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**(2010) 02 CHH CK 0001**  
**In the Chhattisgarh High Court**

Dr. G.R. Uraon

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

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**Date of Decision :** 22-02-2010

**Acts Referred:**

Constitution of India, 1950 — Article 226

Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 — Rule 10, 11, 14, 14(10), 14(11)

**Citation :** (2010) 02 CHH CK 0001

**Hon'ble Judges :** Satish K. Agnihotri, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Satish K. Agnihotri, J.—Challenge in this petition filed under Article 226 of the Constitution of India is to the order dated 25-8-2006 (Annexure P-6) whereby withholding of two annual increments without cumulative effect was passed by the State Government.

2. The indisputable facts, in brief, as projected by the petitioner, are that the petitioner was In-charge of the post of Chief Medical Officer, Dantewada, from 8-3-2001 to 22-3-2001. There were certain irregularities, certain orders were placed for purchase of medicines. Accordingly, a show-cause notice dated 23-7-2002 (Annexure P-I), with five charges of financial irregularities, was issued to the petitioner to the effect that a Departmental Enquiry was proposed against him, calling upon the petitioner to respond to the Departmental Enquiry proposed against him. The petitioner filed a detailed reply on 24-9-2002 (Annexure P-2). The respondent/State thereafter, issued a second show-cause notice dated 3-4-2006 (Annexure P-4) proposing punishment of withholding two annual increments without cumulative effect. The petitioner submitted his reply on 17-4-2006 (Annexure P-5) to show-cause notice dated 3-4-2006. Having considered the reply of the petitioner, the State Government by order dated 25-8-2006 (Annexure P-6) imposed the minor punishment withholding two

annual increments without cumulative effect. Thus, this petition.

3. The charges levelled against the petitioner reads as under:

vkjksi ?- 1& vkfne tkfr dY;k.k foHkkx }kjk miyC/k djks x;s :i;s 21-00 yk[k ds ctV dk mi;ksx ugha djus ds lapkyd ds Li"V funsZ"k ds ckotwn Hkh bl en ds :i;s 21-00 yk[k dh nokbZ dk ?; fd;k x;k ftlesa nksqjk vkqj.k dj Hkqxrku dh ukScr vkbZ ,oa fofRr; vfuferrk;sa gqbZA

vkjksi ?- 2& thou j{kdk nokvksa ds ?; ij fo?; dj :Ik;s 89]463@& dk vfu;fer Hkqxrku dj "kklu dks :i;s 89]463@& dh gkfu igqapkbZ xbZA

vkjksi ?- 3& nokbZ;ksa ,oa lkexzh dk ?; fcuk fufonk ,oa rquyRed i=d ds fd;k tkdj fofRr; vfu;ferrk fd;k tkdj "kklu dks izfr;ksxh nj ls ykHk ls oafpr dj gkfu igqapkbZ xbZA

vkjksi ?- 4& fo?; dj dk lh/ks QeksZ dks vf/kd Hkqxrku dj "kklu dks gkfu igqapkuk rFkk :i;s 5]000@& ls vf/kd dh lsy VSDI dh jkf"k pkyku ls Hkqxrku u dj lh/ks QeksZ dks Hkqxrku fd;k x;kA

vkjksi ?- 5& vkfne tkfr dY;k.k foHkkx }kjk miyC/k djks x;s ctV dk mi;ksx dks"l lafgrk Hkkx 1 ds lgk;d fu;e 284] ds vuq:Ik u dj xaHkhj foRrh; vfu;ferrk,Wa dh xbZA

4. Shri Tripathi, learned Counsel appearing for the petitioner, would submit that the petitioner was hardly for 8 days on the charge of Chief Medical Officer, Dantewada. The order for purchase of medicines was issued on 14-3-2001, which was duly approved on 19-3-2001 by the Competent Authority vide Annexure P-9.

5. The Director, Health Services, on consideration of the reply of the petitioner, with regard to charge No. 1 observed that on account of confusion the order was placed within the financial year 2000-01 on 8-3-2001. With regard to charge No. 2 it was held that the petitioner cannot be held as responsible, as the irregularity was done at the level of Dr. Mehta, the then Chief Medical Officer before the petitioner took the charge of the office of CMO. In respect of charge No. 3, Dr. Mehta was responsible, though it cannot be held that the order was placed without inviting tender or making comparative assessment. Charge No. 4 was not found proved. The finding is not clear, as it was observed that withdrawal and deposit of amount could have been done with the permission of the Collector in accordance with the Rules. Thus, there is no clear finding that the petitioner was responsible for causing any loss to the exchequer.

6. Shri Roy, learned Panel Lawyer appearing for the State, would submit that minor punishment was imposed wherein a proper enquiry is not necessary and even otherwise the minor punishment does not come in the way of his promotion and other service benefits.

7. It is well settled that the High Court while exercising the judicial review may look into the process of decision, but not the decision itself.

8. I have heard learned Counsel appearing for the parties, perused the pleadings and the documents appended thereto.

9. There is no dispute with regard to the fact that the petitioner was In-charge Chief Medical Officer for 8 days. Certain orders were passed for purchase of medicine, may be under pressure of his higher officers to utilize the money in the financial year. The Disciplinary Authority has not found the petitioner fully responsible in placing the purchase order, as certain orders were finalized during the period of his predecessor, who was placed under suspension. It appears that the respondent authorities looking into the nature of charges and the role of the petitioner that could at the most be held as the petitioner was negligent and not careful in placing the purchase order, the impugned minor punishment as aforestated was imposed.

10. Rule 10 of the Civil Services (Classification, Control and Appeal) Rules, 1966 (for short "the Rules, 1966") prescribes nature of the penalties, which reads as under:

10. Penalties.- The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely:

Minor penalties:

(i) Censure;

(ii) Withholding of his promotion;

(iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of order;

(iv) Withholding of increments of pay or stagnation allowance;

Major Penalties:

(v) Reduction to a lower stage in the time scale of pay for a specified period with further directions as to whether or not, the Government servant will earn increments of pay or the stagnation allowance, as the case may be, during the period, on such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the further increments of his pay or stagnation allowance; Note :- The expression "reduction to a lower stage in the time scale of pay" shall also include reduction of pay from the stage of pay drawn by a Government servant on account of grant of stagnation allowance of any.

(vi) Reduction to a lower time scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government servant to the time scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service;

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11. Rule 14 of the Rules, 1966 prescribes for imposing major penalties wherein it is prescribed that an enquiry has to be held in a proper manner as laid in Sub-rules (3) to (23). Thus, the enquiry has to be conducted in accordance with the provisions prescribed under Rule 14.

12. Rule 16 of the Rules, 1966 deals with procedure for imposing minor penalties that no order imposing on a Government servant any of the penalties specified in clauses (i) to (iv) of Rule 10 and Rule 11 shall be made except after informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and given him a reasonable opportunity of making such representation as he may wish to make against the proposal. Sub-rule (1-a) of the Rules, 1966 provides that notwithstanding anything contained in clause (b) of Sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under clause (a) of that sub-rule to withhold increments of pay of Stagnation Allowance and such withholding or increments of pay or Stagnation Allowance is likely to effect adversely the amount of pension payable to the Government servant or to withhold increments of pay or Stagnation Allowance for a period exceeding three years or to withhold increments of pay or Stagnation Allowance with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty.

13. In the present case, it is not the case of the petitioner that withholding of increments would affect pension payable to him or the annual increments have been withheld for more than 3 years or the increments have been withheld with cumulative effect. Thus, Sub-rule (1-a) Rule 16 of the Rules, 1966 requiring proper enquiry as laid down in sub-rules (3) to (23) of Rule 14, is not necessary. Rule 16 provides for a show-cause notice, thereafter consideration of representation before imposing the minor penalty.

14. In the case on hand, minor penalty of withholding two annual increments without cumulative effect has been imposed. On perusal of the papers, it appears that the petitioner was given opportunity of hearing to the charges levelled against him firstly on 23-7-2002 (Annexure P-1) and thereafter when it was decided to impose minor penalty on 3-4-2006 (Annexure P-4). The petitioner submitted his replies on 24-9-2002 (Annexure P-2) and 17-4-2006 (Annexure P-5). Thus, there was no irregularity and illegality in the decision making process.

15. It is well settled principle of law that if there is no irregularity or illegality in the decision making process and the finding is also not perverse, the High Court may not interfere with the decision taken by the employer.

16. In State of U.P. and Another Vs. Man Mohan Nath Sinha and Another, , wherein the High Court quashed the punishment order passed by the authorities, the Supreme Court held as under:

14. The scope of judicial review in dealing with departmental enquiries came up for consideration before this Court in *State of A.P. v. Chitra Venkata Rao* and this Court held :- (SCC pp. 562-63, Paras 21 and 23-24)

21. ...The High Court is not a Court of appeal under Article 226 over the decision of the authorities holding a Departmental Enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the Departmental Authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The Departmental Authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

\*\*\* \*\* 23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an Appellate Court. The findings of fact reached by an Inferior Court or Tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a Tribunal, a writ can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See *Syed Yakoob v. K.S. Radhakrishnan*.

24. The High Court in the present case assessed the entire evidence and came to

its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do.

15. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision-making process. The Court does not sit in judgment on merits of the decision. It is not open to the High Court to reappraise and reappraise the evidence led before the Inquiry Officer and examine the findings recorded by the Inquiry Officer as a Court of appeal and reach its own conclusions. In the instant case, the High Court fell into grave error in scanning the evidence as if it was a Court of appeal. The approach of the High Court in consideration of the matter suffers from manifest error and, in our thoughtful consideration, the matter requires fresh consideration by the High Court in accordance with law. On this short ground, we send the matter back to the High Court.

17. In *Ranjit Thakur Vs. Union of India (UOI) and Others*, , the Supreme Court observed that "judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process".

18. Applying the well settled principles of law to the facts of the case on hand and for the reasons mentioned hereinabove, I am of the considered view that there is no scope for interference with the impugned order passed by the Competent Officer.

19. In the result, the writ petition fails and is hereby dismissed.,

20. There shall be no order as to costs.