

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.1859 of 2011

Gopal Singh Uikey, S/o Late Mahadev, aged about 60 years, Occupation
Retired Tahsildar, Tokapal, Tahsil Tokapal, District Bastar (C.G.)

---- Petitioner

Versus

1. State of C.G., through the Secretary, Revenue Department, DKS Bhawan, Raipur (C.G.)
2. The Commissioner, Bastar Division, District Bastar (C.G.)
3. The Collector, Bastar, District Bastar (C.G.)

---- Respondents

For Petitioner: Mr. Rakesh Pandey, Advocate.

For Respondents/State: Mr. Siddharth Dubey, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

18/08/2021

1. Proceedings of this matter have been taken-up through video conferencing.
2. This writ petition is directed against the order dated 26-2-2011 passed by respondent No.2 whereby respondent No.2 being disciplinary authority has imposed two minor punishments upon the petitioner under Rule 10(iii) & (iv) of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short, 'the Rules of 1966') and directed to recover ₹ 3,63,013/- under Rule 10(iii) of the Rules of 1966 and also directed for cancellation of two annual increments granted on 1-7-2009 and 1-7-2010 after conclusion of departmental enquiry under Rule 10(iv) of the Rules of 1966.
3. Mr. Rakesh Pandey, learned counsel appearing for the petitioner, would make two fold submissions as follows: -

1. While passing the order of recovery under Rule 10(iii) of the Rules of 1966 no clear finding has been recorded that loss was caused to the Government on account of direct negligence of the petitioner or breach of order by the petitioner, because in the enquiry it has been found that embezzlement has made by Cashier Ratiram Nareti and the petitioner was only a supervising officer as Naib Tahsildar of that office, therefore, it is a technical fault / procedural lapse for which the petitioner has been saddled with recovery of ₹ 3,63,013/- which is harsh punishment and cannot be sustained, as neither there is allegation of embezzlement nor it has been found proved against him.
2. Two minor penalties cannot be imposed simultaneously for one misconduct, if any, therefore, the impugned order is liable to be set aside.
4. Mr. Siddharth Dubey, learned Deputy Govt. Advocate appearing for the State / respondents, however, would support the impugned order and submit that looking to the misconduct and looking to the loss caused to the Government by the petitioner, the petitioner has rightly been inflicted with the penalty of recovery of ₹ 3,63,013/- and with cancellation of two annual increments granted on 1-7-2009 and 1-7-2010, that is not liable to be interfered with and the writ petition deserves to be dismissed.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
6. In a departmental proceeding held against the petitioner and one Ratiram Nareti, the disciplinary authority by its order dated 26-2-2011 found that embezzlement took place of the amount of ₹ 7,26,027/- and the said amount has been embezzled by Ratiram Nareti, Cashier, for which he

was charged in Criminal Case No.1704/2004 and he was acquitted also by the judgment of criminal court on 6-6-2009 and it was further held that Rule 24 of the Treasury Code Rules was not followed, therefore, Ratiram Nareti got opportunity to embezzle the amount. As such, the petitioner is guilty of non-compliance of Rule 24, sub-rules 475, 476, 478 and 481 of the Treasury Code Rules and accordingly he was imposed with the aforesaid two penalties under Rule 10(iii) & (iv) of the Rules of 1966. The learned disciplinary authority has clearly held in its order dated 26-2-2011 that embezzlement was done by Ratiram Nareti, the then Cashier, and the petitioner is liable for technical violation of the provisions of the Treasury Code as mentioned herein-above and in that account proceeded to inflict penalty of recovery of ₹ 3,63,013/- and with cancellation of two annual increments granted on 1-7-2009 and 1-7-2010.

7. In this regard, the decision of the Supreme Court in the matter of **Union of India and others v. P. Balasubrahmanayam**¹ is noticed herein in which their Lordships of the Supreme Court were pleased to convert the penalty of compulsory retirement to that of minor punishment as bribery charges were not proved in departmental proceedings and only charges relating to procedural lapses is proved. Their Lordships held that punishment of compulsory retirement is completely disproportionate and harsh and directed the concerned authority to impose proportionate minor penalty and observed as under: -

“18. We are, thus, of the view that the course adopted by the Tribunal was the appropriate course of action, i.e., the procedural lapses having been found and the bribery allegation having been rejected the appropriate course would have been to examine only the issue of disproportionality of punishment.

19. It is correct to say that judicial forums do not sit as an

1 AIR 2021 SC 1257 : AIR OnLine 2021 SC 100

appellate authority to substitute their mind with the mind of the disciplinary authority insofar as the finding is concerned. However, disproportionality of punishment is a concept certainly not unknown to service jurisprudence and has received consideration *inter alia* of this Court². This is what the Tribunal proposed to do. We may examine the finding of the Tribunal on the issue of disproportionality of punishment and are in complete agreement with the view that the punishment of compulsory retirement was completely disproportionate and harsh, keeping in mind the finding arrived at by the disciplinary authority. It, thus, seems to appear that the charges originally levelled may have persuaded the concerned authority to impose punishment; losing sight of the fact that the allegations *qua* bribery had not been found against the respondent.

20. The question is whether the Tribunal proceeded correctly in passing the final direction to impose appropriate minor penalty. The Tribunal itself did not impose the punishment but left it to the authority concerned (for appropriate course of action). It was of the view that considering the findings of procedural lapses against the respondent, the appropriate punishment could only be a minor penalty and not a major penalty. With this again, we are in agreement with the course of action adopted. The nature of charges found against the respondent can hardly be one to call for a major penalty, keeping in mind that there was no bribery charge. Anyone can make mistakes. The consequences of mistakes should not be unduly harsh. We are, thus, of the view that the direction of the Tribunal is what is liable to be sustained.

21. The result of the aforesaid is that the impugned judgment of the High Court is set aside and that of the Tribunal is restored. Necessary consideration not having taken place, the appellants will do the needful in terms of the order of the Tribunal within 8 weeks from today and giving all consequential benefits thereof to the respondent. We hope that this long drawn out service dispute would now come to an end after almost a decade.”

8. As such, the aforesaid judgment would clearly apply in this case as only the procedural lapse of violation of rules in maintaining the treasury records has taken place and it is found proved against the petitioner. The petitioner has not been found guilty of embezzlement of the amount in question. The said amount was embezzled by one Ratiram Nareti who

2 S.R. Tewari v. Union of India and another, (2013) 6 SCC 602

was also prosecuted criminally and acquitted after trial. Since procedural / technical lapse has been found proved on the part of the petitioner in not complying with the provisions of the Treasury Code and for that, two minor penalties are totally unwarranted and one penalty of cancellation of two annual increments imposed against the petitioner would suffice the purpose and therefore the order of inflicting penalty of recovery of ₹ 3,63,013/- is hereby set aside, as this would be too harsh punishment to the petitioner for this procedural lapse and also for the reason that he has admittedly not embezzled the disputed amount and two minor penalties cannot be imposed simultaneously.

9. As a fallout and consequence of the aforesaid discussion, the writ petition is partly allowed and penalty imposed upon the petitioner under Rule 10(iii) of the Rules of 1966 for recovery of ₹ 3,63,013/- is hereby set aside, however, cancellation of two annual increments granted on 1-7-2009 and 1-7-2010 is maintained. However, it is the case of the petitioner that the amount has already been recovered from him. He is at liberty to make application for refund of the same in accordance with law and on being made, it will be considered by the competent authority expeditiously. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge