

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 7617 of 2018**

- Varsha Patel D/o Shri Awadh Ram Patel, Aged About 26 Years Posted as Sub Engineer, Rural Engineering Services, Sub Division Dongargaon, District Rajnandgaon, R/o. Flat No. D/7, Priydarshani Nagar, Risali Sector, Bhilai, District Durg Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh Through The Secretary, Panchayat and Rural Development Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh
2. Chief Engineer, Rural Engineering Services, Office of Development Commissioner, Raipur, District Raipur Chhattisgarh
3. Collector, Rajnandgaon, District Rajnandgaon Chhattisgarh
4. Chief Executive Officer, District Panchayat, Rajnandgaon, District Rajnandgaon Chhattisgarh
5. Chief Executive Officer, Janpad Panchayat, Dongergaon, District Rajnandgaon
6. Sarpanch Gram Panchayat, Banhardih, Block Dongargaon, District Rajnandgaon Chhattisgarh

---- Respondents

For Petitioner	:	Shri Praveen Dhurandhar, Advocate
For State	:	Shri S.P. Kale, Dy. Advocate General

Hon'ble Shri Justice P. Sam Koshy**Order On Board****26.11.2018**

1. The challenge in the present writ petition is to the order Annexure-P/1 dated 05.09.2017 whereby the respondents has ordered the issuance of recovery against the petitioner to the tune of Rs.4,77,328/- and in addition to the order of recovery, respondents i.e. Collector Rajnandgaon also inflicted

the petitioner with a punishment of stoppage of one increment with cumulative effect.

2. The contention of the petitioner at the outset itself that the impugned order is a punitive in nature and in that punishment order has been passed without compliance with the basic principle of natural justice inasmuch as there was no opportunity of hearing provided before reaching to the said conclusions and therefore the same is bad in law. It is also contention of the petitioner is that even if there was any enquiry it was only in the nature of preliminary enquiry whereby also the petitioner has not been taken into confidence or the submission and contention which the petitioner had raised as his defence has not been properly appreciated nor was it duly considered by the authorities before passing of the same.

3. The State counsel opposing the petition tried to justify stating that the order of punishment has been issued after a show cause notice was issued to the petitioner which the petitioner has also replied. According to the State counsel, the order of recovery and stoppage of increment without cumulative effect are in the nature of a minor punishment, therefore, there was no necessity for conducting of a departmental enquiry and thus, prayed for dismissal of the writ petition.

4. Having heard the contention put forth on either side and on perusal of the record, what appears is that while the petitioner was working as Sub-Engineer under respondent No.2 in Rural Engineering Services, he is said to have discharged some work which was not in accordance with specification mentioned in the work order. The contention is that the work was in fact not executed at the place given in the work order but at a different place. Therefore, the amount incurred in the execution of the said

work totaling as Rs.9,50,656 was ordered to be recovered from the two erring officers i.e. petitioner and one K.C. Nande, the then Sub Divisional Officer at the said place of posting. In response to the issuance of show cause notice, there was a categorically denial of the petitioner and moreover, the petitioner has also specifically explained under what circumstances and at whose instructions the petitioner had discharged the said duty. There does not seem to be any enquiry conducted by the department in any manner for holding the petitioner guilty for the same misconduct. In the absence of which the action on the part of the respondents in issuance of impugned order Annexure-P/1 cannot be sustainable.

5. In the case of **O.K. Bhardwaj v. Union of India & Ors., 2001 (9) SCC 180** wherein 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.”

6. 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.**

7. In view of the aforesaid legal position as it stands, undisputedly the charges levelled against the petitioner is quite serious and the petitioner has also been inflicted with the order of recovery of heavy amount of approximately Rs.5 lacs and in addition he was inflicted with the punishment of stoppage of one increment. All of this may have an adverse impact to his promotional career is concerned. Therefore, in the opinion of this Court keeping in view the aforesaid judgments referred in the preceding paragraph the impugned order is not sustainable and the same deserves to be and is accordingly set aside. However, the right of the respondents are reserved to proceed further against the petitioner in accordance with law and after due enquiry, if required an appropriate order may be passed by the department in respect of the alleged misconduct committed, if any.

8. The writ petition accordingly stands allowed.

Sd/-
P. Sam Koshy
Judge