

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 2734 of 2005**

Ashwani Kumar Pandey, aged about 45 years, S/o Shri Khubiram Pandey
Sakin, R/o Kali Ward No. 13 House No. 15, Darri Para, Kawardha, District
Kawardha, M.P.

---- Petitioner**Versus**

1. State of Madhya Pradesh Through the Secreatary, Forest Department,
Mantralaya, Madhya Pradesh Shasan, Bhopal
2. Conservator of Forest and Appellate Authority, Division Durg, District Durg,
M.P.
3. DFO Production, Van Mandal, Rajnandgaon & Apeliya Janch Adhikari,
District Rajnandgaon, M.P.
4. DFO, Van Mandal, Kawardha, District Kawardha, M.P.

---- Respondents

For Petitioner	:	Mr. Satish Gupta, Advocate
For State	:	Mr. Jitendra Pali, Dy. AG

Hon'ble Shri Justice P. Sam Koshy**Order on Board****11/07/2019**

1. The challenge in the present writ petition is to the order Annexure P-6 dated 02.06.1998 whereby the appellate authority has while modifying the order of dismissal from service dated 05.06.1997 has imposed a punishment of compulsory retirement.
2. The case of the petitioner in brief is that the petitioner was working as a Forest Guard under the respondents. During the relevant period the petitioner was posted at Mainpur Production Range under Rajnandgaon District. It is said that the petitioner in between had unauthorizedly remained absent from duty from 27.05.1995. The petitioner thereafter was issued with a charge-sheet on 08.10.1995

and the department sought reply to the charge-sheet within a period of seven days. However, before waiting for the seven days period, the respondents appointed an enquiry officer barely after three days i.e on 11.10.1995 and a presenting officer directing them to conclude the departmental enquiry at the earliest and to submit their report. The enquiry report was accordingly submitted and disciplinary authority vide his order dated 05.06.1997 inflicted the punishment of dismissal from service. The petitioner immediately preferred an appeal before the Conservator of Forest, Durg who in turn partly allowed the appeal on 02.06.1998 whereby the dismissal order stood modified and the petitioner was inflicted with punishment of compulsory retirement.

3. It is this order which is under challenge in the present writ petition. The contention of the petitioner herein challenging the order of compulsory retirement is that the entire departmental enquiry initiated for the petitioner is bad in law. It is in contravention to the Rules prescribed under Chhattisgarh Civil Service (Classification, Control & Appeal) Rules, 1966. It was further the contention of the petitioner that he has not been afforded sufficient opportunity for defending himself before the authorities concerned and the authorities concerned with a predetermined mind have conducted the departmental enquiry and submitted their report. It was also the contention of the petitioner that the impugned order is also bad in law for the reason that the disciplinary authority on the date of punishment so far as the petitioner is concerned was DFO, Kawardha but the punishment order Annexure P-2 was passed by the DFO, Rajnandgaon who was infact not the disciplinary authority

of the petitioner on the date of punishment. It was further the contention of the petitioner that respondents have not produced any cogent and strong evidence before the enquiry officer so far as the charge of the petitioner being unauthorizedly absent from 27.05.1995 is concerned. According to the petitioner the department ought to have call for the attendance register in which the name of the petitioner is reflected to show whether the petitioner was on duty or not? The further contention of the petitioner is that the impugned order thus is bad for the reason that it is firstly in violation of the Rule 14(5) of the 1966. So also the impugned order is bad on account of it being in violation of Rule of 14(21)(a) of the Rules of 1966 and thus prayed for setting aside of the order of punishment passed by the appellate authority and have sought for relief of reinstatement in service with all consequential benefits.

4. The State counsel however, opposing the petition submits that, first of all, the plain reading of the order of punishment would show that the petitioner past conduct also was not very good in as much as in the past also he has been punished with dismissal but has later on come back in service on an appeal. The second contention of the State counsel is also that the petitioner as such has not been put to any prejudice by not given him sufficient time to reply to the charge-sheet as he could have filed it even thereafter but he has not availed that right. He further submits that petitioner infact in any case, has participated in the departmental enquiry and half way through the petition has abandoned the enquiry proceedings without any justification or reasons and therefore it cannot be said that the petitioner has been put to any prejudice calling for an interference

with the impugned order. The State counsel also contended that there are 10 witnesses who were examined in the departmental enquiry and 3 of them also were cross examined by the petitioner and disciplinary authority has reached to the conclusion only thereafter which would further reduce the scope of interference of this Court to the proceedings. The State counsel further contended that the order of dismissal at the first instance dated 05.06.1997 Annexure P-2 is concerned, the same has been issued by a DFO, who is infact a disciplinary authority so far as Forest Guard is concerned. According to the State counsel since the petitioner is a Forest Guard, therefore, the punishment by a DFO or the officer of the rank of DFO cannot be said to be incompetent for the purpose of issuance of punishment. Thus, for all these reasons, the counsel for the State prayed for the rejection of the writ petition.

5. Having heard the contentions put forth on either side and on perusal of records admittedly the petitioner was working as a Forest Guard at Division Rajnandgaon. The charge-sheet was initiated at Rajnandgaon and pending the enquiry the petitioner stood transferred to Kawardha. Thereafter, the petitioner came under the service of the DFO, Kawardha. The petitioner was issued with a charge-sheet on 08.10.1995 and the petitioner was granted seven days time for filing the reply. The seven days has come to an end on 15.10.1995. However, before even waiting for this seven days time, the respondents on 11.10.1995 issued an order of appointment of enquiry officer and presenting officer and the enquiry was got conducted. The enquiry report was submitted on 05.04.1997 and the DFO, Rajnandgaon passed an order of dismissal on 05.06.1997.

which was subsequently modified by the appellate authority i.e the Conservator of Forest vide his order dated 02.06.1998 modifying the order of dismissal from service, to compulsory retirement.

6. So far as the procedure to be adopted while conducting the departmental enquiry is concerned, it would be relevant to refer to the Chhattisgarh Civil Service (Classification, Control & Appeal) Rules, 1966. Rule 14 prescribes the procedure to be adopted for imposition of major penalty. Major penalties have been envisaged in Rules 10 of the Rules of 1966. Under rule 14 the requirement of law is that the disciplinary authority should first issue the charge-sheet to the delinquent employee granting him the reasonable time to file reply to the charge-sheet. The disciplinary authority thereafter shall scrutinize the reply of the delinquent employee and only in the event of the disciplinary authority not being satisfied by the reply would he either conduct the departmental enquiry himself or would appoint an enquiry officer and presenting officer for conducting the enquiry.
7. In the instant case, though the petitioner was granted seven days time to file reply w.e.f. 08.10.1995, but in just 3 days time the respondents passed an order appointing the enquiry officer and presenting officer to enquire into the allegations levelled against the petitioner. No reason has been provided by the respondent State or the justification as to why the department could not wait for seven days time for appointment of the enquiry officer. This act on the part of the respondent shows that they were either prejudiced or have deliberately violated the Rule 14(5) of the Rules of 1966 and have conducted the enquiry in haste.

8. Once when the statute prescribes the procedure for conducting the departmental enquiry, It is under normal circumstances required that the disciplinary authority would adopt to procedure prescribed under the Rules. In the event if the disciplinary authority intends to deviate from the Rules prescribed there has to be cogent reasons and justifications available for the disciplinary authority and which also stands reflected in the orders to be passed for deviating from the said procedure.
9. In the instant case, the very fact of appointing a disciplinary authority within three days is itself a strong indication of the predetermined and hasty approach of the management/establishment in conducting the departmental enquiry. Once when the initiation of departmental enquiry itself is in violation of Rules i.e. Rule 14 of 1966 and there being no justification for the deviation of the rules by the department the entire enquiry proceedings itself would get vitiated.
10. It would be the case where the disciplinary authority has not granted sufficient time to the petitioner, the delinquent employee to submit his reply to the charge-sheet which would also come within the ambit of violation of principles of natural justice in as much as the petitioner has not provided a fair opportunity of defence.
11. Once when this Court reaches to the conclusion there is as per procedural lapse on the part of the disciplinary authority in initiating the enquiry against the petitioner all the subsequent proceedings drawn would also become redundant as the foundation of the initiation itself is bad. Therefore, the subsequent recording of the evidence etc. is of no consequence. This Court therefore on this limited ground itself is of the view that enquiry conducted against the petitioner being bad,

the order passed by the disciplinary authority and the one which was later on modified by the appellate authority dated 05.06.1997 and 02.06.1998 respectively is not sustainable and the same deserves to be and is accordingly set aside.

12. Under the normal circumstances the matter ought to have been remitted back to the disciplinary authority and the enquiry officer to proceed from the stage it was found to be defective. However, in the instant case it has been noted that the petitioner in the year 2013 has crossed the age of superannuation. Therefore, it would not be proper and justified if the petitioner is again subjected to face the enquiry, rather ends of justice would meet if the order of compulsory retirement is set aside and the petitioner be treated as having retired on the post of Forest Guard on the date he has crossed the age of superannuation. It is ordered that petitioner would not be entitled for any actual monetary benefits from the date of punishment till the date of retirement. However, the respondent shall give notional fixation to the petitioner on the post of Forest Guard and shall grant him the benefit of retirement including pensionary benefits on the pay scale of Forest Guard that he would have received on the date of his superannuation. It is also ordered that the petitioner also would not be entitled for any consequential benefits of promotion etc. during the intervening period. The petitioner as such would be entitled for only actual benefits of retirement on the post of Forest Guard.

13. With the aforesaid observation, the writ petition stands accordingly allowed.

Sd/-
(P. Sam Koshy)
Judge