

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 4090 of 2015**

R. M. Patel S/o Late Bhupdev Singh Patel, aged about 64 years,
Retired Forest Ranger, O/o the Divisional Forest Officer, Raigarh
Division, Raigarh, Chhattisgarh, R/o M-2, Songanga Colony,
Sarkanda, Bilaspur, District Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh through its Secretary, Department of Forest,
Mantralay, Mahanadi Bhawan, Naya Raipur, Chhattisgarh
2. The Principal Chief Conservator of Forest, Chhattisgarh, H. Q.
Aranya Bhawan, Medical College Road, Raipur, Chhattisgarh
3. The Chief Conservator of Forest, Bilaspur Circle, Bilaspur
Chhattisgarh, H. Q. Sindhi Colony, Jarhabhata, Bilaspur,
Chhattisgarh
4. The Divisional Forest Officer, Raigarh Division, Raigarh Chhattisgarh
5. The Chhattisgarh Public Service Commission, Raipur, H. Q. Shankar
Nagar Road, Raipur Chhattisgarh

---- Respondents

For Petitioner	:	Shri R. K. Kesharwani, Advocate
For Respondents 1 to 3	:	Shri Adhiraj Surana, Dy. Govt. Advocate
For Respondent no. 5	:	Shri Keshav Shankar Nande, Advocate

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

The challenge in the present writ petition is Annexure P-1 dated
31.08.2015 passed in the name of Governor of the State of Chhattisgarh.
Vide the impugned order, the respondents have imposed punishment of
withholding 50% of pension of the petitioner.

2. Contention of the counsel for petitioner is that the petitioner for the same set of misconduct/charge has already been prosecuted by the respondents and also inflicted with an order of punishment of recovery of an amount of Rs.1,65,768/- vide order dated 04.11.2011 passed by the Secretary, Forest Department, Govt. of Chhattisgarh. Since the petitioner has already been punished, the present impugned order would amount to double jeopardy for the reason that the petitioner cannot be punished for the same repeatedly. Even on merits, the present order does not seem to be technically sustainable for non compliance of the provisions of Rule 8 (3) of Chhattisgarh Civil Services (Pension) Rules, 1976.

3. Counsel for the respondents tried to justify the issuance of Annexure P-1 on the ground that it is only now that the departmental enquiry is concluded and therefore to bring it to a logical conclusion, the authority concerned has passed the order of punishment under Rule-9 of the Pension Rules, 1976.

4. So far as the earlier order of punishment dated 04.11.2011 is concerned, the reply of the respondents is silent in this regard. The order dated 04.11.2011 is under challenge before this Court in WPS No. 6157/14, the order is also annexed as Annexure P-6 in the present writ petition. A plain reading of the said document by itself would reveal that the petitioner has been inflicted with punishment of recovery for the same set of allegation and the charge/misconduct.

5. Given the facts, the present subsequent order Annexure P-1 dated 31.08.2016 definitely amounts to double jeopardy so far as the petitioner is concerned as he has already been punished for the said offence once and he cannot be punished for the same set of charges again.

6. The impugned order Annexure P-1 also suffers from non compliance of the statutory requirement under Rule 8 (3) of the Pension Rules. Recently this Court had an occasion of dealing with the said issue of Rule 8 (3) in WPS No. 464/2017 in the case of G. K. Shrivastava Vs. State of Chhattisgarh and another wherein paragraphs-5 & 6 this Court has held as under:

“5. So far as whether there was a compliance of the provisions of Rule 8 (3)(a) of the Rules, 1976 is concerned, counsel for the respondents are not in a position to justify whether there was a compliance of the requirement of law or not.

6. At this juncture it would be relevant to refer to the decision of this Court in WPS No. 1063/2012 on 12.02.2015 in the case of V. K. Lall Vs. State of Chhattisgarh and another, whereby under similar set of facts, this Court has held that non compliance of the mandatory requirement under Rule 8 (3) (a) of the Rules, 1976 would vitiate the action taken by the Department. For ready reference, the operative part of the said order passed by this Court in WPS No. 1063/12 is reproduced hereinunder:

“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. 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 legal position so also the aforesaid factual matrix of the case, for the reason that firstly the statutory compliance as is required under Rule 8 (3) of the Pension Rules, 1976 having not been complied with

and also the fact that vide Annexure P-6 dated 04.11.2011, the petitioner having already been punished for the same set of allegation, the subsequent order could not have been issued. The impugned order dated 31.08.2015 Annexure P-1 thus deserves to be and is accordingly set aside/quashed.

8. The writ petition accordingly stands allowed.

**Sd/-
P. Sam Koshy
Judge**