

**HIGH COURT OF CHHATTISGARH, BILASPUR****(Judgment/Order delivered on 19.03.2020)****WPS No. 536 of 2005**

M.L. Tamboli, son of Late Shri Heeralal Tamboli, aged about 46 years, resident of near Old Bhatti Kedarpur, Ambikapur, District Sarguja (M.P., now State of Chhattisgarh)

Versus

1. Director Agriculture, Department of Vindhyachal Bhavan, Bhopal, Chhattisgarh
2. Joint Director, Agricultural Department, Bilaspur, Chhattisgarh

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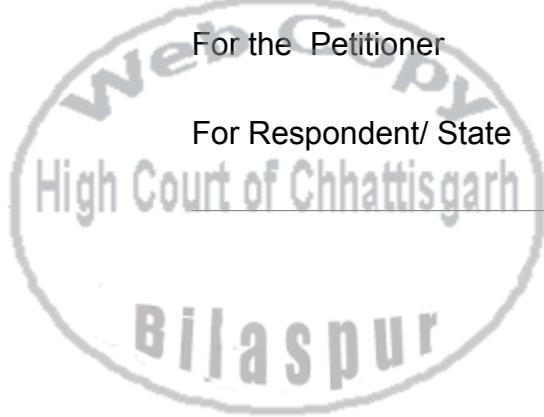
For the Petitioner : Mr. Vinod Deshmukh, Mr. A.K. Prasad & Ms. Shuchita Bais, Advocates  
For Respondent/ State : Mr. Alok Bakshi, Addl. Advocate General

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**Justice Goutam Bhaduri**

**CAV JUDGMENT/ORDER**

1. The challenge made in this writ petition is to the order dated 03.01.1991 passed by the Director, Department of Agriculture, M.P., Bhopal wherein the appeal preferred by the petitioner against the order of dismissal dated 31.12.1985 was rejected.
2. The facts of the case are that the petitioner was initially appointed as Stenographer on 25.08.1965. Subsequently he was made as Permanent Stenographer with effect from 01.04.1980 by order dated 24.05.1984 (Annexure A-1) and thereafter he was promoted by granting upgraded scale with effect from 18.02.1983 by order dated 07.06.1984 (Annexure A-2). The petitioner was attached to the office of Bilaspur by the Joint Director, Agriculture on 16.11.1984. On 21.05.1985, a charge sheet was issued along-with the list of documents, articles of charges and the list of witnesses vide Annexure A-3.





The charge sheet shows that three charges were framed against the petitioner. Charge No.1 was that without any notice/communication or prior sanction, the petitioner used to remain absent from duty. Charge no.2 was that he had disobeyed the orders of higher officials. Charge no.3 was that on 18.10.1984 he had abused the higher officials thereby has committed misconduct. The petitioner filed reply to the charge sheet. Having considered the reply to the charge sheet, the departmental enquiry was conducted. After conducting Departmental Enquiry, the charges were found proved and the petitioner was terminated from service.

3. Learned counsel for the petitioner would submit that there is a gross violation of provisions of *Chhattisgarh Civil Services (Control, Classification and Appeal) Rules 1966* (hereinafter referred to as "CCA Rules, 1966") as the Joint Director who issued the charge sheet has himself acted as Enquiry Officer and the findings so arrived during the departmental enquiry was arrived in a short span and the petitioner was not given opportunity of hearing and most importantly the actual date fixed for enquiry was not intimated to him. He further submits that the finding of the Departmental Enquiry was also recorded in cryptic manner and no particulars or reasons have been assigned to show as to how such finding was arrived or recorded which is against the law laid down by the Supreme Court in ***Union of India Vs. Ram Lakhan Sharma (2018) 7 SCC 670*** and ***State of Uttar Pradesh Vs. Saroj Kumar Sinha (2010) 2 SCC 772***. Learned counsel further referred to sub-rule (11) of Rule 14 as also sub-rule (23)(i) of Rule 14 of CCA Rules 1966 and would submit that the findings so recorded was so cryptic and there is complete violation of procedure prescribed in Rule 14. Referring to the procedure of departmental enquiry, it is further submitted that the judicial review would be possible in view of the law laid down in ***Registrar General, High Court of Patna Versus Pandey Gajendra Prasad***



(2012) 6 SCC 357 and as there has been gross violation of principles of natural justice.

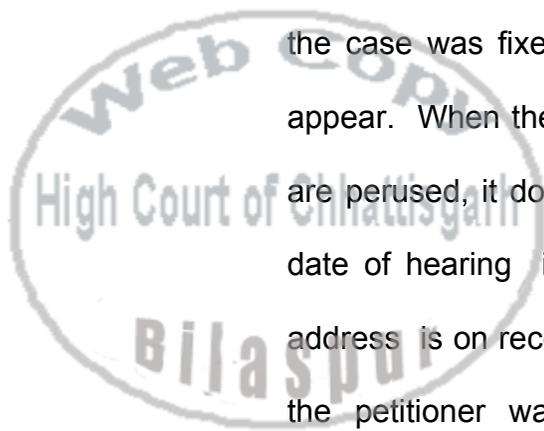
4. Learned State Counsel opposes the arguments of the petitioner. He contends that the petitioner himself failed to appear in departmental enquiry despite the notice given. Consequently, no fault can be attributed to the departmental enquiry and for the conduct of the petitioner, ex-parte enquiry was done. He further submits that looking to the seriousness of the charges, it was proved beyond reasonable doubt and the findings having been arrived in departmental enquiry, principles of natural justice was followed and no interference is therefore warranted. He relies on decisions of the Supreme Court in **General Manager(P), Punjab & Sind Bank v. Daya Singh (2010) 11 SCC 233** and **National Fertilizer Limited Vs. P.K. Khanna (2005) 7 SCC 597** to submit that this Court does not sit in appeal over the finding of the enquiry officer.

5. Heard learned counsel for the parties at length and perused the records. The State was directed to place on record the original file of the departmental enquiry for perusal. So far as the service of the charge sheet is concerned, there is no dispute that the charge sheet was issued to the petitioner which was replied. Thereafter, the joint director, Agriculture, H.S. Das appointed himself as the enquiry officer and C.J. Boithani was the Presenting Officer, who was the Additional Joint Director Agriculture. The said appointment was of 8<sup>th</sup> June 1985. Thereafter, the document would show that the enquiry started. A perusal of enquiry proceedings as recorded shows that after submission of the charge sheet dated 25.05.1985 which was served on 06.06.1985, the reply was not filed till 16.08.1985. To contradict such recording, the return of the State contains Annexure R-1 whereas the reply of the petitioner Annexure R-1 is on record along with the return filed by the State. The respondent State has averred that reply to charge sheet was filed as Annexure R-1. Therefore, the



course of facts shows that the finding recorded in the enquiry report that the petitioner did not file reply is not correct whereby the correctness of presumption is rebutted.

6. The second part of the proceedings records that when the enquiry was fixed on 17.7.1985 and subsequently on 16.08.1985, the petitioner failed to appear despite notice. The proceedings also records the fact that by application dated 10.07.1985, the petitioner requested that because of indisposition of his wife, he would not be able to appear on 17.07.1985, therefore, the case may be fixed in the second week of August, 1985. Hence, the enquiry proceeding records that the case was fixed for 16.08.1985 but on 16.08.1985, the petitioner failed to appear. When the original records of the proceedings of departmental enquiry are perused, it does not show that the petitioner was informed about the next date of hearing i.e., 16.08.1985. Though a letter with over-writing of the address is on record but no document is on record to substantiate the fact that the petitioner was informed about the date of hearing further fixed for 16.08.1985. There is nothing on record in papers of departmental enquiry or with the return to show as to when the intimation of the adjourned date was sent to the petitioner, whether it was received by the petitioner or not.
7. In the return, it is categorically pleaded that after service of the charge sheet, the reply was filed. The reply to the charge sheet is marked collectively as Annexure R-1. It was received by the department on 19.11.1985 and was signed by the petitioner on 16.11.1985. Therefore, as per the return of the State, the reply to the charge sheet was filed on 19.11.1985. The same pleading is contrary to the finding of the departmental enquiry which records two facts that the petitioner was informed that the next date of D.E., was fixed for 16.8.1985 and since the petitioner did not file the reply, the ex-parte order was passed. As a result of such fall out and inconsistency between the finding of





departmental enquiry and the return, it shows that the finding of the departmental enquiry was recorded prior to filing of reply to charge sheet.

8. Further, Rule 14 of The Chhattisgarh Civil Services (Classification, Control and Appeal) Rules 1966 prescribes the procedure for imposing the penalties. Even if the arguments of the State are admitted that the petitioner failed to appear on 16.08.1985 or refused to appear in D.E., while recording the finding, the enquiry officer was required to follow sub-rule (11) of Rule 14 of CCA Rules, 1966. The Rule prescribes that the Presiding Officer is required to produce evidence by which he proposes to prove the articles of charges. Sub-Rule (11) of Rule 14 reads as under :

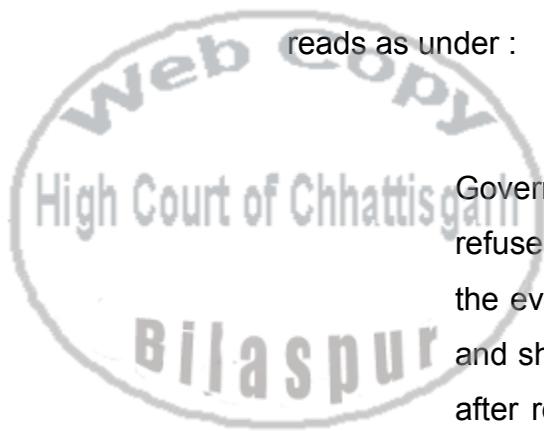
**“Rule 14(11)** The inquiring authority, shall, if the Government servant fails to appear within the specified time or refuses or omits to plead, require the Presiding Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government servant may, for the purpose of preparing his defence :

(i) inspect with five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (3)

(ii) submit a list of witnesses to be examined on his behalf.

**Note,-** If the Government servant applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.

(iii) Give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow for the discovery or producing of any documents which





are in the possession of Government but not mentioned in the list referred to in sub-rule (3).

**Note.-** The Government servant shall indicate the relevance of the documents required by him to be discovered and produced by the Government”.

9. The finding recorded by the enquiry officer after conducting the so called enquiry reads thus :

श्री एम. एल. तम्बोली, शीघ्र लेखन कार्यालय उप संचालक कृषि अंबिकापुर वर्तमान में कार्यालय संयुक्त संचालक कृषि बिलासपुर संभाग बिलासपुर के विभागीय जांच में जांच प्रतिवेदन।

संयुक्त संचालक कृषि, बिलासपुर संभाग बिलासपुर के आदेश क्रमांक अ-14023 दिनांक 8-7-05 द्वारा श्री एम.एल तम्बोली शीघ्र लेखक कार्यालय उप संचालक कृषि अंबिकापुर वर्तमान में कार्यालय संयुक्त संचालक कृषि, बिलासपुर संभाग बिलासपुर के विरुद्ध प्रस्तावित विभागीय जांच में श्री एच. एस. दास संयुक्त संचालक कृषि बिलासपुर संभाग बिलासपुर एवं श्री सी. जो. चोईथानी सहायक संचालक कृषि (स्था. लेखा) को क्रमशः जांच अधिकारी एवं प्रस्तुतकर्ता अधिकारी नियुक्त किया गया।

2/ संयुक्त संचालक कृषि, बिलासपुर संभाग बिलासपुर के पत्र क्रमांक अ-1/1997 दिनांक 21.05.85 द्वारा आरोप पत्र मय अधिकथन पत्र एवं अन्य दस्तावेजों के तथा क्रमांक अ-1/2412 दिनांक 29.05.95 द्वारा अतिरिक्त आरोप पत्र मय अधिकथन पत्र एवं अन्य दस्तावेजों के आरोपी श्री एम. एल. तम्बोली को पंजीकृत डाक क्र. 4405 दिनांक 25.05.85 एवं 4617 दिनांक 06.06.85 द्वारा जारी किये गये। परन्तु आरोपी द्वारा इन आरोपों का उत्तर दिनांक 16.08.85 तक प्रस्तुत नहीं किया गया और आज भी अप्राप्त है।

3/ प्रकरण में जांच करने हेतु दिनांक 17.07.85 एवं 16.08.85 नियत की गई। परन्तु आरोपी श्री एम. एल. तम्बोली किसी भी तिथि पर उपस्थित नहीं हुये। आरोपी ने अपने आवेदन पत्र दिनांक 10.07.85 द्वारा निवेदन किया कि वे अपने धर्म पत्नी के अस्वस्थता के कारण दिनांक 17.07.85 की पेशी में उपस्थित न हो सकेगे एवं साथ ही प्रकरण में अगली पेशी माह अगस्त 1985 के दूसरे सप्ताह में नियत करने हेतु निवेदन किया गया। आरोपी के इस आवेदन पर सहानुभुति पूर्वक विचार करते हुये प्रकरण में अगली पेशी दिनांक 16.08.85 को रखी गई। परन्तु आरोपी दिनांक





16.08.85 को भी उपस्थित नहीं हुये और न ही उस संबंध में किसी प्रकार की सूचना दी गई।

अतः प्रकरण में निम्न एक तरफा निर्णय लिया जाता है।

### निर्णय

आरोपी श्री एम० एल० तम्बोली शीघ्र लेखक कार्यालय उप संचालक कृषि अंबिकापुर वर्तमान में कार्यालय संयुक्त संचालक कृषि बिलासपुर संभाग बिलासपुर के विरुद्ध संयुक्त संचालक कृषि बिलासपुर के पत्र क्रमांक अ-1/1997 दिनांक 21-5-85 एवं क्रमांक अ-1/2412 दिनांक 29-5-85 द्वारा लगाये गये आरोप पूर्णतः सिद्ध होते हैं।

सही /—

एच० एस० दास  
संयुक्त संचालक कृषि  
बिलासपुर संभाग, बिलासपुर, म०प्र०  
एवं जांच अधिकारी

कु० राधा

दि० 25-10-85

10. A plain reading of the above findings would go to show that provisions of sub-rule (11) of Rule 14 of CCA Rules, 1966 was not followed as the Presenting Officer was required to give finding on evidence on the basis of which the charges were levelled and proved, instead, the finding was recorded as aforesaid which was cryptic and without any reason. Further more, sub-rule 23(i) of Rule 14 of CCA Rules 1966 contemplates that after conclusion of enquiry, the report shall be prepared and it shall contain the particulars. For the sake of convenience, sub-rule (23)(i) of Rule 14 is reproduced hereunder :

**“14 (23) (i)** After the conclusion of the inquiry, a report shall be prepared and it shall contain--

- (a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (b) the defence of the Government servant in respect of each articles of charge;
- (c) an assessment of the evidence in respect of each article of charge; and



- (d) the finding on each article of charge and the reasons therefor.

Explanation.-- If in the opinion of the inquiring authority the proceedings of the inquiry establish an article of charge different from the original articles of the charge, it may record its finding on such article of charge :

Provided that the finding on such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge”.

11. A perusal of the findings of the enquiry would show manifest violation of provisions of Rule 14(11) and 14(23)(i) was committed by the Enquiry Officer. The findings in the enquiry are cryptic, without any reasoning and do not satisfy the fact that under what circumstances that finding was arrived at. Further, the Supreme Court in ***Union of India Vs. Ram Lakhan Sharma (2018) 7 SCC 670*** has reiterated the principles with respect to the contents of finding to be recorded and reaffirmed the law laid down in ***(2010) 2 SCC 772*** and has held as under:

“27. In *State of U.P. v. Saroj Kumar Sinha* 2010 2 SCC 772, this Court had laid down that the Enquiry Officer is a quasi-judicial authority, he has to act as an independent adjudicator and he is not a representative of the department/disciplinary authority/Government. In paras 28 and 30, the following has been held : (SCC P. 782) :

“28. An Enquiry Officer acting in quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case, the aforesaid procedure has not been



observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

**30.** When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service”.

12. Reading of the finding of the enquiry officer shows that it neither satisfies the compliance of provisions of Rule 14(23)(i) of CCA Rules, 1966 nor the principles laid down by Supreme Court in *Union of India v. Ram Laxhan Sharma (Supra)*. The finding of the enquiry is also contradictory to the return filed by the State. Nothing is on record even in the original departmental enquiry papers to show that notice of date of D.E., fixed for 16.08.1985 was given to the petitioner. Therefore, when gross violation of principles of natural justice exists on the face of record, the Court will have the power of Judicial Review as laid down in *Registrar General, High Court of Patna V. Pandey Gajendra Prasad (2012) 6 SCC 357 (Supra)*. Para 18 of the said judgment is relevant here and quoted below:

**“18.** It is trite that the scope of judicial review, under Article 226 of the Constitution, of an order of punishment passed in departmental proceedings, is extremely limited. While exercising such jurisdiction, interference with the decision of the departmental authorities is permitted, if such authority has held the proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence on the merits of the case, or if the conclusion reached by the authority, on the face



of it, is wholly arbitrary or capricious that no reasonable person, could have arrived at such a conclusion, or grounds very similar to the above. (See *High Court of Judicature of Bombay v. Shashikant S. Patil* (2000) 1 SCC 416”.

13. In view of such facts, the reliance placed by the State in **(2005) 7 SCC 597** and **(2010) 11 SCC 233** would not be applicable in the given facts of this case as there is flagrant violation of principles of natural justice. This apart, the findings in the departmental enquiry do not satisfy the reasoning and the discussion based on which such finding was arrived at. In the result, the petition succeeds and is allowed. The impugned order of termination of petitioner's service dated 31.12.1985 passed on the basis of proceedings of departmental enquiry as also the order 03.01.1991 rejecting the appeal of petitioner are set aside. The petitioner is entitled for all consequential benefits from the date of termination of his service.

Sd/-  
**(GOUTAM BHADURI)**  
**JUDGE**