

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.574 of 2012**

Meghraj Singh Thakur S/o Late Shri Gaukaran Singh age about 55 years, Store Keeper (Grade-W-7), HR Department, N.T.P.C., Sipat, Bilaspur, Resident of Shubhash Complex Flat No.B-12, Near Jarhabhata, Mandir Chowk, Bilaspur, Tahsil and District Bilaspur (CG)

----- **Petitioner**

Versus

1. Union of India through Secretary Ministry of Energy, Government of India, New Delhi-1
2. National Thermal Power Company Limited, Sipat Bilaspur (CG) Through General Manager

----- **Respondents**

For Petitioner	:	Mr.Ashok Verma and Mr.Gajendra Sahu, Advocates
For Respondent No.1	:	None present
For Respondent No.2	:	Mr.B.D.Guru and Mr.Aruroop Panda, Advocates

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

7/9/2021

1. The petitioner herein calls in question legality validity and correctness of the order dated 29.12.2011 (Annexure P-1) passed by respondent No.2 inflicting penalty of withholding of next one annual increment without cumulative effect and further directed that the petitioner shall not be entitled to any remuneration for the period of suspension pending enquiry, other than the subsistence allowance already paid to him.
2. Mr.Ashok Verma, learned counsel for the petitioner,

would submit that in clause 28 (1) of the Certified Standing Order in respect of Sipat Super Thermal Power Project, NTPC Limited, known as Industrial Employment (Standing Orders) Act, 1946 minor penalties have been prescribed i.e. a) Censure, b) Fine, c) Suspension without wages for a period not exceeding four days and d) Stoppage of increment, as such, inflicting of two punishments i.e. withholding of next one annual increment without cumulative effect as well as forfeiture of remuneration for the period of suspension pending enquiry, other than the subsistence allowance already paid to him is unsustainable and bad in law.

3. On the other hand, Mr.B.D.Guru, learned counsel for respondent No.2, would submit that clause 29 (ii) (e) of the Certified Standing Order would apply and the petitioner would not be entitled for any remuneration for the period of suspension pending enquiry, other than the subsistence allowance already paid to him, as such, the writ petition deserves to be dismissed.
4. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
5. In departmental enquiry held against the petitioner,

charge of putting advance signature in attendance register for 28th & 29th September, 2007 has been found proved in terms of the Standing Orders applicable for workmen at Sipat Super Thermal Power Project and he was inflicted with penalty of withholding of next one annual increment without cumulative effect and simultaneously it was also directed that the petitioner shall not be entitled to any remuneration from the period of suspension pending enquiry, other than the subsistence allowance already paid to him.

6. Penalty for minor misconduct has been prescribed under clause 28(1) of the Certified Standing Orders which states as under:-

"28. PENALTIES FOR MISCONDUCT

The following penalties may for good and sufficient reasons, be imposed for misconduct:

1. The following shall constitute minor penalties:

- a) Censure.
- b) Fine.
- c) Suspension without wages for a period not exceeding four days.
- d) Stoppage of increment."

7. A careful perusal of the aforesaid clause would show that censure, fine, suspension without wages for a period not exceeding four days and stoppage of increment are minor penalties that can be imposed against the petitioner.

8. Procedure for imposition of minor penalties has been

prescribed in clause 29(i) of the Certified Standing Orders which states as under:-

"29. PROCEDURE FOR DEALING WITH CASES OF MISCONDUCT

I) PROCEDURE FOR IMPOSITION OF MINOR PENALTIES:

Where a workman is charged with an offence which may lead to the imposition of a minor penalty, he shall be informed, in writing of the allegations made against him and shall be given an opportunity to make representation, if any, within 72 (Seventy Two) hours.

In case, the explanation/reply/representation of the workman is not considered satisfactory by the person authorized to impose the penalty, the workman concerned may be given an opportunity to be heard, in person, by the person authorized to impose the penalty or by an officer of the Company authorized by the General Manager, specifically or generally for such purposes, before imposing the penalty. In the said hearing, the workman will be explained personally the act(s) of misconduct, details of minor penalties, which can be or is being proposed to be imposed and the workman shall be given an opportunity to explain his case in the presence of at least one other worker."

9. Mr.Guru relied upon clause 29(ii)(e) of the Certified Standing Orders which states as under:-

"29 (ii) PROCEDURE OF IMPOSITION OF MAJOR PENALTIES:

(a) to (d) xxx xxx xxx

(e) If, after enquiry, a workman is found guilty of the misconduct alleged against him or some other misconduct brought out in the course of the enquiry and punishment is awarded, the workman shall not be entitled to any remuneration for the period of suspension pending enquiry, other than the subsistence allowance already paid to him. If a penalty other than dismissal or removal is imposed on him, the punishing authority shall, by order, decide as to how the period of suspension shall be treated. If, however, he is found not guilty

of the alleged misconduct or any other misconduct, he shall be reinstated in his post and shall be paid the difference between the subsistence allowance already paid and the emoluments, consisting of pay and allowances, which he would have received if he had not been suspended, the period of suspension being treated as duty."

10. Clause 29 (ii) (e) is applicable in case major penalty is inflicted. However, clause 29(i), which is procedure for imposition of minor penalty is nowhere provides such forfeiture of remuneration for the period of suspension pending enquiry, other than the subsistence allowance already paid to him, as such, second part of the order by which the petitioner has been held to be not entitled to any remuneration for the period of suspension pending enquiry, other than the subsistence allowance already paid to him could not have been inflicted as the petitioner has been only subjected to minor penalty and he has already inflicted with penalty of withholding of next one annual increment without cumulative effect under clause 28 (1) (d) of the Certified Standing Orders. Even otherwise, if the second part is allowed to stand, it would amount to imposition of two major penalties to the petitioner simultaneously, which is impermissible in law.

11. Consequently, the writ petition is partly allowed. While maintaining the order of withholding of

next one annual increment without cumulative effect, the order directing not granting remuneration for the period of suspension pending enquiry, other than the subsistence allowance already paid to him is hereby set-aside. Respondent No.2 is directed to pay remuneration for the period of suspension pending enquiry, other than the subsistence allowance already paid to him within four weeks along with 9% interest from the date of entitlement till the date of payment. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-