

**IN THE HON'BLE HIGH COURT OF CHHATTISGARH**  
**AT BILASPUR**

W.P. NO. <sup>4455</sup>.....2006

*2/10/06*

**PETITIONER**

✓ S.N. SONESHWAR S/O Roopram Soneshwar,  
 aged 39 years, Patwari, P.C.No. 30, H.Q.  
 Mangchuwa, Tahsil Daundilohara, distt. Durg  
 (C.G.)

VERSUS

**RESPONDENTS**

- (1) The State Government of Chhattisgarh,  
 Through – The Secretary,  
 Revenue Department,  
 D.K.S. Bhavan, Raipur (C.G.)
- (2) The Collector, Durg (C.G.)
- (3) The Sub Divisional Officer,  
 Daundilohara, District Durg (C.G.)

**RECEIVED-COPY**  
*15/2/06*  
 CLERK to A. G. BILASPUR

**Writ Petition under Article 226/227 of the Constitution of India for the issuance of WRIT in the nature of Mandamus certiorari, Prohibition and for any other suitable writ or writs, orders or orders, direction or directions.**

The petitioner respectfully furnishes the particulars of the writ petition as under:-



9

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WP No. 4455 of 2006**

• S.N.Soneshwar

---- Petitioner

**Versus**

• State Of Chhattisgarh & Ors.

---- Respondents

---

Shri Ajay Shrivastava, counsel for the petitioner/s.  
Shri Manish Nigam, Panel Lawyer for the State.

---

**Hon'ble Shri Justice Manindra Mohan Shrivastava**

**Order On Board**

**28/02/2017**

By this petition, under Article 227 of the Constitution of India, the petitioner seeks to assail legality and validity of penalty order dated 27/05/2005 and order passed in appeal dated 13/12/2005 by which, penalty of withholding of increment with cumulative effect has been imposed and affirmed.

2. The short issue arising for consideration in this petition is whether the respondents were justified in law in imposing penalty on the petitioner without supplying the copy of enquiry report and without communicating the reason for disagreement with the findings of the enquiry officer.

3. The relevant factual premise of the case is that there was allegation that while the petitioner was holding an additional charge of Patwari Halka No.28, large number of trees were cut and it is alleged that the petitioner acted negligently and it was not communicated to the higher authorities. The incident eventually led to initiation of departmental enquiry vide charge sheet dated 16/08/2004. After holding enquiry, the enquiry officer prepared an enquiry report on 25/11/2004 in which, he did not find the petitioner guilty of misconduct. However, the disciplinary authority imposed a penalty of withholding one increment holding the petitioner



guilty of misconduct. It was also affirmed in appeal. This gave rise to this petition.

4. Learned counsel for the petitioner submits that the petitioner was holding additional charge of patwari halka no.28. The petitioner could not be held responsible because the information regarding cutting of trees was belatedly given by the *patel* and village *kotwar* situated in patwari halka no.28. This aspect was not duly considered by the enquiry officer who prepared enquiry report dated 25/11/2004. Further, neither the enquiry report was supplied to the petitioner nor any reason for disagreement with the finding of the enquiry officer was communicated to the petitioner and the disciplinary authority proceeded to impose penalty ignoring that the petitioner was never informed regarding cutting of trees by the *patel* and village *kotwar*.

5. On the other hand, learned State counsel submits that the petitioner has filed copy of enquiry report which shows that he has already been supplied with the copy of enquiry report. Therefore, non-supply of enquiry report could not be raised in this petition. It is also submitted that the grounds of procedural impropriety of non-supply of enquiry report was not specifically raised in the appeal. It is next contended by learned State counsel that the enquiry report cannot be said to be a report of complete exoneration, therefore, there was no occasion to give notice to the petitioner. Lastly, it is submitted that the petitioner has not disputed that he was holding additional charge of patwari halka no.28 and when number of trees were cut during the period, he was in charge. Therefore, it is clear that the petitioner was completely negligent in performing his duties as Patwari.

6. After hearing learned counsel for the parties, this Court is of the opinion that this petition deserves to be allowed.

7. At the first place, there is no proof to show that the enquiry report was supplied to the petitioner before imposition of penalty. Merely because the petitioner has placed on record enquiry report, it cannot be presumed that it was supplied to him prior to imposition of penalty. Infact, this fact has not been specifically denied by the respondent nor any document has been placed on record bearing acknowledgment of receipt of enquiry report by the petitioner. Therefore, in view of the decision of the Supreme Court in the case of **Union of India and others v. Mohd. Ramzan Khan**<sup>1</sup> followed by another decision in the case of

---

<sup>1</sup> AIR 1991 SC 471



81

**Mangaging Director, ECIL, Hyderabad v. B. Karunakar and others<sup>2</sup>**, the penalty order is liable to be set aside only on this count.

8. There is another reason why this petition is liable to be allowed.

I have gone through the enquiry report dated 25/11/2004. The enquiry report records that the petitioner was not informed by the *patel* or *kotwar* of the village, therefore, he cannot be held responsible. Therefore, the enquiry report seeks to exonerate the petitioner from charges. If for any reason, the disciplinary authority sought to disagree, the law required to communicate the reason for disagreement as provided in Rule 15 (2) of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966. Moreover, the Supreme Court has also held in the case of **Punjab National Bank and ors. v. Sh. Kunj Behari Misra<sup>3</sup>** that in case of disagreement with the findings of the enquiry officer, the disciplinary authority is obliged under the law to communicate to the delinquent employee, the reason for its disagreement.

9. In view of the aforesaid two serious defects in the procedure for holding departmental enquiry, the final order of penalty is vitiated. The impugned orders are therefore, set aside. The matter is remitted to the disciplinary authority with the direction that the reason of disagreement, if any, shall be communicated to the petitioner in writing along with copy of enquiry report. Thereafter, it would be open for the disciplinary authority to pass appropriate orders, in accordance with law.

10. The petition is accordingly finally disposed off.

Sd/-  
**Manindra Mohan Shrivastava**  
Judge

Deepti

<sup>2</sup> (1993) 4 SCC 727

<sup>3</sup> AIR 1998 SC 2713