

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (S) NO. 2119 OF 2011**

Rudranarayan Singh, S/o R.N. Singh, aged about 50 years, Assistant Grade-II,
Tahsil Office, Ramanujganj, R/o Namnakala, Ambikapur, District Surguja (C.G.)
... **Petitioner**

versus

1. State of Chhattisgarh, through the Secretary, Revenue Department,
DKS Bhawan, Raipur, District Raipur (C.G.)
2. Collector, Ambikapur, District Surguja (C.G.)
3. Commissioner, Surguja Division (Ambikapur), District Surguja (C.G.)
... **Respondents**

For Petitioner	:	Mr. Manoj Paranjpe, Advocate.
For Respondents	:	Mr. Shashank Thakur, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

18/06/2018

1. Challenge in the present writ petition is to the order dated 30.5.2009 (Annexure P-2) and also to the order dated 8.3.2011 (Annexure P-1).
2. Vide Annexure P-2 the Petitioner has been inflicted with an order of punishment in the nature of minor punishment under Rule 10 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 whereby the punishment of stoppage of one increment with non-cumulative effect was imposed against the Petitioner. Against the said order the Petitioner preferred an appeal which stood rejected by the Appellate Authority vide Annexure P-1.
3. The Petitioner in the instant case was placed under suspension on 20.4.2007 and a charge-sheet was also issued on 31.5.2007. However, as there was no progress made subsequently on the departmental enquiry initiated and the Petitioner was kept under suspension, he filed a writ petition i.e. WPS No. 3614 of 2008. The said writ petition stood disposed of on 11.7.2008 at the instance of the learned State Counsel who had given an undertaking that if an enquiry has been initiated against the Petitioner the same shall be concluded within a period of three months from the date of receipt of a copy of the order passed in the said writ petition. Thereafter, the Respondents in an arbitrary and illegal manner, dropping the departmental enquiry straightaway passed an order of minor punishment of stoppage of one increment with non-cumulative effect which was subjected to

appeal and the Appellate Authority also rejected the appeal, leading to the filing of the present writ petition.

4. Contention of the learned Counsel for the Petitioner is that the order of punishment as also the order of Appellate Authority are not sustainable as there is no basis whatsoever available with the Respondents to hold the Petitioner guilty for alleged misconduct. He further submitted that the two orders are also not sustainable for the simple reason that the departmental enquiry initiated at the first instance itself was not concluded and without which the authorities could not have reached to the conclusion holding the Petitioner guilty of misconduct. It was also the contention of the learned Counsel for the Petitioner that the order of Disciplinary Authority also is not a speaking order as it does not reflect as to what was the basis for the order of punishment to be passed. He further submitted that there was also no preliminary enquiry conducted at any point of time which could have also been a basis on which the order of punishment could have been sustained. It was further contended by the learned Counsel for the Petitioner that the department at the first instance when they found that the charges were serious in nature and they had contemplated departmental enquiry were duty bound to ensure that the departmental enquiry is concluded and a logical conclusion would have been arrived at holding the Petitioner guilty of misconduct; in the absence of which the order of punishment is not sustainable.

5. Learned Counsel for the Petitioner has relied upon the judgments of 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. He has also relied upon the judgment of the Madhya Pradesh High Court in the case of **Raj Kapoor Singh Parihar v. State of Madhya Pradesh & Ors., 2014 LawSuit (MP) 196**, decided on 6.3.2014 in W.P. No. 2760 of 2013.

6. Learned Counsel for the State on the contrary opposing the petition submits that a plain perusal of the impugned order of punishment (Annexure P-2) would reveal that the Petitioner's reply to the charge-sheet was not satisfactory and that he has been trying to mislead the authorities in respect of the alleged allegations and charges levelled against him and therefore since the Disciplinary Authority intended to impose only a minor punishment. The order of Disciplinary Authority thus does not warrant interference. He further submits that since it is only a minor punishment and that for imposition of minor punishment it is not necessary to conduct a departmental enquiry, he prayed for the rejection of the writ petition.

7. Having heard the contentions put forth on behalf of either side and on perusal of record what is admitted from the pleadings brought before this Court that the Petitioner was initially placed under suspension on 20.4.2007. A charge-sheet was also issued on 31.5.2007. Thereafter, a departmental enquiry also was initiated against the Petitioner. However, since there was no progress in the departmental enquiry and the Petitioner was continued under suspension, he filed a writ petition i.e. W.P.(S) No. 3614 of 2008. The said writ petition got disposed of on 11.7.2008. Thereafter, for reasons best known, the Collector, Surguja, vide impugned order (Annexure P-2), dropping the departmental enquiry without ascertaining any reasons whatsoever and without also discussing the nature of allegations and the reply which has been submitted by the Petitioner to the charges, inflicted the Petitioner with an order of punishment of stoppage of one increment with non-cumulative effect. The Petitioner preferred an appeal which too stood rejected in a mechanical manner without considering any of the grounds which the Petitioner had raised in the appeal neither has the Collector dealt with the contentions which had been raised by the Petitioner.

8. At this juncture, it would be relevant to take note of the observations of the Hon'ble Supreme Court in the case of **O.K. Bhardwaj** (supra) wherein 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.”

9. Likewise, in the case of **Lakshmi Shankar Prasad** (supra) also the Hon'ble Supreme Court in paragraph 3 of its judgment has held as follows:

“3. ...After the initiation of the fresh proceeding, though an explanation was called for from the delinquent, but the impugned order of punishment indicates that the disciplinary authority has not recorded a finding about the guilt of the delinquent of different charges which were levelled against him as well as the consideration of the explanation given by the delinquent to the charges levelled against. In such circumstances, the High Court was fully justified in interfering with the order of punishment on a conclusion that the disciplinary authority did not record a finding about the guilt of the delinquent nor has it recorded any reasoning for arriving at such conclusion.”

10. Relying upon the aforesaid judgments of the Hon'ble Supreme Court, the Madhya Pradesh High Court also recently in the case of **Raj Kapoor Singh Parihar** (supra) in paragraphs 8, 9 & 10 of its judgment has held as under:

“8. At the cost of repetition, in the opinion of this Court, whether it is an enquiry under Rule 14 or under Rule 16 of the CCA Rules, it is obligatory on the part of the disciplinary authority to issue a specific charge sheet against the petitioner. The delinquent employee must know about the nature of accusation against him. This enables him to put forth his defence in a reasonable, adequate and effective manner. The petitioner submitted his reply to the show cause notice and denied the charges in toto. On merits also, he submitted his detailed reply. Admittedly, no enquiry was conducted. The prosecution witnesses were not examined in presence of the petitioner nor he was permitted to lead his evidence. The alleged enquiry reports, Annexures P/16 and P/17, are the reports based on some material collected behind the back of the petitioner. In the opinion of this Court, the said enquiry reports are no reports in the eye of law, worth the name. This is trite law that even in minor penalty proceedings if the charges are denied. It is obligatory on the part of the disciplinary authority to conduct a full-fledged enquiry.

This view is taken by the Supreme Court in (O.K. Bhardwaj vs. Union of India and others, 2001 9 SCC 180). In the present case, without conducting any enquiry as per rules and after taking into account the ex parte enquiry reports, Annexure P/16 and P/17, the disciplinary authority intended to punish the petitioner. The petitioner submitted detailed reply.

The disciplinary authority in his punishment order although reproduced the stand of the petitioner taken in his reply, did not assign a single reason as to why the said defence or reasons not suit him. AS per Rules 15(3), 16(1)(d) and 16(2)(viii) of CCA Rules, the disciplinary authority is under a statutory obligation to assign reasons for his conclusion. Thus, this is not only the requirement of principle of natural justice, it is the mandate of the governing Statute, i.e., CCA Rules.

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, quasi-judicial 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.

10. The appellate order suffers from same illegality and infirmity. As per Rule 27 of CCA Rules, the appellate authority is obliged to examine the procedural part of the enquiry, perversity of finding and also the proportionality in imposing punishment. The petitioner preferred a detailed appeal running in 15 pages. The said appeal is rejected by a single stroke of pen by holding that the petitioner has not made effort to stop illegal mining. The grounds taken by the petitioner in his appeal memo are not dealt with by the appellate authority. This runs contrary to the judgment of Supreme Court in (*Ram Chander vs. Union of India and others*, 1986 3 SCC 103), followed by this Court in (*Mohammad Idris vs. Registrar General of MP High Court, Jabalpur and others*, 2005 2 MPLJ 51). Recently, the Apex Court followed this view in (*Chairman, Life Insurance Corporation of India and others vs. A/ Masilamani*, 2013 6 SCC 530). Thus, the appellate order is also illegal and cannot be permitted to stand. In the opinion of this Court, even if the petitioner has committed any error or misconduct, the respondents are bound to establish it by conducting enquiry in accordance with law. Without conducting proper enquiry, no punishment order can be permitted to stand."

11. Given the aforesaid legal proposition as it stands if we peruse the record in the instant case, it would reveal that undisputedly a charge-sheet with serious allegations had been issued against the Petitioner and a departmental enquiry also was initiated, however the same was not concluded and was abruptly dropped vide Annexure P-2. The very fact that the departmental enquiry has been dropped itself is a sufficient indication that the charges which have been levelled against the

Petitioner could not be established or the Respondents did not intend to further hold an enquiry in respect of the said charges. Thus the charges itself have not been established or proved and moreover there being no finding of guilt against the Petitioner in a preliminary enquiry, the imposition of a minor punishment against the Petitioner for the charges against which the departmental enquiry had been initiated and dropped would not be sustainable.

12. The action on the part of the Respondents appears to be only in the light of the order passed by this Court on 11.7.2008 in W.P.(S) No. 3614 of 2008 where certain time bound action was proposed so far as departmental enquiry initiated against the Petitioner. Since the Respondents could not conclude the departmental enquiry within stipulated period, the Respondents perhaps thought of dropping the entire departmental enquiry by inflicting the Petitioner with the minor punishment. The same in the light of the judgments of the Hon'ble Supreme Court referred to herein above as also the judgment of the Madhya Pradesh High Court is therefore not sustainable and the same deserves to be and is accordingly set aside/quashed.

13. Accordingly, the writ petition is allowed. The order dated 30.5.2009 (Annexure P-2) and the order dated 8.3.2011 (Annexure P-1) both stand set aside/quashed. Consequences to follow.

Sd/-
(P. Sam Koshy)
Judge