the Conservator of Forest, therefore, there is violation of constitutional provisions contained in Article 311 (2) of the Constitution of India.
5. Per contra, learned State Counsel would support the impugned order of



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termination. According to him, the petitioner was absorbed or regularized as Forester under the orders of the DFO, therefore, his termination by the DFO does not suffer from any error of jurisdiction. To the other arguments raised by learned counsel for the petitioner, he would submit that such plea has not been raised before the enquiry officer and the petitioner has not complained of any prejudice.

6. Having heard learned counsel for the parties at length and on perusal of the record, it would appear that the petitioner's reply to the show cause notice runs into 7 pages. In the reply, he has not stated that he reserved the right to submit any additional reply after perusal of the documents. Even after supply of the enquiry report, the petitioner has not stated in his reply that he has been prejudiced in his defence for the reason that he was not allowed to inspect the documents. As a matter of fact, at the relevant point of time the petitioner has defended his action by specifically referring to the carting challans with reference to which charges were levelled. In reply to the show cause notice after completion of enquiry he himself has requested the disciplinary authority to carefully peruse the carting challans meaning thereby that the petitioner was aware of entire details and writing contained in the carting challans to which he was drawing attention of the disciplinary authority. Therefore, the petitioner has not at all been prejudiced on this count.
7. It is also to be seen that when the petitioner sought inspection of documents, he was instructed by order Annexure-R/1 dated 24.8.1995 that he can inspect the records on 25.8.1995 but it appears, the petitioner did not avail the opportunity.
8. The submission that the petitioner was not allowed assistance of a co-employee which should have been afforded to him because he is the Class-4 employee, also fails to impress because in his reply the petitioner has not stated that he made any such prayer either oral or by

moving application before the enquiry officer but the same was denied to him. If the petitioner considered himself to be competent enough to defend himself and did not seek assistance of co-employee, the blame squarely falls on him because it is not the enquiry officer's fault when no such prayer was ever made by him.

9. The thrust of argument raised by learned counsel for the petitioner is focused mainly on submission that the order of termination has been passed by an authority subordinate to the petitioner's appointing authority.

10. To consider this submission, reference to the contents of first order of appointment by the Conservator of Forest and subsequent order by the DFO needs notice. In the first order the petitioner was absorbed on the post of Coupe Guard on a monthly pay and allowances of Rs.380/- whereas in the second order issued by the DFO on 12.1.1987 the petitioner was granted regular pay scale after conversion of the post of Coupe Guard to the post of untrained and trained Forester. It is not disputed before this Court that the post of Coupe Guard was abolished under an order issued by the State Government on 20/27th February, 1986 and was converted into the post of untrained and trained Forester having pay scale of Rs.400-525/- and 485-740/- respectively. The consequential order dated 12.1.1987 was issued by the DFO, Dhamtari allowing the petitioner to remain untrained Forester in the pay scale of Rs.400-525/-. According to the respondents, this order of 12.1.1987 issued by the DFO is in-fact the order by which the petitioner was retained in service as untrained Forester and since the earlier order of Conservator of Forest appointing the petitioner as Coupe Guard was no longer in existence because the post itself has been abolished, for all legal purposes the petitioner was appointed as Forester on 12.1.1987.

11. In the matter of **State of Assam and Another Vs. Mahendra Kumar Das and Others** {(1970) 1 SCC 709}, the Supreme Court was



considering the argument that the petitioner therein was appointed as Permanent Sub Inspector by the IG, Police whereas the order of dismissal has been passed by the subordinate authority, the Superintendent of Police, therefore, the order of dismissal is illegal and void. Negating the contention, the Supreme Court observed that the Superintendent of Police is appointing and punishing authority of the Sub Inspector of Police, therefore, he had jurisdiction to dismiss and merely because selection for confirmation as Sub-Inspector was conducted by the IG, Police, the Superintendent of Police does not cease to be the appointing authority of the Sub Inspector. Referring to the formal order of appointment of permanent Sub Inspector issued by the Superintendent of Police, it was also observed that the Superintendent of Police having subsequently issued the order, even if initial order was passed by the higher authority, the order of dismissal could be passed by the Superintendent of Police, who was appointing authority under the Rules.

12. The case in hand is almost similar because though the petitioner was initially appointed as Coupe Guard on a fixed pay by the Conservator of Forest but not to any substantive post carrying regular pay scale, the subsequent order of conversion of the post to untrained Forester on a definite pay scale was issued by the DFO. It is to be kept in mind that by circular dated 20/27th February, 1986, the posts of Coupe Guard were abolished or converted to the post of untrained and trained Forester. The consequential order of retaining the services of Coupe Guard as untrained or trained Forester has been issued by the DFO, Dhamtari on 12.1.1987. The appellate authority has also found that under the Forest Manual, under Part-II, Chapter-III, Section 22, the appointing authority of Forester is the DFO. Thus, at the relevant point of time, the petitioner was allowed to remain in service as Forester on regular pay scale under the order issued by the DFO, who is the appointing authority of the Forester and his order of dismissal has also been passed

by the said authority, therefore, the order of termination has not been issued by any authority subordinate to the appointing authority.

13. For all the above-stated reasons, this Court does not find any substance in the present writ petition, which fails and is hereby dismissed.

Sd/-

Prashant Kumar Mishra
Judge

Barve