

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 6157 of 2014**

R. M. Patel S/o Late Bhupdev Singh Patel, aged about 63 years, Retired Forest Ranger, O/o the Divisional Forest Officer, Raigarh Division, Raigarh, C.G. R/o M -2, Songanga Colony, Sarkanda, Bilaspur, Distt. Bilaspur, C.G.

---- Petitioner**Versus**

1. State of Chhattisgarh through its Secretary, Department of Forest, Mantralaya, Mahanadi Bhawan, Naya Raipur C.G.
2. The Prime Chief Conservator of Forest, Chhattisgarh, H.Q. Aranya Bhawan, Medical College Raipur, C.G.
3. The Divisional Forest Officer, Raigarh Division, Distt. Raigarh C.G.

---- Respondents

For Petitioner	:	Shri R. K. Kesharwani, Advocate
For Respondent/State	:	Shri Adhiraj Surana, Dy. Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****07.05.2018**

The challenge in the present writ petition is to the order dated 04.11.2011 (Annexure P-1) passed by the Secretary, Forest Department, State of Chhattisgarh. Vide the impugned order, the authority concerned has imposed the petitioner with a punishment of recovery of an amount of Rs.1,65,768/-.

2. The status of the petitioner is that of a retired Ranger Officer in the Forest Department who stood superannuated w.e.f. 30.06.2011. The petitioner while in service was served with a charge sheet on 07.11.2001 and after completion of enquiry, the enquiry report was submitted by the

enquiry officer on 28.07.2007. A show cause notice subsequently along with an enquiry report was sent to the petitioner vide order dated 05.08.2007. Thereafter no decision was taken by the respondents on the show cause notice and they permitted the petitioner to superannuate on 30.06.2011. After retirement of the petitioner on 30.06.2011, the impugned order now has been passed by the Secretary, State of Chhattisgarh Forest Department on 04.11.2011.

3. The rule position so far as a retired employee is concerned, it is Rule 9 of the Chhattisgarh Civil Services (Pension) Rules, 1976 which would be applicable in the instant case. Sub Sections 1 & 2 of Rule 9 reads as under:

“9. Right of governor to withhold or withdraw pension. -

(1) The Governor reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from pension of the whole or part of any pecuniary loss caused to the Government if, in any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

Provided that the State Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below [the minimum pension as determined by the Government from time to time];

(2) (a) The departmental proceedings, if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced, in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the Governor, that authority shall submit a report regarding its findings to the Governor.

(b) The departmental proceedings, if not instituted while the

Government servant was in service whether before his retirement or during his re-employment:-

- (i) shall not be instituted save with the sanction of the Governor;
- (ii) shall not be in respect of any event which took place more than four years before such institution; and
- (iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings.”

4. Perusal of the record particularly the contentions raised by the respondents in their reply so also from the contents of the impugned order it appears that the impugned order has not been issued by the Governor of the State so also it reflects that the Governor was not taken into confidence before issuance of Annexure P-1. It also reveals that even the Public Service Commission was not consulted before issuance of the impugned order. The respondents have not been able to give any satisfactory explanation for not undertaking the aforesaid exercise which is otherwise statutorily required under Rule-9 of the Pension Rules, 1976.

5. Given the aforesaid factual position, this Court has no hesitation in holding that the impugned order is not sustainable and is violative of Rule-9 of Chhattisgarh Civil Services (Pension) Rules, 1976. Accordingly, the impugned order dated 04.11.2011 Annexure P-1 is set aside with consequences to follow.

6. The writ petition thus stands allowed.

Sd/-
P. Sam Koshy
Judge