

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 7779 of 2011**

Dr. P. L. Badolkar S/o late Nand Lal Badolkar, A/A 57 years, R/o Medical Officer, Primary Health Center, Gharghoda, District Raigarh, CG

---- Petitioner**Versus**

1. State of Chhattisgarh through its Secretary, Ministry of Health and Family Welfare, Mantralay, DKS Bhawan, Raipur, Tahsil and District Raipur, CG
2. Chief Medical Officer, Raigarh, District Raigarh (CG)
3. Collector, Raigarh, District Raigarh (CG)
4. District Departmental Enquiry Officer, at Collectorate, Raigarh (CG)
5. Commissioner, Bilaspur, District Bilaspur (CG)

---- Respondents

For Petitioner	:	Shri A. N. Bhakta , Advocate
For Respondent/State	:	Shri Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****28.06.2018**

The present petition has been filed challenging the quashment of order dated 03.10.2005 Annexure P-1 whereby the petitioner has been inflicted with punishment of stoppage of two increments with cumulative effect and Annexure P-2 dated 15.09.2005 is the communication made to the petitioner.

2. The primary challenge to the impugned order is that the entire disciplinary proceeding stands vitiated on the ground that the charge sheet and the disciplinary action have been initiated by the officer other than the disciplinary authority who is subordinate in rank, therefore, the entire enquiry stands vitiated. According to the counsel for the petitioner, the disciplinary authority, so far as the petitioner is concerned, was the State government. In the instant case, the disciplinary proceeding has been initiated by the Commissioner, the charge sheet also has been issued by the Commissioner and the Collector has been appointed as the enquiry officer.

3. This contention of the petitioner that the disciplinary proceeding cannot be initiated by the officer other than the disciplinary authority or subordinate to the disciplinary authority is not sustainable. The Supreme Court in the case of **Inspector General of Police and another Vs. Thavasiappan** reported in **(1996) 2 SCC 145** has held that there is nothing in law which inhibits the authority subordinate to the appointing authority to initiate disciplinary proceeding for issuance of charge sheet. It is also not necessary that the charge should be framed by the authority competent to award punishment. A similar view was taken by the Hon'ble Supreme Court in AIR 1998 SC 2210 (Steel Authority of India & another v. Dr. R. K. Diwakar & Others) and AIR 2003 SC 4119 (State of U.P. & another v. Chandrapal Singh & another). In **(1995) 1 SCC 332** (Transport Commissioner, Madras 5 v. A. Radha Krishna Moorthy) again the Supreme Court held that "Insofar as initiation of enquiry by an officer subordinate to the appointing authority is concerned, it is well settled now that it is unobjectionable.

The initiation can be by an officer subordinate to the appointing authority. Only the dismissal/removal shall not be by an authority subordinate to the appoint authority.” Given the said judgments, the ground raised by the petitioner is not sustainable.

4. So far as the other grounds which have been raised in respect of the finding of the enquiry officer in his enquiry report regarding charge no.4 and also non appreciation are concerned, this Court, in exercise of its writ jurisdiction under Article 226 of the Constitution of India, would not substitute itself as a disciplinary authority or an appellate authority threadbare going into the finding of the enquiry officer and the evidences which have been brought before the enquiry proceedings as has been settled by the Supreme Court by a series of decisions in this regard.

5. So far as the next ground of the opinion of Public Service Commission not having been given to the petitioner before issuance of punishment order is concerned, the said ground also would not be sustainable as no prejudice whatsoever has been able to be established by the petitioner on account of the opinion of PSC not being made available to him before the impugned order of punishment was passed.

6. Thus, the writ petition being devoid of merit deserves to be and is accordingly dismissed.

Sd/-
P. Sam Koshy
Judge