



2025:CGHC:38564

AFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WPS No. 5614 of 2021**

Shiv Poojan Garg S/o Raj Kishore Garg, Aged About 45 Years R/o. Ex. Constable, 7th Battalion, Chhattisgarh Arms Force, Bhilai, District Durg Chhattisgarh., District : Durg, Chhattisgarh

**... Petitioner**

**versus**

**1** - State Of Chhattisgarh Through Secretary, Department Of Home Affairs, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

**2** - Director General Of Police, Police Head Quarter, Atal Nagar, Nawa Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

**3** - Commandant, 7th Battalion, Chhattisgarh Arms Force, Bhilai, District Durg Chhattisgarh, District : Durg, Chhattisgarh

**... Respondent(s)**

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<b>For Petitioner</b>	: Mr. T. K. Jha, Advocate
<b>For State</b>	: Mr. Rajkumar Gupta, Additional Advocate General

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**Hon'ble Shri Justice Rakesh Mohan Pandey**

**Order on Board**

**04.08.2025**

1) The petitioner has filed this petition seeking the following relief(s):-

**"10.1.** That, this Hon'ble Court may kindly be

pleased to quash the impugned order dated 23.10.2019(Annexure P-1), order dated 03.01.2020 (Annexure P-2), and other dated 11.08.2021 (Annexure P-3).

**10.2.** That, this Hon'ble Court may kindly be pleased to direct the respondent authorities to reinstate the petitioner in service.

**10.3.** That, the Hon'ble Court may kindly be pleased to grant any other relief, as it may deem-fit and appropriate."

- 2) Brief facts of the present case are that the petitioner, on 15.10.2017, was serving as a Constable in the 7th Battalion, Chhattisgarh Armed Force, Bhilai, District Durg. On the said date, one Constable, Baljeet Singh, was taken for medical examination after being found in an intoxicated condition. At that time, Baljeet Singh fled away on account of the obstruction created by the petitioner. Consequently, an article of charge was issued to the petitioner on 27.12.2017. Inquiry Officer and Presenting Officer were appointed, and after completion of the inquiry, the Inquiry Officer submitted its report to the disciplinary authority. The disciplinary authority issued a second show-cause notice on 06.08.2019 and subsequently, inflicted a penalty of dismissal from service vide order dated 23.10.2019. The petitioner preferred an appeal before the appellate authority, which was dismissed vide order dated 03.01.2020. A mercy appeal was also dismissed vide order dated 11.08.2020.
- 3) Mr. Jha, learned counsel for the petitioner, submits that the penalty of dismissal inflicted on the petitioner was based on previous punishments inflicted, but this fact was not disclosed in the second show cause notice dated 06.08.2019. He

further submits that the non-disclosure of previous punishments vitiated the penalty order. He has placed reliance on the judgment of the Hon'ble Supreme Court rendered in ***State of Mysore v. K. Manche Gowda*, 1963 SCC OnLine SC 50.**

- 4) Mr. Gupta, learned Additional Advocate General, submits that the article of charge itself refers to the antecedents of the petitioner. It is contended that sufficient opportunity was afforded to rebut the charges, and the petitioner never challenged the procedural part of the penalty either before the disciplinary or appellate authority. It is further submitted that the charges stood proved and thus, the petition deserves dismissal.
- 5) I have heard learned counsel for the parties and perused the documents placed in the file.
- 6) The Hon'ble Supreme Court in the matter of ***K. Manche Gowda (supra)*** while dealing with the issue of a second show cause notice observed in para-7 & 8 as under:-

*"7. Under Art. 311(2) of the Constitution, as interpreted by this Court, a Government servant must have a reasonable opportunity not only to prove that he is not guilty of the charges levelled against him, but also to establish that the punishment proposed to be imposed is either not called for or excessive. The said opportunity is to be a reasonable opportunity and, therefore, it is necessary that the Government servant must be told of the grounds on which it is proposed to take such action: see the decision of this Court in the State of Assam v. Bimal Kumar Pandit(1). If the grounds are not given in the notice, it would be well nigh impossible for him to predicate what is operating on the mind of the authority concerned in proposing a particular punishment: he would not be in a position to*

*explain why he does not deserve any punishment at all or that the punishment proposed is excessive. If the proposed punishment was mainly based upon the previous record of a Government servant and that was not disclosed in the notice, it would mean that the main reason for the proposed punishment was withheld from the knowledge of the Government servant. It would be no answer to suggest that every Government servant must have had knowledge of the fact that his past record would necessarily be taken into consideration by the Government in inflicting punishment on him; nor would it be an adequate answer to say that he knew as a matter of fact that the earlier punishments were imposed on him or that he knew of his past record. This contention misses the real point, namely, that what the Government servant is entitled to is not the knowledge of certain facts but the fact that those facts will be taken into consideration by the Government in inflicting punishment on him. It is not possible for him to know what period of his past record or what acts or omissions of his in a particular period would be considered. If that fact was brought to his notice, he might explain that he had no knowledge of the remarks of his superior officers, that he had adequate explanation to offer (1) [1964] 2 S.C.R. 1 for the alleged remarks or that his conduct subsequent to the remarks had been exemplary or at any rate approved by the superior officers. Even if the authority concerned took into consideration only the facts for which he was punished, it would be open to him to put forward before the said authority many mitigating circumstances or some other explanation why those punishments were given to him or that subsequent to the punishments he had served to the satisfaction of the authorities concerned till the time of the present enquiry. He may have many other explanations. The point is not whether his explanation would be acceptable, but whether he has been given an Opportunity to give his explanation. We cannot accept the doctrine of "presumptive knowledge" or that of "purposeless enquiry", as their acceptance will be subversive of the principle of "reasonable opportunity". We, therefore, hold that it is incumbent upon the authority to give the Government servant at the second stage reasonable opportunity to show cause against the proposed punishment and if the proposed punishment is also based on his previous punishments or his previous bad record, this should be included in the second notice so that he may be able to give an explanation.*

**08.** *Before we close, it would be necessary to make one point clear. It is suggested that the past record of a Government servant, if it is intended to be relied upon for imposing a punishment, should be*

*made a specific charge in the first stage of the enquiry itself and, if it is not so done, it cannot be relied upon after the enquiry is closed and the report is submitted to the authority entitled to impose the punishment. An enquiry against a Government servant is one continuous process, though for convenience it is done in two stages. The report submitted by the Enquiry Officer is only recommendatory in nature and the final authority which scrutinizes it and imposes punishment is the authority empowered to impose the same. Whether a particular person has a reasonable opportunity or not depends, to some extent, upon the nature of the subject matter of the enquiry. But it is not necessary in this case to decide whether such previous record can be made the subject matter of charge at the first stage of the enquiry. But, nothing in law prevents the punishing authority from taking that fact into consideration during the second stage of the enquiry, for essentially it, relates more to the domain of punishment rather than to that of guilt. But what is essential is that the Government servant shall be given a reasonable opportunity to know that fact and meet the same."*

- 7) In the above-cited judgment, the Hon'ble Supreme Court has held that under Article 311(2) of the Constitution of India, a government servant must be given a reasonable opportunity not only to contest charges but also to oppose the proposed punishment. If past record or previous punishments are to be relied upon, they must be disclosed in the second show-cause notice. Disciplinary proceedings are a continuous process, and such past records can be considered at the punishment stage only after affording the employee the opportunity to explain.
- 8) In the present case, the second show-cause notice dated 06.08.2019 did not disclose the fact that the proposed punishment of dismissal was based upon the petitioner's previous antecedents.
- 9) In view of the law laid down in ***K. Manche Gowda (supra)***, the petitioner was

entitled to be informed of such reliance so as to have an opportunity to explain or rebut the same.

10)The notice in question was a simple show-cause notice, affording the petitioner an opportunity to reply only to the current charges, without any reference to antecedents. However, the penalty order makes it evident that the petitioner's past record formed the basis of the decision. This omission amounts to a denial of a reasonable opportunity as envisaged under Article 311(2) of the Constitution.

11)Accordingly, taking into consideration the principle laid down by the Hon'ble Supreme Court in ***K. Manche Gowda (supra)***, the order(s) impugned are hereby **quashed**.

12)The matter is remitted back to the disciplinary authority to issue a fresh show-cause notice in strict compliance with the law declared in ***K. Manche Gowda (supra)***, clearly stating reliance upon previous punishments or past record, and thereafter to proceed in accordance with the law.

13)Accordingly, the writ petition is **allowed** to the extent indicated above. No order as to costs.

Sd/-

**(Rakesh Mohan Pandey)**  
**Judge**

**WPS No. 5614 of 2021**

**Head Note**

Non-disclosure of reliance on past records in the second show-cause notice violates Article 311(2) of the Constitution of India, where past records are foundation of penalty.

द्वितीय कारण बताओ सूचना में पूर्ववृत्त पर आश्रय का उल्लेख न किया जाना भारत के संविधान के अनुच्छेद 311(2) का उल्लंघन है, जहां पूर्ववृत्त सजा का आधार हो।