

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.4980 of 2009

Ajeet Singh Jat, Aged 45 years, S/o Shri Amar Singh, Posted as Block Education Officer, At Fingeshwar, District Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through its Secretary, Department of Panchayat & Rural Development, Mantralaya, D.K.S. Bhawan, Raipur
2. State of Chhattisgarh, Through its Secretary, Department of School Education, Mantralaya, D.K.S. Bhawan, Raipur
3. The Commissioner/Director, Public Instructions, Chhattisgarh, Raipur
4. The Commissioner, Raipur Division, Raipur
5. The Collector, District Raipur (C.G.)
6. The Chief Executive Officer, Zila Panchayat, Raipur (C.G.)
7. District Education Officer, Raipur (C.G.)

---- Respondents

ANDWrit Petition (S) No.4981 of 2009

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---- Petitioner

Versus

1. State of Chhattisgarh, Through its Secretary, Department of School Education, Mantralaya, D.K.S. Bhawan, Raipur
2. The Commissioner, Public Instructions, Chhattisgarh, Raipur
3. District Education Officer, Raipur, District Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Rajesh Kumar Kesharwani, Advocate.
 For Respondents/State: Mr. Animesh Tiwari, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

01/07/2021

1. Proceedings of this matter have been taken-up through video conferencing.
2. Since common question of law and fact is involved in both the writ petitions, both were clubbed together, heard together and are being disposed of by this common order.
3. In a recruitment held for the post of Shiksha Karmi Grade-III in Janpad Panchayat, Abhanpur, in the year 2007, selection committee was constituted consisting of Chief Executive Officer and Block Education Officer – the petitioner herein. On the basis of selection and verification of certificates, 13 Shiksha Karmi Grade-III were appointed, but later-on, on the basis of some complaint, by order dated 13-2-2008, a three-members enquiry committee was constituted which submitted its report on 14-5-2008 and according to the report, the certificates filed by 7 Shiksha Karmi Grade-III were found to be forged and their services were accordingly terminated by order dated 23-5-2008 and thereafter, the petitioner was served with show-cause notice dated 22-5-2008 as to why appropriate action be not taken against him for the act of misconduct of not properly verifying the certificates of the said Shiksha Karmi Grade-III which the petitioner replied and ultimately, by order dated 6-12-2008, the competent authority imposed minor punishment of withholding of two increments with non-cumulative effect which the petitioner has called in question in W.P.(S) No.4981/2009.
4. Thereafter, another order was passed on 7-7-2009 by the Collector, Raipur holding that since on account of the act of misconduct committed by the petitioner herein and the then Chief Executive Officer, the State Government has suffered monetary loss of total ₹

2,03,313/-, therefore, both the officers will be responsible to the extent of one half each and the petitioner is directed to pay ₹ 1,01,655-50 ps., which has been called in question by the petitioner in W.P.(S) No.4980/2009.

5. These two writ petitions have been filed by the petitioner alleging that he has performed his duty strictly in accordance with law and he acted with all due diligence in verifying the certificates. The petitioner denied the charge thoroughly and specifically. His case is that the procedure envisaged in Rule 16(1) of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short, 'the Rules of 1966') has not been followed before inflicting even minor penalty within the meaning of Rule 10(iv) of the Rules of 1966 and further, order dated 7-7-2009 passed by the Collector which has been called in question in W.P.(S)No.4980/2009 is also without jurisdiction and without authority of law, as the order to impose minor penalty has been conferred by the State Government to the Commissioner by notification dated 4-8-2008, therefore, the order of recovery is liable to be set aside. Further case of the petitioner is that for one alleged act of misconduct, two minor penalties i.e. one of withholding two increments and another, the order of recovery, cannot be imposed simultaneously.
6. Return has been filed justifying the action of the respondents holding that preliminary enquiry was conducted and in the enquiry report dated 14-5-2008, certificates of 7 Shiksha Karmi Grade-III were found to be forged and fabricated and their services have been terminated, and the petitioner was found guilty of misconduct, therefore, minor penalty of withholding of two increments with non-cumulative effect has been passed and later-on, the loss caused to the Government has

been sought to be recovered by the order of the Collector, as such, both the petitions are liable to be dismissed.

7. Mr. Rajesh Kumar Kesharwani, learned counsel appearing for the petitioner, would make following submissions: -

1. While passing the order dated 6-12-2008 imposing minor penalty of withholding of two increments with non-cumulative effect, Rule 16(1) of the Rules of 1966 has not been followed and full opportunity to defend has not been given to the petitioner, therefore, the impugned order is liable to be set aside.
2. Mere show-cause notice would not amount to reasonable opportunity of hearing in terms of Rule 16(1) of the Rules of 1966.
3. The order passed by the Collector, dated 7-7-2009 directing recovery is without jurisdiction and without authority of law, as the power to impose minor penalty has been conferred upon the Commissioner by notification dated 4-8-2008, therefore, order directing recovery of ₹ 1,01,655-50 ps. could not have been passed by the Collector.
4. Two minor penalties for one act of alleged misconduct cannot be imposed, it is liable to be set aside.

8. Mr. Animesh Tiwari, learned State counsel, would support the impugned orders and submit that considering the misconduct and verifying forged certificates as true and the loss which the Government has suffered, penalty imposed cannot be said to be disproportionate to his act of misconduct warranting interference by this Court in exercise of jurisdiction conferred under Article 226 of the Constitution of India.

9. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.
10. The State of Chhattisgarh by notification dated 4-8-2008, delegated the power to impose minor penalty to Class-II Gazetted Officers upon the Divisional Commissioner, in exercise of its power under Rule 12(2) (a) and (b) of the Rules of 1966.
11. Rule 10(i) to (iv) of the Rules of 1966 provides for minor penalties which states as under: -

“10. Penalties.—The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely:—

Minor penalties :—

- (i) Censure;
- (ii) Withholding of his promotion;
- (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of order;
- (iv) withholding of increments of pay or stagnation allowance;”

12. Rule 16 of the Rules of 1966 provides procedure for imposing minor penalties which states as under: -

“16. Procedure for imposing minor penalties.—(1) Subject to the provisions of sub-rule (3) of Rule 15, no order imposing on a Government servant any of the penalties specified in clauses (i) to (iv) of Rule 10 and Rule 11 shall be made except after-

- (a) 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;

(b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;

(d) recording a finding on each imputation of misconduct or misbehaviour; and

(e) consulting the commission where such consultation is necessary.

(1-a) xxx xxx xxx

(2) The record of the proceedings in such cases shall include-

(i) a copy of the intimation to the Government servant of the proposal to take action against him;

(ii) a copy of the statement of imputation of misconduct or misbehaviour delivered to him;

(iii) his representation, if any;

(iv) the evidence produced during the inquiry;

(v) the advice of the commission, if any;

(vi) the findings on each imputation of misconduct or misbehaviour; and

(vii) the orders on the case together with the reasons therefor."

13. A careful perusal of the aforesaid Rule would show that the punishment of withholding of increment which is minor penalty can be imposed on any Government servant only after informing him under Rule 16(1)(a) of the Rules of 1966 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 after giving him a reasonable opportunity to make representation as he may wish to make against the proposal and after taking into consideration such

representation, if any. Rule 16(1)(a) of the Rules of 1966 prohibits imposition of any penalty without serving a charge-sheet on the delinquent and giving him reasonable opportunity to defend.

14. The M.P. High Court in the matter of Ku. Shailja R. Jeswani v. State of M.P. and others¹ has held that notice cannot be construed as a proposal to take action against the petitioner with regard to imputation of misconduct and quashed the order imposing minor penalty.
15. In the matter of Lal Audhraj Singh Lal Rampratap Singh v. State of Madhya Pradesh², a Division Bench of the Madhya Pradesh High Court has clearly held that merely giving a notice to the Government servant saying that he is guilty of certain lapse or misconduct and asking him to show cause against the punishment of withholding of increments is not sufficient. It was observed in para 5 as under: -

“5. The petitioner's grievance that he was not given an effective opportunity of showing cause against the proposed punishment of withholding of his increments is also substantial. Under rule 55-A of the M.P. Civil Services (Classification, Control and Appeal) Rules, which were in force before 13th August 1965, such a punishment could be imposed on any Government servant only after giving him an adequate opportunity of making a representation that he desired to make and after taking into consideration such representation, if made. So also, under rule 13(1)(a) of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1965, the punishment of withholding of increment can be imposed only after the Government servant is informed in writing of the proposal to take this action against him and of the allegations on which it is proposed to be taken and given an opportunity to make any representation he may wish to make and after taking into consideration such representation, if made. No doubt, it is not necessary to hold a departmental enquiry for imposing on a Government servant the punishment of withholding an increment. But he is clearly entitled to an effective opportunity of meeting the allegations on which it is proposed to withhold his increment. Merely giving a notice

1 2000(3) MPHT 85 (NOC)

2 1967 MPLJ 528

to the Government servant saying that he is guilty of certain lapse or misconduct and asking him to show cause against the punishment of withholding of increments is not sufficient. The Government servant must be informed of the allegations against him and the material on which they are based. In the present case, the second notice, which was issued to the applicant on 15th April 1963, was, as stated in the return itself, on the basis of report of enquiry which was held in July 1954. A copy of that report should have been supplied to the petitioner for enabling him to meet the charge of negligence levelled against him and to show that he did not deserve any punishment.”

16. Clause (b) of sub-rule (1) of Rule 16 of the Rules of 1966 confers discretion upon the disciplinary authority to decide whether an enquiry is to be conducted. The disciplinary authority must apply its mind to the facts and circumstances of the case as disclosed in the representation of the employee and other available material and give a reasoned finding whether an enquiry is necessary or not. In absence of such finding, order imposing penalty would be invalid unless of course, it can show that omission has not resulted in prejudice to the employee.
17. Not only this, the M.P. High Court in the matter of Union of India and another v. C.P. Singh³, taking into consideration the decision of the Supreme Court on this point and further taking into consideration the decisions of the Supreme Court in the matters of D.K. Bharadwaj v. Union of India⁴ and Food Corporation of India v. A. Prahalada Rao⁵, summarised the legal position for imposing minor penalty in paragraphs 16 and 17 as under: -

“16. The position as can be gathered from the Rules and the aforesaid decisions can be summarised thus:

(i) In a summary inquiry, a show cause notice is issued informing the employee about the proposal to take

3 2004 (II) MPJR 252

4 (2001) 9 SCC 180

5 (2001) 1 SCC 165

disciplinary action against him and of the imputations of misconduct or misbehaviour on which such action is proposed to be taken. The employee is given an opportunity of making a representation against the proposal. The Disciplinary Authority considers the records and the representation and records of findings on each of the imputations of misconduct.

(ii) In a regular inquiry, the Disciplinary Authority draws up the articles of charge and it is served on the employee with a statement of imputation of misconduct, list of witnesses and list of documents relied on by the Department. The Disciplinary Authority calls upon the employee to submit his defence in writing. On considering the defence; the Disciplinary Authority considers the same and decides whether the inquiry should be proceeded with, or the charges are to be dropped. If he decides to proceed with the enquiry, normally an Inquiring Authority is appointed unless he decides to hold the inquiry himself. A Presenting Officer is appointed to present the case. The employee is permitted to take the assistance of a co-employee or others as provided in the rules. An inquiry is held where the evidence is recorded in the presence of the employee. The employee is permitted to inspect the documents relied upon by the employer. The employee is also permitted to call for other documents in the possession of the Management which are in his favour. The delinquent employee is given an opportunity to rebut the evidence of the management by cross-examining the management witnesses and by producing his evidence both documentary and oral. Arguments-written and/or oral-are received/heard. The delinquent employee is given full opportunity to put forth his case. Therefore, the Inquiring Authority submits his report. The copy of the report is furnished to the employee and his representation is received. Thereafter the Disciplinary Authority considers all the material and passes appropriate orders. The detailed procedure for such inquiries is contained in sub-rules (6) to (25) of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 corresponding to sub-rules (3) to (23) of Rule 14 of the Central Civil Services (CCA) Rules, 1965 and M.P. Civil Services (CCA) Rules, 1966.

(iii) The normal rule, except where the employee admits guilt, is to hold a regular inquiry. But where the penalty proposed is a 'minor penalty', then the Rules give the Disciplinary Authority a discretion to dispense with a regular inquiry for reasons to be recorded by him, and hold only a summary enquiry.

(iv) Though the Rules contemplate imposing a minor penalty without holding a regular enquiry, where the Disciplinary Authority is of the opinion that such enquiry is not necessary, such decision not to hold an enquiry can be only for valid reasons, recorded in writing. Dispensation with a regular enquiry where minor penalty is proposed, should be in cases which do not in the very nature of things require an enquiry, for example, (a) cases of unauthorised absence where absence is admitted but some explanation is given for the absence; (b) non-compliance with or breach of lawful orders of official superiors where such breach is admitted but it is contended that it is not willful breach; (c) where the nature of charge is so simple that it can easily be inferred from undisputed or admitted documents; or (d) where it is not practicable to hold a regular enquiry.

(v) But, even where the penalty proposed is categorised as minor penalty, if the penalty involves withholding increments of pay which is likely to affect adversely the amount of pension (or special contribution to provident fund payable to the employee), or withholding increments of pay for a period exceeding three year or withholding increments of pay with cumulative effect for any period, then it is incumbent upon the disciplinary authority to hold a regular inquiry.

(vi) **Position before decision in FCI:** Where the charges are factual and the charges are denied by the employee or when the employee requests for an inquiry or an opportunity to put forth the case, the discretion of the Disciplinary Authority is virtually taken away and it is imperative to hold a regular inquiry.

Position after decision in FCI: Where the Rules give a discretion to the Disciplinary Authority to either hold a summary enquiry or regular enquiry, it is not possible to say that the Disciplinary Authority should direct only a regular enquiry, when an employee denies the charge or requests for an inquiry. Even in such cases, the Disciplinary Authority has the discretion to decide, for reasons to be recorded, whether a regular enquiry should be held or not. If he decides not to hold a regular enquiry and proceeds to decide the matter summarily, the employee can always challenge the minor punishment imposed, on the ground that the decision not to hold a regular enquiry was an arbitrary decision. In that event, the Court or Tribunal will in exercise of power of judicial review, examine whether the decision of the Disciplinary Authority not to hold an enquiry was arbitrary. If the Court/Tribunal holds that the decision

was arbitrary, then such decision not to hold an enquiry and the consequential imposition of punishment will be quashed. If the Court/ Tribunal holds that the decision was not arbitrary, then the imposition of minor penalty will stand.

17. It is also possible to read the decisions in **Bharadwaj** and **FCI** harmoniously, if **Bharadwaj** is read as stating a general principle, without reference to any specific rules, that it is incumbent upon the Disciplinary Authority to hold a regular enquiry, even for imposing a minor penalty, if the charge is factual and the charge is denied by the employee. On the other hand, the decision in **FCI** holding that the Disciplinary Authority has the discretion to dispense with a regular enquiry, even where the charge is factual and the employee denies the charge, is with reference to the specific provisions of a Rule vesting such discretion.”

18. Reverting to the facts of the case in the light of the aforesaid proposition, it is quite vivid that in the instant case, the petitioner has been served only with show-cause notice dated 22-5-2008 filed in W.P.(S)No.4980/2009, but thereafter, nothing has been done and straightway, order dated 6-12-2008 has been passed holding him guilty of misconduct imposing minor penalty of withholding of two increments with non-cumulative effect which is contrary to the principle of law laid down by the M.P. High Court in Lal Audhraj Singh Lal Rampratap Singh (supra) and C.P. Singh's case (supra), as show cause notice would not amount to proposal to take action against the delinquent and it would also not amount to serving of imputations of misconduct or misbehaviour on which action is proposed to be taken under Rule 16(1)(a) of the Rules of 1966 and there is complete non-compliance of Rule 16(1)(b) of the said Rules as no opinion has been recorded by the disciplinary authority that as to why inquiry is not necessary; taking the representation submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration. No enquiry was held and nothing further

was done and straightway the order has been passed. As such, the contention of learned counsel for the petitioner that the order imposing punishment passed on 6-12-2008 is in teeth of the provisions contained in Rule 16(1) of the Rules of 1966 holds water and accordingly, order dated 6-12-2008 deserves to be set aside.

19. Now, comes the order dated 7-7-2009 passed by the Collector, Raipur directing recovery of ₹ 1,01,655-50 ps. from the petitioner, which has been called in question in W.P.(S)No.4980/2009.

20. It is true that by notification dated 4-8-2008, the State Government has conferred the power to impose minor penalty to the Divisional Commissioner and the Collector has no jurisdiction and no such power (to Class-II Officer) has been conferred to the Collector to impose minor penalty, such power has been conferred to the Commissioner under Rule 12(2)(a) and (b) of the Rules of 1966. As such, the power to impose minor penalty of recovery of ₹ 1,01,655-50 ps. from the petitioner could not have been passed by the Collector having no jurisdiction, he is neither appointing authority of the petitioner nor disciplinary authority of the petitioner. Admittedly, the petitioner is Class-II Gazetted Officer. Under Rule 10(iii) of the Rules of 1966, recovery of any pecuniary loss from the pay of Government servant can be ordered as a minor penalty only when it is found that loss has been caused to the Government by negligence or breach of order. Show cause notice under Rule 16(1)(a) of the Rules of 1966 must indicate the fact of negligence or breach of order and consequent loss to the Government (see K.P. Lakwani v. State of M.P.⁶). In the instant case, such a statement is missing either in the notice or in the impugned order dated 7-7-2009. Therefore, being

without jurisdiction and without authority of law, the order dated 7-7-2009 is hereby quashed.

21. There is one more reason for not upholding the order of the Collector dated 7-7-2009. On the date of the order directing recovery of money i.e. 7-7-2009, the petitioner has already been inflicted with minor penalty by order dated 6-12-2008 for the said misconduct by the competent authority which the petitioner has challenged in the earlier writ petition. Therefore, for one act of misconduct, a Government servant cannot be inflicted with two minor penalties simultaneously, one is withholding of two increments with non-cumulative effect and another is recovery of ₹ 1,01,655-50 ps. which fall within 'minor penalties' under Rule 10(iii) and (iv) of the Rules of 1966. As such, imposition of two minor penalties for one act of misconduct cannot stand together and they are liable to be quashed.

22. In the result, both the writ petitions are allowed. Orders dated 6-12-2008 and 7-7-2009, both, are quashed reserving liberty in favour of the respondents to proceed in accordance with law. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

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AND

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Head Note

1. Minor penalty to Government servant cannot be imposed without complying the provisions contained in Rule 16 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966.

छत्तीसगढ़ सिविल सेवा (वर्गीकरण, नियंत्रण तथा अपील) नियम, 1966 के नियम 16 में अंतर्विष्ट प्रावधानों का पालन किये बिना शासकीय सेवक पर लघु शास्ति अधिरोपित नहीं किया जा सकता।

2. Collector has no power and jurisdiction to impose minor penalty under the Rules of 1966 to Class-II Gazetted Officers.

नियम 1966 के अंतर्गत, कलेक्टर को द्वितीय श्रेणी के राजपत्रित अधिकारी पर लघु शास्ति अधिरोपित करने की शक्ति तथा क्षेत्राधिकार नहीं है।