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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.5383 of 2012**

V. K. Gupta, S/o Late R. K. Gupta, Aged About 53 Years,
Occupation Service, Posted as Sub Engineer, Water
Resources Division Kawardha, R/o Qtr. No. H-3,
Chhirpani Colony, P.S. Kawardha, District Kabirdham,
Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh Through Joint Secretary, Panchayat and Rural Development Department, D.K.S. Bhawan, Raipur, Chhattisgarh.
2. Commissioner Raipur Division Raipur, District Raipur, Chhattisgarh.
3. Collector Kabirdham, District Kabirdham, Chhattisgarh.
4. Secretary, Water Resources Department, D.K.S. Bhawan, Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Petitioner : Shri Sunil Sahu, Advocate

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

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

01.10.2021

1. Petitioner has filed this petition challenging the order (Annexure P/1) dated 23.05.2012 whereby Disciplinary Authority imposed punishment of withholding of one increment with cumulative effect.
2. Facts of case in nutshell, are that petitioner was posted as Sub-Engineer in the Office of Janpad Panchayat, Sahaspur Lohara, District Kabirdham. Upon receiving complaint with

regard to irregularities in civil construction work of village Panchayatm Danighatoli of increasing depth of Pond situated at village Panchayat, valuation of work and late payment of wages, a show cause notice was issued and thereafter, petitioner was suspended. Charge-sheet was also issued to him. Upon appointing Enquiry Officer as well as Presenting Officer, departmental inquiry was conducted against the petitioner. After conclusion of departmental inquiry, Enquiry Officer submitted its report on 19.12.2011 on all four charges imputed against petitioner. Enquiry Officer held charges No.2 to 4 to be not proved and with respect to charge No.1 mentioned as 'charge not fully proved'. Enquiry Officer forwarded its report to Disciplinary Authority, who in turn, passed impugned order imposing punishment of stoppage of one increment.

3. Shri Sunil Sahu, learned counsel for the petitioner would submit that petitioner was holding substantive post of Sub-Engineer, Water Resources Department and on the date of filing of writ petition, he was posted in Water Resource Division Kawardha, District Kabirdham. Petitioner at some point of time was sent on deputation from his parent Department to Panchayat & Rural Development Department and was posted at Janpad Panchayat, Sahaspur Lohara, District Kabirdham. Suddenly, petitioner was placed under suspension on the allegations of irregularities in work of village Panchayat Danighatoli. When within the prescribed

period, charge-sheet could not be served upon petitioner, his order of suspension was revoked vide order dated 04.01.2011. On 28.01.2010, charge-sheet was served upon petitioner imputing four charges, to which, petitioner submitted his reply denying all charges levelled against him on 06.02.2010. After submission of his reply, inquiry was conducted by Enquiry Officer appointed under Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short 'CCA Rules of 1966') and none of the charges were found to be proved by Enquiry Officer in its report dated 21.12.2011 submitted before Disciplinary Authority. After completion of departmental inquiry by Enquiry Officer, petitioner submitted an application for payment of entire salary of suspension period as no charges have been proved against him. After receiving application from petitioner, respondent No.1 passed an order of imposing punishment without following CCA Rules of 1966. Respondent No.1 without issuing any notice to petitioner, proposing punishment after receipt of inquiry report, more so, when Enquiry Officer in its report held that none of the charges was proved against petitioner. He submits that order impugned is contrary to law and in violation of principles of natural justice. No opportunity of hearing as required under CCA Rules of 1966 has been afforded to petitioner. He further submitted that though the case was said to have been fixed for hearing on 23.01.2012, at about 4.00 P.M., but from note-sheet

(Annexure P/6) itself, it is apparent that case was not put up for consideration before the competent authority. He pointed out that Disciplinary Authority has recorded charge No.1 to be proved in its entirety, which is contrary to report submitted by Enquiry Officer. It is contended that when once Disciplinary Authority recorded in note-sheet that file itself was not placed before him on the date fixed, then fresh letter/notice should have been issued to petitioner fixing next date of hearing. It is pointed out that in fact, no letter was sent to petitioner intimating him the date of hearing before Disciplinary Authority i.e. 23.01.2012. He submits that impugned order (Annexure P/1) is in violation of procedure prescribed under the CCA Rules of 1966. Order impugned is passed without giving opportunity of hearing, it is passed in violation of principles of natural justice, hence, it be set aside.

4. Per contra, Shri Vimlesh Bajpai, learned Government Advocate for the State would submit that Disciplinary Authority issued letter/notice to petitioner on 11.01.2012 (Annexure R/1), hence, submission of learned counsel for petitioner that no letter/notice was served upon him before passing an order of punishment on inquiry report is not correct. It is further contended that as punishment imposed vide Annexure P/1 is a minor punishment of withholding of one increment without cumulative effect, there is no requirement of issuing notice, hence, there is no substance in writ petition, which is liable to be dismissed.

5. Shri Sunil Sahu, learned counsel for petitioner would submit that State/respondent has not placed any document on record along with reply to show that petitioner was served with letter/notice dated 11.01.2012 at any point of time, hence, there is non-compliance of Rules 15 and 16 of CCA Rules of 1966.
6. I have heard learned counsel for the respective parties.
7. So far as the submission of learned counsel for the petitioner with regard to finding recorded by Enquiry Officer on the charges imputed against petitioner, perusal of document (Annexure P/5), which is departmental inquiry report dated 19.12.2011 would show that Enquiry Officer held charges No.2 to 4 not to be proved. With respect to charge No.1, it is mentioned as “आरोप पूर्णतः प्रमाणित नहीं”; meaning thereby that Enquiry Officer recorded charge No.1 not to be proved fully. In impugned order (Annexure P/1), Disciplinary Authority in paragraph No.4 has recorded charge No.1 to be proved.
8. The aforementioned recording of finding against charge No.1 by Disciplinary Authority, if considered along with inquiry report, would show that Disciplinary Authority arrived at a different conclusion than of Enquiry Officer. In the said circumstance, it is for the Disciplinary Authority to comply with Rule 15 of CCA Rules of 1966.

9. Hon'ble Supreme Court in case of **S. P. Malhotra v. Punjab National Bank and Others** reported in **(2013) 7 SCC 251** held as under :

“14. *Punjab National Bank v. Kunj Behari Misra*, (1998) 7 SCC 84 itself was the case where the Disciplinary Authority disagreed with the findings recorded by the Enquiry Officer on 12.12.1983 and passed the order on 15.12.1983 imposing the punishment, and immediately thereafter, the delinquent officers therein stood superannuated on 31.12.1983. In *Kunj Behari Misra* (supra), this court held as under : (SCC p.97, para 19)

“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have

already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer. (emphasis supplied)”

10. In the aforementioned ruling, Hon'ble Supreme Court specifically held that principle of natural justice is to be followed and an opportunity of hearing is to be provided to delinquent employee when Disciplinary Authority was not an Enquiry Officer, comes to conclusion other than conclusion of Enquiry Officer, notice recording reasons is to be issued to delinquent employee.
11. In the facts of the case, State/respondent has submitted reply that petitioner was issued letter/notice on 11.01.2011. Perusal of contents of letter would show that it nowhere mentions the reasons of finding charge No.1 to be proved or disagreeing with finding of Enquiry Officer with respect to charge No.1, assigning reasons and further to take proposed action.
12. The other submission of learned counsel for petitioner is that no letter was issued to petitioner. Perusal of Annexure P/6, which is note-sheet of Department would show that after note-sheet dated 11.05.2012, there is mention of drawing proceedings based on letter dated 11.01.2012; further

proceedings be initiated as per decision taken on hearing dated 23.01.2012, note-sheet recorded by respondent No.1 dated 15.05.2012 and subsequent part would show that the case file was not put up before Disciplinary Authority on 23.01.2012, but in upper part of proceedings dated 15.05.2012, it records the decision taken on 23.01.2012, which *prima facie* shows that proceedings recorded are not matching with each other, hence, it could not be accepted that any letter is issued in absence of any receipt of petitioner placed on record by respondents or proof of service of said letter, more so when contradictory contents of proceeding dated 15.05.2012 is recorded. When once the Disciplinary Authority records that case could not be placed before him for hearing, then it could not be said that any decision have been taken on 23.01.2012. The proceedings shows that no hearing took place on the date fixed, Disciplinary Authority has not applied its mind on the said date, then in such circumstances, further notice ought to be issued fixing fresh date for hearing of petitioner, when the case of respondent itself is that personal hearing was required to be given to petitioner.

13. For the foregoing discussions, I am of the considered opinion that order impugned (Annexure P/1) is passed without following due procedure prescribed under the law in violation of principles of natural justice, hence, it is set aside.
14. Hon'ble Supreme Court in a situation where the order of punishment is set aside on the ground of technicalities of not

following procedure prescribed of conducting departmental inquiry passing order of punishment and while setting the order, remitted back the case to Disciplinary Authority in case of **State of Punjab and Others v. Chander Mohan** reported in **(2005) 13 SCC 81** held as under :-

“4. The High Court has misdirected itself. The fresh enquiry referred to by the first Appellate Authority as well as by the High Court in the first round of proceedings related to a fresh enquiry to be held by the enquiry officer. It did not pertain to a fresh proceeding being initiated altogether by a competent authority. Since the earlier proceeding was really dismissed on the basis of a technicality, it was open to the competent authority to reinstitute the same. This has been so held by a Constitutional Bench of this Court in *Devendra Pratap Narain Rai Sharma v. State of U.P.*, [1962 Supp (1) SCR 315] in AIR paras 7 and 8. In that view of the matter, we allow the appeal and set aside the order of the High Court. The proceedings initiated by the Inspector General of Police may be carried on from the stage at which it was stopped.”

15. Recently, Hon'ble Supreme Court in case of **Allahabad Bank & ors v. Krishna Narayan Tewari** reported in **(2017) 2 SCC 308** while considering issue with respect to remand of case to

the Enquiry Officer/Competent Authority has observed as under:-

“8. There is no quarrel with the proposition that in cases where the High Court finds the enquiry to be deficient, either procedurally or otherwise, the proper course always is to remand the matter back to the authority concerned to redo the same afresh. That course have been followed even in the present case. The matter could be remanded back to the disciplinary authority or to the enquiry officer for a proper enquiry and a fresh report and order.”

16. As this Court set aside the order of punishment of petitioner considering that proper opportunity of hearing was not granted to the petitioner before imposing punishment, in the opinion of this Court, it will be proper to direct respondent-Disciplinary Authority to issue fresh notice to petitioner with reasons for proposed punishment on inquiry report submitted by Enquiry Officer and after hearing the petitioner, fresh order be passed.
17. In view of above, order (Annexure P/1) dated 23.05.2012 is set aside. The respondent concerned may further proceed from the stage of receipt of inquiry report and after issuance of letter/notice of hearing and providing opportunity of hearing to petitioner, fresh orders be passed on inquiry report

submitted against petitioner at the earliest preferably within six months from the date of receipt of copy of this order.

18. The writ petition is allowed in part.

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh