

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 3267 of 2010**

M. Ram Prasad Rao, S/o Late Shri M. Surya Narayan, Aged about 51 years, R/o 27 Kholi, Vikash Nagar, Bilaspur, Presently posted Asstt. Grade II, Cattle Breeding Farm Pakariya, Veterinary Department, Pendra Road, Distt. Bilaspur, Chhattisgarh.

---Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Agriculture & Animal Husbandry Department, Mantralaya, D.K.S. Bhawan, Raipur, Chhattisgarh.
2. Director, Directorate of veterinary Services, Raipur, Distt. Raipur, Chhattisgarh.
3. Joint Director, Veterinary Services, Composite Building, Opposite Collectorate, Bilaspur, Chhattisgarh.

--- Respondents

Writ Petition (S) No. 3286 of 2010

M.S. Sahgal, S/o Late B.S. Sahgal, Aged about 48 years, Working as Asstt. Grade III at office of Joint Director, Veterinary Services, Bilaspur, Chhattisgarh.

---Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Veterinary Department, D.K.S. Bhawan, Raipur, Chhattisgarh.

2. Director, O/o Directorate veterinary Services,
Raipur, Distt. Raipur, Chhattisgarh.

3. Joint Director, O/o Veterinary Services,
Bilaspur, Distt. Bilaspur, Chhattisgarh.

--- Respondents

For Petitioner in WPS/3267/2010 :-

Mr. P. Acharya, Advocate

For Petitioner in WPS/3268/2010 :-

Mr. Vinod Deshmukh, Advocate

For Respondents/State :- Mr. Animesh Tiwari, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board (Through Video Conferencing)

12/07/2021

1. Since common question of fact and law is involved in both these writ petitions, they are heard together and are being decided by this common order.

2. In a regular departmental enquiry held against the two petitioners herein and two other employees, the Disciplinary Authority (respondent No. 2 herein) vide order dated 15/01/2009 (Annexure P-6) inflicted minor penalty under Rule 10(iv) of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (in short 'Rules of 1966')

withholding three annual increments with non-cumulative effect. The petitioners did not call in question the order dated 15/01/2009 (Annexure P-6) and it had thus attained finality, but thereafter, vide order dated 02/06/2010 (Annexure P-1), the Disciplinary Authority cancelled its earlier order (Annexure P-6) of withholding three annual increments of the petitioners with non-cumulative effect and substituted it with the order of recovery of ₹ 7,50,000/- from each of the petitioners, which has now been called in question by the petitioners by way of both these writ petitions.

3. Mr. P. Acharya, learned counsel for petitioner in WPS No. 3267/2010, as well as Mr. Vinod Deshmukh, learned counsel for petitioner in WPS No. 3268/2010, both would make a solitary submission that the Disciplinary Authority (respondent No. 2) has not been conferred with the power of review under the Rules of 1966 as it has only been conferred upon the Appellate Authority under Rule 29(1) of the Rules of 1966, therefore, the Disciplinary Authority (respondent No. 2) could not have cancelled its earlier order dated 15/01/2009 (Annexure P-6)

inflicting minor penalty upon the petitioners withholding three annual increments with non-cumulative effect and then it could not have substituted it with the impugned order dated 02/06/2010 (Annexure P-1) passed for recovery to the tune of ₹ 7,50,000/- from each of the petitioners under Rule 10(iii) of the Rules of 1966 and that too, without recording any finding that such an amount is recoverable from the petitioners because of the loss caused to the State Government for negligence or breach of order on the part of the petitioners as required under Rule 10(iii) of the Rules of 1966, as such, the impugned order deserves to be quashed.

4. Mr. Animesh Tiwari, learned Deputy Advocate General appearing for respondents/State, would support the impugned order and submit that since huge loss was caused by the act of misconduct on the part of the petitioners, therefore, pursuant to the order of the Government, the Disciplinary Authority directed for recovery of loss to the tune of ₹ 7,50,000/- from each of the petitioners, as such, the writ petitions deserve to be dismissed.

5. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

6. It is not in dispute that in a regular departmental proceeding held against the petitioners as well as two other employees, the Director, Veterinary Services i.e. respondent No. 2 being the Disciplinary Authority had inflicted minor penalty within the meaning of Rule 10(iv) of the Rules of 1966 and directed for withholding three annual increments of the petitioners with non-cumulative effect vide order dated 15/01/2009 (Annexure P-6) and the said order was not questioned by the petitioners and it had already come into force and had become final. Thereafter, vide the order impugned dated 02/06/2010 (Annexure P-1), the Disciplinary Authority (respondent No. 2), pursuant to the order of the Government, cancelled its earlier order (Annexure P-6) directing withholding of three annual increments with non-cumulative effect and substituted it with the order of recovery of ₹ 7,50,000/- from each of the petitioners.

7. The question for consideration is, whether the Director, Veterinary Services i.e. respondent No. 2 herein, being the Disciplinary Authority, was justified in cancelling its earlier order dated 15/01/2009 (Annexure P-6) imposing minor penalty of withholding three annual increments of the petitioners with non-cumulative effect under Rule 10(iv) of the Rules of 1966 and substituting that order with the order dated 02/06/2010 (Annexure P-1) passed for recovery of ₹ 7,50,000/- from each of the petitioners under Rule 10(iii) of the Rules of 1966 ?
8. It is well-settled law that there is no inherent power of review vested in a Court or a body exercising judicial function. The power of review is a creature of statute and unless the statute expressly provides for it, there is no power vested in judicial or quasi-judicial authority to review the decision already taken by it.
9. It is well-settled law that administrative authority does not have inherent power of review. The Supreme Court in the matter of Patel

Harshi Thakershi v. Shri Pradyumansinghji

Arjunsinghji¹ has held as under :-

"It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order."

10. In the matter of **Major Chandra Bhan Singh v.**

Latafat Ullah Khan², the Supreme Court has held that review is creature of statute and cannot be entertained in the absence of a provision therefor relying upon its earlier judgments in the matter of **Harbhajan Singh v. Karam Singh**³ and **Patel Chunibhai Dajibhai v. Narayanrao Khanderao Jambekar**⁴. As such, the above-stated principle will equally apply to the administrative bodies also who sometimes take decisions which are semi-judicial in character. Thus, the Disciplinary Authority has no power and jurisdiction to exercise the power of review as it has not been conferred by Rules of 1966 which is applicable to the Government servant.

1 AIR 1970 SCC 1273

2 (1979) 1 SCC 321

3 AIR 1966 SC 641

4 AIR 1965 SC 1457

11. Rule 29(1) of the Rules of 1966 provides for review which states as under :-

"29. (1) Notwithstanding anything contained in these rules except Rule 11 -

(i) the Governor; or

(ii) the head of a department directly under the State Government, in the case of a Government servant serving in a department or office (not being the secretariat), under the control of such head of a department, or

(iii) the appellate authority, within six months of the date of the order proposed to be reviewed, or

(iv) any other authority specified in this behalf by the Governor by a general or special order, and within such time as may be prescribed in such general or special order may at any time, either on his or its own motion or otherwise call for the records of any inquiry and review any order made under these rules or under the rules repealed by Rule 34 from which an appeal is allowed but from which no appeal has been preferred or from, which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may -

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made by any

reviewing authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose; any of the penalties specified in clauses (v) to (ix) of Rule 10 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 14 and except after consultation with the Commission where such consultation is necessary :

Provided further that no power to review shall be exercised by the head of department unless :

(I) the authority which made the order in appeal; or

(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him."

12. A careful perusal of the aforesaid rule would show that the power of review has been conferred to the Governor, the head of a Department directly under the State Government, the appellate authority or any authority specified in this behalf by the Governor by a general or special order.

13. In the instant case, respondent No. 2 i.e. the Director, Veterinary Services is neither the head of a department directly under the State Government in the case of a Government servant serving in a department or office nor he is the

Appellate Authority being the Disciplinary Authority and further he has not shown that he has been conferred with the power of review by general or special order of the Governor. As such, respondent No. 2 being the Disciplinary Authority reviewing its earlier order in exercise of the power of review is without jurisdiction and without authority of law in absence of provision therefor in the Rules of 1966.

14. There is one more reason for not upholding the impugned order dated 02/06/2010 (Annexure P-1). By the supersession of order dated 15/01/2009 (Annexure P-6) inflicting minor penalty upon the petitioners withholding three annual increments with non-cumulative effect under Rule 10(iv) of the Rules of 1966, now minor penalty under Rule 10(iii) of the Rules of 1966 has been imposed and order for recovery of ₹ 7,50,000/- from each of the petitioners has been passed.

15. Rule 10(iii) of the Rules of 1966 states as under :-

"10. Penalties. - The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely :-

Minor penalties :-

(I) XXXX

(ii) XXXX

(iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of order;"

16. It is clear from perusal of the aforesaid rule that penalty of recovery of any pecuniary loss from the pay of the Government servant can be imposed only when it is found that the loss has been caused by the Government servant to the Government by negligence or breach of order. In the instant case, no such notice has been issued to the petitioners informing them that they are liable for the loss caused to the Government either by their negligence or by breach of order on their part. Even the impugned order dated 02/06/2010 (Annexure P-1) does not clearly show that the alleged pecuniary loss to the extent of ₹ 7,50,000/- from each of the petitioners has been caused to the Government because of negligence or breach of order on the part of the petitioners which is sine qua non for imposing penalty under Rule 10(iii) of the Rules of 1966. The impugned order (Annexure P-1) directing recovery of ₹ 7,50,000/- from each of the petitioners does not contain any clear finding

that the said loss was caused to the Government by petitioners' negligence or breach of order.

17. In view of the aforesaid legal analysis, the impugned order dated 02/06/2010 (Annexure P-1) passed by respondent No. 2 substituting its earlier order (Annexure P-6) deserves to be and is hereby set aside and the earlier order dated 15/01/2009 (Annexure P-6) is restored.

18. With the aforesaid observations, both of these writ petitions are allowed to the extent indicated herein-above. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3267 of 2010

Petitioner M. Ram Prasad Rao

Versus

Respondents State of Chhattisgarh & Ors.

WPS No. 3286 of 2010

Petitioner M.S. Sahgal

Versus

Respondents State of Chhattisgarh & Ors.

(English)

Disciplinary Authority has no power and jurisdiction to review its order imposing minor punishment.

(Hindi)

अनुशासनिक प्राधिकारी अपने ऐसे आदेश, जिसके द्वारा लघु शास्ति अधिरोपित किया गया है, को पुनर्विलोकन करने की शक्ति एवं अधिकारिता नहीं है ।