

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 5075 of 2009**

1. Narayan Marskole, S/o Shri Ramchandra Merskole, aged about 45 years, working as Asst. Sub-Inspector 2nd battalion, C.G. Armed Forces, Sakri, Dist. : Bilaspur (C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh, through the Secretary, Department of Police, Mantralaya, D.K.S. Bhawan, Raipur (C.G.)
2. The Commandant, 8th Battalion C.G. Armed Forces, Rajnandgaon, Dist. : Rajnandgaon (C.G.)

---- Respondents

For Petitioner	:	Shri Vinod Deshmukh and Shri N. Naha Roy, Advocates
For Respondents/State	:	Shri Siddharth Dubey, Dy. Government Advocate

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Order on Board****01.02.2019**

1. Petitioner was working as a driver though holding a rank of an Assistant Sub-Inspector in the 2nd Battalion of Chhattisgarh Armed Forces at Bilaspur. A Swaraj Mazda vehicle bearing registration No.CG03/1210 was under his assignment. He was supposed to be deputed to the said vehicle since 09.11.2007. While driving the said vehicle sometime in January, 2008, the engine ceased which required extensive repair and expenses. Based on an enquiry, the authorities decided to recover the expenses met in the repair of the vehicle from the salary of the Petitioner and it is the said decision dated 12.07.2009 annexed as Annexure P/1 that is being assailed.
2. Submission of the counsel for the Petitioner is that since such a punishment has civil consequences because a significant amount of money was sought to be recovered from the salary of the Petitioner, there should have been a proper enquiry before a punishment of such kind could come to visit him.
3. Submission further made on behalf of the Petitioner is that the decision contained in Annexure P/1 has been taken on the basis of fact finding report

conducted by one Shri K. S. Choudhary and was submitted before the D.I.G. Bhilai range which formed the basis of passing the order in question.

4. Even from the fact finding report, I fail to understand as to how the entire responsibility of negligence could be saddled upon the Petitioner and an order of recovery from the salary could be ordered.
5. The vehicle has had a long history of problems relating to the engine even before. The present Petitioner was assigned the duty to drive the said vehicle. Evidence has come that the vehicle's engine was repaired earlier in open market. Infact when the engine ceased while being driven by the Petitioner, certain internal parts were found to be missing when the engine was dismantled for repair.
6. By no stretch of argument or for that matter any expert driver or a mechanic can find fault of such kind unless the engine is dismantled and examined carefully. The finding has also come that the Petitioner had made complaints with regard to the vehicle to the superior authorities which included non functioning of certain meters which are indicators like the temperature meter, the oil pressure meter etc. The defects were never attended to or repaired and it is sheer coincidence that the cumulative effect of the non repair of the vehicle culminated into ceasure of the engine on the day in question.
7. Besides the above factual aspect, since no regular departmental proceeding was held any recovery of money from the salary of Petitioner has civil consequence. The order contained in Annexure P/1 to recover entire cost of repair of engine of the vehicle cannot be sustained. The fact finding enquiry cannot be used as a basis for imposing such punishment.

8. Stand of the State however, is that the finding of negligence on part of the Petitioner has emerged in the enquiry and it is based on such findings that decision was taken to recover the loss of money suffered by the Respondent authorities.
9. As already held earlier that the fact finding cannot form the basis for recovery of money from the salary of the Petitioner, there should have been a regular proper enquiry with opportunity to him. To some extent, the Court is willing to accept the submission of counsel for the Petitioner that his detailed explanation offered to the concerned authority was brushed aside with the object of protecting the previous driver as well as wrong doing of the authorities who got the vehicle repaired in the open market and not in the workshop and facilities available for forces.
10. The writ application is allowed. The impugned order dated 12.07.2009 (Annexure P/1) is set aside. If any recovery has been made from the Petitioner the same must be refunded within 03 months of the production of a copy of the order.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice