



2025:CGHC:2360

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Reserved for Order on : 22.11.2024

Order Passed on : 14/01/2025

WPS No. 290 of 2019

1 - G. L. Mishra S/o Shri Gajanand Prasad Mishra Aged About 70 Years R/o Retired Deputy Ranger, P.O. Pali, District Korba Chhattisgarh.

--- Petitioner

versus

1 - State Of Chhattisgarh Through The Secretary, Department Of Forest, Mahanadi Bhawan, P.O. Mantralaya, P.S. Rakhi, Atal Nagar, District Raipur Chhattisgarh.Chhattisgarh

2 - The Chief Conservator Of Forest, Circle Bilaspur, Bhakta Kavar Ram Gate, Sindhi Colony, District Bilaspur Chhattisgarh.

3 - The Divisional Forest Officer, North Bilaspur Division, Bilaspur, at Present Marwahi Division, Post Office Pendra Road, District Bilaspur Chhattisgarh.

---- Respondents

For Petitioner : Mr. Vipin Tiwari, Advocate

For Respondents/State : Mr. Ritesh Giri, Panel Lawyer

Hon'ble Shri Justice Parth Prateem Sahu

C A V ORDER

1. Petitioner has filed this petition seeking following relief (s) :-

“10.1 That, the Hon'ble Court may kindly be pleased to issue a writ in the nature of certiorari quashing the impugned order dated 31.12.1991 (Annexure P-2) passed by the respondent no. 3 and the order dated 07.04.2018 (Annexure P1) passed by the respondent no. 2, in the interest of justice.

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10.2 That the Hon'ble Court may kindly be pleased to issue a writ in the nature of mandamus commanding the respondents to refund the amount of pay and allowances withheld pursuant to the impugned order dated 31.12.1991 to the petitioner with interest at 18% per annum on the withheld amounts from the dates withheld to the date of refund.

10.3 That the Hon'ble Court may kindly be pleased to issue a writ in the nature of mandamus commanding the respondents to treat the period of suspension as period spent on duty.

10.4 That the Hon'ble Court may kindly be pleased to issue a writ in the nature of mandamus directing the respondents to draw the annual increments due during the period of suspension till the impugned order 31.12.1991 and the Hon'ble Court may further be pleased to direct the respondents to make payment of the passed and countersigned T.A. bills amounting Rs. 3186/- along with interest at 18% per annum on the amount of increments and T.A. bills withheld deliberately till the date of payment.

10.5 That, the Hon'ble Court may kindly be pleased to call for the entire relevant records from the respondents.

10.6 That, any other order of orders or direction or relief though just and fit in the circumstances of the case may also kindly be granted.”

2. Learned counsel for petitioner submits that petitioner while working on the post of Forester was engaged for felling of bamboos at Coupe “C” Mukwa in production range Jatga North Bilaspur Division District Bilaspur. The felling of trees was on account of construction of exit path from Coupe. Petitioner has engaged about 40-50

labourers for felling of bamboo in Coupe "C". Inadvertently the labourers felled the bamboos outside the boundary of Coupe "C" in Coupe "D" range and when petitioner came to know the mistake of labourers engaged by him, he immediately stopped the work of felling of bamboos and informed his senior of extra felling of bamboos by labours on 20.11.1988. During the course of inspection also he found some trees were cut by unknown person and he has also seen some illegal activities in compound 108, 109, 113 of which he has also made complaint. After conducting enquiry, it was alleged that by the negligent act, 344 trees have been felled illegally within one year in the compartment of 108, 109, 113 of Coupe "C". Petitioner was served with a charge-memo and thereafter departmental enquiry proceedings was initiated against him. On 13 occasions, petitioner made request to supply the copy of field list of enumeration of illicit stumps of 344 trees. However, the said documents were not supplied. The documents were even not produced before the Enquiry Officer as they were not produced. Supply of the said documents was refused on 03.11.1991 (Annexure P-6). After conclusion of the inquiry, the petitioner was penalized by having his pay scale reduced to the minimum pay of a forester. Petitioner preferred an appeal which also came to be dismissed.

3. It is further contention of learned counsel for petitioner that apart from the other grounds raised in the writ petition, primary grounds on which he is making submission is that petitioner was not given opportunity by the Enquiry Officer to submit his brief in terms of

Rule 14 (19) of the C.G. Civil Services (Classification Control & Appeal) Rules, 1966 (In short 'the Rules, 1966'). The order of punishment was passed by the Divisional Forest Officer on 31.12.1991, however, before passing of the order of punishment, copy of enquiry report was not furnished to petitioner and no explanation/representation was called for and thereby petitioner was deprived of an opportunity of being heard on the enquiry report before imposing order of punishment, which is in violation of the principles of natural justice. In support of his defence, he placed reliance upon the decision in case of **Union of India v. Mohd. Ramzan Khan**, reported in **(1991) 1 SCC 588**.

4. Learned counsel for State-respondents vehemently opposes the submission of learned counsel for petitioner and would submit that Disciplinary Authority has passed the order of punishment in accordance with law. The Appellate Authority also after the order passed by this Court in WPS No.188 of 2010 had issued notice to petitioner on 31.03.2018 and only thereafter has passed the order of punishment after giving opportunity of hearing. There is no procedural irregularities in passing the order of punishment as also while hearing the appeal submitted by petitioner. He contended that punishment is imposed as petitioner failed to perform his duties properly and committed misconduct.
5. I have heard the learned counsel for the parties and perused the pleadings in the writ petition as also the reply and the documents enclosed along with the writ petition.

6. Though in the writ petition, petitioner has raised multiple grounds, however, the grounds, which is referred in the preceding paragraph that copy of the enquiry report is not served upon petitioner prior to passing of the order of punishment, as it goes to the route of the case, therefore, this Court is considering the said grounds first.
7. Perusal of the pleadings made in the writ petition would show that petitioner in paragraph 9.6 has specifically pleaded that enquiry report was not furnished to him. In reply to the writ petition, grounds taken in the para 9.6 has not been specifically denied or dealt with. Pleadings or grounds which is not denied is to be presumed to be admitted. Copy of the order of punishment by the Disciplinary Authority is filed as Annexure P-2. From the order also it is not reflecting that after receipt of the enquiry report by the Disciplinary Authority and prior to passing of an order of punishment, copy of the enquiry report was served upon petitioner/delinquent employee and representation/explanation was called for.
8. The Hon'ble Supreme Court in case of **Mohd. Ramzan Khan** (supra) has observed thus :-

“18. We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would

amount to violation of rules of natural justice and make the final order liable to challenge hereafter.”

9. After the decision in case of **Mohd. Ramzan Khan (supra)**, the State Government has issued a circular/instruction on 20.08.1992. Relevant para of the circular dated 20.08.1992 is extracted below for ready reference :-

“विभागीय जांच से सम्बन्धित प्रकरणों में, मध्यप्रदेश सिविल सेवा (वर्गीकरण, नियंत्रण तथा अपील) नियम 1966 के अन्तर्गत की गई जांच की, जांचकर्ता अधिकारी की रिपोर्ट पर अनुशासिक अधिकारी को अपना मत बनाना पड़ता है तथा उसके आधार पर आगे की कार्यवाही निर्धारित करनी पड़ती है। तात्पर्य यह है कि जांच रिपोर्ट जांच कार्यवाही में एक महत्वपूर्ण आधार पर आगे की कार्यवाही निर्धारित करनी पड़ती है। तात्पर्य यह है कि जांच रिपोर्ट, जांच कार्यवाही में एक महत्वपूर्ण सामग्री है, जो कि अपचारी कार्मिक के विरुद्ध काम में लाई जाती है। संविधान के अनुच्छेद 311 (2) की अपेक्षाएं है कि अपचारी कार्मिक को नैसर्गिक न्याय की भावना के प्रकाश में जांच अधिकारी की रिपोर्ट के खिलाफ सुनवाई का अवसर प्रदान किया जाये।

2. अतः शासन द्वारा निर्णय लिया गया है कि ऐसे सभी मामलों में, जहां जांच का कार्य, मध्यप्रदेश सिविल सेवा (वर्गीकरण, नियंत्रण तथा अपील) नियम 1966 के नियम 14 के प्रावधानों के अनुसार किया गया है, अनुशासनिक प्राधिकारी यदि वह जांच अधिकारी से भिन्न है तो वह मामले पर अन्तिम आदेश देने से पहले सम्बन्धित शासकीय सेवक को जांच रिपोर्ट की एक प्रति निम्नलिखित सम्बोधन/पृष्ठांकन सहित भेजेंगे-

'जांच अधिकारी की रिपोर्ट संलग्न है। अनुशासनिक प्राधिकारी रिपोर्ट पर विचार करने के पश्चात् उपयुक्त निर्णय लेगा। अतः यदि आप किसी प्रकार का अभ्यावेदन अथवा अनुरोध करना चाहें तो

ऐसा आप इस पत्र की प्राप्ति के 15 दिन के भीतर अनुशासनिक प्राधिकारी को लिखित रूप में कर सकते हैं।'

3. उपर्युक्त अनुदेश जारी होने के दिनांक से प्रभावशील माने जाएंगे और तदनुसार केवल उक्त मामलों में लागू होंगे जहां अनुशासनिक प्राधिकारी को अन्तिम शास्ति आदेश अभी पारित करना है। पुराने मामलों को विचारण के लिए पुनः खोलना आवश्यक नहीं है।"

10. There is clear instructions by the State Government as to how and what procedure is to be adopted when the Enquiry Officer submits the enquiry report before the Disciplinary Authority. In the case at hand, specific grounds is taken by petitioner in this regard that enquiry report was not served upon him before passing an order of punishment and no opportunity was granted to submit representation.
11. In the reply to the writ petition as discussed above, there is no specific denial and no documents in this regard has been filed by respondents along with reply to controvert the pleadings made in the writ petition.
12. Hon'ble Supreme Court in case of **Punjab National Bank v. K.K. Verma**, reported in **(2010) 13 SCC 494** has observed thus :-

“21. In *Mohd. Ramzan Khan case* [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] the Court was concerned with the question as to whether the 42nd Amendment brought about any change in the matter of supply of a copy of the report which is a part of the first stage, and the effect of non-supply thereof on the punishment proposed. The Court considered the various

judgments on this aspect and held in para 18 of the judgment as follows : (SCC p. 597)

“18. We make it clear that wherever there has been an enquiry officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and *non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter.*”

(emphasis supplied)

It is only with a view not to affect the enquiries which were conducted in the meanwhile that the Court held that those inquiries will not be affected, and though it was only declaring the law, the propositions laid down therein will apply prospectively. This was basically to protect the actions which were taken during the interregnum i.e. after the 42nd Amendment became effective until it was explained as above in this judgment.

25. The Service Regulations of the appellant are concerning the discipline and conduct in a nationalised bank which is an instrumentality of the State. The instrumentalities of the State have always been expected to act in fairness, and following the principles of natural justice has always been considered as a minimum expectation in that behalf. The above Regulations will, therefore, have to be read as containing the requirement to furnish a copy of the enquiry report and the order of the disciplinary authority recording its disagreement therewith to the employee prior to any decision on the penalty being arrived at. That will secure to the delinquent employee an

opportunity to make his submissions on the adverse findings and to prove his innocence.

30. This being the position, in the instant case it is clear that the appellant had not followed their own Regulations which clearly require the disciplinary authority to record the reasons where it differed from the enquiry officer. The Regulations also clearly lay down that a copy of the enquiry report and the order of disagreement are to be provided to the employee. In the present case, we are concerned with the stage where the disciplinary authority differs with the enquiry officer on his findings. This is prior to arriving at the guilt of the employee. His right to receive the report and defend at that stage before the guilt is established is very much recognised as seen above. The counsel for the appellant submitted that the Constitution Bench has held in *Union of India v. Tulsiram Patel* [(1985) 3 SCC 398 : 1985 SCC (L&S) 672] that after the 42nd Amendment, the employees are not entitled in law to be heard in the matter of penalty.

31. In *Karunakar case* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] , another Constitution Bench has referred to *Tulsiram Patel* [(1985) 3 SCC 398 : 1985 SCC (L&S) 672] in para 13 and then explained the legal position in this behalf in para 25 as follows : (*Karunakar case* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] , SCC pp. 753-54, para 25)

“25. While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz. before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the

guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the Forty-second Amendment.”

13. Considering the facts and circumstances of the case in particular the grounds taken by petitioner of non-supply of enquiry report, granting opportunity to submit representation on the enquiry report, not controverted by respondents in their reply nor submitted any documents to controvert the said grounds raised in the writ petition as also in view of the decision of Hon'ble Supreme Court as mentioned above I am of the considered view that non-supply of the enquiry report is in violation of principles of natural justice and it is in contravention of the instruction issued by the State Govt., therefore, the order dated 31.12.1991 (Annexure P-2) and the order passed in appeal dated 07.04.2018 (Annexure P-1) are not sustainable in the eyes of law. Accordingly they are quashed.
14. As the order Annexure P-1 and P-2 has been quashed on the technical ground of not providing opportunity of hearing in terms of instructions dated 20.08.1992, the matter is remitted back before the Disciplinary Authority to take decision afresh after providing copy of enquiry report to the petitioner granting him opportunity to submit his representation on the enquiry report if he so desire and thereafter to pass an order afresh. As the order of punishment is dated 31.12.1991, the Disciplinary Authority is directed to pass an

order within a period of three months from the date of receipt of the order following due process of law.

15. Accordingly, this petition is allowed in above terms.

Sd/-
(Parth Prateem Sahu)
Judge

Balram