

**(1999) 09 AHC CK 0199**

**Allahabad High Court**

**Case No:** C.M.W.P. No. 5657 of 1999

Ram Avatar Swarankar

APPELLANT

Vs

Sub-Divisional  
Agricultural Extension  
Officer, Karvi,  
Chitrakoot and others

RESPONDENT

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**Date of Decision:** Sept. 28, 1999

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (1999) 4 AWC 3146 : (1999) AWC 3146

**Hon'ble Judges:** O.P. Garg, J

**Bench:** Single Bench

**Advocate:** Prakash Padia and R.G. Padia, for the Appellant;

**Final Decision:** Allowed

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### **Judgement**

O. P. Garg, J.

The petitioner Ram Autar Swarnkar was a Junior Clerk in the office of Sub-Divisional Agriculture Extension Officer, Karvi at Chitrakoot. He was placed under suspension on 29.5.1998 in contemplation of departmental enquiry. Ramesh Chand Shukla, District Agriculture Officer, respondent No. 2 was appointed enquiry officer. A charge-sheet dated 30.6.1998 was served on the petitioner on 2.7.1998. There were as many as 12 charges against the petitioner. He submitted a detailed reply to each one of the charges on 18.8.1998. A report of enquiry dated 28.9.1998 was submitted by the enquiry officer-respondent No. 2. A copy of the report of enquiry is Annexure-14 to the writ petition. A notice was issued to the petitioner on 22.1.1999 to show cause and ultimately after taking into consideration the reply submitted by the petitioner, he was removed from service on 27.1.1999, a copy of which is Annexure-16.

2. The order of removal dated 27.1.1999 has been challenged by the petitioner on variety of grounds and it is prayed that it may be quashed and the respondent No. 1 be directed to pay arrears of salary w.e.f. 1.5.1998 onwards.
3. Counter and rejoinder-affidavits have been exchanged. Heard Dr. R. G. Padia, learned counsel for the petitioner and learned standing counsel. In the counter-affidavit, it has been maintained that the order of removal of the petitioner from service has been rightly passed after certain serious charges of misdemeanor and misconduct on his part have been substantiated. It was maintained that the enquiry has been conducted in accordance with the procedure prescribed by law and since the order of removal is commensurate to serious charges established against the petitioner, no interference under Article 226 of the Constitution of India is warranted.
4. A close scrutiny of the documents brought on record indicates that Dr. Darshan Singh Rajput, Sub-Divisional Extension Officer, Karwi, Chitrakoot, who has passed the impugned order of removal of the petitioner from service, has a positive animus against him. The petitioner as well as Dr. Darshan Singh Rajput are residents of district Hamirpur. Their villages are not too far off and are located at a distance of 3-4 Kms. The brother of the present petitioner was murdered in 1985. Some close relatives of Dr. Darshan Singh Rajput were interrogated by local police of Police Station Jariya in connection with the murder of the brother of the petitioner. It is in this background that it has been alleged that Dr. Darshan Singh Rajput had entertained a feeling of ill-will against the petitioner and he was out to teach him a lesson. The fact that Dr. Darshan Singh Rajput was apprehensive of some untoward incident on account of the alleged conduct of the petitioner is well reflected from the two D.O. letters, dated 5.6.1998 and 19.5.1998, Annexures 22 and 23, respectively addressed to Sri Shambhoo Nath Singh, the then District Magistrate, Chatra Pati Sahuji Maharaj Nagar (now Chitrakoot). These letters indicate that Dr. Darshan Singh Rajput was mentally disturbed on account of the behaviour of the petitioner and was not in a sound situation or position to perform his official duties. He was so much afflicted with the fear of any untoward incident that he requested the District Magistrate in most apologetic manner that he may be transferred outside the division. The tone and tenor of these two letters is sufficient to, establish that the appointing authority, i.e., Dr. Darshan Singh Rajput had a serious pique against the petitioner and it was for this reason that he sat tight over the report of enquiry submitted by the enquiry officer, Sri Ramesh Chandra Shukla, District Agriculture Officer. The enquiry report was submitted on 28.9.1998. A show cause notice was issued to the petitioner with regard to the proposed punishment after more than three months of the receipt of the enquiry report. It is common knowledge and every departmental authority is expected to know that the show cause notice should accompany the enquiry report. In this case, enquiry report was not sent to the petitioner though he submitted his reply, Annexure-A15, on 25.1.1999 and demanded the report of enquiry. Later on, a report of enquiry was given to the petitioner on 25.1.1999. Without waiting for the reply/comments of the petitioner, order of removal, Annexure-16, was passed on 27.1.1999. January 26, 1999 was national holiday on

account of Republic day. It indicates that Dr. Darshan Singh Rajput was in hot haste in passing the order of extreme punishment against the petitioner.

5. The orders on the report of enquiry were passed after some pressure was mounted on Dr. Darshan Singh Rajput by the higher authorities to finalise the matter. To justify the delay, Dr. Rajput required the enquiry officer to make his recommendations with regard to the proposed punishment. Through letter dated 17.12.1998, Annexure-17 of the writ petition, the enquiry officer suggested the following punishments :

(1) An adverse entry be awarded to the delinquent official and he should not be entrusted with any work concerning drawing and disbursement of funds.

(2) Stoppage of one increment.

It was also suggested that the petitioner be reinstated with immediate effect so that he may get justice. It appears that the respondent No. 1 sent another letter on 30.12.1998 to the enquiry officer concerning the proposal for punishment to be awarded to the petitioner. A reply to the said letter was sent again by the enquiry officer on 2.1.1999, Annexure-18 to the writ petition. In this letter, the enquiry officer has clearly specified that the various serious charges against the petitioner have not been established so as to warrant infliction of any major punishment. It was further pointed out that even the charges which have been substantiated against the petitioner are such, in which the petitioner cannot be held solely responsible and, therefore, it was reiterated that minor punishment, which was proposed earlier in his letter dated 17.12.1998, Annexure-17 to the writ petition, may be imposed. An early decision in the matter was solicited so that the petitioner and his family members may not unnecessarily suffer for an indefinite period. From the above correspondence. It is clear that the enquiry officer was Insisting for award of minor punishment to the petitioner as in most of the serious charges, he had been exonerated and in some of the petty charges, he was not found solely responsible. In spite of the positive recommendation of the enquiry officer, which was required to be submitted by the disciplinary authority himself, Dr. Darshan Singh Rajput passed the impugned order of removal of the petitioner from service. It shows the vindictive ness of the disciplinary/appointing authority in dealing with his employee.

6. There is yet another aspect of the matter. The petitioner was suspended on 29th May. 1998 in contemplation of departmental enquiry. Since then, the petitioner was not paid any subsistence allowance by the disciplinary authority though under the rules, it was the bounden duty of the authority to pay subsistence allowance. Dr. Padia pointed out that the entire enquiry was vitiated on account of non-payment of subsistence allowance. In support of his contention, he placed reliance on various decisions of the Apex Court, such as. [State of Maharashtra Vs. Chandrabhan Tale](#), ; Fula Bhai Solani v. Presiding Officer and another, 1996 52FLR 688 SC ; Ghanshyam Das Srivastava v. State of U. P., 1973 27 FLR 466 SC and to cap all the above decisions, emphatic reliance was placed on a recent decision of the Supreme Court in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.

and another, 199 892 FLR 627, in Paul Anthony's case, (supra), all the earlier cases have been referred to.

7. As regards grant of subsistence allowance. It may be mentioned that it is not bounty or charity, which is extended to a Government Servant. On joining the Government Service, a person does not mortgage or barter away his basic rights as a human being, Including the fundamental rights conferred on him by virtue of our Constitution. As has been observed in Capt. M. Paul Anthony's case. (supra), the Government, only because it has the power to appoint, does not become the master of the body and soul of the employee. The Government by providing job opportunities to its citizens only fulfils its obligations under the Constitution, Including the Directive Principles of the State Policy. The employee, on taking up an employment only agrees to subject himself to the regulatory measures concerning his service. An order of suspension does not put an end to his service under the Government. He continues to be a member of the service though he is not permitted to work and is paid only subsistence allowance which is less than his usual salary. In this connection, a reference may be made to the [The State of Madhya Pradesh Vs. The State of Maharashtra and Others](#), . Service Rules usually provide for payment of salary at a reduced rate during the period of suspension and this amount is known as subsistence allowance. If there is no provisions in the Rules, applicable to a particular class of service for payment of salary at reduced rate, the employer would be liable to pay full salary even during the period of suspension. When an employee is placed under suspension, he and his family members are visited-with evil consequences. He is demobilized, de-established and is rendered to a state of vagrancy if even the meagre amount of subsistence allowance is not paid to him. Subsistence allowance means that it is just enough to make both ends meet and If the said amount is also not paid during the period of suspension, the provision for payment of subsistence allowance during the period of suspension would be rendered otiose. In Capt. M. Paul Anthony's case (supra), the Apex Court has cautioned that the act of non-payment of subsistence allowance can be likened to slow-poisoning as the employee. If not permitted to sustain himself on account of non-payment of subsistence allowance, would gradually starve himself to death.

8. It was, virtually a revengeful act of Dr. Darshan Singh Rajput who had withheld the payment of subsistence allowance to the petitioner." The innate right of the petitioner to get the minimum of the amount of salary for the sustenance of himself and his family members was deliberately denied. There was no earthly reason for taking away the aforesaid right of payment of subsistence allowance to the petitioner. Obviously, an employee who is financially handicapped and is made to starve, cannot effectively defend himself in a departmental proceeding. A person facing departmental enquiry has to run here and there to collect the documents in order to meet the charges : move about to consult his seniors well versed in the procedure concerning departmental proceedings, and since his very existence in the Government employment is at stake, he may be required to take legal assistance. The arduous exercise which is undertaken by a

delinquent employee during the course of disciplinary proceedings, cannot but be imagined. Besides the mental torture and agony, he has to spend considerable amount which drains out his already depleted resources of income. In these circumstances, it is extremely cruel not to pay the subsistence allowance to the suspended employee. After taking into consideration the fact that the petitioner did participate in the , enquiry, which was conducted locally. I will not go to the extent in concluding that the entire enquiry was vitiated on account of nonpayment of subsistence allowance, but will certainly record displeasure of the Court that the petitioner was treated in a very harsh manner by the disciplinary authority.

9. Dr. Padia, learned counsel for the petitioner pointed out that the order of removal is bad in law not only on the ground that it was passed by a person who entertained ill-will and grudge against the petitioner but also on the basis of the fact that no notice to show cause was given before passing the impugned order of removal, particularly keeping in view the fact that the recommendations of the enquiry officer in the matter of punishment were deviated from. In substance, the submission of Dr. Padia is that if the disciplinary authority differs from the punishment suggested by the enquiry officer, a notice to show cause is necessarily to be given to the delinquent employee before inflicting major penalty. This submission of Dr. Padia is founded on the decision dated 25.11.1997 passed by this Court in Civil Misc. Writ No. 19030 of 1991. A. D. Sewak v. State of U. P. and another, in which reliance was placed on a Division Bench decision of this Court in Dr. Ram Naresh Singh v. State of U. P., 1994 SCC 437. The view taken was that if the disciplinary authority clearly expresses that he was not in agreement with the opinion of the enquiry officer, in that event, the law requires that the disciplinary authority was to give the petitioner an opportunity. Since in that case, the disciplinary authority did not give any opportunity to the delinquent employee, the order impugned was quashed. I am in full agreement with the decision aforesaid.

10. The charge-sheet served on the petitioner consisted of as many as 12 charges, some of them were very nasty and serious, while few of them related to the lapses, which included negligence and carelessness on the part of the petitioner in the performance of his duties. The various serious charges could not be established against the petitioner. The charges which were established against the petitioner did not justify his removal from service. This punishment has resulted in hitting below the belt and is highly disproportionate to the gravity of some of the charges established against the petitioner.

11. The Impugned order of removal dated 27.1.1999, Annexure-16 to the writ petition, cannot be sustained, firstly, for the reason that the said order has been passed by an officer/disciplinary authority who was not prepared to see eye to eye and was positively hostile to the interest and well being of the petitioner ; secondly, the order of punishment has been passed in opposition to the recommendation of minor punishment made by the enquiry officer without giving an opportunity of hearing to the petitioner or a notice to show cause and, thirdly, the punishment or removal is highly disproportionate to the gravity of some of the charges established against the petitioner. For all these reasons,

the order of removal from service is to be quashed.

12. In the result, the writ petition is allowed and the impugned order dated 27.1.1999 (Annexure-16 to the writ petition) removing the petitioner from service is hereby quashed. It is, however, made clear that the disciplinary authority/appointing authority-respondent No. 1 (other than Dr. Darshan Singh Rajput) shall be entitled to conclude the disciplinary proceedings against the petitioner, in accordance with law, from the stage the enquiry report was submitted. This exercise shall be concluded within three months from the date of production of a certified copy of this judgment and order. The question of payment of full salary, or otherwise, during the period of suspension, shall be decided by the disciplinary authority/appointing authority according to rules and keeping in view the proportionate punishment, which may be passed on the basis of established charge(s) against the petitioner. It is further directed that the entire amount of arrears of subsistence allowance w.e.f. 29.5.1998, on which date the petitioner was placed under suspension, till 30.9.1999 shall be positively paid to the petitioner (at the rate of 50% of the salary for first six months and 75% for the remaining period) on or before 25th October, 1999 and the subsistence allowance from 1.10.1999 onwards, till he remains under suspension, shall be paid by 15th day of every succeeding month.