

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 2979 of 2003

- Nanda Prasad Gupt, S/o Ram Jatan Ram, aged about 51 years, Assistant Grade-II, Office of the District Excise Officer, Ambikapur, (Sarguja)

---- Petitioner

Versus

1. State Of Chhattisgarh through the Secretary, Ministry of Excise Etc. Dau Kalyan Singh Bhawan, Raipur
2. The Excise Commissioner, State of Chhattisgarh, Byron Bazar, Raipur
3. The Collector, Department of Excise, Ambikapur (Sarguja)

---- Respondents

For Petitioner
For Respondent-State

Shri Sameer Oraon, Advocate
Shri Shashank Thakur, GA

Hon'ble Justice Mr. Prashant Kumar Mishra

Order On Board

05/09/2018

1. Under assail in this petition is the appellate order passed by the Excise Commissioner, Chhattisgarh on 19.06.2013 partly allowing petitioner's appeal against the order passed by the Collector (Excise), Sarguja on 27.11.2001 (Annexure-P-2). While partly allowing the appeal, the Excise Commissioner had reduced the penalty from stoppage of 4 increments to stoppage of 2 increments without cumulative effect.
2. During the relevant period, December, 1992 to August, 1993, the petitioner was posted as UDC (AG-II) in the office of the District

Excise Officer, Ambikapur. Amongst other duties, it was his duty to maintain the record of the liquor lifted by the contractor, however, the petitioner and the Excise Inspector failed to maintain the record, because of which the Excise Contractor committed fraud to the value of Rs.4 Lakhs, which remained undetected because of non maintenance of record.

3. In a duly drawn departmental enquiry proceedings, the petitioner was afforded opportunity of hearing and thereafter the Enquiry Officer found him guilty of the charge. Copy of the report was supplied to the petitioner and after considering his reply, the Collector (Excise) passed an order on 27.11.2001 imposing penalty of stoppage of 4 increments without cumulative effect.
4. Assailing the above said order of the Collector, the petitioner preferred an appeal before the Excise Commissioner, Chhattisgarh, who has allowed the appeal in part and had reduced the penalty from stoppage of 4 increments to 2 increments without cumulative effect.
5. It is argued that the petitioner was not afforded opportunity of hearing and the impugned order would have effect on petitioner's pension, therefore, it deserves to be set aside.
6. Per contra, learned State counsel would submit that from the contents of the order passed by the Collector and the Excise Commissioner, it is quite apparent that the petitioner has been afforded proper opportunity of hearing, therefore, no interference with the finding of fact arrived by the Authorities is required to be made.

7. Having heard learned counsel for the parties and on perusal of the record, it would appear that the orders passed by the Collector (Excise), Sarguja and the Excise Commissioner, Chhattisgarh are detailed orders assigning reason as to why the petitioner has been found guilty of not maintaining the record, which facilitated the contractor to commit fraud to the tune of Rs.4 Lakhs. In both the orders, it is stated in detail that proper opportunity was afforded to the petitioner and was supplied the copy of the enquiry report. The petitioner was also heard by the Collector (Excise) as well as by the Excise Commissioner, before whom the petitioner had engaged a lawyer to argue his case.
8. It is settled law that writ Court is not entitled to substitute the findings recorded by the Enquiry Officer duly affirmed by the Disciplinary Authority and the Appellate Authority unless the findings suffer from perversity.
9. In the case at hand, I have not found any perversity either in the approach or in the finding recorded by the Disciplinary Authority or the Appellate Authority, who have accepted the finding recorded by the Enquiry Officer. Even otherwise, the penalty imposed on the petitioner is minor penalty, which has no effect on his pension.
10. The writ petition has no substance. It deserves to be and is hereby dismissed.

Sd/-
Prashant Kumar Mishra
Judge