

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 4044 of 2008

1. R.K. Padhi, S/o Shri Lallu Prasad, Aged about: 50 years, R/o Vijay Ward Power House Road, Jagdalpur, P/o Jagdalpur, District: Bastar, C.G.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Forest Department, D.K.S. Bhawan Mantralaya, District - Raipur C.G.
2. Chief Conservator Of Forest (Administration), Aranyan Bhawan, Medical College, District - Raipur C.G.
3. Conservator Of Forest, Jagdalpur Circle, Jagdalpur, District - Bastar C.G.

---Respondents

For Petitioner	:	Mr. R.N. Jha, Advocate
For State	:	Mr. Sameer Behar, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

Order on Board

25.07.2019

1. The challenge in the present Writ Petition is to the Order Annexure P-4 dated 18.01.2006 and also Annexure P-6 dated 28.07.2007 wrongly mentioned in the relief clause as 29.07.2007.
2. The facts of the case is that, the petitioner was working as an accountant under the respondents posted at Divisional Forest Officer, Jagdalpur, Forest Division: Bijapur. The petitioner was issued with a charge sheet on 24.12.2004 and the allegation was the unauthorized absence on the part of the petitioner for the period between 18.05.2004 to 31.01.2005, period of 8 ½ months i.e, 259 days to be precise. The petitioner submitted his reply to the said charge-sheet on 20.01.2005 denying the allegations of misconduct

and submitted certain records to justify the absence and had taken the defence that the petitioner was suffering from malaria related illness. That not satisfied with the reply of the petitioner, respondents initiated the Departmental Enquiry against the petitioner. An Enquiry Officer and also a presenting Officer was appointed and conducted the Departmental Enquiry. The Enquiry Officer vide his report dated 04.06.2005 (Annexure P-3) held that the charges are partly proved and the petitioner is partially guilty of the misconduct based on the Enquiry Report. The Disciplinary Authority inflicted punishment of stoppage for one annual increment with cumulative effect and also ordered that the period of absence shall be treated as *dies non*.

3. The petitioner, immediately preferred an appeal before the appellate authority and the appellate authority on scrutinizing the case of the petitioner, ordered for treating the period of absence as unauthorized absence and also ordered that the period in between 21.05.2004 to 24.05.2004 shall be treated as Medical Leave. It is these two orders which are under challenge in the present Writ Petition.
4. The primary ground of challenge by the petitioner is that, the enquiry has not been properly conducted inasmuch as the petitioner has not been given a fair opportunity of defence and that he has not been granted sufficient opportunity of hearing to cross-examine the management witnesses. The second ground which the learned counsel has raised is that, the punishment imposed by the respondents is highly disproportionate and is not commensurate to the nature of misconduct alleged and the counsel for the petitioner prayed for an appropriate direction to the respondents for modifying

the punishment order by imposing a minor punishment to the petitioner.

5. The State Counsel on the other hand opposing the petition submits that, a plain reading of the Enquiry Report itself shows that the petitioner has been granted a fair opportunity of hearing and he has also fully participated in the Departmental Enquiry and, therefore, it can not be said that, he was not granted sufficient opportunity of defence/hearing.
6. Likewise, the State Counsel further submits that, the period of absence of the petitioner, firstly being unauthorized and secondly, the duration being a considerable period of 259 days roughly 8 ½ months which is too long period to take the misconduct on the part of the petitioner lightly, thus prayed for rejection of the writ petition
7. Having heard the contentions put forth on either side and on perusal of records, admittedly the petitioner was absent from duty for the period between 18.05.2004 to 31.01.2005, all these period the petitioner has never produced any proof of his suffering from any medical ailment. From the record, it also does not reveal that, the petitioner while he was absent from duty has ever intimated the respondents, so far as his cause of absence is concerned, neither has he moved an application for grant of Medical Leave while he was absent. The only defence, justification or explanation that the petitioner has given is that, when the charge sheet was issued to the petitioner, he gave reply to the charge sheet.
8. Another aspect which is evident from the reading of the Enquiry Report is that, the petitioner had participated in the enquiry proceedings. He also cross-examined one of the departmental

witnesses and so far as other witnesses are concerned, there is a specific entry of the Enquiry Officer of the petitioner expressing not to cross-examine those departmental witnesses. This fact, as is revealed from the enquiry report would show that, the Petitioner infact has been granted reasonable opportunity of hearing. This fact also gets strengthened from the reading of the Enquiry Report which would show that the petitioner has also led evidence before the enquiry officer to prove his innocence.

9. The law so far as the scope of judicial review in matters of the disciplinary proceedings is concerned, it is by now well settled that the Courts while entertaining the petition under Article 226 of the constitution of India, would not substitute itself as another Appellate Body over the findings of the Disciplinary Authority. It is also a settled position of law that, this Court would not conduct a roving enquiry into the evidence which has been laid before the enquiry officer nor has this Court got power under Article 226 of the Constitution of India to re-appreciate the entire evidence threadbare to reach to a different conclusion than what has been arrived at by the Disciplinary Authority. The power of judicial review confined upon this Court in disciplinary matters is only to the extent of verifying whether there is any perversity in the finding of enquiry officer or whether the authorities passing the order either were not competent or have in any manner exceeded their powers which is otherwise conferred upon them under the service regulations governing the field.
10. Moreover, the power of this Court is also limited to the extent of testing Decision Making Process not the decision itself. Since, either in the pleading or in the submissions on the part of the petitioner,

there is no contention of the finding of the enquiry officer as well as the disciplinary authority to be in any manner perverse nor is the issue of competence/competency under challenge.

11. Moreover, the enquiry proceedings show that, the petitioner was given an opportunity of hearing. He had availed the said opportunity, cross-examined the witnesses of the department and also led evidence in support of his contention. Thus, the finding of the enquiry officer as well as that of the disciplinary authority is pure finding of fact without any technical flaws, so far as the procedural aspect is concerned. Under the circumstances, this Court finds it difficult to interfere with the order of punishment and the two orders passed Annexure P-4 and P-6 respectively.

12. The present Writ Petition, accordingly fails and stands rejected.

Sd/-
(P. Sam Koshy)
Judge