

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 5629 of 2017

Manohar Lal Chouhan S/o Shri Shiv Lal Chouhan, Aged About 42 Years, R/o Village Kariyatar, Post Purgaon, Police Station Bilaigarh, District Balodabazar Bhatapara Chhattisgarh.

---Petitioner

Versus

1. State Of Chhattisgarh Through The Principal Secretary, Home Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh.
2. Under Secretary, State Of Chhattisgarh, Home Department Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh.
3. Director General Of Home Guard, New Raipur, District Raipur Chhattisgarh.

---Respondents

For petitioner	:	Shri Raghvendra Pradhan, Advocate.
For respondent/State	:	Shri Adhiraj Surana, Dy.G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

27/04/2018

1. The grievance of the petitioner in the present Writ Petition is that the order of suspension issued against the petitioner on 27/05/2017 stands impliedly revoked in view of the provision of Rule 9 of the Chhattisgarh Civil Services (Classification, Control and Appeals) Rule, 1966 (In short "the rules, 1966") but the respondents are not issuing any order in this regard, nor are they taking the petitioner back into service.
2. The facts of the case in brief is that, on the charges of some alleged major misconduct, the petitioner's services was placed under suspension

vide order dated 27/05/2017 and the petitioner still continues to be placed under suspension.

3. The counsel for the petitioner submits that, the proviso clause to sub Rule 5 of Rule 9 of the rules of 1966 envisages a provision that, the order of suspension shall stand revoked on expiry of 90 days in case the copy of charge and the other documents referred to in sub Rule 2-a are not issued to the delinquent employee.

4. According to the counsel for the petitioner, in the instant case, though the petitioner was placed under suspension on 27/05/2017 and the chargesheet also having been issued on 07/07/2017, but the chargesheet did not accompany with all the documents which were cited by the respondents along with the chargesheet and therefore as per the aforementioned proviso clause to sub Rule 5 of Rule 9, the order of suspension should stand automatically revoked. He further submits that, once when the rule prescribed a procedure to be adopted and in the proviso clause to sub Rule 5 a word "shall" has been used for providing the requisites, it was mandatorily required by the respondents to have been complied with the requirement of law. Non-compliance of such mandatory requirement would automatically render the order of suspension revoked as is envisaged under the rules and thus prayed for issuance of direction to the respondents to treat the order of suspension to have been revoked permitting the petitioner to assume his duties.

5. The State counsel however opposing the Writ Petition submits that, the entire Writ Petition itself is totally misconceived. According to the State counsel, there is no violation whatsoever of the Rule as it stands as would be reflected from the contents of the Writ Petition itself. The State counsel refer to the date of suspension which was 27/05/2017 and thereafter the chargesheet having been issued on 07/07/2017 i.e. on the 42nd day and which was duly served upon the petitioner.

6. The State counsel submitted that since the chargesheet has been issued to the petitioner within 90 days prescribed under the rules, the order of suspension cannot be said to have been revoked as requirement of law has been duly adhered to and thus prayed for rejection of the Writ Petition.

7. Having heard the contentions put forth on either side and on perusal of record it would be relevant to take note of the dates and the relevant developments.

8. Admittedly, the petitioner in the instant case was placed under suspension on 27/05/2017. The chargesheet was issued on the 42nd day i.e. on 07/07/2017. Perusal of chargesheet would reveal that, along with the chargesheet, the authorities concerned had enclosed a list of documents totaling 14 in number. The chargesheet also accompanied a list of witnesses which had cited 18 witnesses.

9. Now the only allegation is that, from the list of documents, the documents cited at Sr.No. 2, 4, 5 & 9 were not provided to the petitioner.

10. The Writ Petition further reflect that, immediately on 18/07/2017, the petitioner demanded the 4 documents which was alleged to have not been enclosed along with the chargesheet.

11. Subsequently, Annexure-P/5 dated 06/09/2017 shows that the petitioner subsequently was infact provided with all these 4 documents and Annexure-P/5 also reflects that the said documents were released to the petitioner on an earlier occasion also i.e. vide letter dated 16/08/2017 which was within 90 days and it was again provided to the petitioner on 06/09/2017.

12. After having obtained all the documents sought for, the petitioner has now filed the Writ Petition seeking relief of an automatic revocation of the suspension.

13. If we peruse the second proviso to Rule 5-a of Rule 9 it would reveal that, the intention of the legislature is that the order of suspension would stand revoked in case if the chargesheet is not issued within 90 days. It was also the intention of the legislature that the chargesheet should also accompany the list of documents and list of witnesses which is also the requirement under the rules as per sub Rule 2-a of Rule 9.

14. The respondents had admittedly issued the chargesheet and the chargesheet also undisputedly accompanied the list of witness as also the list of documents.

15. The only grievance is that 4 out of the 14 documents cited by the respondents along with the chargesheet were not provided to the petitioner. This Court is of the opinion that merely because 4 of the documents out of

the 14 documents cited having not been issued would by itself entitle for revocation of suspension. Moreover, subsequently on demand being made, the respondents immediately provided the documents as well. Thus, it cannot be said that the right of the petitioner in any manner has been adversely prejudiced.

16. What primarily has to be considered is whether the respondent/State had admittedly issued the chargesheet accompanied with the list of witnesses and documents. The record shows that it was infact provided to the petitioner except for the 4 documents which too has been promptly provided on the petitioner bringing it to the notice of the respondents and demanding the same.

17. In the given factual matrix of the case, this Court does not find the present case to be one which would attract the the second proviso to sub rule 5-a of rule 9, it has to be reflected that a delinquent employee has not been issued with the chargesheet within 90 days. Further the chargesheet also was not accompanied with list of documents and witness.

18. In the instant case, as per the version of the petitioner himself he has been provided the chargesheet on the 42nd day along with the list of documents and witnesses and only 4 documents of the entire list of documents were found allegedly not provided to the petitioner at the first instance, but the same also was immediately provided to the petitioner on demand being made.

19. Given the aforesaid facts and circumstances of the case, the Writ Petition preferred by the petitioner is totally misconceived and devoid of merit and the same thus deserve to be and is accordingly dismissed.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit