

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 1427 of 2011**

B.P. Mehta S/o Nanhu Lal Mehta, aged about 67 years, R/o Girdhari Nagar,
Ward No.9, Durg, Tehsil and Distt. Durg, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary, Department of Revenue, DKS Bhawan, Mantralaya, Raipur, Chhattisgarh.
2. The Collector, Distt. Durg, Chhattisgarh.
3. The Deputy Collector, Distt. Durg, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri BP Singh and Shri Purnendra Khichariya, Advocates.
For Respondents/State	:	Shri B.Gopa Kumar, Deputy Advocate General.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****17/09/2015**

1. The petitioner through the present petition is challenging the order dated 21.01.2011 (Annexure P/1) whereby the disciplinary authority has regularized the suspension period i.e. 03.09.1986 to 08.12.1986 for the purpose of calculating the pensionary benefit and that the Petitioner except for the subsistence allowance would not be entitled for any monetary benefit for the suspension period.
2. Learned counsel appearing for the Petitioner submits that it is a case where the Petitioner was placed under suspension on 03.09.1986 and was subsequently terminated from service on 09.12.1987. The order of

termination was subsequently quashed by the Commissioner on 07.10.1989. According to Petitioner, after setting aside the order of termination, the Commissioner had granted liberty to the Collector to conduct fresh inquiry, if he deems fit, and on the basis of which, the Collector initiated a fresh inquiry.

3. The said order of granting liberty to the Collector to conduct fresh inquiry was subjected to challenge before the High Court of Madhya Pradesh by the Petitioner in which an interim order was also granted in favour of Petitioner against the departmental enquiry. Subsequently, the said petition got dismissed for want of prosecution which has not been restored and as such, dismissal of writ petition had attained its finality. Meanwhile, by virtue of interim order granted by the MP High Court, the departmental inquiry initiated by the disciplinary authority got stalled for a considerable period of time and that it was only much later that the Petitioner himself brought this fact to the notice of the authorities, who thereafter proceeded and finally submitted the enquiry report in favour of the Petitioner on 27.03.2009. Based upon the said report the competent authority by order dated 05.01.2010 held that the period while the Petitioner was out of service i.e. from 09.12.1987 to 18.10.1989 shall be treated as 'No Work No Pay' and that the suspension period from 03.09.1986 to 08.12.1987 shall be treated as spent on duty only for the purpose of granting pension and pensionary benefit.
4. Subsequently, order dated 21.01.2011 (Annexure P/1) was also passed on behalf of the Collector/competent authority holding that for the period the Petitioner was placed under suspension, he shall not be eligible for any monetary benefits except for the subsistence allowance that he has received. This, according to Petitioner is illegal, harsh and also arbitrary for the reason that the Petitioner has been subjected to departmental enquiry twice and on both the occasions he has been exonerated from the charges

and since no charge has been established against him, he should not be for no fault of his be penalized for the period he was placed under suspension, and therefore, the Petitioner should be granted difference of wages with that of subsistence allowance that he has received.

5. Per contra, learned counsel appearing for the State submits that the action on the part of Respondents is clearly in accordance with provisions of rules governing the service conditions of the Petitioner. He would further submit that admittedly the Petitioner was placed under suspension w.e.f. 03.09.1986 to 08.12.1987 as there was serious allegations against him and it was only in the course of Departmental Enquiry the Petitioner has been exonerated from the charges leveled against him and therefore the Petitioner is not entitled for the benefits during the period of suspension. Therefore, the delay in the conclusion of the departmental enquiry was attributed to the Petitioner.
6. Counsel for the State referring to FR-54-B of Fundamental Rules, wherein the power has been conferred on the competent authority to decide the period of suspension, would submit that there is no infirmity with the order passed by the Respondents and the petition deserves to be dismissed.
7. Considering the total facts and circumstances of the case and also taking note of the fact that the Petitioner in the present petition has not disclosed the fact that he had on earlier occasion challenged the action of the Commissioner dated 07.10.1989 before the High Court of Madhya Pradesh in which initially an interim order was granted due to which Departmental Enquiry against the Petitioner got stalled for a very long time. The enquiry was ultimately concluded much after his retirement, and the Petitioner himself is to be blamed if the Departmental Enquiry has been prolonged even after his retirement. Therefore, it cannot be said that the authorities

concerned have acted in any arbitrary manner or have taken a decision contrary to the rules.

8. For ready reference, the provisions of FR-54-B(1) is re-produced as under :

“F.R. 54-B(1) When a Government servant who has been suspended, is re-instated or would have been so re-instated but for his retirement on superannuation while under suspension, the authority competent to order re-instatement shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with re-instatement or the date of his retirement on superannuation, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.”

9. Once the power has been conferred upon the authorities concerned under FR-54-B of Fundamental Rules and the said power has been exercised, in the given facts and circumstances of the case, it cannot be said that the authorities concerned have taken a view which was not plausible or have taken a decision contrary to the law.
10. For the foregoing reasons, this court does not find any infirmity in the order impugned warranting interference of this court. The petition being devoid of merit is liable to be and is hereby dismissed. No order as to costs.

Sd/-

(P.Sam Koshy)
Judge