

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.4153 of 2011**

Thakur Ram Dhruv S/o Late Narrotam Dhruv, Aged about 39 years, Kodobatar, Tehsil Gariaband, District Raipur (CG)

----Petitioner

Versus

1. State of Chhattisgarh Thro' Secretary, Panchayat & Gramin Vikas Vibhag Deptt., Mantralaya, Raipur (CG)
2. Chief Executive Officer, Jila Panchayat, Raipur (CG)
3. Chief Executive Officer, Janpad Panchayat, Tehsil Gariaband, Raipur (CG)

---- Respondents

For Petitioner	:	Mr.Raja Sharma, Advocate
For Respondent No.1	:	Mr.Siddharth Dubey, Dy.G.A.
For Res.No.2 and 3	:	None present though served

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board (Through Video Conferencing)

27/08/2021

1. The petitioner herein calls in question the order dated 23.11.2010 (Annexure P-3) passed by respondent No.2 by which he has been terminated from the post of Panchayat Karmi, Gram Panchayat Behrabuda, Tahsil Gariyaband, District Gariyaband.
2. Mr.Raja Sharma, learned counsel for the petitioner, would submit that the impugned order passed by respondent No.2 is not in accordance with the provisions contained in Rule 7 of the Chhattisgarh Service (Discipline and Appeal) Rules, 1999 (hereinafter called as 'Rules of 1999') and respondent No.2 has not conducted any enquiry as

envisaged in Rule 7 of the Rules of 1999, as such, the impugned order deserves to be set aside.

3. On the other hand, Mr.Siddharth Dubey, learned Deputy Government Advocate appearing for respondent No.1/State, would support the impugned order.
4. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the records with utmost circumspection.
5. Rule 7 of the Rules of 1999 provides as under:-

“7. Procedure for imposing major penalties.-

(1) No order, imposing on a member of the Panchayat Service, any of the penalties specified in clauses (iv) to (via) of Rule 5 shall be passed except after a formal inquiry is held as far as may be, in the manner hereinafter provided.

(2) When an order for formal inquiry has been made, the disciplinary authority shall frame Definite charges on the basis of allegations and shall communicate such charges, alongwith the statement of the allegations, to the member of the Panchayat Service and also require him to submit, within such time as may be specified a written statement of defence and also to state whether he desires to be heard in person.

(3) The person against whom inquiry is to be held shall, for the purpose of preparing to defence, be permitted to inspect and take extracts from such records as he may specify :

Provided that such permission may be refused if, for reasons to be recorded in writing, in the opinion of the Enquiry' Officer such records are not relevant for the purpose or it is against the public interest to allow his access thereto.

(4) On receipt of the written statement of

defence or if any such statement is not received within the time specified, the disciplinary authority may himself enquire into such of the charges as are not admitted or appoint an Enquiry Officer to hold the inquiry and forward to him his report and, if advised, his recommendation alongwith all the inquiry papers.

(5) The disciplinary authority may nominate any person to present the case in support of the charges before the Enquiry Officer. The member of the Panchayat Service may present his case with the assistance of any other Panchayat Servant of State Government Servant approved by the Enquiry Officer but may not engage a legal practitioner for the purpose, unless the person nominated by the disciplinary authority as aforesaid is a legal practitioner or unless the disciplinary authority having regard to the circumstances of the case so permits.

(6) If the servant of the Panchayat Service desires to be heard in person, he shall be so heard. If he so desires or if the disciplinary authority so directs, an oral enquiry shall be held by the Enquiry Officer. At such inquiry, evidence shall be heard as to such of the allegations as are not admitted and the person charged shall be entitled to cross examine the witness, to give evidence in person, to produce documentary evidence, if any and to have such witness called as he may wish :

Provided that the Enquiry Officer may, for reasons to be recorded in writing, refuse to call a witness.

(7) At the conclusion of the inquiry, the Enquiry Officer shall prepare a report of the inquiry, recording his findings on each of the charges together with reasons therefor.

(8) The proceedings conducted against the persons charged shall contain a sufficient record of :-

- (i) the charges framed against such person and the statement of allegations;
- (ii) the written statement of defence if any;
- (iii) the oral evidence taken in the course

of the inquiry;

(iv) the documentary evidence considered in the course of the inquiry;

(v) the orders, if any, made by the Enquiry Officer or the disciplinary authority, as the case may be, with regard to the inquiry;

(vi) a report setting out the findings on each charge and the reasons therefor.

(9) The Enquiry Officer, if he is other than the disciplinary authority, shall submit the records of the proceedings mentioned in clause (8) above to the disciplinary authority without recommendation relating to the penalty to be imposed. The disciplinary authority shall consider the record of the enquiry and its findings on each charge, having regard to the findings on the charges and the record (if the proceedings) if he is of the opinion that any of the penalties specified in clauses (iv) to (vii) of Rule 5 should be imposed, it shall furnish to the person charged a copy of the report of the Enquiry Officer, and where the disciplinary authority is not the Enquiry Officer a statement of its findings together with brief reasons for disagreement, if any, with the findings of the Enquiry Officer.

(10) The disciplinary authority shall consider the representation, if any, made by the person charged in response to the notice and determine the penalty, if any, should be imposed and shall pass appropriate order on the case.

(11) The orders passed by the disciplinary authority shall be communicated to the member of the Panchayat Service, who shall also be supplied with a copy of the report of the Enquiry Officer and where disciplinary authority is not the Enquiry Officer, a statement of its findings together with the brief reasons for disagreement, if any, with the findings of the Enquiry Officer, unless they have already been supplied to the person charged."

6. Reverting to the facts of the present case in the light of aforesaid Rule which requires holding of departmental enquiry by issuing charge-sheet and giving an opportunity

of hearing to the delinquent Panchayat Karmi, but it appears that after conducting preliminary enquiry, no formal charge-sheet and no formal enquiry was conducted in accordance with Rule 7 of the Rules of 1999, as such, the mandatory provision as contemplated under Rule 7 of the Rules of 1999 for imposing major penalty of termination has not been followed, which is in teeth of the provisions contained in Rule 7 of the Rules of 1999.

7. Accordingly, the impugned order dated 23.11.2010 (Annexure P-3) passed by respondent No.2 terminating the services of the petitioner from the post of Panchayat Karmi is hereby quashed. However, Respondent No.3 is at liberty to proceed in accordance with law.
8. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-