

(2016) 06 TP CK 0006
In the Tripura High Court
Case No : WP (C) No. 30 of 2013.

Arun Chandra Gope - Appellant @HASH State of Tripura and Others

Date of Decision : 24-06-2016

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 9(2)(a)
Constitution of India, 1950 — Article 309

Citation : (2016) LIC 4533

Hon'ble Judges : S. Talapatra, J.

Bench : Single Bench

Advocate : A. Bhowmik, Advocate, for the Appellant; B.C. Das, Advocate General and Ms. A.S. Lodh, Addl. G.A, for the Respondents

Final Decision : Allowed

Judgement

S. Talapatra, J. - Heard Mr. A. Bhowmik, learned counsel appearing for the petitioner as well as Mr. B.C. Das, learned Advocate General assisted by Ms. A.S. Lodh, learned Addl. G.A. appearing for the respondents.

2. By means of this writ petition the petitioner has challenged the order dated 16.09.2010 passed by the Chief Secretary imposing the penalty of withholding of 10% of his pension for a period of 1 (one) year and treating the period of suspension from 06.06.2006 to 20.09.2007 as not spent on duty and hence the petitioner will not be entitled to pay and allowance for that period of suspension save and except what has been drawn as subsistence allowance.

3. The undisputed fact is that a departmental proceeding was initiated against the petitioner by the memorandum bearing No. F. 19(660)/VIG/FOR-06/38-41 dated 01.04.2008 on the charges that the petitioner while functioning as the Beat Officer, Surma committed serious irregularities in marking the trees on jote land and further marking the logs with his TFD Hammer No. 715 pertaining to C.S. plot Nos. 49 and 50 of Khatian No. 24 of Mouja Setrai belonging to one Shri Pradip Debbarma. There were 78 (seventy-eight) trees bearing serial Nos. 0722/03-04 to 0799/03-04.

4. By filing a written statement, the petitioner disputed the said charges as levelled by the memorandum dated 01.04.2008. During pendency of the said proceeding the petitioner retired from service on superannuation on 30.04.2009. Consequence thereupon, has been deemed to be a proceeding under Rule-9(2) (a) of the CCS (Pension) Rules, 1972 as adopted in the State of Tripura. It would be apposite to mention that on culmination of the inquiry, the Inquiry Officer in his report dated 01.04.2008, Annexure-G to the writ petition, has clearly observed that the petitioner has violated the rules and acted in a manner which is unbecoming of a Government servant. Thereafter, the petitioner, having been served with the copy of the inquiry report submitted a representation against the findings of the inquiry officer. On purported consideration of the inquiry report and the representation of the petitioner, the impugned order dated 18.09.2010 has been passed by the Chief .Secretary, Government of Tripura.

5. In the midst of the hearing, this court queried the Stale Counsel whether the order dated 18.09.2010, Annexure-H to the writ petition, has been passed by the authority, competent to pass such order. Rule-9(2)(a) of the CCS (Pension) Rules, 1972 provides that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President. In terms of the adoption order of the CCS(Pension) Rules, 1972, the President has to be read as the Governor for purpose of the State Govt, employees. Accordingly, any report after a departmental proceeding within the meaning of sub-rule (1) of Rule 9 of the CCS (Pension) Rules, 1972 has to be submitted to the Governor of the State, who is the only authority to take decision upon such report, not the Chief Secretary or any other authority, if not delegated. However, Ms. A. S. Lodh, learned Addl. G.A. had taken a stand that the power has been delegated on the authority who has passed the impugned order. In support of that statement, one notification No. F.5(11-GA (AR)/2002(S)) dated 22-09-2003 has been placed in this Court.

6. This court is of the clear opinion that the said notification does not refer to the authority, as referred in the proviso to Rule 9(2)(a) of the CCS (Pension) Rules, 1972.

7. Today, at the outset Mr. B.C. Das, learned Advocate General has made a categorical statement. On scrutiny of the records, it appeared that the Chief Secretary did not have the requisite power to pass such order. Since the impugned order dated 18.09.2010 has been passed by a person having no competence to pass such order, the order dated 18.09.2010 is quashed and set aside. But the report of the departmental proceeding has to be placed before the Hon"ble Governor, Tripura in accordance with the procedure and thereafter appropriate decision shall be taken on the said report. The other grounds raised as against the report have not been dealt with on merit. If any order is passed adverse to the petitioner, the petitioner shall be with liberty to challenge such order on the basis of the grounds taken in this writ petition.

8. In the result, the writ petition is allowed to the extent as indicated above.

Personal appearance of the Principal Chief Conservator of Forests (PCCF), Government of Tripura is dispensed with.