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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.429 of 2005

Chandra Pal Singh Tanwar S/o Lalsingh Tanwar, aged about 48 years, Naib Tahsildar, R/o Gondpara, Bilaspur

---- Petitioner

Versus

1. The Hon'ble Governor, State of Madhya Pradesh, Bhopal.
2. State of Madhya Pradesh, Ministry of Revenue, through its Secretary, Vallabh Bhawan, Bhopal
3. The Public Service Commission M.P., through its Secretary, Indore M.P.
4. The Commissioner, Jabalpur Division, Jabalpur
5. State of C.G. Through the Secretary, Revenue Department, Mantralaya, Mahanadi Bhawan, Nava Raipur, Atal Nagar, District Raipur (CG)

---- Respondents

For Petitioner	: Mr.Vinod Deshmukh, Advocate
For Res.No.1 to 4	: None present
For Respondent No.5/State	: Mr.Sunil Otwani, Addl.A.G.

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

16.7.2021

1. Proceedings of this matter have been taken-up through video conferencing.
2. This writ petition is directed against the order dated 30.1.1990 passed by the respondent-State, whereby the petitioner has been inflicted with penalty of removal from his service in exercise of power under Rule 10(viii) of the Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966 (hereinafter called as 'the Rules of 1966').
3. The petitioner at the relevant point of time was

posted as Naib-Tahsildar and he was also Incharge of Nayab Nazir Branch of Lakhanadaun, District Surguja. He was served with the charge-sheet on 19.4.1978 with an allegation that he had acted negligently in performance of his duty and account of which, the State Government has suffered loss of ₹19135.75 and also supplied charge-sheet along with list of witnesses and articles naming Mr.R.S.Gautam, Tahsildar and Mr.Shyam Singh Thakur, Clerk as witnesses to the said charges. On 19.6.1978 the petitioner submitted his detailed reply and categorically denied all the allegations levelled against him in charge-sheet and categorically stated that Mr.Shyam Singh Thakur and Mr.R.S.Gautam are responsible for the alleged act of misconduct and consequent loss to the Government, if any and he requested the enquiry officer to give an opportunity to cross-examine the witnesses. On 11.12.1980 the enquiry officer submitted its report to the Divisional Commissioner/Disciplinary Authority. It is the case of the petitioner that he was exonerated from allegation of misappropriation of money and only charge that has been found proved against him that he did not follow the rules and regulations regarding audit of accounts and failed to arrest embezzlement of ₹19135.75 being Incharge Officer of Nayab Nazir

Branch. On 8.10.1985, after more than 5 years from the date of submission of enquiry report, respondent No.4 issued show-cause notice on proposed punishment to the petitioner as to why punishment of removal from service should not be inflicted upon him. The petitioner immediately on 5.11.1985 submitted his detailed reply to show-cause notice, but again after 5 years, the Government inflicted punishment of removal from service by non-speaking order, which deserves to be quashed.

4. Return has been filed opposing the writ petition stating inter-alia that after full-fledged enquiry, the petitioner has been found guilty for non-performance of his duty in accordance with the rules and on account of his non-complying the audit rules, the State Government has suffered loss of ₹19135.75, as such, the writ petition deserves to be dismissed.

5. Mr.Vinod Deshmukh, learned counsel for the petitioner, would submit that the enquiry officer has categorically recorded a finding that amount has not been embezzled by the petitioner and only there is technical violation/procedural lapse in following the rules and therefore, his gravity of misconduct is not so much, warranting infliction of major penalty of removal from service. He would further submit that

R.S.Gautam was appointed as presenting officer, who was co-delinquent in the same case and one Shyam Singh Thakur, who was involved in misappropriation of money was also convicted in criminal case and his revision was also dismissed by this Court and the disciplinary authority took 10 years in concluding departmental enquiry, which is highly belated and as such, the impugned order of removal deserves to be quashed.

6. On the other hand, Mr.Sunil Otwani, learned Additional Advocate General for respondent No.5/State, would submit that considering the misconduct committed by the petitioner which was found proved, penalty imposed cannot be said to be disproportionate warranting interference by this Court in the order of punishment.

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

8. Before parting into merits of the case, it would be appropriate to mention here that against the order of removal, the petitioner also preferred an appeal before the appellate authority in the State of Madhya Pradesh, but the petitioner has not disclosed the result of the appeal and has stated in this writ petition that appeal was pending and he has not heard anything from the appellate authority. This Court also directed the parties to file affidavits which the petitioner and respondent No.5 both have filed stating that details of appeal whether it has been heard and decided is not known despite their attempts. Affidavit by the Secretary, Revenue Department has also been filed stating that the State of Madhya Pradesh has said that record is not available and therefore, original disciplinary record and appellate record could not be tressed. In that case, learned counsel for the parties submit that this writ petition be decided on its own merit. Learned counsel for the petitioner undertakes that he will not press the appeal, which was filed before the appellate authority as the result is not known. Learned Additional Advocate General for respondent No.5/State also agreed to argue the writ petition on its own merit against the order of removal. In fact the original application was filed in the year 1991 and it has been re-registered as writ petition in the year 2005, therefore, considering the pendency of this case for last 30 years and the Court accepting the submission of learned counsel appearing for the parties that appeal has not been decided on merits, proceeded to hear the writ petition on merits questioning the order of removal.

9. The main contention of learned counsel for the petitioner is that since the enquiry officer in para-7 of his enquiry report has clearly held that amount of ₹19135.75 has not been embezzled by the petitioner, but further held that annual inspection was done by the petitioner on 17.2.77, but it was not effective inspection and in capacity of Incharge of Nayab Nazir Branch of Lakhanadaun, District Surguja, he failed to keep control and failed to arrest embezzlement and it has been further held that on the basis of enquiry, the petitioner's integrity cannot be doubted. Furthermore, the enquiry officer in internal page 13 of enquiry report has clearly held that the petitioner used to be out of headquarter in implementation of 20 points programme initiated by the Government and Tahsildar Mr.R.S.Gautam used to be in headquarter, therefore, Mr.R.S.Gautam is responsible for irregularity, if any and the petitioner has not embezzled the amount in question and he has not even supported directly or indirectly to the act of embezzlement, as such, from the enquiry report, it is quite vivid that neither the petitioner has embezzled the amount in dispute nor he has in any way directly or indirectly assisted in embezzlement of the said amount by which loss was caused to the Government and even the enquiry officer has recorded a finding that the petitioner's integrity cannot be doubted and these findings have not been contradicted by the disciplinary authority, rather it has been accepted. In view of finding recorded by the enquiry officer, the disciplinary authority ought to have considered in its proper perspective, but the disciplinary authority has fully agreed with the finding of the enquiry officer particularly that the petitioner has not committed embezzlement, he is directly not responsible and his integrity is beyond doubt, but surprising on 8.10.1985, the disciplinary authority issued show-cause notice on proposed punishment as to why punishment of removal should not be imposed upon him after more than 5 years from the date of submission of enquiry report by the enquiry officer and then the petitioner submitted his detailed reply on 5.11.1985 and then again the disciplinary authority/State Government took 5 years and inflicted punishment of removal from service on 30.1.1990 i.e. again with a delay of 5 years.

10. From the aforesaid narration of the facts, it is quite vivid that the petitioner was not found guilty of embezzlement of the said amount and he was also not found guilty of assisting the delinquent employee in embezzlement of that amount and his integrity was found beyond doubt by the enquiry officer, which the disciplinary authority fully agreed though took ten years in deciding as to whether what penalty should be proposed to the petitioner and ultimately after 5 years on 8.10.1985 issued show-cause notice proposing the penalty of removal and then again took 5 years in passing the order of removal. Since the misconduct which has been found proved is not any positive act leading to misconduct, but there is only allegation that has been found proved by the enquiry officer which has been agreed by the disciplinary authority i.e. technical violation in not properly verifying the accounts/records properly and in not securing the compliance of accounts Rules arresting changes or the act of embezzlement on the part of the subordinate employees. Therefore, in the considered opinion of this Court, punishment of removal from service i.e. major penalty under Rule 10(viii) of the Rules of 1966 would be disproportionate to the misconduct which is said to have been proved against the petitioner.

11. It is appropriate to mention here that ordinarily this Court would have referred the matter to the disciplinary authority for imposition of appropriate punishment being the competent authority, but considering the fact that order of removal was passed 30 years back i.e. on 30.1.1990 and sending the matter to the disciplinary authority would arrest the finalization of disciplinary proceeding, therefore, this Court has proceeded to convert the major punishment of removal to the minor punishment.

12. In the matter of **Union of India and others v. P.Balasubrahmanayam**[1] their Lordships of the Supreme Court pleased to convert the penalty of compulsory retirement to that of minor punishment where bribery charges were not proved in departmental proceedings and only charges relating to procedural lapse is proved, holding the punishment of compulsory retirement to be completely disproportionate and harsh and held as under:-

> "18. We are, thus, of the view that the course adopted by the Tribunal was the appropriate course of action, i.e., the procedural lapses having been found and the bribery allegation having been rejected the appropriate course would have been to examine only the issue of disproportionality of punishment.
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> 19. It is correct to say that judicial forums do not sit as an appellate authority to substitute their mind with the mind of the disciplinary authority insofar as the finding is concerned. However, disproportionality of punishment is a concept certainly not unknown to service jurisprudence and has received consideration inter alia of this Court[2]. This

1 AIR 2021 SC 1257
2 S.R. Tewari v. Union of India and Anr. (2013) 6 SCC 602 : (2013 AIR SCW 3338).

> is what the Tribunal proposed to do. We may examine the finding of the Tribunal on the issue of disproportionality of punishment and are in complete agreement with the view that the punishment of compulsory retirement was completely disproportionate and harsh, keeping in mind the finding arrived at by the disciplinary authority. It, thus, seems to appear that the charges originally levelled may have persuaded the concerned authority to impose punishment; losing site of the fact that the allegations qua bribery had not been found against the respondent.
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> 20. The question is whether the Tribunal proceeded correctly in passing the final direction to impose appropriate minor penalty. The Tribunal itself did not impose the punishment but left it to the authority concerned (for appropriate course of action). It was of the view that considering the findings of procedural lapses against the respondent, the appropriate punishment could only be a minor penalty and not a major penalty. With this again, we are in agreement with the course of action adopted. The nature of charges found against the respondent can hardly be one to call for a major penalty, keeping in mind that there was no bribery charge. Anyone can make mistakes. The consequences of mistakes should not be unduly harsh. We are, thus, of the view that the direction of the Tribunal is what is liable to be sustained.
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> 21. The result of the aforesaid is that the impugned judgment of the High Court is set aside and that of the Tribunal is restored. Necessary consideration not having taken place, the appellants will do the needful in terms of the order of the Tribunal within 8 weeks from today and giving all consequential benefits thereof to the respondent. We hope that this long drawn out service dispute would now come to an end after almost a decade."

13. Accordingly, punishment of removal from service of the petitioner by order dated 30.1.90 is hereby set-aside and further in the considered opinion of this Court, minor penalty would be sufficient under Rule 10(iii) of the Rules 1966. Since it has been proved that on account of negligence or breach of rules by the petitioner, the Government has suffered loss of ₹19135.75, it would be appropriate to award minor penalty under Rule 10(iii) of the Rules of 1966 to the petitioner.

14. Accordingly, the order dated 30.1.1990 is hereby set-aside and that is substituted to the minor penalty of ₹19135.75 for loss caused to the Government due to negligence of the petitioner.

15. Since the petitioner has already attained the age of superannuation on January, 2002, the question whether from 30.1.90 to the date of retirement, the petitioner's entitlement for full pay and allowances will be considered by the competent authority i.e. respondent No.5 under sub-rule (2) of Rule 54 of the Fundamental Rules within 45 days from the date of receipt of a copy of this order. The petitioner is at liberty to place additional representation/relevant rules regulations applicable to claim full pay and allowances along with a copy of this order. Respondent No.5/State Government is directed to take appropriate steps for finalization of pensionary benefits including pension etc. of the petitioner in view of order passed hereinabove within 30 days from the date of receipt of a copy of this order.

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

Sd/-

(Sanjay K.Agrawal)
Judge

B/-