

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.11.2018

Pronounced on : 29.03.2019

CORAM:

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.14727 of 2009

and

WMP.No.1 of 2009

K.Pachamuthu

...Petitioner

Vs

1. The Principal Chief Conservator of Forests,
Chennai 600 015.
2. The Conservator of Forests,
Villupuram Circle, villupuram.
3. The Divisional Forest Officer,
I.F.F.Division, Kallakurichi,
Villupuram District.
4. The District Forest Officer,
Salem District, Salem.Respondents

Prayer:

Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, calling for the records relating to the orders in (1) Pro.No.BB3/19602/09 dated 23.06.2009 of the first respondent and (2) Pro.No.4914/08/Pa dated 16.02.2009 of the second respondent to quash the same.

For Petitioner : Mr. M.Ravi

For Respondents : Mr. S.V.Vijay Prashanth
Additional Govt Pleader (Forest)

O R D E R

The instant writ petition has been filed, calling for the records relating to the orders in (1) Pro.No.BB3/19602/09 dated 23.06.2009 of the first respondent and (2) Pro.No.4914/08/Pa dated 16.02.2009 of the second respondent to quash the same.

2. The petitioner joined service as a Forester. He has promoted as Forest Ranger. Between 22.11.2006 to 04.04.2008, he has working as Forest Ranger in interface Forestry Division, Kariyalur, Kallakurichy. He was assigned to do preparatory work of raising seedlings, selection of places survey and other related works under the Tamil Nadu Afforestation Project. He received a total sum of Rs.3,37,984/- (Rupees Three Lakhs Thirty Seven Thousand Nine Hundred and Eighty Four only), for the works to be done. The petitioner was in full charge as Ranger in Kariyalur Range from 22.06.2006 to 04.04.2008 and was in additional charge from 02.02.2008 to 04.04.2008 of Cherapattu IFF Range and was relieved from Kariyalur on 04.04.2008 and additional charge was handed over on 09.04.2008 by the petitioner to his successor-in office. It is also stated by the petitioner that, all the plantations are in good condition on the day when he handed over.

3. During the inspections conducted by the Divisional Forest Officer, I.F.F.Division, Kallakurichi, serious irregularities were found in carrying out the works allotted to him. The irregularities were found as follows:-

"a) Raising of unhealthy seedling and raising less number of seedlings than sanctioned. Advance Recoverable received Rs.1,52,640/- for the works to be carried out Thallmundiyur Village, in Tamil Nadu Afforestation Project.

b) Raising of 9000 seedlings (not done in full). Participatory Rural Appraisal, Survey, Micro Plan preparation not done and watering not properly done for raised seedlings in 2008 porpam village."

4. The Divisional Forest Officer issued a charge memo under Rule 17(a), Tamil Nadu Civil Services (Discipline and Appeal) Rules. The loss caused to the Government was tabulated and it reads under:-

Estimate No. and Amount	Work allotted	Work Carried out	Short fall	Loss to the Govt.
DSO 253/07-08 Rs.1,52,640	Raising of 22,000 seedlings	20,000 seedlings with stunted growth	1. Did not carry out watering and shift 20,000 seedlings as per the estimate. 2. Did not raise 2,000 seedlings	Rs.75,300/-
DSO NO. 259/07-08 Rs.16,352	PRA, Baseline survey, Microplan preparation and VFC constitution	Nil	1. Did not carry out	
DSO 252/07-08 Rs.1,52,640	Raising of 22,000 seedlings	17,000 seedlings with stunted growth	1. Did not carry out watering and shift 17,000 seedlings as per the estimate. 2. Did not raise 5,000 seedlings	Rs.96,750/- Rs.3,37,984
DSO 258/07-08 Rs.16,352/-	PRA, Baseline survey, Microplan preparation and VFC constitution	Nil	4. Did not carry out	

5. The petitioner gave an explanation on 31.07.2008. The petitioner states that, he was transferred on 04.04.2008 from Kariyalur village. He stated that Divisional Forest Officer who took in-charge in his place admitted that 82,500 seedlings raised in Cherapattu IFF Range is in good condition. The petitioner states that the Divisional Forest Officer expect certain favour from him and because the petitioner did not fulfill the desires, he has obtained report from the new Ranger and the allegations leveled against him are completely false.

6. The Conservator of Forest by his order dated 16.02.2009 passed the following order:-

PROCEEDINGS OF THE CONSERVATOR OF FORESTS ,
VILLUPURAM CIRCLE

Present : Thiru P. Varadaraj, IFS
Conservator

Pro No. 4914/08/Pa.1

Dated 16.02.2009

Sub: Public Service - Thiru K. Pachamuthu - Forest Ranger Charge Memo issued by the Divisional (Forest Officer) IFF Division, Kallakurachi under Rule 17 (a) of the TNCS (D &A) Rules - Passing of Final Order - Reg.

Ref: 1. Na.Ka.No. Po/880/08 dated 22.07.08 of Divisional Forest Officer, HT Division, Kallakurichi

2. Acknowledgement of Thiru K. Pachamuthu Forest Ranger dated 17.07.08

3. Na.Ka.No. Po/880/G8 dated 24.09.2008 of Divisional Forest Officer, IFF Division Kallakurichi.

Thiru K. Pachamuthu, Forest Ranger, had served in Kallkurichi Interface Forestry Division, in Kariyaloor Range from 22.11.2006 to 04.04.2008. During the above period, in 2008 Thazhmudiyur and Porpam village Afforestation works, there were stagnation in the preparatory works and other related works of Participatory Rural Appraisal, Survey, Micropian etc. In this connection, in the reference first cited, Charge Memo under Rule 17 (a) of the Tamil Nadu Civil Services (D&A) Rules. The Forest Ranger had acknowledged receipt of the Charge Memo under Rule 17(a) of the Tamil Nadu Civil Services (D&A) Rules. The Forest Ranger had acknowledged receipt of the Charge Memo on 17.07.2008. Even after the lapse of the stipulated period to submit explanation. he has not submitted his explanation till date. Details of the Charge.

In 2008-09 in Kariyaloor Range, TAP Works - 2008 - Thazhamudiyur Project village and 2008 porpam project village (presently Mattuthurai) the preparatory works of revising seedling, selection of places survey and other related works (PRA exercise) survey, Micro plan preparation etc. have not been completed in 2007-08

itself i.e. before 31.03.2008 even though the Ranger received advance of funds of Rs. 1,52,640/- for each and in this regard Charge Memo has been issued.

In order to assess accurately the works which were not done, field inspections were conducted in various stages and the unattended works have been properly found out and mentioned in clear terms."

In order to pass final order in this Charge Memo the issue has been finalized and the details of unattended works, its expenditure therefor for each village are mentioned as follows:-

A. 2008 Thazamudiyur, ITDP Project Village - The defects found in the amount of loss to Government
The number of bags of seedlings to be prepared = 22000 Nos.

Even though the fund required for preparing 22000 bags of seedlings as per target, only 20,000 bag! of seedlings done in an unhealthy condition were available and watering was not done twice daily and there was not even average progress was achieved in Kariyaloor Central Seedling Centre, the Seedlings have been grown properly and rental amount was obtained for site rent.

Cost as per Estimate	22000 Bags seedlings	22000 Bags Seedlings
A.1) Watering twice daily (10 days (20.02.2008 to 01.03.2008))	10793	9812
2) Watering twice daily (30 days (02.03.2008 to 31.03.2008))	16190	14718
3) Land Rate		
4) Cost of works 30 days		
5) Shifting (1 time)		
Total		
B. 2000 Bag seedlings have been omitted to be planted and loss due to that	Rs.	

Cost as per Estimate	22000 Bags seedlings	22000 Bags Seedlings
Estimate cost including poly bags and Bio-Fertilizers	2,40,617.00	
Deduct Seed rent (since nursery raised at Kariyalur Central Nursery)	5805.00	
Total	2,34,812.00	
Rs.10.67 seedlings 22000 Nos	Rs.	
10.67mx2000 (Short falls only)	21340.00	
Therefore total amount of loss to Government	37608 + 21340 = Rs.58,948.00	

II a. PRA

b. baselining survey

Work not done -

c. Micro Plan

Government loss 16,352.00

Total

Total 75,300.00

d. 2008 Porpam (Mattuthurai) ITDP Village nursery works ~ Defects found and Government loss

As per target, seedlings to be prepared = 22000

But only 17000 bags seedlings alone were available ad that too were of inferior quality and not properly grown as there was no watering twice daily and shifting works not done and hence that Government Loss due to inferior quality seedlings.

Cost as per Estimate

For 22000 bags

For 17000 bags

Seedlings

Seedlings

1) Watering twice daily	10793	8340
2) Watering once daily	16190	12510
3) Cost of Water (40 days)	2816	2176
4. Shifting (One time)	5184	4005
Total		27031

B.5000 Bags seedlings loss due to failure to prepare seedlings estimated cost including polybags and bio-fertilizers land rent may be deducted	240617 5805
Total	234812
Rs.10.67X5000 Nos (Shortfall only)	53367
Therefore total amount of loss to Government	80,398.00
II a. PRA b. Base lining survey c. Micro Plan (As the works have not been done loss to the Government)	16352.00 96,750
Total Loss I + II 75300 + 96750)	1,72,050

As listed above, those works not executed and other related works, as per guidelines for project implementation should have been completed before 31.03.2008. Due to inaction to follow the guidelines by his dereliction of duty as such, success of the project as well as the growth of plantations have suffered set back and Thiru K. Pachamuthu, Forest Ranger, has been responsible for the same, as may be seen from his failure to submit his explanation. Hence the Divisional Forest Officer, IFF Division, Kallakurichi in his reference second cited, has requested that for the act of Thiru K. Pachamuthu Forest Ranger in having falsely accounted for Rs.1,72,050/- in respect of works which were not executed should be recovered from the Ranger and for the act of dereliction of duty suitable orders as per rules may be passed.

The Charge Memo and converted records relating to the charges framed by the Divisional Forest Officer, in respect of the irregularities committed by Thiru.K. Pachamuthu Ranger in JAF works - 2008, Thazhamudiyur and 2008 / Porpam (Mattuthurai) were examined. Thiru K. Pachamuthu . Ranger has submitted acknowledgment dated 17.7.2008 for having received the charge memo. But since he has failed to submit his explanation within the stipulated period and even after that, it is taken that he has no explanation to offer and admits the charges and

he is made responsible for the loss of Rs.1,72,050/- occurred to Government and hence the following order is passed.

ORDER

In 2008, Thazmudiyoore and 2008 Porpam JAF Works the loss of Rs. 1,72,050/- sustained by the Government is ordered to be recovered from Thiru.K.Pachamuthu, Forest Ranger in 16 monthly installments first installment at Rs. 10,800/- and installments 2 to 17 at Rs.10,750/-

Sdxxxxxxx

Controller of Forests"

7. The petitioner filed an appeal. On receipt of the charge memo, the petitioner gave an explanation on 31.07.2008, which was received by the District Forest Officer on 04.08.2008. It was received by the Divisional Forest Officer on 12.12.2008. The same was not forwarded to Conservator of Forest, Villupuram. It is specifically stated that, the Conservator of Forest, Villupuram, in his reference No.4914/08/F dated 20.12.2008, asked the Divisional Forest Officer to issue another chance to the petitioner.

8. It is submitted by the petitioner that, though the District Forest Officer received the explanation on 12.12.2008, he took his own time to send it to Conservator of Forest on 25.02.2009, by which time the impugned order has been passed. He would state that, in any event there is no reason as to why he took 4 months for the reply to go from District Forest Officer on 04.08.2008 to Divisional Forest Officer on 12.12.2008. In these circumstances, it is contended that the explanation given by the writ petitioner ought to have been considered.

9. The Appellate Authority by its order dated 23.06.2009 rejected the appeal of the petitioner. The order reads as under:-

- 1) "The order of punishment dated 16.02.2009 was passed without considering his explanation dated 31.07.08 to the charge memo dated 02.07.08.
- 2) It is a fact that the explanation of the Ranger dated 31.07.08 was received by the District Forest Officer, Salem on 04.08.03 and then it was received by the Divisional Forest Officer, Interface Forestry Division, Kallakurichi on 12.12.08. The Conservator of Forests, Villupuram in his Ref.No. 4914./08 F dated 20.12.08 has asked the Divisional Forest Officer, Interface Forestry Division, Kallakurichi to issue another chance to the Accused Officer to submit his explanation. Though the explanation was received by the Divisional Forest Interface Forestry Division,

Kallakurichi on 12.12.08 has taken his own tinie and sent it to the Conservator of Forests, Villupuram only on 25.02.09 vide his Ref. No. I/880/2008 dated 25.02.09. In the meantime, the Consen itot of Forests. Villupuram who had advised the Divisional Forest Officer to give one more chance to the Forest Ranger has passed Ex-parte orders on 16.02.2009

- 3) The contention of the appellant that even if no explanation is submitted a duty is east on (he disciplinary authority to hold enquiry and to prove the charges does not appear to be correct as the charge sheet was issued under rule 17(a).
- 4) The contention of the appellant that the Conservator of Forests ought to have seen that Rule 1.7(a) of Tamil Nadu. Civil Service (Discipline and Appeal) Rules provides for enquiry in cases of withholding of increments of pay is not applicable in this case as the final orders issued by the Conservator of Forests is only for recovery of Government loss.
- 5) The contention that the District Forest Officer has disbursed the amount after periodical inspection and after satisfying himself about the progress of works and therefore, the District Forest Officer and the two Foresters are also responsible is not correct. The District Forest Officer has released funds as advance only and the Ranger had executed the works. Therefore, the District Forest Officer cannot be held responsible.
- 6) The repetition of the contention that enquiry should have been conducted in 17(a) cases does not sounds well.
- 7) The contention that the appellant got relieved. on 09.04.08 and therefore. he is not responsible for the alleged situation of the plantation on • 01.05.08 and 13.06.08 is not correct. The main charge against the appellant is in both the plantations he has not completed the work of soil filling in the container bags; PRIV,. Survey of micro plan preparation have not done. This point cannot be changed within 20 to 30 days of relief 'of the appellant from the Range.
- 8) The contention of the Ranger that he is responsible to the extent of 40% of the loss is not correct as he has drawn the Forest Advance and executed the work and therefore he alone is responsible for the total loss of Rs.1,72,050/-

Hence, in the above circumstances. I have examined all, the connected records. 'The contention of Ranger is not acceptable. The charges are in order. The punishment imposed is also in order. Therefore. the following orders are issued on the appeal petition of Thiru K. Pacharnuthu. Forest. Ranger dated 30.03.09.

ORDER

The orders issued in Conservator of Forests, Villupuram Proc. NO.4914/08 E dated 16.02.09 ordering the recovery of Rs.1,72,050/- from Thiru.K.Pachamuthu, Forest Ranger is confirmed and the appeal petition of Thiru.K.Pachamuthu, dated 30.03.2009 is hereby rejected."

It is this order which is challenged in the present writ petition.

10. The learned counsel for the petitioner laid great emphasis on the fact that, he is a victim for conspiracy. He would state that, purposely the explanation of the petitioner dated 31.07.2008 was not forwarded to the Conservator of Forest and therefore, the Conservator of Forest could not held, since there was no explanation, he had admitted his charge. The petitioner would contend that the principles of natural justice had been violated. He would also states that, he was in full charge as Ranger from 22.06.2006 to 04.04.2008, and was in additional charge from 02.02.2008 to 04.04.2008 of Cherapattu IFF Range and was relieved from Kariyalur on 04.04.2008 and additional charge on 09.04.2008 and therefore, handed over to the Succession Officer all the plantations, which was in good condition on 09.04.2008. The petitioner was therefore states that, he would not responsible for the state of the plantation from 01.05.2008 or 31.06.2008.

11. The learned counsel for the petitioner would further argued that, the works in question had been inspected periodically by the Divisional Forest Officer, IFF Division, Kallakurichi and after only satisfying himself about the progress of the works, has disbursed the amounts by way of cheques. He would also states that, if the relevant two Foresters were involved in the works and the petitioner alone had responsible for the short comings. The petitioner would say that, the Divisional Forest Officer who conducted inspection periodically and who had issued cheques is also co-delinquent and being co-delinquent he is not entitled to initiate disciplinary proceedings against the petitioner and to issue the charge memo dated 02.07.2008. According to the petitioner, the Divisional Forest officer was also co-delinquent, the Government alone is Competent Authority to initiate proceedings under Rule 9-A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

12. The learned counsel for the petitioner argued that, he has not been given reasonable opportunity to having himself and the enquiry under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, is vitiated because the Competent Authority being the Conservator of Forest, did not consider his representation and had accepted the statement given in the charge memo as gospel truth. He would argue that in the absence of any enquiry, the procedure under Rule 17(a) has not been followed.

13. The petitioner would rely on the judgment dated 23.12.2009 passed by this Court in the case of R. Neethirajan Vs. Secretary to the Government. It is contended that the Deputy Conservator of Forest is also co-delinquent and the charge memo could have been issued only by the Government. The petitioner would rely on following paragraphs of the case cited supra:-

"12. I have considered the rival submissions of both the counsels.

13. According to me for the purpose of deciding the issue involved in this writ petition, it is enough if we consider the two points raised by the learned counsel appearing for the petitioner. Admittedly, the Deputy Conservator of Forest and the petitioner are involved in the misconduct and as far as the petitioner is concerned, the authority to take disciplinary action is the Conservator of Forest and so far as the Deputy Conservator of Forest is concerned the authority competent to take action is Principal Chief Conservator of Forests.

14. It is also admitted that action is being contemplated against Deputy Conservator of Forest and draft charge memo has been sent to Principal Chief Conservator of Forest. For that purpose, a reading of Rule 9(A) makes it clear that when more than one Government servant of the same Department are involved in a same misconduct the authority competent to institute disciplinary proceedings and impose any of the penalties specified under Rule 8, shall be the higher authority in the Department in respect of the Government servant who holds higher post and the disciplinary proceedings against all of them shall be taken together.

15. Therefore, to initiate action in respect of more than one Government servant involved in the same misconduct and they are having different ranks, the competent authority to take action is the authority, who can take action in respect of Government servant,

who holds the higher post, Another requirement is the the proceedings against all of them shall be taken together.

16. In this case, in so far the first condition is concerned, the Principal Chief Conservator of Forest is the authority to take action against the Deputy Conservator of Forest as the Deputy Conservator of Forest holds higher post and therefore, the Principal Chief Conservator of Forest alone is competent to take disciplinary proceedings against the petitioner also.

17. But the charge memo against the petitioner was issued only by the Conservator of Forest and therefore, charge memo does not satisfy the first requirement of the rule 9(A). Even assuming that Conservator of Forest is the authority to initiate action against the Deputy Conservator of Forest, the 2nd requirement under Rule 9 (A) is not satisfied. As per the second requirement, the disciplinary proceedings against all of them shall be taken together and in this case, admittedly, action has been taken only against the petitioner and till date, there is no proof made available that any action has been taken against the Deputy Conservator of Forest. Even assuming that charge memo has been issued against the Deputy Conservator of Forest that will also not cure the defect inasmuch as rule 9(A) contemplates that the action must be taken together against all of them.

Therefore, the fact that the action was not taken against both the officials together and charge memo was not issued by the Principal Chief Conservator of Forest, who is competent to initiate action against the Deputy Conservator of Forest, the charge memo issued by the Conservator of Forest, the 3rd respondent, is not in accordance with law."

14. The petitioner would also rely on the judgment of the Hon'ble Supreme Court of India, in the case of Food Corporation of India & Others Vs. Sarat Chandra Goswami, reported in (2014) 13 SCC 211, to substantiate his contention that there is no formation of opinion by the Authority and without such formation of opinion, the order imposing punishment is erroneous. He would rely on the following paragraphs in the said judgement.

"8. Per contra, Mr Chaudhary heavily relied on the authority in A. Prahalada Rao [Food Corporation of India v. A. Prahalada Rao, (2001) 1 SCC 165 : 2001 SCC (L&S) 186] and urged that the discretion vested in the disciplinary authority under the Regulations casts an

obligation on it to form an opinion and formation of such opinion has to be in writing.

9. On a perusal of the order [Sarat Chandra Goswami v. Food Corporation of India, (2007) 2 Cal LJ 757] passed by the learned Single Judge, we find that he has taken note of the fact that there was no expression or formation of opinion. He has further recorded that the learned counsel for the Corporation had conceded that there was nothing to show that the Chairman-cum-Managing Director who had made the final order had recorded any opinion in writing before making the final order to the effect that there was no need to hold a regular inquiry. From the principle stated by this Court in A. Prahalada Rao case [Food Corporation of India v. A. Prahalada Rao, (2001) 1 SCC 165 : 2001 SCC (L&S) 186] it is quite limpid that though in all cases where the employee disputes his liability, a full-fledged enquiry is not expected to be held as that would frustrate the purpose of interpreting the summary procedure for imposing minor penalties, yet the discretion conferred under Regulation 60(1)(b), if exercised in an arbitrary manner, it is open to the employee to challenge the same before the appropriate forum. The Court had further opined that Regulation 60 (1)(b) mandates the disciplinary authority to form its opinion whether it is necessary to hold an inquiry in a particular case or not.

10. Once it is held that there has to be formation of opinion and such an opinion is assailable in a legal forum, we are of the view that the said opinion has to be founded on certain objective criteria. It must reflect some reason. It can neither be capricious nor fanciful but demonstrative of application of mind. Therefore, it has to be in writing. It may be on the file and may not be required to be communicated to the employee but when it is subject to assail and, eventually, subject to judicial review, the competent authority of the Corporation is required to satisfy the court that the opinion was formed on certain parameters indicating that there was no necessity to hold an enquiry. Thus, the High Court has correctly understood the principle stated in A. Prahalada Rao [Food Corporation of India v. A. Prahalada Rao, (2001) 1 SCC 165 : 2001 SCC (L&S) 186] and we do not find any fault with the same.

11. In the result, we do not perceive any merit in these appeals and the same stand dismissed with no order as to costs."

15. Rule 8 and 9 of Tamil Nadu Civil Services (Discipline and Appeal) Rules, reads as under:-

"8. The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon every person who is a member of the civil service of the State and every person holding a civil post under the State specified in rule 2, namely :-

(i) Censure;

(ii) Fine (in the case of persons for whom such penalty is permissible under these rules) (iii) Withholding of increments or promotion ;

Provided that the penalty of withholding of increment shall not be imposed on a Government servant, if the said penalty cannot be given effect to fully while in service :

Provided further that in cases where the penalty of withholding of increment cannot be given effect to fully for any contingency that arose after the penalty of withholding of increment is imposed, the monetary value equivalent to the amount of such increments that can not be given effect to shall be recovered from the person :

Provided also that in cases of withholding of increment with cumulative effect, the monetary value equivalent to three times the amount of increments ordered to be withheld shall be recovered.

(vide G.O.Ms.No.113, Personnel and Administrative Reforms (N) Department dated 2.8.2006) (with effect from 2.8.2006)

(iv) Reduction to a lower rank in the seniority list or to a lower post not being lower than that to which he was directly recruited, whether in the same service or in another service, State or Subordinate, or to a lower time-scale, not being lower than that to which he was directly recruited, or to a lower stage in a time-scale ; Provided that in cases where the punishment of reduction to a lower stage in a time-scale cannot be given effect to fully, the monetary value equivalent to the difference in emoluments as a result of reduction to such lower stage in the time-scale for the unexpired period of the punishment shall be recovered from the person.

(v) Recovery from pay of the whole or part of any pecuniary loss caused to the State Government or the Central Government or to any Government Company or Organization or Local Authority or to a Local Body, while on deputation, by negligence or breach of orders;

(vi) Compulsory retirement;

(vii) Removal from the Civil Service of the State Government;

(viii) Dismissal from the Civil Service of the State

Government; and

(ix) Suspension, where a person has been suspended under rule 17(e), to the extent considered necessary by the authority imposing the penalty. The penalties mentioned in items (i) to (iii), (v) and (ix) shall be deemed to be minor penalties and those in items (iv) and (vi) to (viii) shall be deemed as major penalties. The penalties mentioned in items (vi), (vii) or (viii), as the case may be, shall be imposed on a Government servant for the violation of rule 19 of the Tamil Nadu Government Servant's Conduct Rules, 1973.

Explanation-I

The discharge,-

(i) of a person appointed on probation before the expiry or at the end of the prescribed or extended period of probation ; or

ii) of a person engaged under contract, in accordance with the terms of his contract ; or

(iii) of a person appointed, otherwise than under contract, to hold a temporary appointment on the expiration of the period of the appointment, does not amount to the removal or dismissal within the meaning of this rule.

Explanation-II .-

The following shall not amount to a penalty within the meaning of this rule, namely :-

(i) withholding of increments of pay of a Government servant for his failure to pass any Departmental examination in accordance with the rules or orders governing the Service to which he belongs or post which he holds or the terms of his appointments ;

(ii) non-promotion of a Government servant, whether in a substantive or officiating capacity, after consideration of his case, to a service, grade or post for promotion to which he is eligible ;

(iii) reversion of Government servant officiating in a higher service, grade or post to a lower service, grade or post, on the ground that he is considered to be unsuitable for such higher service, grade or post or on any administrative ground unconnected with his conduct ;

(iv) reversion of a Government servant, appointed on probation to any other service, grade or post, to his permanent service, grade or post during or at the end of the period of probation in accordance with the terms of his appointment or to the rules and orders governing such probation;

(v) replacement of the services of a Government servant, whose services had been borrowed from a State Government or the Central Government or an authority under the control of a State Government or the Central Government

at the disposal of the State Government or the Central Government or the authority from which the services of such Government servant had been borrowed ; and

(vi) compulsory retirement of a Government servant in accordance with the provisions relating to superannuation or retirement.

Explanation-III

The removal of a person from the civil service of the State Government shall not disqualify him for future employment but the dismissal of a person from the Civil Service of the State Government shall ordinarily disqualify him for future employment.

9. (a) In addition to the penalties specified in rule 8, the penalty of suspension for a period not exceeding fifteen days may be imposed on Forest Guards by the Forest Engineer, Forest Utilization Officer, State Sylvi culturist, Working Plans Officer or District Forest Officer, as the case may be.

(b) Notwithstanding anything contained in rule 8, any of the penalties specified in column (2) of Appendix I to these rules may be imposed on the holders of the posts in the Tamil Nadu Jail Subordinate Service, the Tamil Nadu Fire Subordinate Service and the Tamil Nadu Port Subordinate Service specified in the corresponding entry in column (1) by the authorities specified in the corresponding entry in column (3) thereof.

(c) (1) The Governor or any other authority empowered by him by general or special order may -

(i) institute disciplinary proceedings against any Government servant;

(ii) direct a disciplinary authority to institute disciplinary proceedings against any Government servant on whom that disciplinary authority is competent to impose under these rules any of the penalties specified in rule 12*.

*(vide G.O.Ms.No.19, Personnel and Administrative Reforms (N) Department, dated 11.2.2008, w.e.f. 11.2.2008)

(2) The authority competent under these rules to impose any of the penalties specified in items (i) to (iii) and (v) of rule 8 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in items (iv) and (vi) to (viii) of rule 8 notwithstanding the fact that such authority is not competent under these rules to impose any of the latter mentioned penalties.

9A.*In any case where more than one Government servant of the same Department are jointly involved or whose cases are interconnected, the authority competent to

institute disciplinary proceedings shall be the immediate higher authority in that Department in respect of the Government servant who holds the highest post among such Government servants and the disciplinary proceedings against all of them shall be taken together. Where inquiry is to be conducted in terms of rule 17(b), the said authority may either himself conduct the inquiry or get the inquiry conducted by an Inquiring Officer appointed by the authority competent to impose major penalty in respect of the Government servant who holds the highest post among such Government servants. The said authority shall remit the case, at the appropriate stage, to the authority competent to impose any of the penalties specified in rule 8 in respect of the Government servant who holds the highest post among such Government servants in that Department for passing final orders:

*(vide G.O.Ms.No.26, Personnel and Administrative Reforms (N) Department, dated 15.2.2008, w.e.f. 15.2.2008).

Provided that in the case of Government Servants belonging to different departments who are jointly involved or whose cases are interconnected, the Government shall be the authority competent to initiate disciplinary proceedings and impose any of the penalties specified in rule 8 and in such cases the administrative department of Secretariat in respect of the Government servant who holds the highest post will initiate such disciplinary proceedings and issue final orders after complying with the entire procedure laid down in these rules.

Provided further that this rule shall not apply to cases in which officers coming under the administrative control of the Chief Secretary to Government are jointly involved"

16. Rule 17(a), 17(b) are deals with the procedures that has to be followed before imposing penalties reads as under:-

"17. (a) In every case where it is proposed to impose on a member of a service or a person holding a civil post under the State any of the penalties specified in items (i), (ii), (iii), (v) and (ix) in rule 8 or in rule 9, he shall be given a reasonable opportunity of making any representation that he may desire to make and such representation, if any, shall be taken into consideration before the order imposing the penalty is passed ; Provided that the requirements of this sub-rule shall not apply where it is proposed to impose on a member of a service any of the penalties aforesaid on the basis of facts which have led to his conviction by a court martial or where

the officer concerned has absconded or where it is for other reason impracticable to communicate with him:

Provided further that, in every case where it is proposed, after considering the representation, if any, made by the Government servant, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay without cumulative effect for a period exceeding 3 years or to withhold increment of pay with cumulative effect for any period, the procedure laid down in sub-rule (b) shall be followed before making any order imposing on the Government servant any such penalty.

(b) (i) Without prejudice to the provisions of the Public Servants' Inquiries Act, 1850, (Central Act XXXVII of 1850), in every case where it is proposed to impose on a member of a service or on a person holding a Civil Post under the State any of the penalties specified in items (iv), (vi), (vii) and (viii) in rule 8, the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged, together with a statement of the allegation, on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time to put in a written statement of his defence and to state whether he desires an oral inquiry or to be heard in person or both. An oral inquiry shall be held if such an inquiry is desired by the person charged or is directed by the authority concerned. Even if a person charged has waived an oral inquiry, such inquiry shall be held by the authority concerned in respect of charges which are not admitted by the person charged and which can be proved only through the evidence of witnesses. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses to give evidence in person and to have such witnesses called, as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. Whether or not the person charged desired or had an oral inquiry, he shall be heard in person at any stage if he so desires before passing of final orders. A report of the inquiry or personal hearing (as the case may be) shall be prepared by the authority holding the inquiry or personal hearing

whether or not such authority is competent to impose the penalty .Such report shall contain a sufficient record of the evidence , if any, and a statement of the findings and the grounds thereof. Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor or partly recorded by its predecessor and partly recorded by itself;

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided:

Provided further that where there is a complaint of sexual harassment within the meaning of rule 20-B of the Tamil Nadu Government Servants' Conduct Rules, 1973, the complaints Committee established in each Government department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the Disciplinary Authority for the purpose of these rules and the Complaints Committee shall hold the inquiry as far as practicable in accordance with the procedure laid down in these Rules.

(Vide G.O.Ms.No.160, P&AR(N) Department, dated 20.9.2006 w.e.f.20.9.2006)

Provided also* that the Government Servant may take the assistance of any retired Government servant to present the case on his behalf but may not engage a legal practitioner for the purpose unless the inquiring authority is a legal practitioner or the inquiring authority, having regard to the circumstances of the case, so permits.

*(Vide G.O.Ms.No.160, P&AR(N) Department, dated 20.9.2006 w.e.f.20.9.2006)

Explanation .- The Government servant shall not take the assistance of any retired Government servant who has two pending disciplinary cases on hand, in which he has to give assistance.

(ii) After the inquiry or personal hearing referred to in clause (i) has been completed, the authority competent to impose the penalty specified in that clause, is of the opinion, on the basis of the evidence adduced during the inquiry, that any of the penalties specified in rule 8 should be imposed on the

person charged, it shall, before making an order imposing such penalty, furnish to him a copy of the report of the inquiry or personal hearing or both, as the case may be, and call upon him to submit his further representation, if any, within a reasonable time, not exceeding fifteen days. Any representation received in this behalf within the period shall be taken into consideration before making any order imposing the penalty, provided that such representation shall be based on the evidence adduced during the inquiry only. It shall not be necessary to give the person charged any opportunity of making representation on the penalty proposed to be imposed ;

Provided that in every case where it is necessary to consult the Tamil Nadu Public Service Commission, the disciplinary authority shall consult the Tamil Nadu Public Service Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty:

Provided further that in the case of a person appointed to a post in a temporary department by transfer from any other class or by recruitment by transfer from any other service, the State Government may, at any time before the appointment of such person as a full member to the said post, revert him to such other class or service, either for want of vacancy or in the event of his becoming surplus to requirements or if the State Government are satisfied that he has not got the necessary aptitude for work in the said post, without observing the formalities prescribed in this sub-rule."

17. Rule 17(a) mandates that a reasonable opportunity of making a representation to be given to the delinquent Officer before imposing minor penalty. The charge memo in dated 02.07.2008 and the petitioner has send his explanation on 31.07.2008. The petitioner claims that the explanation did not reach the Chief Conservator Forest Officer before 16.02.2009.

18. The order of Appellate Authority shows that following facts:-

1. The explanation dated 31.07.2008 of the petitioner was received by the District Forest Officer on 04.08.2008.
2. It was received by the Divisional Forest Officer only on 12.12.2008.
3. The Conservator of Forest has by letter reference No. 4914/08 F dated 20.12.08, asked the Divisional Forest Officer to issue another chance to the petitioner to submit his explanation.

4. The explanation which was received by the Divisional Officer on 12.12.2008, was sent to the Conservator of Forest only on 25.02.2009, that is after the order was passed by the Conservator of Forest.

19. The dates makes it absolutely clear that, though District Forest Officer and Divisional Forest Officer has received the explanation well in time, they have reason which is not known decided not to forward the explanation to the Conservator of Forest. There is no reason as to why District Forest Officer who received explanation on 04.08.2008 sent it late with the Divisional Forest Officer who received it only on 12.12.2008.

20. There is no reason as to why the Divisional Forest Officer who received the explanation of the petitioner on 12.12.2008, sent it only to the Conservator of Forest on 25.02.2009 and that too after the Conservator of Forest had send the letter on 20.12.2008 to him to give the petitioner one more chance to submit his explanation.

21. There is no reason forthcoming from the respondent as to why the representation of the petitioner was not before the Conservator of Forest while passing the order. Principle of Natural Justice therefore has been clearly violated. The Conservator of Forest therefore proceed ahead with the facts as presented to him by the Divisional Forest Officer who gave the charge memo. The fact that the Conservator of Forest observed "The Charge Memo and converted records relating to the charges framed by the Divisional Forest Officer, in respect of the irregularities committed by Thiru.K. Pachamuthu Ranger in JAF works - 2008 , Thazhamudiyur and 2008 / Porpam (Mattuthurai) were examined. Thiru K. Pachamuthu . Ranger has submitted acknowledgment dated 17.7.2008 for having received the charge memo. But since he has failed to submit his explanation within the stipulated period and even after that, is taken that he has no explanation to offer and admits the charges and he is made responsible for the loss of Rs.1,72,050/- occurred to Government and hence the following order is passed" shows that the order has been passed only because there was no explanation by the petitioner and which would amount to admission of charges.

22. In the light of the above order of the Conservator of Forest dated 16.02.2009, and the consequent order dated passed by the Appellate Authority which is under challenge is set aside and the matter was remanded back to the Conservator of Forest to consider the case once again in the light of the explanation given by the writ petitioner. Since the charge memo dated 02.07.2008 had passed more than 11 years, the Conservator of Forest is directed to dispose of the proceedings within a period

of eight weeks from the date of receipt of a copy of this order.
The writ petition is allowed. No Costs. Consequently, connected
miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Pkn

To

1. The Principal Chief Conservator of Forests,
Chennai 600 015.
2. The Conservator of Forests,
Villupuram Circle, villupuram.
3. The Divisional Forest Officer,
I.F.F.Division, Kallakurichi,
Villupuram District.
4. The District Forest Officer,
Salem District, Salem.

+1 cc to Mr.M.Ravi, Advocate, S.R.No.31123

+1 cc to the Spl.Government Pleader, S.R.No.30077

WP.No.14727 of 2009

AK(CO)
SSM(03/05/2019).

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