

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 992 of 2011**

Budheshwar Singh Gond, S/o. Dokri Ram Gond, Aged about 61 years, R/o. Indrasen Nagar, 27 Kholi, Mangla, Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department of Panchayat and Rural Development, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh.
2. The Chief Engineer, Rural Engineering Services, O/o. Development Commissioner, Civil Lines, Raipur, Chhattisgarh
3. The Collector, District Janjgir-Champa Chhattisgarh
4. The Executive Engineer, Rural Engineering Services, Division Janjgir, District Janjgir-Champa Chhattisgarh

---- Respondents

For Petitioner	:	Mr. N. Naha Roy, Advocate
For State	:	Ms. Abhyunnati Singh, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****05/11/2019**

1. The main relief sought for by the petitioner in the present writ petition was seeking a restrain against the respondents from recording fresh evidences in the departmental enquiry proceedings initiated against the petitioner.
2. The facts of the case is that the petitioner while working as an Assistant Engineer was issued with a charge-sheet on 06.04.2005 in respect of certain irregularities committed while he was working as a Sub-Divisional Officer in district Janjgir-Champa.
3. In due course of time, the petitioner on attaining the age of superannuation stood retired from service on 31.05.2010. The Inquiry officer appointed for conducting the departmental enquiry against the petitioner in respect of the charge-sheet dated

06.04.2005 submitted his report on 30.08.2010. The inquiry report was in favour of the petitioner in as much as the Inquiry officer has held that the charges are not proved against the petitioner. Thereafter, the Disciplinary Authority had not passed any further order as is evident from the pleadings of the writ petition, so also evident from the reply submitted by the State Government in this regard. However, subsequent to inquiry report being submitted the Inquiry officer again issued Annexure P/6 dated 23.12.2010 calling upon the Presenting Officer to remain present before him as the Inquiry officer intends to record further evidences in respect of the charges leveled against the petitioner. It is this action which is under challenge in the present writ petition.

4. The contention of the petitioner is that the letter dated 23.12.2010 is per se illegal for the reason that the Inquiry officer is denuded of his power once he submits his inquiry report, unless he is instructed by the Disciplinary Authority, the Inquiry officer suo motu could not have reopened the inquiry for recording of additional evidence. The petitioner, thus, prayed for the quashment of Annexure P/6 and also sought for giving an appropriate direction to the respondents for releasing of the retiral dues, which has not been released to the petitioner till date.
5. The petitioner in the instant had an interim protection in his favour since 21.02.2011. Annexure P/6 by virtue of this interim order has not been acted upon any further. What has to be seen at this juncture is that admittedly the Inquiry officer was appointed to inquire into the charges leveled against the petitioner vide charge-sheet

dated 06.04.2005 he has submitted his report on 30.08.2010. The inquiry report stood in favour of the petitioner-the delinquent employee. The Disciplinary Authority or any officer higher in the Department has not passed any further order on the inquiry report, neither is there any order showing disagreement to the findings given by the Inquiry officer.

6. Without there being any further order from the Disciplinary Authority or for that matter any higher authority in the Department, the Inquiry officer seems to have suo motu reopened the inquiry for recording of further evidences. This Court is of the opinion that once the Inquiry officer submits his inquiry report to the Disciplinary Authority or to the Department, the Inquiry officer becomes functus officio and unless there is a specific order passed by the Disciplinary Authority or for that matter a higher authority in the Department, the Inquiry officer suo motu cannot reopen the inquiry for recording of further evidence.
7. The view of this Court stands fortified from the judgment of the Hon'ble Supreme Court in the case of "**Union of India v. K.D. Pandey & Another**" reported in (2002) 10 SCC 471 wherein the Hon'ble Supreme Court in very categorical terms has held that, if such process is allowed, the inquiry can go on perpetually until the view of the Inquiry officer is in accord with the Disciplinary Authority and it would be an abuse of the process of law.
8. Under the circumstances, this Court is of the firm view that notice Annexure P/6 issued by the Inquiry officer is not proper, legal and justified and the same accordingly stands set-aside/quashed leaving it open to the Disciplinary Authority to pass appropriate orders in

accordance with law in terms of the inquiry report that had been submitted by the Inquiry officer on 30.08.2010.

9. Considering the fact that the petitioner is retired way back in May, 2010 i.e. about 9 years back, it is expected that the respondents shall take an early decision preferably within a period of 4 months from the date of receipt of the copy of this order.
10. With the aforesaid observations, the present writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved