

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 2053 of 2015**

B.S. Netam S/o Late Shri R.S.Netam Aged About 64 Years R/o Gram Mangal Tarai, Post Singhoula, Police Station Daundi, Tahsil and District Balod, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh Through Secretary, Ministry Of Forests, Mahanadi Bhawan, Police Station Rakhi, Naya Raipur, District Raipur, Chhattisgarh
2. Division Forest Officer, Drug Division, Durg, District Durg Chhattisgarh
3. Divisional Joint Director, Department Of Treasury, Accounts And Pension Durg, District Durg Chhattisgarh

----Respondents

For Petitioner	:	Mr. Kashif Shakeel, Advocate
For State	:	Mr. Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****30/04/2018**

1. The order under challenge is to Annexure P/1 dated 12.05.2015, whereby the respondents have issued an order of recovery to the tune of Rs.89,822/- against the petitioner.
2. The petitioner in the instant case stood retired from service on 31.05.2010. After the retirement the petitioner has been paid 90% of the gratuity amount in pursuant to a notice of recovery which was pending against the petitioner. Later on the impugned order Annexure P/1 has been issued seeking for a recovery of an amount of Rs.89,822/- which is alleged to have been paid in excess to the petitioner on account of wrong calculation made by the respondents so far as the length of service of the petitioner is concerned.
3. According to the respondents, due to inadvertence the period of training, which the petitioner had undergone has also been taken into consideration as qualifying service while counting the total length of

service of the petitioner and have paid the said amount which was recoverable from the petitioner.

4. It would be relevant at this juncture to refer to rule 63(9) of the Chhattisgarh Civil Services (Pension) Rules, 1976, which for ready reference is reproduced herein under:-

“63(9) If the amount of anticipatory gratuity disbursed by the Head of Office proves to be in excess of the amount finally assessed by the Audit Officer, the gratuitant shall not be required to refund the excess.”

5. The plain reading of the aforesaid provision shows that even if inadvertently certain excess payment has been made while releasing of the provisional gratuity amount, the said amount cannot under any circumstances ask to be refunded by the employee concerned. Moreover, the impugned order of recovery also would not be sustainable for the reason that the concerned Divisional Forest Officer has vide its noting dated 17.11.2014 (Annexure P/4) has categorically held that the petitioner has undergone the training period after an order of appointment duly was issued in his favour and he has continuously discharged his duties, even as a trainee with the respondents.
6. Given the said note of the Divisional Forest Officer dated 17.11.2014 (Annexure P/4), also the impugned order of recovery (Annexure P/1) dated 12.05.2015 is not sustainable and the writ petition accordingly deserves to be and is allowed. The impugned order of recovery dated 12.05.2015 stands set-aside/quashed.
7. The writ petition accordingly stands disposed off.

Sd/-
(P. Sam Koshy)
Judge