

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 464 of 2017**

G. K. Shrivastava S/o Late B. N. Shrivastava, aged 64 years, Retired Assistant Conservator of Forest, O/o the Chief Conservator of Forest (Wild Life) and Regional Director, Udanti Sitanadi Tiger Reserve, Raipur, Chhattisgarh. R/o H. No. 138, Sunder Nagar, Raipur, District Raipur, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh through its Secretary, Department of Forest, Mantralay, Mahanadi Bhawan, Naya Raipur, Chhattisgarh
2. The Chhattisgarh Public Service Commission, Raipur through its Secretary, Shankar Nagar Road, Raipur Chhattisgarh

---- Respondents

For Petitioner	:	Shri R. K. Kesharwani, Advocate
For Respondent no.1	:	Shri Adhiraj Surana, Dy. Govt. Advocate
For Respondent no.2	:	Shri Ashish Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****03/05/2018**

The challenge in the present writ petition is to the order dated 07.01.2017 (Annexure P-1) whereby the order of punishment dated 26.12.2016 was communicated to the petitioner. Vide the impugned order, the respondents have inflicted the petitioner with a punishment of recovery to the tune of Rs.25,67,814/-.

2. The challenge in the present writ petition is on the limited ground of the impugned order being bad in law for the reason that the same is in violation of the provisions of Rule-8(3)(a) of Chhattisgarh Civil Services

(Pension) Rules of 1976 (for short “the Rules, 1976”).

3. The contention of the counsel for the petitioner is that the requirement of Rule 8 (3) (a) of the Rules, 1976 is to issue a show cause notice to the delinquent employee and also furnish him a notice on the proposed punishment and thereafter, an appropriate order ought to have been passed by the Disciplinary Authority whereas in the instant case, the said requirement of law prescribed under Rule- 8(3) (a) of the Rules, 1976 has not been complied with.

4. Counsel for the respondents submits that the action against the petitioner was after a duly conducted departmental enquiry wherein he had also participated and he was granted full opportunity of defence, therefore, the impugned order having been passed subsequently could not be challenged by the petitioner now. Counsel for the respondents submit that the finding of the enquiry officer is also that of the petitioner being guilty of causing huge loss to the respondents by the act of financial irregularities on the part of the petitioner.

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.

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 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.

8. The writ petition accordingly stands disposed of.

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