

HIGH COURT OF CHHATTISGARH AT BILASPURWP No. 4028 of 2003

Dinesh Kumar Dey S/o Late S.K.Dey, aged about 32 years, R/o Rajpara, Police Line, District Kanker (C.G.).

---Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, Home Department, D.K.Bhawan, Raipur (C.G.).
2. Director General of Police, Raipur (C.G.).
3. Inspector General of Police, Jagdalpur (C.G.).
4. Superintendent of Police, Kanker (C.G.).

---Respondents

For petitioner	:	Shri J.K.Gupta, Advocate.
For State	:	Shri Ratan Pusty, Government Advocate.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

31/10/2018

1. The challenge in the present Writ Petition is to the order Annexure-P/4 dated 12/09/2001 whereby the respondents have ordered for recovery of an amount of Rs.1,75,000/- from the salary of the petitioner.
2. The challenge also is to the two appeals decided on 08/11/2001 and 07/01/2003 passed by the Inspector General of Police as well as the Director General of Police respectively.
3. The facts of the case in brief is that, the petitioner was working as a Constable (driver) at the Reserved Center, Kanker in the police department. On 12/12/2000, he was deputed for dropping some police officers at Raipur

and he was ordered to drop these officers in the police metadoor (407) bearing registration No. MP-03-2042.

4. It is said that, in the course of his return journey from Raipur to Kanker, he met with an accident in as much as the vehicle which was being driven by him came down of the road and dashed a tree causing injuries to him as well as damage to the vehicle.

5. The department subsequently investigated the spot as also the damaged vehicle and reached to the conclusion that the accident arose on the rash and negligence of the petitioner and thereafter assessed the damages to the vehicle and an estimate was got prepared reflecting that the cost for repair would be somewhere around Rs. 1,75,000/- based on which the impugned order of punishment dated 12/09/2001 was passed directing the recovery of Rs.1,75,000/- to be made from the salary payable to the petitioner.

6. The petitioner had preferred an appeal before the Inspector General of Police which stood rejected on 08/11/2001 vide Annexure-P/6.

7. Subsequently, the petitioner again preferred a mercy appeal before the Director General of Police which too stood rejected vide order dated 07/01/2003.

8. The contention of the counsel for the petitioner is that, the impugned order of recovery is bad in law to the extent that the assessment for the recovery of damages has not been properly made. According to him, it is a case where the recovery is not of the actual damage caused, but it is on the

basis of an expected estimate got prepared by the department which could not have been the order of recovery by way of punishment. He further contended that, before passing the impugned order of punishment, the petitioner has not been granted any opportunity of hearing, neither has he been taken into confidence while the assessment of Rs.1,75,000/- was being made. He further submits that, the impugned order is also bad for the reason that, the impugned order has been passed without providing the employee any of the documents which have been relied upon or scrutinized by the department while reaching to the amount of Rs.1,75,000/- and for all these reasons, the counsel for the petitioner prayed for setting aside of the punishment order as also the order passed by the Appellate Authority.

9. The State counsel on the contrary opposing the petition submits that, it is a case where the accident occurred because of the rash and negligent driving of the petitioner and this was assessed from the preliminary investigation which was conducted by the department and the preliminary investigation was conducted on the basis of inspection of the site and also inspection of the vehicle involved in the accident.

10. The State counsel further submits that, it is not a case where the petitioner has been punished without any assessment. He submits that, since, the State Government took a decision of recovering the damage caused, the inspection and the assessment was done only so far as the damage which has been caused to the vehicle.

11. According to the State counsel, the assessment has been made on the basis of the inspection conducted by the experts in the field like the persons working in the workshop and also the people who are related to the repair of the vehicle. He further submits that, the workshop of the police department had initially given a report that the vehicle was not repairable on the workshop of the State Government and that it would have to be repaired from outside agency which would be too expensive. Thereafter, the department got the vehicle examined from a private workshop and who has given an estimate of approximately Rs.1,75,000/- (Annexure-R/6). He further submits that, it is a case where the assessment is approximate for the reason that, the finding of the expert is that, the vehicle was so much damaged that it would be beyond repair and if at all if it had to be repaired, it would be too expensive to repair and therefore the department thought it of not to get the vehicle repaired, rather thought of dumping the vehicle as having become unusable.

12. On a query being put to the State counsel as to whether in the course of assessment of the damages caused to the vehicle or whether in the course of the preliminary investigation the petitioner was in fact taken into confidence or not, the State counsel fairly admits that from the record it does not appear that the petitioner was taken into confidence while preparation of either the estimate or while the assessment was being made by the private workshop owner.

13. It has also not come on record or neither was the State counsel in a position to establish as to what infact was the actual expenditure incurred in the course of repair of the vehicle.

14. Having heard the contentions put forth on either side and on perusal of record what clearly reflect is that, the department has failed to show as to what exactly is the actual amount incurred in the course of repairing of the vehicle. It is also not the case of the State that the vehicle has since been repaired.

15. At this juncture, it would be relevant to take note of the impugned order of punishment passed by the Superintendent of Police whereby in the operative paragraph, his findings is that the assessment of Rs. 1,75,000/- is based on an estimate and is an approximate figure which by itself would show that it is not the actual figure.

16. Further from the fair submission made by the State counsel it clearly reflects that, in the course of the assessment being made, the employee has not been taken into confidence.

17. There is no finding to the defence raised by the petitioner that the accident occurred in the course of avoiding a head on collision with a vehicle coming from the opposite direction.

18. It has time and again reiterated by the Hon'ble Supreme Court as also by this High Court as also by other High Courts that before any order of punishment is imposed, the least that is required is an opportunity of hearing to the delinquent employee against which the punishment is being imposed.

Just because the order of recovery falls within the category of minor punishment by itself would not mean that the requirement of following the principles of natural justice is not there.

19. It is a case where an amount of Rs.1,75,000/- at that relevant point of time was a huge figure and imposing of such an order against the low paid employee would have been too excessive an order and when the recovery infact had to be made, the authorities could have conducted a preliminary enquiry or an enquiry as the case may be giving the petitioner also an opportunity to defend himself and to show his innocence or to disprove the charges that are levelled against him.

20. It would be relevant at this juncture to refer to the judgment passed by this Court in the case of Balkrishna Joshi v. State of C.G. & Ors. [WPS No. 407 of 2012 d/on 25/07/2018] wherein in paragraphs 9 & 10, this Court has held as under:-

“9. Though the order under challenge is an order of recovery, but imposition of recovery also has the effect of a minor punishment. The Hon’ble Supreme Court in the case of O.K. Bhardwaj v. Union of India & Ors., 2001 (9) SCC 180 and State of Bihar & Anr. v. Lakshmi Shankar Prasad, 2002 (10) SCC 351, wherein in the both the cases it has been envisaged that even if the authorities concerned intend to impose minor punishment there has to be reasons to be recorded and moreover when the charges levelled against an employee being factual in nature and further there being a categorical denial on the part of the delinquent employee so far as these factual averments are concerned, an enquiry would be must before imposing the punishment. In the

case of O.K. Bhardwaj (supra) in paragraph 3 of the judgment it has been held as under:

“(3) While we agree with the first proposition of the High Court having regard to the rule position which expressly says that “withholding increments of pay with or without cumulative effect” is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with.”

10. In the case of “Raj Kapoor Singh Parihar vs. State of Madhya Pradesh & Others, 2014 LawSuit (MP) 196” WP No. 2760/2013, decided on 06.03.2014, in paragraph No.9 the Madhya Pradesh High Court has held as under:

“9. By the impugned punishment order, recovery of a huge amount is directed against the petitioner, which entails civil consequences. It was obligatory on the part of the respondents to assign reasons for the same. The reasons are held to be heartbeat of 'conclusion' by the Supreme Court. It is emphasized that in judicial, quasijudicial and administrative orders, the authorities must assign reasons. This view is taken by Supreme Court in Kranti Associates Private Limited V. Masood Ahmed Kha, 2010 9 SCC 496.”

21. Given the aforesaid legal position as it stands and also from the admitted factual position as is reflected from the preceding paragraphs, this

Court is of the opinion that the order of recovery passed by the authorities and which has been affirmed by the Appellate Authority as also by the respondent No.2 in a mercy appeal is not sustainable and therefore the same deserve to be and is accordingly set-aside.

22. Given the fact that the order is being set-aside on the technical grounds of non-compliance of the principles of natural justice and also keeping in view the fact that as per the petitioner, till date no recovery has been made by the department, if the department so feels they may conduct an enquiry and after granting due opportunity of hearing to the petitioner they may pass a suitable order in respect of the damages sustained by the department.

23. In view of the same, the Writ Petition accordingly stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit