

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.2177 of 2012**

Dhannuram Yadav, S/o Shri Budhram Yadav, Aged About 47 Years, R/o Achanakmar, Tahsil Kota, District Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary Forest Department, DKS Bhawan, Raipur, Chhattisgarh.
2. The Conservator of Forest, Bilaspur Circle, District Bilaspur, Chhattisgarh.
3. The Divisional Forest Officer, Forest Division Bilaspur, District Bilaspur, Chhattisgarh.

---- Respondents

For Petitioner : Shri Abhishek Pandey, Advocate on
behalf of Shri Rakesh Pandey, Advocate

For Respondents/State : Shri Vimlesh Bajpai, Govt. Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

20.09.2021

1. Petitioner dis-satisfied with the order dated 06.03.2012 (Annexure P/1) passed by Appellate Authority confirming the order passed by Disciplinary Authority of removal of petitioner from service, has filed this writ petition with following relief(s) :

“10.1 The Hon'ble Court may graciously be pleased to issue a writ/order/direction in the nature of mandamus thereby setting aside the order issued by respondent No.2 dated 5/6.3.2012 (Annexure P/1) and order dated

19/21.11.2011 (Annexure P/6) passed by respondent No.3 and further be pleased to direct the respondents to reinstate the petitioner with full back wages, in the ends of justice.

10.2 Any other relief which this Hon'ble Court deems fit and proper be awarded in favour of the petitioner, including cost."

2. Facts of the case in nutshell are that the petitioner was initially appointed on the post of Forest Guard on daily wage basis. Subsequently, his service was regularized and he was posted in a forest area where wildlife freely moves with responsibility to protect wildlife. During his posting at forest Jalda Sarasdol barrier as Forest Guard, one female antelope was hunted. Some of the tourists, who were visiting forest area found female antelope hunted by some persons and one bottle green Scorpio Jeep standing near hunted animal. This incident was reported to petitioner, who was on duty at forest barrier, who in turn asked tourists and guide along with them to intimate the incident of hunting to higher officer at Chhaparwa. Officials of Forest Department found involvement of petitioner also and initially POR No.575/2004 was registered. In forest offence No.575/2004, name of petitioner along with others was mentioned, he was arrested and remained in custody for more than 48 hours.
3. Considering the conduct of petitioner, departmental proceedings was initiated against him. Charge-sheet issued,

he was suspended and thereafter, Enquiry Officer as well as Presenting Officer were also appointed vide order dated 17.09.2010. After full-fledged inquiry, Enquiry Officer found both the charges levelled against petitioner proved. Disciplinary Authority after receiving inquiry report from Enquiry Officer issued notice to petitioner on 14.10.2011 (Annexure P/3) asking to submit defence as to why he should not be removed from service. Disciplinary Authority while considering inquiry report as well as defence statement submitted by petitioner, passed an order dated 21.11.2011 terminating service of petitioner with immediate effect vide Annexure P/6.

4. Aggrieved by order passed by Disciplinary Authority, petitioner preferred departmental appeal, which came to be dismissed by impugned order.
5. Shri Abhishek Pandey, learned counsel for the petitioner would submit that Disciplinary Authority as well as Appellate Authority have not considered the facts and evidence available in inquiry report as well as reply and defence submitted by petitioner before Enquiry Officer as well as Disciplinary Authority in its entirety and erroneously arrived at a finding that petitioner has committed misconduct attracting major penalty of removal from service. It is further contended that order passed by Disciplinary Authority based on the inquiry report is *per se* illegal and arbitrary. There is no direct evidence against petitioner of his involvement in hunting of

wildlife. Both the authorities have failed to consider that petitioner got acquitted from charges in Criminal Case No.449/2010 passed in 22.11.2010 by Judicial Magistrate First Class, Kota whereby petitioner along with others have been acquitted of similar charges, which is subject matter of disciplinary inquiry proceedings. When once the Court came to conclusion that involvement of petitioner is not found to be proved in criminal case, respondents ought not to have passed an order of punishment in departmental proceedings. Copy of order passed by Judicial Magistrate First Class, Kota dated 22.11.2010 is filed as Annexure P/5. Appellate Authority also has not considered all grounds raised by petitioner in its entirety. Impugned order passed by Appellate Authority is not a speaking order on all the grounds raised by petitioner in his appeal. Appellate Authority is bound to consider and decide the grounds raised by delinquent employee and to pass a speaking order. In support of his contention, learned counsel for petitioner places reliance upon an order passed in Writ Petition (S) No.1010 of 2012 dated 11.08.2021. He submits that there is no evidence against petitioner, but he has been punished only on the basis of suspicion, which is not sustainable. When once petitioner has been acquitted on same set of facts and evidence in criminal case, he could not be convicted on same facts and evidence by Disciplinary Authority in departmental proceedings. Lastly, it is pointed that punishment imposed

against petitioner in the facts of the case is too harsh. He submits that orders passed by Appellate Authority as well as Disciplinary Authority be quashed and petitioner be reinstated in his service.

6. Per contra, Shri Vimlesh Bajpai, learned Government Advocate representing the State would submit that Disciplinary Authority as well as Appellate Authority have considered all the grounds and defence of petitioner before passing order of his termination from service. Disciplinary Authority considered inquiry report as well as reply to show-cause notice for imposition of proposed punishment minutely before passing an order imposing major penalty against petitioner and that has been discussed in the order. Appellate Authority while considering the appeal and grounds made therein as well as records of disciplinary inquiry, rightly came to conclusion that misconduct committed by petitioner is one of the grave one and justified in passing order of removal of petitioner from service. He submits that consideration of criminal case and departmental inquiry proceeding stands on different footing. Consideration of criminal case for imposition punishment on accused person is very strict i.e. prosecution has to prove the charge beyond all reasonable doubt whereas in a departmental proceedings, the department has to prove the charge on preponderance of probabilities. He submits that defence taken by petitioner before Enquiry Officer and in appeal are contradictory. In one proceeding,

petitioner stated that the person, by name Tahar Singh, occupant of bottle green Scorpio Jeep, came to barrier, asked petitioner to permit him to enter into forest area, to which, he objected and subsequently, key was snatched and forcefully, lock of barrier was open; whereas in appeal, it is pleaded that petitioner has been implicated only on the basis of suspicion, he was under threat of his life and incident was immediately reported. The petitioner in his evidence stated that he accompanied other co-accused persons including Tahar Singh to forest area in the night for taking dead body of antelope at suitable place, which was considered by Enquiry Officer and Disciplinary Authority.

7. I have heard learned counsel for the respective parties.
8. Perusal of the record would show that petitioner was working as Forest Guard and posted on the date of incident at forest Lalda Sarasdol barrier, on the way Jalda- Sarasdol at forest range No.154. During course of departmental inquiry, department examined Shri Kishun Singh Maravi Forester and Shri Ganesh Ram Sakar, resident of Chhaparwa. In their statements, they have stated that when after getting knowledge of hunting of antelope in forest and dead body of hunted animal was lying in forest area, along with other officers, they also went in the evening near body of antelope to trap persons involved in hunting of animals, they hid themselves in nearby area and found five persons came there in two motorcycles. Petitioner in inquiry proceedings

have admitted that in the night also, Tahar Singh of Lormi called him and he along with other went to place of hunting in forest area, he was given threat of his life and also of his family members and under fear, he accompanied accused persons.

9. It is not in dispute that the post, on which, petitioner was working and posted at barrier was for protection of wildlife and forest produce. He was having responsibility under his duty to protect wildlife and forest produce in every situation.
10. In the light of facts and evidence available before disciplinary inquiry proceedings, it is to be considered that whether disciplinary authority erred in passing an order of major punishment of removal of service. In exercising the jurisdiction of judicial review, scope of interference of High Court is very limited. High Court can interfere with the order of punishment only on the ground that proceedings drawn is not in accordance with law, there was breach of principle of natural justice, the order passed by Disciplinary Authority is perverse.
11. Perusal of order passed by Disciplinary Authority and inquiry report placed on record would show that in initiating departmental inquiry proceeding, there is no violation of any of the provisions of law. The order passed by Disciplinary Authority, in the opinion of this Court, is well reasoned order. There is a finding of Enquiry Officer as well as Disciplinary

Authority that petitioner made an attempt to mislead the authorities while they were conducting inquiry of hunting of a wild animal.

12. Hon'ble Supreme Court in case of **Chairman & Managing Director, V.S.P. and Others v. Goparaju Sri Prabhakara Hari Babu** reported in **(2008) 5 SCC 569** held as under :

“21. Once it is found that all the procedural requirements have been complied with, the Courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The Superior Courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when the misconduct stands proved. (See *Sangfroid Remedies Ltd. v. Union of India*, (1999) 1 SCC 259).

22. The High Court in exercise of its jurisdiction under Article 226 of the Constitution of India also cannot, on the basis of sympathy or sentiment, overturn a legal order.”

13. So far as other submission of learned counsel for petitioner that when once petitioner was acquitted from same charges based on same evidence, petitioner could not have been punished in departmental inquiry, is also not sustainable. Standard of proof in criminal proceeding is based on proof to

be beyond reasonable doubt, whereas in departmental proceedings, nature of prove is based on preponderance of probability, hence, merely on the ground that petitioner was acquitted from criminal charges, would not be in itself sufficient to hold that petitioner is not guilty of misconduct.

14. Hon'ble Supreme Court in case of **Samar Bahadur Singh v. State of Uttar Pradesh and Others** reported in **(2011) 9 SCC 94** held as under :

“7. Acquittal in the criminal case shall have no bearing or relevance to the facts of the departmental proceedings as the standard of proof in both the cases are totally different. In a criminal case, the prosecution has to prove the criminal case beyond all reasonable doubt whereas in a departmental proceedings, the department has to prove only preponderance of probabilities. In the present case, we find that the department has been able to prove the case on the standard of preponderance of probabilities. Therefore, the submissions of the counsel appearing for the appellant are found to be without any merit.”

15. Even in criminal trial, petitioner was acquitted giving benefit of Section 94 of IPC and even if order passed by Judicial Magistrate First Class is considered as it is, Magistrate come to conclusion that there is involvement of petitioner in offence, but under threat.

16. In view of above submission of learned counsel for petitioner that as he has been acquitted from criminal charges, respondents could not have passed an order of punishment in departmental proceedings, is not sustainable and is hereby repelled. Petitioner was appointed in Forest Department as Forest Guard and he is having responsibility to protect wildlife and forest produce. Even if, it is considered that petitioner under threat has acted to tunes of Tahar Singh, who hunted wildlife, but Enquiry Officer has recorded a finding that petitioner, at the time of inquiry conducted by Senior Officers, has not given correct information and tried to astray them, which in the opinion of this Court, is a serious misconduct committed by petitioner.
17. Perusal of Annexure P/1 would show that the Appellate Authority considered the entire material including inquiry report, defence and representation submitted by petitioner, at the time of passing the impugned order, hence it cannot be said that the Appellate Authority not passed speaking order.
18. In view of aforementioned facts and circumstances of the case, this Court does not find any merit in writ petition calling interference with impugned order of punishment. The petition being devoid of substance, is liable to be and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge