



**IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA**

**CWP No. 9379 of 2023
Decided on 16th July, 2024**

Varinder Kumar

...Petitioner

Versus

State of Himachal Pradesh and others

...Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

¹Whether approved for reporting? Yes

**For the petitioner: Mr. Ashwani Sharma, Senior
Advocate, with Ms. Nisha Nalot,
Advocate.**

**For the respondents: Mr. Anup Rattan, Advocate General,
with Mr. Sumit Sharma, Deputy
Advocate General.**

Ajay Mohan Goel, Judge (Oral)

By way of this writ petition, the petitioner has, *inter alia*, prayed for the following relief:-

“That due to undue delay in conclusion of departmental inquiry proceedings on the part of the respondents, the charge-sheet issued by the respondent No. 1 (Forests Department, Government of H.P.) against the petitioner vide Memorandum dated 27.04.2016 (Annexure P-2) may be treated as lapsed or closed and

accordingly, quashed and set aside. Also suspension order dated 27.04.2016 (Annexure P-1) may be ordered to be revoked. Resultantly, all consequential actions, taken or proposed to be taken against the petitioner, may also be ordered to be terminated and the same may be directed to be considered non-est ab-initio. The respondents may be directed to pay arrears of salary and allowances payable to the petitioner during the period of his suspension upto the date of superannuation after deducting the suspension allowance, if any, paid for the said period and also to release all other due and pending retiral benefits applicable to the petitioner otherwise payable to him in accordance with extant rules and regulations, more specifically, payment of regular pension alongwith commutation of pension and also release of death-cum-retirement gratuity alongwith amount payable to the petitioner under Group Insurance Scheme (GIS)."

2. The case of the petitioner is that he joined the Forest Department as a Guard on 24.03.1977. He was promoted against the post of Deputy Forest Ranger in the year 1998 and against the post of Forest Range Officer in the year

2012. He superannuated from service on 30.06.2016 after putting in more than 39 years of service. Two months before his retirement, the petitioner was placed under suspension vide Annexure P-1 i.e. order dated 27.04.2016. On this very day, a memorandum contemplating to initiate an inquiry against the petitioner was also issued under Rule 14 of the CCS (CCA) Rule 1975 and a charge sheet (Annexure P-2) was served upon the petitioner by respondent No.1. It is further the case of the petitioner that the inquiry report was submitted to the Disciplinary Authority on 28.05.2022, by the Inquiry Officer, but, no decision even after a lapse of considerable time, either accepting or rejecting the inquiry report stood taken by the authority concerned. It is further the grievance of the petitioner that on account of this Departmental Inquiry, the post retiral benefits of the petitioner as stand mentioned in the writ petition have been withheld by the authorities.

3. Learned Senior Counsel appearing for the petitioner argued that in the present case, the Departmental inquiry was initiated against the petitioner just a few months before his superannuation in the year 2016. The inquiry proceedings in

the Departmental inquiry were concluded as far back as in the year 2022 and since the submission of the report of the inquiry report by the Inquiry Officer to the Disciplinary Authority, till date, no action thereupon has been taken. He further submitted that as the period within which the inquiry ought to have been taken to its logical conclusion has expired, therefore, the petition be allowed, memorandum dated 27.04.2016, be treated as lapsed and closed and suspension order may also be revoked and respondents be directed to pay all retiral benefits to the petitioner, to which, he is entitled.

4. State has opposed the prayer of the petitioner on the basis of the reply filed to the writ petition. Learned Additional Advocate General has submitted that after the inquiry report was received by the Disciplinary Authority, the Authority sought some additional information related to the case from respondent No.2, but, as information was not available and not coming forth from the concerned field offices and as the matter was under correspondence, therefore, action was not yet taken on the inquiry report, but, it would soon be taken. Accordingly, he prayed that the present petition being

devoid of merit be dismissed, because, the allegation against the petitioner was serious that he had obtained the job on the basis of a fake Schedule Caste Certificate.

5. I have heard learned Senior Counsel for the petitioner, as well as learned Additional Advocate General and I have also carefully gone through the pleadings as well as documents appended therewith.

6. The facts are not much under dispute. The Disciplinary proceedings were initiated against the petitioner a few months before his superannuation, in terms of charge sheet (Annexure P-2) and it is also not in dispute that the Inquiry Officer submitted his report after the completion of the inquiry to the Disciplinary Authority in the year 2022.

7. Now, the stand of the respondents is that after the Disciplinary Authority received the report from the Inquiry Officer, it sent a communication to respondent No.2 and sought certain information from the concerned field offices and as the matter remained under correspondence for some time and as after receiving the requisite information, respondent No.2 had again referred the matter to respondent No.1 for taking

necessary decision on the inquiry report, therefore, there is no merit in the writ petition.

8. On the face of the contents of the reply filed by the respondents-Department, this Court would like to make an observation that the procedure that has been followed in the present case by the respondents, more so, by the Disciplinary Authority after the receipt of the inquiry report contrary to the provisions of Rule 15 of the CCS (CCA) Rules. Rule 15 (supra) relates to action on the inquiry report and Rule 15(1) and 15(2), which are relevant for the purpose of the decision of this writ petition reads as under:-

“(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.

(2) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report

of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.”

9. In terms of the above quoted provisions, the Disciplinary Authority, after the receipt of the inquiry report, if not satisfied with the inquiry report may remit the case to the Inquiring Authority for further inquiry and report, otherwise, the Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry to the delinquent Officer with his tentative reasons for disagreement, if any, with the findings of the Inquiring Authority calling upon the Government Servant to submit his response thereto. There is no provision in Rule 15 that the Disciplinary Authority after receiving the inquiry report can seek the assistance of any other authority to go into the veracity of the inquiry report as has been done in the present case by respondent No.1 by seeking information from

respondent No.2.

10. Besides this, there is another important aspect relating to the undue delay that has taken place in the conclusion of the departmental proceedings. The proceedings were initiated against the petitioner in the year 2016 and the inquiry report was submitted to the disciplinary authority somewhere in the year 2022 and till date the disciplinary proceedings have not been taken to their logical conclusion. Hon'ble Supreme Court of India in Prem Nath Bali versus Registrar, High Court of Delhi and another (2015) 16 Supreme Court Cases 415, has been pleased to hold that the Hon'ble Court has emphasized time and again that it is the duty of the employer to ensure that the departmental inquiry initiated against the delinquent employee is concluded within the shortest possible time by taking priority measures. Hon'ble Supreme Court has further held that every employer (whether State or private) must make sincere endeavor to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be

concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year.

11. Thus, in terms of the said judgment of the Hon'ble Supreme Court, the outer limit that has been fixed for taking a departmental inquiry proceeding to its logical conclusion is one year. In the present case, what to talk of one year as of now 8 years have passed. The judgment of the Hon'ble Supreme Court was in force as on the date when the disciplinary proceedings were initiated against the present petitioner. Yet, the same have not been concluded till date, which undoubtedly has caused extreme hardship and inconvenience to the petitioner as his retiral benefits have not been released to him even after 8 years of his superannuation.

12. Therefore, in these peculiar circumstances, as the departmental proceedings have not been taken to their logical conclusion expeditiously and within the time frame mentioned

by the Hon'ble Supreme Court in Prem Nath Bali's case (supra), this writ petition is allowed by quashing the departmental proceedings that were initiated against the petitioner vide Annexure P-2, as well as the order of suspension passed against him. In the light of the departmental proceedings having been quashed by this Court, it is ordered that the retiral benefits that are due to the petitioner be released to him forthwith without any undue delay alongwith such statutory interest as is permissible in law. Suspension period be treated as period in service, for all purposes.

13. Pending miscellaneous applications, if any, also stand disposed of.

(Ajay Mohan Goel)
Judge

July 16, 2024
(Vinod)