

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 3143 of 2015**

P. D. Gupta S/o Late Shri Ram Pratap Gupta, Aged About 65 Years
Retired Forest Ranger, At- Forest Range, Kuwanrpur, Forest Division,
Manendragarh, District Korea, Chhattisgarh, R/o Village And P. O.-
Viohari, District Sahdol, Madhya Pradesh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through- Its Secretary, Department Of Forest, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh, Chhattisgarh
2. The Prime Chief Conservator Of Forest, Chhattisgarh, H. Q.- Aranya Bhawan, Jail Road, Raipur, Chhattisgarh
3. The Divisional Forest Officer, Forest Division, Manendragarh, District-Korea, Chhattisgarh

----Respondents

For Petitioner	:	Mr. Rajesh Kumar Kesharwani, Advocate
For State	:	Mr. Adhiraj Surana, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****15/05/2018**

1. The challenge in the present writ petition is to the order dated 22.07.2014 (Annexure P/6) and also to the order dated 09.06.2015 (Annexure P/1), which is an order of punishment of recovery to the tune of Rs.5,27,095/- and also reduction of pension by 20% for a period of 5 years and also the subsequent appeal which stood rejected vide Annexure P/1.
2. At the outset, the counsel for the petitioner submits that it is a case where the charge sheet itself was served upon the petitioner after his retirement that was on 31.01.2010 and the charge sheet was issued to him on 23.02.2011. He submits that it is a case where there is a clear violation of rule 8(3) of the Chhattisgarh Civil Services (Pension) Rules, 1976. It was further contended by the counsel for

the petitioner that the case of the petitioner is also squarely covered by a recent decision of this Court in WPS No. 464/2017 decided on 03.05.2018.

3. The State counsel however opposing the petition submits that the petitioner while in service was found to have committed certain irregularities, to which a charge sheet and departmental enquiry was conducted and an order was finally passed vide Annexure P/1 and therefore it cannot be said to be a case where the petitioner was not granted an opportunity of hearing. Further he submits that the order of punishment was only to the extent of the loss caused to the department and after 5 years of time, the petitioner's status would be restored back monetary wise and as such he would not be thereafter put to any loss and prayed for the rejection of the writ petition.
4. Having heard the contentions put forth on either side and on perusal of the record, it would be relevant at this juncture to refer to the decision of this Court in WPS No. 464/2017, decided on 03.05.2018. In the said case, this Court has in paragraph No.7 ordered as under:

“7. Given the aforesaid factual matrix of the case and also in the light of the fact that there is no material brought on record by either of the respondents to show that there was compliance made as is required under Rule 8 (3) (a) of the Rules of 1976, this Court is inclined to hold that the impugned order dated 26.12.2016 which was communicated to the petitioner vide Annexure P-1 dated 07.11.2017 is bad in law to the extent of having not complied the provisions of Rule 8 (3) (a) of the Rules, 1976. The respondents would be at liberty if they wish to, to proceed against the petitioner in accordance with law from the stage of the submission of the enquiry report by the enquiry officer to the Disciplinary Authority.”

5. Perusal of the record would show that in the instant case also the

mandatory requirement, as is envisaged under sub-Rule (3) of Rule 8, has not been complied with by the respondents before issuance of the order.

6. There is also an order of this High Court in the case of “V.K. Lal vs. State of Chhattisgarh & Another” WPS No. 1063/2012, decided on 12.02.2015, whereby this Court again for non-compliance of the provisions of Rule 8(3) of the Pension Rules, the order of punishment was set-aside/quashed. In paragraphs No.8 & 9 of the said judgment, it was held as under:

“8. Rule 8(3)(a) of the Rules provides that in case the petitioner is found prima facie guilty of grave misconduct before imposition of any punishment a show cause notice is required to be given. In the return filed by the respondents it has nowhere been stated that any show cause notice as required under Rule 8(3)(a) of the Rules was given to the petitioner. During the arguments, it has also been admitted that no show cause notice as required under Rule 8(3)(a) of the Rules was given to the petitioner.

9. Considering the submissions as advanced by the parties and the admitted position that before passing the order impugned (Annexure P/1) no show cause notice as required under Rule 8(3)(a) of the Rules was given to the petitioner, the same is liable to be quashed and is hereby quashed. The pensionary benefits of the petitioner are directed to be restored. However, the respondents would be at liberty to proceed against the petitioner strictly in accordance with law, if so required.”

7. Given the aforesaid facts, this Court is of the opinion that, the case of the petitioner also squarely falls within the parameters laid down by the High Court in the aforesaid two judgments and the impugned orders dated 22.07.2014 (Annexure P/6) and 09.06.2015 (Annexure P/1) are not sustainable and the same deserve to be set-aside and are accordingly set-aside.
8. The writ petition thus stands allowed and disposed off consequences

to follow.

9. Any recovery, which has been made as a consequence, would have to be refunded back to the petitioner forthwith within a period of 90 days from today.

Sd/-
(P. Sam Koshy)
Judge

Ved