

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.2382 of 2010**

- Mahendra Kumar Dhoke, aged about 43 years, S/o Late Shri Babu Rao Dhoke, C/o Shamim Khan, Mata Garage, Kali Mata Ward No.30 Pandari, Raipur (C.G.)

----- Petitioner**Versus**

- 1.State of Chhattisgarh, through the Secretary, Department of Food, Civil Supplies and Consumer Protection, D.K.S. Bhawan, Mantralaya, Raipur (C.G.)
- 2.Managing Director, Chhattisgarh, Warehousing Corporation, Head Office, 22, Anand Nagar, Raipur (C.G.)
- 3.Collector, District Narayanpur (C.G.)
- 4.Deputy Collector, District Narayanpur (C.G.)

----- Respondents

For Petitioner	Mr. Pranjal Shukla, Advocate
For Respondent-State	Mr. Soumya Rai, PL
For Respondent No.2	Mr. Anuroop Panda, Advocate

Hon'ble Justice Shri Sanjay K. Agrawal**Order On Board****03/08/2021**

1. The petitioner by way of this writ petition is challenging the legality, validity and the propriety of the charge sheet dated 27.04.2009

served to the petitioner on 28.05.2009 vide Annexure-P/1, whereby the departmental enquiry has been initiated by the respondent No.3, the Collector, Narayanpur against the petitioner branding the impugned order as arbitrary, illegal and without authority of law. The petitioner is also challenging the letter dated 12.10.2009 (Annexure-P/2) issued by the respondent No.3 to respondent No.2 for completing the departmental enquiry initiated by the respondent No.3 against the petitioner.

2. Mr. Pranjal Shukla, learned counsel for the petitioner, would submit that at the relevant point of time, the petitioner was working as Junior Technical Assistant and his appointing authority, disciplinary authority and terminating authority is the respondent No.2, the Managing Director, Chhattisgarh Warehousing Corporation by virtue of Regulation 22 (2) of the Chhattisgarh Warehousing Corporation Act, 1962 (Staff Regulations), thus the Collector could not have instituted the departmental enquiry against the petitioner, therefore, the impugned charge sheet (Annexure-P/1) and the

consequential proceedings deserve to be quashed.

3. Mr. Soumya Rai, learned State counsel would support the impugned order.
4. Mr. Anuroop Panda, learned counsel for the respondent No.2, would submit that the State has 50% shareholding in the Warehousing Corporation and after the departmental enquiry was instituted by the Collector against the petitioner, the Enquiry Officer and the Presenting Officer has been appointed by the Corporation, therefore, the order is sustainable and the writ petition deserves to be dismissed.
5. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.
6. At the relevant point of time, the petitioner was working as Junior Technical Assistant and according to learned counsel for the petitioner, the petitioner's appointing authority, disciplinary authority and the

terminating authority is the respondent No.2, Managing Director, Chhattisgarh Warehousing Corporation by virtue of Regulation 22 (2) of the Chhattisgarh Warehousing Corporation Act, 1962 (Staff Regulations). Regulation 22 of the said Act provides as under:-

"22. Imposition of Penalties.

1. Any employee committing a breach of the regulations of the Corporation or being guilty of negligence, inefficiency or indolence in performance of his duties or knowingly doing anything detrimental to the interests of the Corporation or in conflict with its instructions or committing a breach of discipline or being guilty of any other act of misdemeanour or is convicted of a criminal offence shall be liable to the following penalties:

(a) Fine

(b) Censure

(c) Delay or stoppage of increment or promotion

(d) Reduction to a lower post in his permanent class or to a lower stage in his incremental scale.

(e) Recovery from pay of the whole or part of pecuniary loss caused to the Corporation by the employee.

(f) Removal

(g) Dismissal

2. The power to impose a penalty

under sub-regulation (1) shall be exercised:

(i) In the case of Class I employees other than Managing Director, in respect of all penalties by the Board of Directors, and in the case of Class II employees in respect of all penalties except the penalty as specified in Clauses (b) & (c) of Sub-Regulation (1) by the Executive Committee subject to ratification by the Board.

(ii) In the case of class III and class IV employees, in respect of all penalties, and in the case of Class II employees, penalties as specified in clause (b) and (c) of Sub Regulation (1) by the Managing Director.

(Regional Managers to act as appointing authority, disciplinary authority and terminating authority in their Region for class IV staff. Authority Board of Directors' meeting Resolution No.14 dt. 4.7.81)

(iii) In the case of the Managing Director in respect of all penalties except the penalties specified in clause (f) and (g) of Sub-Regulation (1) by the State Government in Consultation with the Central Warehousing Corporation.

(iv) No punishment other than that specified in Sub-Regulation (1) (a), (1) (b) and (1) (c) shall be imposed on any employee without formal charges being framed against him and without giving him an opportunity for tendering an explanation in writing and cross examining the witness against him, if any, and of producing defence.

(v) Notwithstanding anything

contained in these regulations, punishment to employee on deputation from the State Government or Government Institution or Cooperative Societies shall be imposed in accordance with the rules and procedure laid down in this behalf in their parent service."

Since the petitioner at the relevant point of time was working as Junior Technical Assistant, which is the Class-III category post, the appointing authority and disciplinary authority/terminating authority of the petitioner is the Managing Director, Chhattisgarh Warehousing Corporation, the respondent No.2, therefore, the departmental enquiry could not have been initiated by the Collector, the respondent No.3, which is *ex facie* without jurisdiction and without authority of law.

7. After institution of the enquiry by the Collector against the delinquent, even if the enquiry officer and presenting officer is appointed by the Corporation, the order instituting the departmental enquiry will not become legal and it will remain without jurisdiction, as the Collector has no

jurisdiction. Consequently, the impugned order (Annexure-P/1) instituting the departmental enquiry against the petitioner and the consequential proceedings become illegal and without authority of law. Accordingly, the impugned charge sheet dated 27.04.2009 served to the petitioner on 28.05.2009 vide Annexure-P/1 and the impugned letter dated 12.10.2009 (Annexure-P/2) are hereby quashed. However, the respondent No.2 is at liberty to proceed in accordance with law.

8. Accordingly, the writ petition is allowed. No order as to cost (s).

Sd/-
Sanjay K. Agrawal
Judge

Nirala