

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.1102 of 2005

(Arising out of order dated 28-2-2005 passed by the Vice Chancellor,
Indira Gandhi Krishi Vishwavidyalaya, Raipur)

A.K. Shrivastava, S/o Late Shri S.P. Shrivastava, Aged about 48
years, Assistant Engineer, IGKV, R/o M-6, Sector-1, Avanti Vihar,
Teli Bandha, Raipur (C.G.)

---- Petitioner

Versus

1. Indira Gandhi Krishi Vishwavidyalaya Through its Registrar,
Krishak Nagar, Raipur (C.G.)
2. Vice Chancellor, Indira Gandhi Krishi Vishwavidyalaya, Raipur
(C.G.)

---- Respondents

For Petitioner: Mr. Anand Dadariya, Advocate.
For Respondents: Mr. B.D. Guru, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

28/08/2017

1. The petitioner who was holding the post of Assistant Engineer in
respondent Indira Gandhi Krishi Vishwavidyalaya was subjected to
departmental proceeding under the Chhattisgarh Civil Services
(Classification. Control and Appeal) Rules, 1966 (for short, 'the
Rules of 1966') and the Enquiry Officer submitted its report on 19-
11-1999 holding that 13 charges are not proved against the
petitioner except charge No.1(3) which was found to be proved.
Thereafter, the disciplinary authority issued show cause notice
along with reasons for disagreement and final order on 28-2-2005

was passed directing recovery of ₹ 13,85,868/- and stoppage of two increments with cumulative effect. Feeling aggrieved against that order, this writ petition has been filed.

2. Mr. Anand Dadariya, learned counsel for the petitioner, submits that the disciplinary authority having disagreed with the findings recorded by the Enquiry Officer holding that charges are not proved against the petitioner, was required to record its reasons firstly as required under Rule 15 (2) of the Rules of 1966 and further could have recorded its own reasons on such charges on the basis of charges available on record, but this course was not adopted. It was virtually a final order of imposing punishment and verbatim in the order of punishment alleged reasons assigned in the show cause notice have been copied making it vulnerable and therefore the entire departmental enquiry and punishment imposed against the petitioner deserve to be quashed.
3. On the other hand, Mr. B.D. Guru, learned counsel appearing for the respondent University, would submit that enquiry has been conducted against the petitioner strictly in accordance with law and the disciplinary authority having disagreed with the findings of the Enquiry Officer assigned reasons and conveyed the same to the petitioner in the shape of show cause notice and full-fledged findings have been recorded imposing aforesaid punishment and therefore the writ petition deserves to be dismissed.
4. I have heard learned counsel for the parties and considered the rival submissions made herein-above and also gone through the

record with utmost circumspection.

5. It is not in dispute that for carrying-out the said departmental enquiry, the procedure envisaged in the Rules of 1966 are applicable in which Rule 15 (2) provides for the procedure and further action to be taken if the disciplinary authority disagrees with the findings of the Enquiry Officer. Rule 15 (2) of the Rules, 1966 states as follows: -

“Rule 15 (2) – Further action if Disciplinary Authority if disagrees with the findings of Enquiry Authority.

(2) The Disciplinary authority shall, if it disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for the such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.”

6. A focused glance of the aforesaid Rule would show that in the event the disciplinary authority disagrees with the findings of the Enquiry Officer, he has to record its separate reasons for such disagreement and he is also obliged to record its own findings pertaining to such charge and in that case the principles of natural justice have to be complied with by communicating the reasons of disagreement to the delinquent employee, and after reply is filed, the disciplinary authority has to record its own findings on all such charges on which the Enquiry Officer has assigned its reasons and in order to record punishment, such a procedure is imperative.
7. The point is no longer res integra and the Supreme Court in the matter of Yoginath D. Bagde v. State of Maharashtra and

another¹ has considered the issue and also considered the earlier decisions of the Supreme Court in the matters of **Punjab National Bank v. Kunj Behari Misra**² and **State of Assam v. Bimal Kumar Pandit**³ holding as under in paragraphs 29, 30, 31 and 34: -

“29. ... But the requirement of “hearing” in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before the disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the “TENTATIVE” reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of “not guilty” already recorded by the enquiring authority was not liable to be interfered with.

30. Recently, a three-Judge Bench of this Court in [Punjab National Bank v. Kunj Behari Mishra](#) (supra) relying upon the earlier decisions of this Court in [State of Assam v. Bimal Kumar Pandit](#) (supra), [Institute of Chartered Accountants of India v. L.K. Ratna](#)⁴ as also the Constitution Bench decision in [Managing Director,](#)

1 (1999) 7 SCC 739

2 (1998) 7 SCC 84

3 AIR 1963 SC 1612

4 (1986) 4 SCC 537

ECIL v. B. Karunakar⁵ and the decision in [Ram Kishan v. Union of India](#)⁶ has held that: (SCC p. 96, para 17)

"It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority."

The Court further observed as under : (SCC p. 96, para 18)

"When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded

5 (1993) 4 SCC 727

6 (1995) 6 SCC 157

with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed."

The Court further held that the contrary view expressed by this Court in [State Bank of India v. S.S. Koshal](#)⁷ and [State of Rajasthan v. M.C. Saxena](#)⁸ was not correct.

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

7 1994 Supp (2) SCC 468

8 (1998) 3 SCC 385

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 reasons 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.

34. Along with the show-cause notice, a copy of the findings recorded by the enquiry officer as also the reasons recorded by the Disciplinary Committee for disagreeing with those findings were communicated to

the appellant but it was immaterial as he was required to show cause only against the punishment proposed by the Disciplinary Committee which had already taken a final decision that the charges against the appellant were proved. It was not indicated to him that the Disciplinary Committee had come only to a "tentative" decision and that he could show cause against that too. It was for this reason that the reply submitted by the appellant failed to find favour with the Disciplinary Committee."

8. The aforesaid decision has been followed by the Supreme Court in the matter of Lav Nigam v. Chairman & MD, ITI Ltd. and another⁹ and in paragraphs 10 and 13, Their Lordships of the Supreme Court held thus,

"10. The conclusion of the High Court was contrary to the consistent view taken by this Court that in case the disciplinary authority differs with the view taken by the inquiry officer, he is bound to give a notice setting out his tentative conclusions to the appellant. It is only after hearing the appellant that the disciplinary authority would at all arrive at a final finding of guilt. Thereafter, the employee would again have to be served with a notice relating to the punishment proposed.

13. We have already quoted the extracts from the show-cause notice issued by the disciplinary authority. It is clear that no notice at all was given before the disciplinary authority recorded its final conclusions differing with the finding of fact of the inquiry officer. The notice to show cause was merely a show-cause against the proposed punishment. In view of the long

9 (2006) 9 SCC 440

line of authorities, the decision of the High Court cannot be sustained. The appeal is accordingly allowed and the decision of the High Court is set aside.”

9. The decision rendered by the Supreme Court in **Kunj Behari Misra'a** case (supra) has been followed by Their Lordships of the Supreme Court with approval in the matters of **Punjab National Bank and others v. K.K. Verma**¹⁰, **S.P. Malhotra v. Punjab National Bank and others**¹¹ and **Pawan Kumar Agarwala v. General Manager-II and Appointing Authority, State Bank of India and others**¹².

10. Applying the principles of law laid down in the aforesaid cases to the facts of the present case, it is quite clear that the disciplinary authority vide Annexure P-14 conveyed its reasons for disagreement, but the disciplinary authority had already formed its opinion for recovery of ₹ 13,85,868/- and stoppage of two increments with cumulative effect. It was no longer remained a show cause notice as it has been issued with premeditation of imposing punishment. Not only this, in the final order of punishment dated 28-2-2005, again the disciplinary authority has verbatim reproduced the reasons for disagreement as contained in the alleged show-cause notice dated 10-1-2001 and has not recorded any independent finding which is sine qua non under Rule 15 (2) of the Rules, 1966, as such, there are no separate reasons recorded on such charge by the disciplinary authority except the

10 (2010) 13 SCC 494

11 (2013) 7 SCC 251

12 (2015) 15 SCC 184

reasons for disagreement. It is a case of total non-compliance of Rule 15 (2) of the Rules, 1966.

11. Therefore, the impugned order of punishment dated 28-2-2005 passed by the disciplinary authority imposing punishment of recovery of ₹ 13,85,868/- as well as stoppage of two increments with cumulative effect is hereby set aside. The matter is remitted back to the disciplinary authority for issuing fresh show-cause notice along with reasons for disagreement and after filing reply by the petitioner herein, the University/disciplinary authority will take final decision recording its own findings on such charges as early as possible preferably within a period of three months from the date of receipt of a copy of this order, strictly in accordance with law.

12. The writ petition is allowed to the extent indicated herein-above.

No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge