

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.3092 of 2011**

Panna Lal Sahu, S/o Bhagirathi Sahu, aged about 51 years, (Ex.Asst.Sub Inspector, Police Reserve Centre, Korba,) R/o Pragati Nagar, Darri, Police Stn. Darri, Tah: Katghora, District: Korba, Chhattisgarh

----- **Petitioner**

Versus

1. State of Chhattisgarh, Through Their Secretary, Department of Home, Mantralaya, DKS Bhawan, Raipur, Chhattisgarh
2. Inspector General of Police, Bilaspur Range, Bilaspur, Chhattisgarh
3. Superintendent of Police, Korba, Chhattisgarh

----- **Respondents**

For Petitioner	: Mr.M.K.Beag, Advocate
For Respondents/State	: Mr.Sunil Otvani, Addl.A.G. with Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board (Through video conferencing)

13.8.2021

1. This writ petition is directed against the order dated 29.4.2011 (Annexure P-4) by which respondent No.2 in exercising the review power under Section 29(1) of the Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966 (hereinafter called as 'Rules of 1966') converted the punishment of stoppage of one increment with cumulative effect for one year to the penalty of removal from service.
2. In a departmental proceeding initiated against the petitioner for consuming liquor at public place and snatching ₹200/- from one Sahu Ram and for acting

negligently in performance of his official duty, the Superintendent of Police, Korba/Disciplinary Authority by order dated 18.6.2009 (Annexure P-1) inflicted minor penalty of stoppage of one increment without cumulative effect for one year. Against the order imposing penalty, the petitioner preferred an appeal before respondent No.2 i.e. Inspector General of Police, Bilaspur Range, Bilaspur. The Inspector General of Police / Respondent No.1 finding that the petitioner has been acquitted from criminal charge of robbery, set-aside the penalty imposed by the disciplinary authority and remanded the matter to the disciplinary authority for fresh departmental proceedings for one charge except charge with regard to robbery from one Sahu Ram by order dated 21.12.2009 (Annexure P-2) in exercise of suo-motu revisional jurisdiction under Regulation 270(1) of the Chhattisgarh Police Regulations. In second round of departmental enquiry, by order dated 7.10.2010 (Annexure P-3) the disciplinary authority directed for stoppage of one increment with cumulative effect for one year, against which, the petitioner again preferred an appeal before the appellate authority. The appellate authority by order dated 29.4.2011 (Annexure P-4) declined to consider the appeal on merits holding that he has already exercised suo-motu revisional jurisdiction on 21.12.2009 and invoked review power purportedly under

Section 29(1) of the Rules of 1966 and inflicted penalty of removal from service and also held that for suspension period the petitioner will not be entitled for service benefits.

3. The petitioner has called in question the order dated 29.4.2011 (Annexure P-4) stating inter-alia that by exercising the review power, proviso to Rule 29(1) of the Rules 1966 has not been complied with and he has not been given a reasonable opportunity of making a representation against the said penalty of removal from service and appeal ought to have been decided on merits, which has also not been considered.
4. Return has been filed by the respondents justifying the impugned order.
5. Mr.M.K.Beag, learned counsel for the petitioner, would submit that the impugned order is unsustainable and bad in law as reasonable opportunity of making a representation against the penalty proposed as required under proviso to Rule 29(1) of the Rules of 1966 has not been afforded to the petitioner while exercising review jurisdiction by which the petitioner has suffered prejudice and without hearing and without even serving a copy of enquiry report, the petitioner has been directed to be removed, which is unsustainable and bad in law.
6. On the other hand, Mr.Sunil Otwani, learned Additional Advocate General with Mr.Ravi Bhagat, learned Deputy

Government Advocate for the respondents/State, would submit that looking to the misconduct found proved against the petitioner he has rightly been removed from service by inflicting the penalty of removal from service and as such, the writ petition deserves to be dismissed.

7. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

8. It is not in dispute that for two charges levelled against the petitioner, disciplinary enquiry was conducted against him by the disciplinary authority, in which by order dated 18.6.2009 the disciplinary authority has imposed penalty of stoppage of one increment without cumulative effect for one year, against which, he preferred appeal before the appellate authority, but the appellate authority in appellate proceeding invoked revisional jurisdiction under Regulation 270(1) of the Chhattisgarh Police Regulations and set-aside the punishment so awarded and remanded the matter to the disciplinary authority for fresh departmental proceedings for one charge only. In second round, the disciplinary authority only conducted enquiry in respect of one charge as directed by the appellate authority as in the meanwhile, the petitioner was acquitted from charge of robbery. This time, the

disciplinary authority imposed punishment of stoppage of one increment with cumulative effect and also held that for suspension period the petitioner will not be entitled for other benefits except which he has already obtained. When the petitioner again preferred an appeal against the order of the disciplinary authority dated 7.10.2010, the appellate authority did not decide the appeal preferred by the petitioner holding that he has already exercised suo-motu revisional power by order dated 21.12.2009 and invoked review jurisdiction under Rule 29(1) of the Rules of 1966 and converted the punishment of stoppage of one increment with cumulative effect for one year to the penalty of removal from service. It is pertinent to mention here that in absence of provisions of review in the Chhattisgarh Police Regulations, Rules of 1966 would apply. (See **Premchandra v. State of MP**¹ and **Krishnanaryan shivpyare Dixit v. State of M. P. and others**².)

9. At this stage, it would be appropriate to notice Rule 29

(1) of the Rules of 1966 which states as under:-

"29. (1) Notwithstanding anything contained in these rules except Rule 11-

(i) the Governor; or

(ii) the head of a department directly under the State Government, in the case of a Government servant serving in a department or office (not being the secretariat), under the control of such head of a department, or

1 1970 MPLJ 430

2 1985 MPLJ 343

(iii) the appellate authority, within six months of the date of the order proposed to be reviewed, or

(iv) any other authority specified in this behalf by the Governor by a general or special order, and within such time as may be prescribed in such general or special order may at any time, either on his or its own motion or otherwise call for the records of any inquiry and review any order made under these rules or under the rules repealed by Rule 34 from which an appeal is allowed but from which no appeal has been preferred or from, which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may-

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose; any of the penalties specified in clauses (v) to (ix) of rule 10 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 14 and except after consultation with the Commission where such consultation is necessary:

Provided further that no power to review shall be exercised by the head of department unless:

(i) the authority which made the order in appeal; or

(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him."

10. A careful perusal of the aforesaid provisions would show that if the reviewing authority is of the opinion that penalty has to be enhanced, then he has to give a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of rule 10 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses and no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 14 and except after consultation with the Commission where such consultation is necessary.

11. Reverting to the facts of the present case in the light of aforesaid rule position, it is quite vivid that though after remand by the disciplinary authority, fresh enquiry was conducted and the disciplinary authority inflicted with penalty of removal while exercising review jurisdiction under Rule 29(1) of the Rules of 1966, but the petitioner has not been given a reasonable opportunity of making a representation against the penalty proposed i.e. removal from service. The reviewing authority took-up the appeal preferred by the

petitioner for hearing and without complying with the provisions contained in Rule 29(1) of the Rules of 1966 straightway order of removal from service has been passed as he has given opportunity to make a representation against the proposed enhanced penalty and even other part of the provisions contained in Rule 29(1) of the Rules of 1966 has not been complied with, which is in teeth of the provisions contained in Rule 29(1) of the Rules of 1966.

12. Not only this, appeal preferred against the order of disciplinary authority dated 07.10.2010 has even not been decided on merits by the appellate authority holding that he has already exercised revisional power and exercising review jurisdiction punishment from removal of service has been inflicted.

13. In that view of the matter, the order passed by the appellate authority being reviewing authority dated 29.4.2011 (Annexure P-4) is hereby set-aside. However, the order passed by the disciplinary authority dated 07.10.2010 (Annexure P-3) to the extent of stoppage of one increment with cumulative effect is hereby restored. The petitioner will be entitled for full pay and allowances from 25.6.2008 to 30.4.2009 and he will also be entitled for all consequential service benefits since he has already attained the age of superannuation on 17.8.2018.

14. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-