

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 4102 of 2012

- Smt. Urmila Devi W/o Lt. Akhilanand Dubey Aged About 45 Years
Ram Mandir, Ramanujganj, Post, Police Station And Tahsil
Ramanujganj Undivided Distt. Surguja At Present Distt.
Balrampur Ramanujganj C.G.

---- Petitioner

Versus

1. State Of Chhattisgarh S/o Through The Secretary, Department
Of Water Resources, D.K.S. Bhawan, Raipur C.G.
2. The Commissionerm Surguja Division At Ambikapur, Distt.
Surguja C.G.
3. The Collector Surguja At Ambikapur Distt. Surguja C.G.
4. Superintending Engineer Water Resources Deptt. Surguja
Division At Ambikapur Distt. Surguja C.G.
5. Executive Engineer Water Resources Deptt. Division - 2,
Ramanujganj, District Balrampur Ramanujganj C.G.

---- Respondents

For Petitioner : Shri A.K. Prasad, Advocates

For State : Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Narendra Kumar Vyas

Order on Board

16.09.2021

1. The petitioner has filed the present writ petition challenging the order dated 13.08.2012 by which the Commissioner, Surguja Division has dismissed the appeal filed by the petitioner against the order dated 27.06.2011 passed by the Collector, Surguja.
2. The brief facts as projected by the petitioner are that she is widow of Late Shri Akhilanand Dubey who was working as Amin in the office of Executive Engineer, Water Resources Department, Division No. 2, Ramanujganj, District Surguja (C.G.). He was charge-sheeted for causing loss to the Government to the tune of Rs. 1,19,977/-. Pursuant to the issuance of charge-sheet issued by the Collector, Surguja, Ambikapur he was suspended. Subsequently on 20.07.2009, the

Collector, Surguja pending the departmental inquiry, revoked the suspension of the petitioner's husband on 05.05.2010. thereafter, he died on 19.11.2010. As such, the departmental enquiry pending against him was closed on 02.12.2010. The Collector vide order dated 27.06.2011 ordered to pay only subsistence allowances to the legal heirs of the deceased employees for the period he was suspended and It was directed that suspension period will be treated as on duty.

3. The petitioner has challenged that order dated 27.06.2011 passed by the Collector, Surguja before the Commissioner, Surguja Division, which was dismissed by the Commissioner contending that F.No. 54-B(2) of the Fundamental Rules is not applicable in the case of petitioner, he has been exonerated on count that no final decision was taken over by the department, therefore, no interference is required in the order passed by the Collector, the petitioner is only entitled for subsistence allowance of his suspension period.
4. Learned counsel for the petitioner would submit that since the petitioner's husband expired during the pendency of the inquiry and the suspension order was revoked before death, therefore, it is incumbent upon the department authority to resort to proceedings as contemplated under Chapter VIII, F.R. No. 54-B(3) of the Fundamental Rules which deals with dismissal, removal and suspension of an employee and should have given notice to concerned government employee before passing any order with regard to regularisation of the suspension period.
5. F.R. No. 54-B (2) (3) and (4) of the Fundamental Rules are extracted below:-

“F.R. 54-B (2) Notwithstanding anything contained in rule 53, where a Government servant under suspension dies before the disciplinary or Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order re-instatement is of the opinion that the suspension was wholly unjustified,

the Government servant shall subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reason directly attributable to the Government servant it may, after giving him an opportunity to make his representation [within 60 days from the date of on which the communication in this regard is served in him] and after considering the representation, if any, submitted by him direct, for reasons to be recorded in writing that the Government servant shall be paid for the period of such delay only [amount (not being the whole)] of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes”

6. From the bare perusal of the above mentioned provisions it is crystal clear that the disciplinary authority after revocation of the suspension period should have given notice to concerned delinquent employee and should have given an opportunity with regard to regularization of suspension period, but before death of the petitioner's husband no such procedure has been followed by the authority, therefore, there is clear violation of the F.R. No. 54-B(3) as quoted above. This fundamental rule has come up for consideration before the Hon'ble Supreme Court in case of **M. Gopala Krishna Naidu vs. State of Madhyapradesh**¹ held as under in para 7 and 10 of the judgment:-

“7. It is true as Mr. Sen pointed out that F.R. 54 does not in express terms lay down that the authority shall give to the employee concerned the opportunity to show cause before he passes the order. Even so, the question is whether the rule casts such a duty on the authority by implication. The order as to whether a given case falls under cl. 2 or cl. 5 of the Fundamental Rule must depend on the examination by the authority of all the facts and circumstances of the case and. his forming the opinion therefrom of two factual findings; whether the employee was fully exonerated and in case of suspension whether it was wholly unjustified. Besides, an order passed under this rule would obviously affect the government servant adversely if it is one made under cls. 3 and 5. Consideration under this rule depending as it does on facts and circumstances in their entirety, passing an order on the basis of factual finding

1 AIR 1968 SC 240

arrived at from such facts and circumstances and such an order resulting in pecuniary loss to the government servant must be held to be an objective rather than a subjective function. The very nature of the function implies the duty to act judicially. In such a case if an opportunity to show cause against the action, proposed is not afforded, as admittedly it was not done in the present case, the order is liable to be struck down as invalid on the ground that it is one in breach of the principles of natural justice.

10. In our view, F.R. 54 contemplates a duty to act in accordance with the basic concept of justice and fairplay. The authority therefore had to afford a reasonable opportunity to the appellant to show cause why cls. 3 and 5 should not be applied and that having not been done the order must be held to be invalid.”
7. Thus, from the above said legal position it is quite clear that it is incumbent upon the disciplinary authority to issue show cause notice to the petitioner's husband with regard to regularization on suspension period. Since, no such procedure has been followed, therefore, the order dated 13.08.2012 passed by the Commissioner, Surguja Division and also the order dated 27.06.2011 passed by the Collector, Surguja so far as it relates to payment of subsistence allowance only during the suspension period, are hereby quashed.
8. The respondent authorities are directed to pay full pay and allowances to the petitioner during the period of suspension of deceased employee within three months from the date of receipt of copy of this order.
9. In view of the above, the present petition is allowed.

Sd-
(Narendra Kumar Vyas)
Judge