

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 6911 of 2010**

Umendra Mishra, S/o. Shri Late Shyamlal Mishra, Aged about 44 years, R/o. Police Line, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Home, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh
2. The Director General of Police, Raipur Chhattisgarh
3. The Inspector General of Police, Bilaspur, Range Bilaspur Chhattisgarh
4. The Superintendent of Police, Bilaspur Chhattisgarh
3. Additional Superintendent of Police, City, Bilaspur, Chhattisgarh

----Respondents

For Petitioner	:	Mr. B.D. Guru, Advocate Mr. Ajit Singh, Advocate Ms. Priya Mishra, Advocate
For State	:	Mr. Arvind Dubey, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****04/09/2018**

1. The challenge in the present writ petition is to the order dated 21.09.2010, passed by the Director General of Police rejecting the appeal of the petitioner against the order of termination dated 04.02.2010.
2. At the outset, the counsel for the petitioner submits that for the moment the petitioner intends to challenge the finding of the Appellate Authority only on the two grounds, firstly the Appellate Authority has not decided the appeal of the petitioner by an speaking order, in as much as the contentions and submissions raised by the Appellate Authority in the appeal has not been

decided by a reasoned order and therefore the impugned order (Annexure P/1) gets vitiated for that.

3. The second contention of the petitioner was that so far as the charge No.1 & 3 are concerned, the allegation was that the petitioner has wrongly registered a crime against the accused persons vide Crime No.41/2005 against one Surjit Singh @ Mangal Singh.
4. The counsel for the petitioner submits that the said crime number i.e. 41/2005 alleged to have been registered falsely by the petitioner at Police Station Chakarbhata has finally resulted in conviction of the accused persons vide judgment dated 17.11.2008, The fact that the said Criminal Case has culminated in the conviction of the accused by itself clearly demonstrates that it was not a false case which has been registered by the petitioner and as such both these charges do not have any substance to withstand and both these charges would therefore stands collapsed.
5. So far as charge No. 2 is concerned, the Appellate Authority has also not considered the contention of the petitioner raised in his appeal so far as the deposition of witness No.7 recorded during the course of the inquiry proceedings i.e. the statement of Azad Shatru Bahadur Singh, the then City Superintendent of Police under whom the petitioner was working and who in his deposition has clearly admitted about the petitioner having intimated about the arrest of the said accused persons. The said witness further deposed that he in turn had also further intimated the higher authorities in the

department which would demonstrate that the charge No.2 leveled against the petitioner is without any basis.

6. The counsel for the petitioner prays that the present writ petition may be disposed off on setting aside of the impugned order (Annexure P/1) holding it to be bad in law and a non-speaking and unreasoned order and the matter may be remitted back to the Appellate Authority to decide the appeal altogether afresh.
7. The State counsel opposing the petition however submits that it is a case where initially there was an inquiry report and a punishment order which was inflicted vide Annexure P/7 dated 27.10.2007. However on a mercy appeal preferred by the petitioner the appeal was allowed and the punishment order earlier passed stood set-aside and the matter stood remitted back for a fresh adjudication altogether and subsequently a provisional inquiry report was also collected and based on the finding of the said provisional inquiry report, the subsequent punishment order has been passed and therefore there is no scope of interference. He further submits that even otherwise the petitioner has been given all opportunities of defense in the course of the departmental enquiry and for this reason also the State counsel prayed for dismissal of the writ petition.
8. Having heard the contentions put forth on either side and on perusal of the record, what is undisputed is that vide order (Annexure P/1) dated 04.02.2010 the petitioner has been inflicted with a punishment of removal from service. Against the said order, the appeal has been preferred vide Annexure P/12. The petitioner in his

appeal has raised various grounds. Some of the grounds is in respect of the punishment order being based on the provisional inquiry report, whereas there was already a final inquiry report which has not been taken note of by the Disciplinary Authority while passing the impugned order of punishment.

9. From the records, it also appears that so far as charge No. 1 & 3 is concerned, it primarily relates to the registration of an offence vide Crime No.41/2005 alleging the said registration of the case to be without substance and has been with malafide intention. Undisputedly the said criminal case arising out of the said crime No.41/2005 stands concluded and the accused in the said case stands convicted for the offence. The very conviction of the accused in the said crime itself demolishes the case of the State of the petitioner having unnecessarily registered Crime No. 41/2005. Thus the order of punishment or the order of the Appellate Authority in affirming the judgment of removal from service based on the charge No. 1 & 3 therefore would become unsustainable.
10. So far as charge No.2 is concerned, the Appellate Authority has not discussed or considered the aspect that the witness of the prosecution witnesses No.7 Azad Shatru Bahadur Singh himself has deposed of the petitioner having given due intimation so far as the arrest of the accused Mangal Singh. The Appellate Authority also has not considered the aspect that the said officer has also deposed of himself further intimated about the arrest of Mangal Singh to the higher authorities in the department i.e. Senior Superintendent of Police, Bilaspur.

11. From the aforesaid facts, it clearly reflects that the Appellate Authority's order is an unreasoned and a non-speaking order and the Appellate Authority further requires to have gone into the aspect of the conviction of the accused in Crime No.41/2005, which by itself would have demolished both the charges leveled against the petitioner/the delinquent employee. Moreover, the Appellate Authority also has not considered the statement of the witness No.7 while deciding the appeal so far as charge No.2 is concerned.
12. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that the order of the Appellate Authority dated 21.09.2010 is not sustainable and the same deserves reconsideration and is accordingly set-aside/quashed. The matter stands remitted back to the Appellate Authority to decide the appeal of the petitioner (Exhibit P/12) and while deciding the appeal, now the Appellate Authority shall also take into consideration the fact that the accused in Crime No.41/2005 stands convicted from the competent Court of law and whether in the said circumstances, the charge No.1 & 3 would be any further sustainable or not.
13. Let the Appellate Authority pass a fresh order on the appeal of the petitioner within a further period of two months from the date of receipt of certified copy of this order.
14. The writ petition thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge