

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 3136 of 2019**

Rajendra Prasad S/o Shri Laxman Ram Aged About 45 Years R/o Om Gardens, Gandhi Nagar, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Public Works Department, Mahanadi Bhawan, Mantralaya, Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Chief Engineer Public Works Department, Bilaspur Region, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. A. V. Shridhar, Advocate
For State	:	Mr. Rahul Mishra, Dy. GA

Hon'ble Shri Justice P. Sam Koshy**Order on Board****30/04/2019**

1. The challenge in the present writ petition is to the order Annexure P-1 dated 02/04/2019 whereby the respondents have issued a second show cause notice to the petitioner proposing to impose a punishment of deduction to the lowest pay scale in which the petitioner is presently placed. While issuing the said notice, 10 days time has been granted to the petitioner.
2. Primary contention of the petitioner is that the impugned notice has been issued after departmental enquiry was conducted and enquiry officer has submitted his report to the disciplinary authority vide enquiry report dated 16/08/2017. The contention of the petitioner is that the enquiry report which have been submitted by the enquiry officer is infact in favour of the delinquent employee i.e. petitioner in

as much as the enquiry officer found that the petitioner charges levelled against the petitioner are not proved and one which is said to have been proved are not one which entails for major punishment and had proposed for only letting of the petitioner by issuance of warning.

3. Further contention of the petitioner is that the impugned notice is nothing but a predetermined order of the respondent clearly proceeding to inflict the petitioner with a punishment of reduction to the lowest in the present pay scale in which petitioner is working. According to the petitioner before issuance of the impugned notice the petitioner has not been issued with any other show cause notice, nor has the disciplinary authority given reasons why he does not accept the finding of the enquiry officer nor has he passed an order holding that he intends to deviate from the stand that the enquiry officer has taken. According to the petitioner under both circumstances the authorities ought to have given a notice to the petitioner before proposing punishment.
4. The law in this regard is well settled it has been reiterated in more than couple of judgments of the Supreme Court and various High Courts that whenever a disciplinary authority intends to disagree with the finding of the enquiry officer, the disciplinary authority has to give reasons for disagreeing with the finding of the enquiry officer and at the same time should have noticed the delinquent employee intimating him of deferring with the view of the enquiry officer and thereafter the disciplinary authority could have taken a fresh decision.
5. In the instant case, there does not seem to have been any such procedure adopted by the disciplinary authority. Record shows that the

disciplinary authority has simply ignored the finding of the enquiry officer and have thereafter straight way issued a show cause notice proposing a punishment without discussing anything as to why finding of the enquiry officer is not acceptable to the disciplinary authority or what is the finding which the disciplinary authority intends to rely upon before inflicting the petitioner with a punishment.

6. The said procedure is also required under the Chhattisgarh C.C.S. (CCA) Rules 1966 under rule 15(2). The Supreme Court in the case of **Yoginath D. Bagde Vs. State of Maharashtra, (1999) 7 SCC 739** in paragraph 28 & 31 has held as under:-

“28. Such an opportunity may either be provided specifically by the Rules made under [Article 309](#) of the Constitution or the Disciplinary Authority may, of its own, provide such an opportunity. Where the Rules are in this regard silent and the Disciplinary Authority also does not give an opportunity of hearing to the delinquent officer and records findings, different from those of the Inquiring Authority that the charges were established, "an opportunity of hearing" may have to be read into the Rule by which the procedure for dealing with the Inquiring Authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be 'not guilty' by the Inquiring Authority, is found 'guilty' without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded. “

“31. The delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour

of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of [Article 311\(2\)](#) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under [Article 309](#) of the Constitution. "

7. In view of the aforesaid legal position as it stands the impugned notice as of now in the present case, thus is clearly in violation of the rule 15(2) of the rules of 1966 and is also in violation of the mandate of the Supreme Court in the case of **Yoginath D. Bagde (Supra)** . The impugned show cause notice therefore is not sustainable and the same deserves to be and is accordingly set aside. However, right of the respondent stands reserved and if they intend to defer with the finding of the enquiry officer and intend to proceed further, the Disciplinary authority may do so in accordance with the rules and

regulations and also keeping in view the observations of the Supreme Court in the case of **Yoginath D. Bagde (Supra)**.

8. With the aforesaid observations, the writ petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Rohit