

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 395 of 2011**

S.R. Sinha, S/o. Shri Ramlal Sinha, Aged about 62 years, R/o. Madrasipara, Antagarh, District Kanker, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, Through: the Secretary, Forest Department D.K.S. Bhawan, Raipur, District Raipur, Chhattisgarh
2. Conservator of Forest and General Manager, Vanopaj Sahkari Sangh Maryadit, West Bhanupratappur, Kanker Circle, Chhattisgarh
3. Divisional Forest Officer and Managing Director, Zila Vanopaj Sahkari Sangh Maryadit, West Bhanupratappur, District Kanker Chhattisgarh
4. Sub-Divisional Officer Forest East Kapsi and Deputy Managing Director, District Union West Bhanupratappur, District Kanker, Chhattisgarh

----Respondents

For Petitioner	:	Mr. Rajkumar Pali, Advocate
For State	:	Mr. Jitendra Pali, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****14/10/2019**

1. The challenge in the present writ petition is to the order Annexure P/1 dated 28.04.2010, whereby the petitioner's appeal against the order of punishment dated 19.08.2009 has been rejected.
2. The facts of the case is that the petitioner was substantively working as a Forest Guard (Forester) under the respondents. During the relevant time, the petitioner was posted as a Poshak Adhikari (Disbursement Officer) for the two Tendupatta collecting centres situated at Primary Forest Society, Koylibeda and the Primary Forest Society, Junagawdegaon in district Kanker. It is said that there were certain irregularities or misconduct committed by the petitioner in the course of discharging his duties as a Poshak Adhikari (Disbursement Officer). The petitioner was served with a

charge-sheet on 20.04.2004. The petitioner stood retired from service on attaining the age of superannuation w.e.f. 31.07.2008. Before the retirement the departmental enquiry initiated could not be concluded. The departmental enquiry finally stood concluded and the petitioner was inflicted with the punishment of recovery of an amount of Rs.10,52,443/- vide order dated 19.08.2009. The said order was passed by respondent No.3. The petitioner immediately preferred an appeal before the respondent No.2 and the appeal also stood rejected vide the impugned order Annexure P/1 dated 28.04.2010 leading to the filing of the present writ petition.

3. The contention of the petitioner at the outset is that the impugned order of punishment as well as the rejection of the appeal is *per se* illegal and bad in law for the reason that the same is in contravention to the provisions of **Rule 9 of the Chhattisgarh Civil Services (Pension) Rules, 1976**. According to the petitioner, since the respondents could not conclude the departmental enquiry while the petitioner was in service. After his retirement the petitioner could have been inflicted with an order of punishment only with the sanction of His Excellency the Governor as is stipulated under Rule No.9. According to the petitioner, in the instant case no such sanction has been obtained from the Governor and therefore the order of punishment and the order passed in appeal both are bad in law and deserve to be set-aside.
4. The State counsel opposing both these grounds submits that such a ground was never raised by the petitioner in the appeal, nor has the petitioner raised such a ground in the present writ petition, and therefore the State had never had an occasion of dealing with this

ground in their reply and therefore the petitioner cannot now be permitted to take this stand. This argument of the State counsel would not be acceptable or sustainable for the simple reason that grounds of the impugned order being violative of the statutory provisions is a legal ground and legal grounds can be raised at any point of time even at the time of arguments.

5. From the available records in the writ petition, admittedly the petitioner was issued with a charge-sheet on 20.04.2008 and the petitioner stood retired on 31.07.2008. Before the retirement of the petitioner the inquiry could not be concluded, nor the petitioner was inflicted with any order of punishment.
6. It would be relevant at this juncture to refer to Rule 9 of the Chhattisgarh Civil Services (Pension) Rules, 1976 as it stands:

“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:

(a) in which an order of dismissal from service could be made in relation to the Government servant during his service in case it is proposed to withhold or withdraw a pension or part thereof whether permanently or for a specified period; or

(b) in which an order of recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders could be made in relation to the Government servant during his service if it is proposed to order recovery from his pension of the whole or part of any pecuniary loss caused to the Government].

(3) No judicial proceeding, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension and death-cum-retirement gratuity as provided in [Rule 64], as the case may be, shall be sanctioned :

[Provided that where pension has already been finally sanctioned to a Government servant prior to institution of departmental proceedings, the Governor may, by order in writing, withhold, with effect from the date of institution of such departmental proceedings fifty per cent of the pension so sanctioned subject however that the pension payable after such withholding is not reduced to less than [the minimum pension as determined by the Government from time to time] :

Provided further that where departmental proceedings have been instituted prior to the 25th October, 1978, the first proviso shall have effect as it for the words "with effect from the date of institution of such proceedings" the words "with effect from a date not later than thirty days from the date aforementioned," had been substituted :

Provided also that-

(a) If the departmental proceedings are not completed within a period of one year from the date of institution thereof, fifty per cent of the pension withheld shall stand restored on the expiration of the aforesaid period of one year;

(b) If the departmental proceedings are not completed within a period of two years from the date of institution the entire amount of pension so withheld shall stand restored on the expiration of the aforesaid period of two years; and

(c) If in the departmental proceedings final order is passed to withhold or withdraw the pension or any recovery is ordered, the order shall be deemed to take effect from the date of the institution of departmental proceedings and the amount, of pension since withheld shall be adjusted in terms of the final order subject to the limit specified in sub-rule (5) of Rule 43].

(5) Where the Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule-

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted-

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the Court."

7. Perusal of the proviso to Sub-Rule (2) clearly reflects that the Disciplinary Authority who has initiated the departmental enquiry against a person can pass an order against the employee, who has since retired only after submitting a report in this regard to the Governor and obtaining of sanction from the Governor. In the instant case the order of punishment dated 19.08.2009 was passed almost after one year of the petitioner having retired by the respondent No.3. The order of the Appellate Authority stood decided on 28.04.2010 again is one which has been passed after about two years from the date of his retirement. Both these orders do not have a bearing of the matter having being placed before the Governor or having obtained prior sanction from the Governor before the punishment order was issued.

8. In view of the fact that there is a clear non-compliance of the requirement of the proviso attached to Rule 9 (2), which makes the order of punishment ***per se*** bad or illegal and is therefore not sustainable. The view of this Court stands fortified from the judgment rendered by the Division Bench of the Madhya Pradesh High Court in the case of “**D.D. Jalota v. The State of Madhya Pradesh & Others**” 2010(3) MPHT 172 and the judgment of this High Court in **WPS No. 6676/2017 decided on 17.01.2018**.
9. In view of the same, the impugned order Annexure P/1 dated 28.04.2010, so also the order of punishment dated 19.08.2009 is set-aside/quashed. Since this Court has only quashed the impugned order of punishment as well as the order passed in the appeal on the technical ground of non-compliance of the requirement under **Rule 9 of the Chhattisgarh Civil Services (Pension) Rules, 1976**, the right of the respondents stand reserved to take appropriate action in accordance with the Rules, if they feel so.
10. The writ petition thus stands allowed with consequences to follow.

Sd/-
(P. Sam Koshy)
Judge