

Writ Petition No.3057/1999**07.12.2016**

Shri P.N.Dubey, learned counsel for petitioner.

None for the respondents.

This petition is pursued by the legal representative, who is substituted in place of the original petitioner who expired during the pendency of the present petition.

The original petitioner employed with Madhya Pradesh Leather Development Corporation being proceeded against in a departmental enquiry vide charge-sheet dated 08.02.1999 had filed this writ petition seeking quashment thereof.

That by order dated 16.07.1999 while issuing notice on admission/disposal, the respondents were permitted to proceed with the enquiry but were prohibited from passing the final orders.

That during pendency of the petition, original petitioner expired. The question is whether in these given facts valid it will be for the employer to proceed with the departmental inquiry and pass final order.

In this context reference can be had of the decision in **Basudeo Tiwary vs. Sido Kanhu University AIR 1998 SC 3261**, wherein it is held :

“14. The appellant has since demised during the pendency of these proceedings, no further direction either as to further inquiry or

reinstatement can be given. We declare that the termination of the appellant by the respondent as per the notification referred to by us is invalid. Consequently, it would be deemed that the appellant had died in harness. Needless to say that the appellant would become entitled to the payment of arrears of salary from the date of termination of his services upto the date of his death on the basis of last pay drawn by him. Let Respondent take action within a period of three months from today to work out the arrears due to the appellant from the date of his termination till his death and pay the same to his legal representatives.”

Furthermore, since trite it is that the departmental enquiry is complete only when final order is passed by the disciplinary authority. For an authority please see : Judgment in Yoginath D.Bagde vs. State of Maharashtra AIR 1999 SC 3734; wherein it is held :

“33. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those

findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution."

In the case at hand, evidently, no final order has been passed against the original petitioner, may be because of interim order, and since he expired before passing of final order, the entire departmental enquiry stands abated as

would warrant any action by the respondents. Since the departmental enquiry proceedings stands abated, the original petitioner stands exonerated of all the charges against him framed in departmental enquiry. The consequence shall ensue.

Petition is disposed of finally in above terms.

(SANJAY YADAV)
JUDGE

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