



2026:CGHC:21759



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NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPS No. 1955 of 2022**

Indrasen Agrawal S/o Late Shri Ramchandra Agrawal Aged About 66 Years
Retired Upper Collector, R/o C 102, Usha Heights, Vaishali Nagar Phase 2,
Talapara, Bilaspur, Police Station Tarbahar, District Bilaspur, Chhattisgarh,
District : Bilaspur, Chhattisgarh

... Petitioner**versus**

1 - State of Chhattisgarh Through Secretary, Department of Revenue And
Disaster Management, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nava
Raipur, District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

2 - Collector, Dhamtari, District Dhamtari, Chhattisgarh, District : Dhamtari,
Chhattisgarh.

... Respondent(s)

For Petitioner : Mr. S. P. Kale, Advocate

For State : Mr. Vinay Pandey, Deputy Advocate General

Hon'ble Shri Justice Rakesh Mohan Pandey**Order on Board****08/05/2026**

1. The petitioner has filed this petition seeking the following reliefs:—

"10.1 The Hon'ble High Court may kindly be pleased
to call for the record in respect of departmental
enquiry initiated against the petitioner.



10.2 Hon'ble Court may kindly be pleased to quash the charge-sheet dated 25/08/2021 issued by the respondent.

10.3 Any other relief, which Hon'ble Court deems fit and proper may also kindly be granted to the Petitioner in the interest of justice.

10.4 Cost of the Petition be also awarded.”

2. Facts in brief are that at the relevant time in the year 2015, the petitioner was posted as an Additional Collector, District Dhamtari. He retired from service on attaining the age of superannuation on 30.06.2017. After retirement, an article of charge was issued on 21.06.2018 making allegations that, while exercising powers of the First Appellate Authority under the Right to Information Act, he directed the authority concerned to provide documents free of cost. Consequently, departmental enquiry was contemplated and an amended article of charge was issued on 25.08.2021 wherein similar allegations were reproduced. It is pleaded that the departmental enquiry has been initiated against the petitioner after retirement without obtaining prior permission or sanction of the Hon'ble Governor and the same is in contravention of the provisions of Rule 9(2)(b) of the Chhattisgarh Civil Services (Pension) Rules, 1976. (for short, Pension Rules, 1976).
3. Learned counsel appearing for the petitioner would submit that the departmental enquiry was initiated against the petitioner after retirement on 25.08.2021 and no prior sanction was accorded by the Hon'ble Governor, which is an essential requirement for initiating departmental enquiry against a retired government servant. He has placed reliance upon the judgment passed by the Hon'ble Division Bench in the matter of **Vikram Singh Yadav v. State of Chhattisgarh & ors. (WPS No.6178 of 2019, dt. 28.06.2022)**. He has also placed reliance on the judgment passed in the matter of **State of Madhya Pradesh v. T.N. Verma [2001 (1) M.P.L.J.]**. He would argue that after



retirement, the relationship of employer and employee comes to an end and, therefore, the authorities had no jurisdiction to initiate departmental enquiry.

4. On the other hand, Mr. Vinay Pandey, learned Deputy Advocate General appearing for the State would oppose the submissions made by learned counsel for the petitioner and submit that the petitioner committed certain misconduct while posted as an first appellate authority under the Right to Information Act and, therefore, immediately after retirement, an article of charge was issued on 21.06.2018. The article of charge was issued in the name of the Governor. He would further contend that the subsequent charge-sheet issued on 25.08.2021 was in continuation of the earlier article of charge and, therefore, it cannot be said that the departmental enquiry was initiated after expiry of the limitation prescribed under Rule 9(2)(b) of the Pension Rules, 1976. He would further argue that a notification dated 02.03.2017 was issued by the State Government, according to which sanction from the Hon'ble Governor under Rule 9(2)(b) of the Rules, 1976 is not necessary, as such sanction can be granted by the Chief Minister of the State. He would contend that the sanction required under Rule 9(2)(b) of the Rules, 1976 has been granted by the Chief Minister of the State itself; therefore, the petition is misconceived and deserves to be dismissed.
5. Heard learned counsel for the parties and perused the documents placed on file.
6. The provision of Rule 9 (2) (b) of the Rules, 1976 states that if departmental proceedings are started after a Government servant's retirement, they can be initiated only with the Governor's sanction, must relate to an event that occurred within the last four years, and shall be conducted according to the prescribed departmental



procedure for withholding pension or recovering loss caused to the Government.

7. In the present case, after going through the article of charge and other documents, it appears that the while the petitioner was posted as Additional Collector/First Appellate Authority under RTI Act, an order was passed by him on 07.09.2015; he retired from services on 30.06.2017, whereas the article of charge was issued against him on 21.06.2018 and subsequent amended article of charge was issued on 25.08.2021. Perusal of the article of charge would show that it was issued in the name of the Hon'ble Governor by the State of Chhattisgarh. In the return filed by the State, the concurrence order or approval of the Chief Minister has not been placed on record.
8. With regard to the requirement of prior sanction, the Hon'ble Division Bench in the matter of **Vikram Singh Yadav (supra)**, while dealing with the provisions of Rule 9(2)(b) of the Rules, 1976, held that every executive decision does not need to be formally issued in the name of the Governor. However, when a decision affects a person outside the Government or requires official communication, it should be expressed in the Governor's name under Article 166 of the Constitution. The relevant paragraph 46 is reproduced as under:—

“Perusal of the judgments noted above would go to show that every executive decision need not be formally expressed, but when an executive decision affects an outsider or is required to be officially notified or communicated, it should be expressed in the name of the Governor. When there is compliance of the requirements of Article 166 of the Constitution, the same gives an immunity to the order to the extent that it cannot be challenged on the ground that it is not an order made by the Governor. Omission to comply with the provisions of Article 166 of the Constitution does not render an executive action a nullity.”



9. In the instant matter, the decision taken by the respondent authorities affects the rights of the petitioner, who would be an outsider after retirement, therefore, the requirement of prior sanction from the Governor was mandatory for initiation of departmental enquiry against the petitioner.
10. In the matter of ***State of T.N. Verma (supra)***, the High Court of Madhya Pradesh while dealing with similar issue in para- 5 held as under:—

"5. We find no merit in the submission raised by the learned counsel for the State. The learned counsel was unable to point out that before initiating the departmental enquiry sanction of the Governor was obtained as mandated by the provisions of Rule 9 of M.P. Civil Services (Pension) Rules, 1976. It is transparent from bare reading of Rule 9 (2) (b) that departmental proceedings, if not instituted while the Government servant was in service whether before his retirement or during his re-employment, shall not be instituted save with the sanction of the Governor. The second rider provided by Rule 9 (2) (b) is that such enquiry shall not be in respect of any event which took place more than four years before such institutions. In the instant case, first requirement of sanction of the Governor is not satisfied. Thus, the very institution of the departmental enquiry and subsequent issuance of charge-sheet was wholly unauthorised. There is no whisper in the memo of writ petition that Governor has sanctioned the holding of departmental enquiry against the retired employee as mandated under Rule 9 (2) (b) of the M.P. Civil Services (Pension) Rules, 1976 which reads thus:

"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 proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service,



including service rendered upon re-employment after retirement:

*** *** *** ***

(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 [he 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 look place more than four years before such institution....."

11.From bare reading of above quoted judgment it is clear that under Rule 9(2)(b) of the Pension Rules, 1976, departmental proceedings against a retired Government servant can be initiated only with the sanction of the Governor.

12.In the present case, there was no sanction from the Hon'ble Governor as required under Rule 9(2)(b) of the Pension Rules, 1976, therefore, initiation of departmental enquiry and issuance of article of charge against the petitioner is illegal and bad in law.



2026:CGHC:21759

13.The State has also not placed any document on record to substantiate the fact that any prior approval or sanction was obtained from the from the Chief Minister of the State.

14.Taking into consideration the above disucssed facts and law, the initiation of departmental enquiry and issuance of articles of charge(s) are not sustainable in the eyes of law. Accordingly, the articles of charge Annexure P/1 and P/3 are hereby **quashed**. The petition is **allowed**. No order as to costs.

Sd/-

Rakesh Mohan Pandey

JUDGE

NADIM