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HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 499 of 2018

- Nidhish Kumar Koshti, S/o Shri Arvind Kumar Koshti, Aged About 40 Years Presently Posted as Excise Sub- Inspector, Durg, Chhattisgarh. R/o House No. 98, Near Surya Mall P. S. Junwani, District- Durg, Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh through Secretary-cum-Commissioner, Department of Excise, Mantralaya, Mahanadi Bhawan, Naya Raipur, District- Raipur, Chhattisgarh
2. Deputy Commissioner, State Flying Squad, Raipur, District- Raipur, Chhattisgarh
3. Chhattisgarh Public Service Commission, through its Secretary, Shankar Nagar Road, Raipur, Chhattisgarh

---- Respondents

For Appellant	:	Shri Mateen Siddiqui, Advocate
For State	:	Ms Richa Shukla, Dy GA
For Respondent- 3	:	Shri YC Sharma, Advocate

Hon'ble Shri Prashant Kumar Mishra, Actg CJ &
Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board by Prashant Kumar Mishra, Actg CJ.

02.05.2019

1) Appellant's Writ Petition has been dismissed by the learned Single Judge on the ground of delay and latches but reserving liberty to prefer departmental appeal.

2) The appellant was imposed minor penalty of stoppage of two increments without cumulative effect by an order passed by the Excise Commissioner on 16.02.2017. However, when the Writ Petition was filed

on 27.04.2017, the appellant was still undergoing punishment, therefore, the Writ Petition did not suffer from delay and latches.

3) Insofar as availability of alternative remedy is concerned, it is brought to our notice that Excise Commissioner is the competent authority to hear the appeal, therefore, appellate remedy under Rule 23 read with Rule 24 of the Schedule appended to Chhattisgarh Civil Service (Classification, Control and Appeal) Rules, 1966 (for short, '1966 Rules') is not available. In previous hearing, we had sought information from learned Additional Advocate General as to whether the post of Excise Commissioner and Secretary (Excise) in the State of Chhattisgarh is held by the same person to which learned Additional Advocate General informed that the post is held by the same person. Thus even if the appellate remedy is available under Rule 24, the order having been passed by the Excise Commissioner, an appeal to the State Government which will be dealt with by the Secretary (Excise) would amount to appeal from Ceaser to Ceaser's wife. Therefore, alternative remedy in the present case is illusory and not real.

4) In view of the above, we proceed to deal with the issue on merits.

5) On receipt of complaint by the Chhattisgarh Lokayog, Raipur alleging irregularities in the State run excise shop at Belha, the Lokayog sought report from the Excise department. The Deputy Commissioner (Excise) (Flying Squad), Raipur submitted a report to the Excise Commissioner, Raipur on 30.03.2016 stating that no irregularities were found in the liquor shops of Belha, Takhatpur and Gatowri although it was

found in the report that a sum of Rs.4,499/- was found less in the cash box of the subject shop. Based on this report, the Excise Commissioner issued a notice to the appellant on 16.05.2016 alleging that a sum of Rs.4,499/- was found less in the cash box which amounts to violation of Chhattisgarh Civil Service (Conduct) Rules 1965 attracting punishment under Rule 10 of 1966 Rules, therefore, why penalty may not be imposed on the petitioner ?

6) Appellant submitted reply to the show cause notice denying the charges. However, without giving any further opportunity of hearing or constituting a departmental enquiry against him, the order imposing punishment has been passed against him on 16.02.2017.

7) For the ground on which we are inclined to allow the petitioner's appeal, we are not dealing with the merits of the matter. Suffice it would be to note that Rule 10 of 1966 Rules provides for minor as well as major penalties. Show cause notice issued against the petitioner does not speak of any particular penalty which was proposed to be imposed on the appellant. It only refers to Rule 10 of 1966 Rules. For imposing a minor penalty, Rule 16 of 1966 Rules provides that no order imposing on a Government servant any of the penalties specified in Clause (i) to (iv) of Rule 10 of 1966 Rules (including penalty of stoppage of increment) shall be made except after informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal. The word 'proposal' occurring in Rule 16(1)

(a) is the proposal for imposing minor penalty and this proposal is to be necessarily stated in the show cause notice seeking explanation of the government servant about the proposed action. However, in the show cause notice neither this proposal was mentioned nor there was any indication that the Excise Commissioner was proposing to pass an order imposing any of the minor penalties mentioned in Clauses (i) to (iv) of Rule 10. Thus, the show cause notice itself was not in conformity with Rule 10 read with Rule 16(1)(a) of 1966 Rules. The notice being bad in law, the consequent order dated 16.02.2017 imposing minor penalty also deserves to be and is hereby set aside.

8) Liberty is reserved in favour of the State to proceed against the appellant in accordance with law, if it so desires.

Sd/-	Sd/-
Actg Chief Justice	Judge
(Prashant Kumar Mishra)	(Parth Prateem Sahu)

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