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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 4205 of 2005

1. Smt. Nirmala Rajput, aged about 55 years, W/o late C.S. Thakur.
2. Shri Abhishek Rajput, Aged about 26 years, S/o late C.S. Thakur.
3. Ku. Priya Thakur, Aged about 25 years, D/o late C.S. Thakur
All R/o Kushalpur, Purani Basti, New Employees Colony, Near
Danteshwari Mandir Chowk, Kushalpur, Raipur (CG).

---- Petitioner(s)

Versus

1. State of Madhya Pradesh (Now Chhattisgarh) through the Secretary,
Separate Revenue Department, Govt. of MP Bhopal.
2. Divisional Deputy Commissioner, Sales Tax, Raipur.
3. Commissioner, Sales Tax, Madhya Pradesh, Indore.

---Respondents

For Petitioner	:	Shri Animesh Verma and Shri Mahesh Mishra, Advocates.
For State	:	Shri Jitendra Pali, Deputy Advocate General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

24/06/2019

1. Challenge in the present writ petition is the order dated 04.02.1989 (Annexure A/1) whereby the services of the petitioner was terminated on account of certain misconduct. The concerned employee had also challenged the order of termination in an appeal which too stood rejected vide order dated 12.03.1990.
2. Brief facts of the case relevant for adjudication of the dispute is that, the original petitioner in the present writ petition i.e. Shri C.S. Thakur was working as a Lower Division Clerk (in short, LDC) in the Sales Tax Department of the State Govt. On 30.05.1986 the employee was placed under suspension contemplating Departmental Enquiry. Later on, on 30.08.1986 a charge sheet was issued whereby certain charges were levelled against the employee in respect of unauthorized presence at Toll

Barrier; preparation of penalty order sheet without authorization of the superior authorities and the last charge being that of unauthorized penalty imposed and permitting the vehicles to pass through the Toll Barrier. The petitioner was asked to submit his reply before which the petitioner sought permission to inspect the records. According to counsel for the respondents, he was permitted to inspect the records after which he gave detailed reply on 17.10.1986. Thereafter, enquiry officer was appointed vide order dated 13.11.1986. The enquiry officer also permitted the officer to inspect record on 04.03.1987. Thereafter, the petitioner gave another explanation/reply to the charge sheet before the enquiry officer on 19.03.1987 and thereafter the enquiry officer proceeded with the departmental enquiry and submitted his enquiry report on 31.05.1988. Based on the enquiry report, the disciplinary authority issued second show cause notice on 18.07.1988 and later on the petitioner was inflicted with punishment of removal from service vide order dated 04.02.1989 (Annexure A/1).

3. The petitioner immediately thereafter preferred an appeal to the departmental appellate authority who too rejected the appeal vide order dated 12.03.1990. Subsequent to the rejection of the appeal, the petitioner has preferred OA No.3915 of 1990 before the State Administrative Tribunal and on closure of the Tribunal, the matter stood transferred to the High Court where the case was registered as WP No.4205 of 2005.
4. The counsel for the petitioners challenging the order of removal from service submits that the action on the part of the respondents is totally bad in law for the reason that, firstly the departmental enquiry has been conducted in an illegal manner and secondly the findings arrived at by the enquiry officer which has been accepted by the disciplinary authority is

totally a perverse finding and is also contrary to the evidence which has come on record. The petitioner further contended that even otherwise taking into consideration the nature of allegation, the punishment of removal from service is highly disproportionate and is not commensurate to the gravity and needs interference of this court on this ground also.

5. The counsel for the petitioner further submits that a plain reading of the evidence which have been recorded during the course of enquiry proceeding would also reveal that the petitioner had been discharging his duties even after his normal duty hour only as per the instructions received from the higher authorities and as such it is not a case that he was unauthorizedly present in the office. It was further the contention of the petitioner that the petitioner has been made a scapegoat in the course of protecting the higher officials in the department at whose instance the delinquent had been working at the Toll Barrier. Foremost, the counsel for the petitioners raising objection so far as the enquiry proceedings being bad submits that it is a case where a wrong procedure was adopted by the enquiry officer inasmuch as the statement of the delinquent employee was recorded first before the management led its evidence and this by itself vitiates the entire enquiry proceedings.
6. According to the petitioners, the normal procedure to be adopted by the enquiry officer is that of directing the Presenting Officer to lead evidence first and only thereafter the worker or the concerned delinquent could have directed to lead evidence or record his statement. It is also the requirement under Rule 14 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (in short, the Rules, 1966).

7. Per contra, the counsel appearing for the respondents-State justifying the action submits that infact it is a case where no prejudice whatsoever has been caused to the delinquent during the course of enquiry proceedings. According to him, it is only a statement which was recorded. The petitioner was not subjected to cross examination and the departmental enquiry would also reveal that after the management had closed its evidence, the delinquent employee was again granted time to adduce further evidence, if any, that he intended to. Thus, it is not a case that the petitioner had been deprived of his right to lead evidence after the management's evidence was concluded.
8. The State counsel further tried to defend his action by stating that merely because the statement of the petitioner had been recorded first would not by itself make the entire disciplinary proceeding to be bad as the enquiry officer had proceeded further with the matter and directed the management to lead evidence who, in turn, have adduced sufficient evidence before the enquiry officer with which it amply stands proved that the petitioner was unauthorizedly present in the Toll Barrier on the date of misconduct and that the delinquent had unauthorizedly prepared penalty order sheets and had issued receipt of penalty amount and also permitted the vehicles unauthorizedly to pass through the Toll Barrier.
9. According to the State counsel, the evidence which has been brought on record stand un-rebutted as the delinquent employee has not been able to produce any evidence to rebut or to controvert the same or to establish that the charges levelled are false and fabricated.
10. Having heard the contentions put forth on either side and on perusal of records, this court at first instance would like to go into the veracity of the departmental enquiry that was conducted. The delinquent employee, since

been a government employee, is governed by the provisions of the Rules, 1966. Part-VI of the said Rules 1966 lays down the procedure to be followed for imposition of penalties. Rule-14 of Rules, 1966 categorically provides procedure which have to be followed by the enquiry officer in the course of conducting an enquiry. Skipping the irrelevant portion so far as present writ petition is concerned, it is trite at this juncture to refer to the procedures laid down in Sub-Rules 14 to 17 of the Rule 14 of the Rules 2016 as under :

“14. On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Officer and may be cross-examined by or on behalf of the Government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer, to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government servant shall be entitled to have if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the enquiry is adjourned. The inquiring authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government servant to produce new evidence, if it is of the

opinion that the production of such evidence is necessary in the interest of justice.

Note. - New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(16) When the case for the disciplinary authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Government servant shall be required to sign the record, in their case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Government servant shall then be produced. The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.”

11. Plain reading of the aforesaid rule provision, it would reveal that as per the procedure prescribed, it is the requirement of law that the enquiry officer after the commencement of enquiry proceeding calls for the presence of the delinquent employee and is asked to either plead guilty or not guilty so far as the allegations which are levelled against him. In the event of the petitioner pleading not guilty, the procedure requires the management/department to lead evidence first to prove all the charges/ misconduct alleged against the delinquent employee. Subsequent to the closing of the evidence by the management, the enquiry officer had to ask the delinquent to adduce evidence in support of his defence and only

thereafter is the delinquent himself examined and cross examined before the enquiry officer. Any deviation from the aforesaid statutory position should have specific reasons for doing so. If not, the entire enquiry proceeding gets vitiated on this ground alone.

- 12.** In the instant case, from the perusal of enquiry proceedings as it reflects that the enquiry officer after the enquiry had commenced called upon the delinquent employee to submit his explanation which the delinquent employee submitted before the enquiry officer on 19.03.1987 and denied the allegations levelled against him. Subsequently, the enquiry officer fixed the case for recording of the statement of the delinquent on 04.04.1987. Perusal of the enquiry proceedings show that on 04.04.1987 a detailed statement of delinquent was recorded and subsequently the enquiry officer proceeded further by directing the management to lead evidence. The management is said to have then recorded the statement of its witnesses and the enquiry officer has submitted his enquiry report.
- 13.** The question at this juncture would be whether recording of the statement of the delinquent employment before the enquiry officer on 04.04.1987 was in accordance with procedures prescribed under Rule 14 of the Rules, 1966 or not. The relevant portion of the Rules has already been reflected in the preceding paragraph. Perusal of record does not reveal such a procedure to be followed by the enquiry officer.
- 14.** Now going on the issue as to what would be the effect of such recording of statement, if we see the records, it is evident that the delinquent employee has made a complete statement. In the course, the employee definitely has disclosed his entire defence that he intends to raise or the stand that he intends to take in order to defend himself or to establish that the charges levelled against him is not proved. The other effect of recording

statement of the employee first is that the department or the prosecution i.e. the Presenting Officer gets himself well equipped with the stand and defence of the delinquent employee and the Presenting Officer has ample opportunity to present his case in a manner detrimental to the interest of the delinquent employee or any manner by which the management is able to overcome the defence of the delinquent employee.

- 15.** So far as the department enquiry and the procedure to be followed by the enquiry officer is concerned, it is settled position of law that it is always for the management or the department to lead evidence first to establish the misconduct or the charges levelled against the employee. The employee never could be asked to lead evidence or give his statement first in respect of his defence.
- 16.** The Supreme Court as early as in 1963 i.e. in case of Meenglas Tea Estate Vs. Workmen, AIR 1963 SC 1719 dealing with similar situation in paragraph 4 held as under:

“4. The Tribunal held that the enquiry was vitiated because it was not held in accordance with the principles of natural justice. It is contended that this conclusion was erroneous. But we have no doubt about its correctness. The enquiry consisted of putting questions to each workman in turn. No witness was examined in support of the charge before the workman was, questioned. It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him.....”

17. Similar view was again taken by the Supreme Court in Associated Cement Companies Ltd. Vs. Workmen and Another, 1964 (3) SCR 652 wherein in paragraph 13 it has held as under :

“13. The other infirmity in the present proceedings flows from the fact that the enquiry has commenced with a close examination of Malak Ram himself. Some of the questions put to Malak Ram clearly sound as questions in cross-examination. It is necessary to emphasise that in domestic enquiries, the employer should take steps first to lead evidence against the workman charged, give an opportunity to the workman to cross-examine the said evidence and then should the workman be asked whether he wants to give any explanation about the evidence led against him. It seems to us that it is not fair in domestic enquiries against industrial employees that at the very commencement of the enquiry, the employee should be closely cross-examined even before any other evidence is led against him. In dealing with domestic enquiries held in such industrial matters, we cannot overlook the fact that in a large majority of cases, employees are likely to be ignorant, and so, it is necessary not to expose them to the risk of cross-examination in the manner adopted in the present enquiry proceedings. Therefore, we are satisfied that Mr. Sule is right in contending that the course adopted in the present enquiry proceedings by which Malak Ram was elaborately cross-examined at the outset constitutes another infirmity in this enquiry.”

18. In State of Uttaranchal and Others Vs. Kharak Singh, 2008(8)SCC 236, the Supreme Court dealing with all the judgments in the past in this regard in paragraph 15 has laid down certain principles in respect of conducting departmental enquiry which for ready reference is being reproduced herein under:

“15. From the above decisions, the following principles would emerge:

- i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.
- ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.
- iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.
- iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.”

19. The Allahabad High Court in one of its more recent decision reported in Manu/UP/1956/2015 in case of Hardev Singh Vs. State of U.P. & Others, in paragraph 17 has held as under:

“17. It is relevant to indicate that after the chargesheet is given to the employee, an oral enquiry is a must, whether the employee requests for it or not. Hence, a notice should be issued to him indicating him the date, time and place of the enquiry. On that date the oral and documentary evidence against the employee should first be led in his presence. In certain exceptional cases the employee may be asked to lead evidence first but ordinarily the rule is that first the employer must adduce his evidence. The reason for this principle is that the charge sheeted employee should not only know the charges against him but should also know the evidence

against him so that he can properly reply to the same. Where no witnesses were examined and no exhibit or record is made but straight away the employees was asked to produce his evidence and document in support of his case, it is illegal vide P.C. Thomas v. Mutholi Cooperative Society Ltd., 1978 LIC 1428 (Ker.) and Meenglas Tea Estate v. Their Workmen, AIR 1963 SC 1719.”

- 20.** Considering the aforesaid legal position as it stands and on perusal of enquiry proceedings in the instant case, this court has no hesitation in holding that the procedure adopted by the enquiry officer in conducting departmental enquiry was infact firstly contrary to Rule 14 of Rules, 1966 and is also in violation of the judgments of the Supreme Court in this regard.
- 21.** Accordingly, this court is of the opinion that entire enquiry proceeding stands vitiated from the stage of the recording of the statement of the delinquent employee at the first instance on 04.04.1987. Since the enquiry itself gets vitiated at the first instance, the requirement of the going into the merits of the case taking into consideration the statement which have been recorded during the course of enquiry is uncalled for and would not be proper, legal and justified because any proceedings drawn subsequent to the recording of the statement of the delinquent employee gets vitiated and cannot be taken note of. The order of termination and the rejection of appeal on this technical ground itself is not sustainable and the enquiry proceeding is held to be in violation of the principles of natural justice also.
- 22.** As a consequence, the dismissal order dated 04.02.1989 and the rejection of the appeal on 12.03.1990 both being unsustainable, deserve to be and is accordingly set aside.
- 23.** Since this court is setting aside the order of removal from service as also the appellate authority's order on the technical ground of enquiry being

bad in law, this court is reluctant to grant benefit of back wages to the delinquent employee from the date of removal from service till the date of his attaining the age of superannuation applying the principles of 'No Work No Pay'.

- 24.** In the normal circumstances if the departmental enquiry gets vitiated on technical ground, the matter has to be remitted back from the stage from where the enquiry gets vitiated. In the instant case, since the delinquent employee has died on 22.05.2012, the question of remission of the matter back for proper enquiry does not arise.
- 25.** Taking all the aforesaid facts and circumstances in to consideration, this court is of the opinion that as a consequence of the order of removal from service and the appellate authority's order dated 04.04.1987 and 12.03.1990 respectively getting set aside/quashed, the petitioners who are the legal heirs of the delinquent employee would be entitled for the benefit of retiral dues which the delinquent employee would have got had he not been inflicted with the order of removal from service. The retiral dues includes pension, gratuity and all other benefits which the delinquent employee would have received had he not been removed from service.
- 26.** It is made clear that the petitioners would not be entitled for the back wages for the intervening period between the date of removal from service i.e. 04.02.1989 till he attains the age of superannuation. However, the entire period will be treated as 'Period Spent On Duty' and the delinquent employee would have to be treated at par with his immediate junior and should be granted benefits notionally at par with his immediate junior and the actual pensionary and retiral dues and benefits should be accordingly fixed and calculated and the same be released to the petitioners.

27. Let this retiral benefits in terms of the order passed in the preceding paragraphs be released to the petitioners without any further delay taking into consideration the date of removal being 1989, within an outer limit of 90 days from the date of receipt of copy of this order.

Sd/-
(P. Sam Koshy)
Judge

inder

HEAD NOTE

Recording of the statement of the delinquent employee first in a departmental enquiry proceeding vitiates the entire enquiry proceeding.

The recording of statement of the charge sheeted employee first is also in contravention to Rule 14 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966.