



2025:CGHC:8082

**AFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WPS No. 8586 of 2019**

**1** - Suresh Singh S/o Late Vijay Bahadur Singh Aged About 57 Years  
Posted As Asstt. Sub Inspector, (Mechanic) (M.T. Branch) At Police Line,  
Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

**--- Petitioner**

**versus**

**1** - State Of Chhattisgarh Through Its Secretary, Department Of Home And  
Police Mantralaya, Mahanadi Bhawan, Nawa Raipur, Atal Nagar., District :  
Raipur, Chhattisgarh

**2** - The Director General Of Police Phq - Indrawati Bhawan, Nawa Raipur,  
Atal Nagar, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

**3** - The Superintendent Of Police District Raipur Chhattisgarh., District :  
Raipur, Chhattisgarh

**4** - The Reserve Inspector Police Line, Raipur, District Raipur  
Chhattisgarh., District : Raipur, Chhattisgarh

**5** - Shri Gurjit Singh The Then Reserve Inspector, At - Police Line, Raipur  
And Now Posted As Deputy Superintendent Of Police, At O/o The  
Superintendent Of Police, Durg, District Durg Chhattisgarh., District : Durg,  
Chhattisgarh

**--- Respondents**

**WPS No. 3137 of 2024**

**1** - Suresh Singh S/o Late Vijay Bahadur Singh Aged About 62 Years  
Posted As- Sub - Inspector, Mechanic M.T. Branch, At- Police Line, Raipur,  
District : Raipur, Chhattisgarh

---**Petitioners**

**Versus**

**1** - State Of Chhattisgarh Through Its Secretary, Dept. Of Home And  
Police, Mantralaya, Mahanadi Bhawan, Nawa Raipur, Atal Nagar, Raipur,  
District : Raipur, Chhattisgarh

**2** - The Director General Of Police Phq- Indrawati Bhawan, Nawa Raipur,  
Atal Nagar, District : Raipur, Chhattisgarh

**3** - The Superintendent Of Police District- Raipur, Chhattisgarh.

**4** - The Reserve Inspector Police Line, Raipur, District : Raipur,  
Chhattisgarh

--- **Respondents**

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For petitioner : Mr. Rajesh Kumar Kesharwani with  
Ms. Shrijita Kesharwani, Advocates.  
For Respondents-State: Mr. Rajeev Bharat, Govt. Advocate.  
For Respondent No. 5 : Mr. Chandrikaditya Pandey, Adv.  
in WPS No. 8586/2019  
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**Hon'ble Shri Naresh Kumar Chandravanshi, J**

**ORAL Order**

**14-2-2025**

**1.** Since in both the cases, issue for determination is one and the same, whether despite denial by the employee of allegation of embezzlement of lacs of rupees, without any departmental proceeding or any judicial proceeding (criminal case), any recovery can be made from that employee and his retiral dues can be withheld, therefore, both the petitions are being heard together and decided by this common order. For convenience, most of the documents have been referred from WPS No.

8586/2019.

2. Facts of the case in nutshell are that, the petitioner was initially appointed on the post of Constable (Mechanic) on 1-7-1982 in the police department. On 11-6-2011, while he was posted as Assistant Sub Inspector (Mechanic), he was directed to do duty in 'Shourya Petrol Pump', Police Line, Raipur (henceforth, referred to as 'petrol pump') without any written/formal order. From 11-6-2011 to 7-4-2014, he performed duty in said petrol pump under oral instruction of respondent No. 4/5. Thereafter, upon oral instruction, he was returned to Police Line, Raipur in M.T. Branch. Petitioner was holding technical post and in the petrol pump also, he was looking after mechanical fault. Sole in-charge of the petrol pump was respondent No. 4/5. Under oral direction and under pressure of respondent No. 4/5, petitioner looked after transaction of petrol pump, whereas he was not having any experience of keeping books of account in respect of transaction of petrol pump. He performed his duty honestly, but vide communication dated 23-3-2014 (Annexure P-3) and 4-9-2014 (Annexure P-5), respondent No. 4/5 informed him that, upon physical verification of books of account of petrol pump, deficiency of Rs. 30,47,345.91/- and Rs. 27,23,659.00 respectively was found and he was directed to deposit said amount. Under pressure, the petitioner deposited Rs. 8 lacs twice. Vide communication dated 7-9-2015 (Annexure P-6), respondent No. 4/5 informed that as per audit report of petrol pump, during in-charge period of petitioner i.e. from 12-6-2011 to 7-4-2014, deficiency of Rs. 80,49,387.34/- has been found in account books, therefore, he was directed to submit explanation. Vide Annexure P-7 dated 8-9-2015,

petitioner submitted his explanation stating inter alia that he was unknown about functioning of petrol pump and, therefore, he had refused to perform duty there, further, he has not committed any theft or mistake and due to such allegation of huge embezzlement, he has been highly upset. Despite that, respondent No. 3/Superintendent of Police, Raipur issued show cause notice/adjustment notice (Annexure P-1) dated 11-9-2015 stating inter alia that, on being audited the account books of petrol pump from firm of Chartered Accountant during the period of 12-6-2011 to 7-4-2014, deficit of Rs. 80,49,387.34/- has been found, as such, he was directed to clarify his position and ensure adjustment. Reply vide Annexure P-8 dated 14-9-2015 was submitted by the petitioner, claiming himself to be innocent. But, without considering reply of petitioner, respondent No. 3 passed impugned order (Annexure P-2) dated 16-11-2015 directing deduction of Rs. 10,000/- per month from his salary, which continuously deducted from his salary. Challenging aforesaid show cause/adjustment notice (Annexure P-1) dated 11-9-2015 and recovery order (Annexure P-2) dated 16-11-2015 issued by the respondent No. 3/ Superintendent of Police, Raipur, petitioner filed WPS No. 8586/2019 under Article 226 of the Constitution of India seeking following reliefs :-

“a. This Hon'ble Court may kindly be pleased to issue a writ in the nature of mandamus or suitable direction to the respondents for calling the records pertaining the impugned orders for its perusal.

b. This Hon'ble Court may kindly be pleased to quash

the impugned recovery order, dt. 11/09/2015 Annexure P/1 and dt. 16/11/2015 Annexure – P/2.

c. This Hon'ble Court may kindly be pleased to direct the respondents to return back the recovered amount from the petitioner with penal interest @ 18% p. a.

d. May kindly be pleased to direct the respondent authorities for enquiring the affairs from the agency of Economical Offence Wing.

e. May kindly be pleased to allow compensation and any other relief as the Hon'ble Court may be deemed fit and proper.

f. Cost of petition may kindly be allowed.”

**2.1** During such recovery, on 29-2-2024, the petitioner retired from the post of Sub Inspector (Mechanic), but because of said show cause notice/adjustment notice (Annexure P-1), recovery notice (Annexure P-2) and allegation of embezzlement, his retiral dues have been withheld, therefore, he has filed WPS No. 3137/2024 under Article 226 of the Constitution of India seeking following reliefs :-

“10.1 The Hon'ble Court may kindly be pleased to direct the respondent authorities to release the retiral dues, full pensions, gratuity, GPF, Leave encashment, GIS etc. of the service of the petitioner.

10.2 That, the Hon'ble Court may kindly allow the interest @12 p.a. for the delay in payment of the benefits.

10.3 That, the Hon'ble Court may kindly allow other relief as deem fit and proper.”

**3.** Learned counsel for the petitioner would submit that, during said period i.e. 12-6-2011 to 7-4-2014, he was posted as Assistant Sub Inspector (Mechanic) in police line, but under oral instruction of respondent No. 4/5, he performed duty at the petrol pump, he was not in-charge of the petrol pump, rather, respondent No. 4/5 was in-charge of the petrol pump and under his oral instruction, sometimes, he used to look after the work of transaction of petrol pump, that too, under supervision of respondent No. 4/5, else, at that period, his main duty was to look after mechanical fault of the petrol pump. Even otherwise, since he was not acquainted with the accountancy work or having account training, therefore, he could not have performed the duty of maintaining account book of transaction of petrol pump. In the month of April, 2014, he was removed from petrol pump and under oral instruction, he was performing his duty at Police Line, M.T. branch. Learned counsel for the petitioner further submits that, since initial explanation, the petitioner was showing his innocence and he has specifically stated that, neither he has committed any theft nor any wrongful act in the petrol pump. Despite that, he was compelled to deposit huge amount, as such, he has deposited Rs. 8 lacs under threat and pressure as respondent authorities did not consider his explanation. It is further submitted that without conducting any departmental inquiry or any

criminal proceeding, petitioner has been leveled allegation of embezzlement of more than one crore rupees and has been compelled to make adjustment of amount vide Annexure P-1 and P-2. Learned counsel further submitted that, even as per the preliminary inquiry report (Annexure R-4), the petitioner has denied allegation of said embezzlement in his deposition, despite that, without any inquiry or criminal proceeding, impugned order of recovery has been made, huge amount has been recovered from the petitioner and his retiral dues have also been withheld. Though after the order passed by this Court on 30-8-2024, 50% amount of pension, gratuity and leave encashment has been paid to the petitioner.

**3.1** Learned counsel for the petitioner further submitted that without any proper inquiry or criminal proceeding, making huge recovery from him and withholding his retiral dues are against the CG Civil Services (Classification, Control and Appeal) Rules, 1966 (henceforth, referred to as 'CCA Rules') and CG Civil Services (Pension), Rules, 1976 (henceforth, referred to 'Rules, 1976'), hence it is prayed that, the reliefs sought for by the petitioner in both the writ petitions may be granted.

**4.** Respondents No. 1 to 4 have filed their reply, stating inter alia that, the petitioner took charge of Shourya (Police) Petrol Pump, Raipur on 11-6-2011 and worked there from 12-6-2011 to 7-4-2014. On physical verification of transaction/accounts of petrol pump conducted by respondent No. 4/5 on 23-3-2014 and 8-4-2014, deficiency of Rs. 30,47,345.91 and Rs. 27,23,659.00/- respectively was found. Upon explanation being sought for adjustment of the aforesaid amount, the

petitioner gave his consent vide Annexure R-2 dated 27-10-2015, to deposit the amount in installment of Rs. 10,000/- per month and he himself deposited Rs. 8,60,000 in installments, which itself establish the fact that he has embezzled the amount.

**4.1** Learned counsel for respondents No. 1 to 4, referring to their reply, would submit that, conduct of petitioner with regard to embezzlement of huge amount was reported to respondent No. 3, thereafter, as per direction of respondent No. 3, accounts of the petrol pump were got audited from chartered accountant firm namely VBM and Company, Raipur and in that audit of financial year 2011-12 to 2014-15, when the petitioner was in-charge of the petrol pump, total deficit amount of Rs. 1,01,26,623.34/- was reported by the said Chartered Accountant firm, against which, a sum of Rs. 8,20,000/- was deposited by the petitioner. As per direction of respondent No. 3, a preliminary inquiry was conducted by the Inquiry Officer/Dy. Superintendent of Police, Police Head Quarter, Raipur and in that inquiry, statement of petitioner and other employees of petrol pump were recorded. After inquiry, inquiring officer submitted preliminary inquiry report vide Annexure R-4, wherein the petitioner was found guilty of embezzlement of government fund of Rs. 80,23,666.34/-. Therefore, contention of learned counsel for the petitioner is incorrect that, without any inquiry or opportunity being provided to the petitioner, said recovery order has been made and retiral dues have been withheld. The impugned order of recovery of deficit amount from the petitioner is minor penalty under Rule 10 of the CCA Rules, therefore,

there is no illegality or infirmity in issuing the impugned recovery order and withholding retiral dues of the petitioner. As such, both the petitions are liable to be rejected.

5. Respondent No. 5 has not filed his reply. He has been made party in person as well as by virtue of post (the then) as respondents No. 4 & 5.

6. I have heard learned counsel for the parties and perused the material available on record.

7. As per reply and contention of respondents No. 1 to 4, the petitioner was in-charge of the petrol pump from 12-6-2011 to 7-4-2014 and during this period, he was also responsible for maintaining account books up-to-date, but as per allegation, the petitioner embezzled amount of Rs. 1,01,26,623.34/-. This allegation itself shows that, huge transactions were being made at the petrol pump, but as per contention of the petitioner, he is not aware at all about the transaction of petrol pump, under instruction of respondent No. 4/5 and under pressure, he was performing duty at petrol pump. To prove liability of petitioner that he was in-charge of petrol pump for said period, the order pertaining to making him in-charge of petrol pump ought to have been filed, but no such order has been filed, rather, as per the petitioner, he performed his duty there under oral instruction only, whereas in-charge of petrol pump was respondent No. 4/5. As such, without having any valid document to shift liability upon the petitioner for said embezzlement of huge amount, seems

to be illegal to fasten liability upon the petitioner, particularly when, since his initial explanation, petitioner's stand is that, he is innocent and without having any experience of said work, he was orally entrusted duty at the petrol pump and he has not committed any theft or any wrong act.

8. Preliminary inquiry report (Annexure R-4) dated 29-01-2018 shows that, it (preliminary inquiry report) was submitted by the Dy. Superintendent of Police, Police Head Quarter, Raipur, before Sr. Superintendent of Police, Distt. Raipur on 29-1-2018, wherein petitioner has been held liable for embezzlement of Rs. 1,01,26,623.34/- while his posting at petrol pump from 12-6-2011 to 7-4-2014. But in this inquiry report also, it has been mentioned that "**Petitioner has stated that he has not embezzled Rs. 80,49,387.34/-, and he has denied the allegation (charge).**" In this preliminary inquiry report, the officer holding liable the petitioner for said period and other police officials for embezzlement of other period, recommended disciplinary action and legal proceedings against them. But as per contention of learned counsel for respondents, no departmental inquiry or any other legal proceeding like criminal proceeding etc. has been initiated or conducted or pending against petitioner.

9. In view of above discussion, it is evidently clear that, without any inquiry or criminal proceeding and even prior to obtaining any preliminary inquiry report, impugned show cause notice (Annexure P-1) dated 11-9-2015 and recovery order (Annexure P-2) dated 16-11-2015 have been issued by the respondent No. 3/ Superintendent of Police, Raipur and directed for adjustment/recovery of huge amount of Rs.

80,49,387.34/- from the salary of petitioner only at the behest of said consent (Annexure R-2) dated 27-10-2025 submitted by the petitioner, whereas contents of Annexure R-2 itself shows that, the petitioner has not unequivocally admitted the allegation, rather he has denied the allegation and stated that he has not committed any mistake. Having considered such ambiguous admission of the petitioner and further considering his oral explanation, in which, he has stated that he has not committed any theft or any wrong in the petrol pump, such recovery order ought to have been made after conducting due departmental inquiry and also other legal proceeding, as has been recommended by the inquiry officer in belated preliminary inquiry report (Annexure R-4) dated 29-1-2018.

**10.** It is the contention of respondents No. 1 to 4 that the impugned order of recovery of deficit amount from the petitioner is a minor penalty under Rule 10 of the CCA Rules. Rule 10(i) to (iv) of the CCA Rules provides for minor penalty, which 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) Censure;

(ii) Withholding of his promotion;

(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:

(iv) withholding of increments of pay or stagnation allowance;”

**11.** Rule 16 of the CCA Rules provides procedure for imposing minor penalties, which states as under :-

**“16. Procedure for imposing minor penalties.-**

(1) Subject to the provisions of sub-rule (3) of Rule 15, no order imposing on a Government servant any of the penalties specified in clauses (i) to (iv) of Rule 10 and Rule 11 shall be made except after-

(a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal.

(b) holding an inquiry in the manner laid down in subrules (3) to (23) of Rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary:

(c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration:

(d) recording a finding on each imputation of misconduct or misbehaviour: and

(e) consulting the commission where such consultation is

necessary.

(1-a) xxx                      xxx                      xxx

(2) The record of the proceedings in such cases shall include-

(i) a copy of the intimation to the Government servant of the proposal to take action against him;

(ii) a copy of the statement of imputation of misconduct or misbehaviour delivered to him:

(iii) his representation, if any:

(iv) the evidence produced during the inquiry:

(v) the advice of the commission, if any;

(vi) the findings on each imputation of misconduct or misbehaviour; and

(vii) the orders on the case together with the reasons therefor."

**12.** Careful perusal of the aforesaid rule would show that, the punishment of recovery from salary, whole or part, of any pecuniary loss caused by the employee to the government, is minor penalty, and can be imposed on any government servant only after informing him under Rule 16(1)(a) of the CCA Rules, in writing, of the proposal to take action against him and of the imputations of misconduct or misbehavior, on which, it is proposed to be taken, and after giving him a reasonable opportunity to make such representation as he may wish to make against the proposal.

Rule 16(1)(a) of the CCA Rules prohibits imposition of any penalty without serving a charge sheet on the delinquent and giving him reasonable opportunity to defend.

**13.** The M.P. High Court in the matter of **Ku. Shailja R. Jeswani v. State of M.P. and others** [2000 (3) MPHT 85 (NOC)] has held that notice cannot be construed as a proposal to take action against the petitioner with regard to imputation of misconduct and quashed the order imposing minor penalty.

**14.** In the matter of **Lal Audhraj Singh Lal Rampratap Singh v. State of Madhya Pradesh** (1967 MPLJ 528), a Division Bench of the Madhya Pradesh High Court has clearly held that merely giving a notice to the Government servant saying that he is guilty of certain lapse or misconduct and asking him to show cause against the punishment of withholding of increments is not sufficient. It was observed in para 5 as under:-

"5. The petitioner's grievance that he was not given an effective opportunity of showing cause against the proposed punishment of withholding of his increments is also substantial. Under rule 55-A of the M.P. Civil Services (Classification, Control and Appeal) Rules, which were in force before 13th August 1965, such a punishment could be imposed on any Government servant only after giving him an adequate opportunity of making a representation that he desired to make and after taking into consideration such representation, if made. So also,

under rule 13(1)(a) of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1965, the punishment of withholding of increment can be imposed only after the Government servant is informed in writing of the proposal to take this action against him and of the allegations on which it is proposed to be taken and given an opportunity to make any representation he may wish to make and after taking into consideration such representation, if made. No doubt, it is not necessary to hold a departmental enquiry for imposing on a Government servant the punishment of withholding an increment. But he is clearly entitled to an effective opportunity of meeting the allegations on which it is proposed to withhold his increment. Merely giving a notice to the Government servant saying that he is guilty of certain lapse or misconduct and asking him to show cause against the punishment of withholding of increments is not sufficient. The Government servant must be informed of the allegations against him and the material on which they are based. In the present case, the second notice, which was issued to the applicant on 15th April 1963, was, as stated in the return itself, on the basis of report of enquiry which was held in July 1954. A copy of that report should have been supplied to the petitioner for enabling him to meet the charge of negligence levelled against him and to show that he did not deserve any punishment."

- 15.** Clause (b) of sub-rule (1) of Rule 16 of the Rules of 1966 confers discretion upon the disciplinary authority to decide whether an

enquiry is to be conducted. The disciplinary authority must apply its mind to the facts and circumstances of the case as disclosed in the representation of the employee and other available material and give a reasoned finding whether an enquiry is necessary or not. In absence of such finding, order imposing penalty would be invalid unless of course, it can show that omission has not resulted in prejudice to the employee.

**16.** Not only this, the M.P. High Court in the matter of **Union of India and another v. C.P. Singh** (2004 (II) MPJR 252), taking into consideration the decision of the Supreme Court on this point and further taking into consideration the decisions of the Supreme Court in the matters of **D.K. Bharadwaj v. Union of India** [(2001) 9 SCC 180] and **Food Corporation of India v. A. Prahalada Rao** [(2001) 1 SCC 165], summarised the legal position for imposing minor penalty in paragraphs 16 and 17 as under:-

"16. The position as can be gathered from the Rules and the aforesaid decisions can be summarised thus:

(i) In a summary inquiry, a show cause notice is issued informing the employee about the proposal to take disciplinary action against him and of the imputations of misconduct or misbehaviour on which such action is proposed to be taken. The employee is given an opportunity of making a representation against the proposal. The Disciplinary Authority considers the records and the representation and records of findings on

each of the imputations of misconduct.

(ii) In a regular inquiry, the Disciplinary Authority draws up the articles of charge and it is served on the employee with a statement of imputation of misconduct, list of witnesses and list of documents relied on by the Department. The Disciplinary Authority calls upon the employee to submit his defence in writing. On considering the defence; the Disciplinary Authority considers the same and decides whether the inquiry should be proceeded with, or the charges are to be dropped. If he decides to proceed with the enquiry, normally an Inquiring Authority is appointed unless he decides to hold the inquiry himself. A Presenting Officer is appointed to present the case. The employee is permitted to take the assistance of a co-employee or others as provided in the rules. An inquiry is held where the evidence is recorded in the presence of the employee. The employee is permitted to inspect the documents relied upon by the employer. The employee is also permitted to call for other documents in the possession of the Management which are in his favour. The delinquent employee is given an opportunity to rebut the evidence of the management by cross-examining the management witnesses and by producing his evidence both documentary and oral. Arguments-written and/or oral, are received/heard. The delinquent employee is given full opportunity to put forth his case. Therefore, the Inquiring Authority submits his report. The copy of the report is furnished to the employee

and his representation is received. Thereafter the Disciplinary Authority considers all the material and passes appropriate orders. The detailed procedure for such inquiries is contained in sub-rules (6) to (25) of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 corresponding to sub-rules (3) to (23) of Rule 14 of the Central Civil Services (CCA) Rules, 1965 and M.P. Civil Services (CCA) Rules, 1966.

(iii) The normal rule, except where the employee admits guilt, is to hold a regular inquiry. But where the penalty proposed is a 'minor penalty', then the Rules give the Disciplinary Authority a discretion to dispense with a regular inquiry for reasons to be recorded by him, and hold only a summary enquiry.

(iv) Though the Rules contemplate imposing a minor penalty without holding a regular enquiry, where the Disciplinary Authority is of the opinion that such enquiry is not necessary, such decision not to hold an enquiry can be only for valid reasons, recorded in writing. Dispensation with a regular enquiry where minor penalty is proposed, should be in cases which do not in the very nature of things require an enquiry, for example, (a) cases of unauthorised absence where absence is admitted but some explanation is given for the absence; (b) non-compliance with or breach of lawful orders of official superiors where such breach is admitted but it is contended that it is not willful breach; (c) where the nature of charge is so

simple that it can easily be inferred from undisputed or admitted documents; or (d) where it is not practicable to hold a regular enquiry.

(v) But, even where the penalty proposed is categorised as minor penalty, if the penalty involves withholding increments of pay which is likely to affect adversely the amount of pension (or special contribution to provident fund payable to the employee), or withholding increments of pay for a period exceeding three year or withholding increments of pay with cumulative effect for any period, then it is incumbent upon the disciplinary authority to hold a regular inquiry.

(vi) **Position before decision in FCI:** Where the charges are factual and the charges are denied by the employee or when the employee requests for an inquiry or an opportunity to put forth the case, the discretion of the Disciplinary Authority is virtually taken away and it is imperative to hold a regular inquiry.

**Position after decision in FCI:** Where the Rules give a discretion to the Disciplinary Authority to either hold a summary enquiry or regular enquiry, it is not possible to say that the Disciplinary Authority should direct only a regular enquiry, when an employee denies the charge or requests for an inquiry. Even in such cases, the Disciplinary Authority has the discretion to decide, for reasons to be recorded, whether a regular enquiry should be held or not. If he decides not to hold a regular enquiry and proceeds to decide the matter

summarily, the employee can always challenge the minor punishment imposed, on the ground that the decision not to hold a regular enquiry was an arbitrary decision. In that event, the Court or Tribunal will in exercise of power of judicial review, examine whether the decision of the Disciplinary Authority not to hold an enquiry was arbitrary. If the Court/Tribunal holds that the decision was arbitrary, then such decision not to hold an enquiry and the consequential imposition of punishment will be quashed. If the Court/Tribunal holds that the decision was not arbitrary, then the imposition of minor penalty will stand.

17. It is also possible to read the decisions in **Bharadwaj** and **FCI** harmoniously, if **Bharadwaj** is read as stating a general principle, without reference to any specific rules, that it is incumbent upon the Disciplinary Authority to hold a regular enquiry, even for imposing a minor penalty, if the charge is factual and the charge is denied by the employee. On the other hand, the decision in **FCI** holding that the Disciplinary Authority has the discretion to dispense with a regular enquiry, even where the charge is factual and the employee denies the charge, is with reference to the specific provisions of a Rule vesting such discretion."

**17.** Reverting to the facts of the instant case in the light of the aforesaid proposition, it is quite vivid that in the instant case, only on the basis of order Annexure P-1 dated 11-9-2015, seeking clarification with regard to deficit of amount of the petrol pump and directing him for

adjustment of the amount and in pursuance thereof, consent by denying allegation Annexure R-2 dated 27-10-2015 was submitted by the petitioner. The letter Annexure P-1 cannot be construed as a proposal to take action against the petitioner with regard to imputation of misconduct, as provided in Section 16(a) of the CCA Rules and only in the light of said consent in form of denial of allegation (Annexure R-2) submitted by the petitioner, the impugned order Annexure R-2 dated 16-11-2015 has been passed by the respondent No. 3/Superintendent of Police, Raipur holding him guilty of embezzlement of Rs. 80,49,387.34/- and directed for adjustment of the same by deducting Rs. 10,000/- per month from the salary of petitioner, which is contrary to the principle of law laid down by the Hon'ble MP High Court in the case of **Lal Audhraj Singh Lal Rampratap Singh** (supra) and **C.P. Singh's** case (supra), as show cause notice/ adjustment notice Annexure P-1 dated 11-9-2015 would not amount to proposal to take action against the delinquent and it would also not amount to serving of imputation of misconduct or misbehaviour on which action is proposed to be taken under Rule 16(1)(a) of the CCA Rules and there is complete non-compliance of Rule 16(1)(a) of the said Rules, as no opinion has been recorded by the disciplinary authority that, as to why, inquiry is not necessary, taking alleged consent dated 27-10-2015 (Annexure R-2) submitted by the petitioner under clause (a) and the record of inquiry, if any, held under Clause (b), into consideration. Though in instant case, preliminary inquiry was conducted and report dated 29-1-2018 (Annexure R-4) was submitted, but as per that inquiry report itself, the petitioner has denied the allegation of embezzlement of said amount.

Despite that, the impugned recovery order (Annexure P-2) dated 16-11-2015 has been passed by the respondent no. 3, which is in teeth of the provisions contained in Rule 16(1) of the CCA Rules, therefore, order Annexure P-1 dated 11-9-2015 and order Annexure P-2 dated 16-11-2025 issued by the respondent No. 3 are quashed.

**18.** So far as withholding of pension, and retiral dues i.e. gratuity etc. is concerned, it is settled preposition of law that, right to receive pension by the employee has been recognized by Hon'ble Apex Court as right to property under Article 300A of the Constitution of India. The Supreme Court in the case of **Deokinandan Prasad Vs. State of Bihar [1971] 2 SCC 330**, while considering various judgments, has held in para 33 as under :-

**“33.** Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by sub-article (5) of Article 19. Therefore, it follows that the order, dated June 12, 1968, denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under Article 32 is maintainable. It may be that under the Pension Act (Act 23 of 1871) there is a bar against a civil court entertaining any suit relating to the matters mentioned therein. That does not stand in the way of writ of mandamus being issued to the State to

property consider the claim of the petitioner for payment of pension according to law.”

**19.** In the case of *State of W.B. v. Haresh C. Banerjee* [(2006) 7 SCC 651], Hon'ble Supreme Court has recognized that, even when after repealing of Article 19(1)(f) and Article 31(1) of the Constitution of India, vide Constitution (Forty – fourth Amendment) Act, 1978 with effect from 20-6-1979, the right to property was no longer remained a fundamental right, it was still constitutional right as provided in Article 300A of the Constitution of India. Right to receive pension was treated as right to property.

**20.** For withholding pension, Rule 9 of the CG Civil Services (Pension) Rules, 1976 (henceforth, referred to as 'Rules, 1976') is applicable. Rule 9(4) speaks as under :-

**"9. Right of Governor to withhold or withdraw pension :** (4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension and death-cum-retirement gratuity as provided in [Rule 64] shall be sanctioned:

[Provided that, where pension has already been finally sanctioned to a Government servant prior to institution of departmental proceedings, the Governor, may, by

order in writing, withhold, with effect from the date of institution of such departmental proceedings, fifty percent of the pension so sanctioned subject, however, that the pension payable after such withholding is not reduced to less than [the minimum pension as determined by the Government from time to time]:

Provided further that, where departmental proceedings have been instituted prior to the 25th October, 1978, the first proviso shall have effect as if for the words 'with effect from the date of institution of such proceedings' the words 'with effect from a date not later than thirty days from the date aforementioned' had been substituted:

Provided also that, -

(a) if the departmental proceedings are not completed within a period of one year from the date of institution thereof, fifty percent of the pension withheld shall stand restored on the expiration of the aforesaid period of one year;

(b) if the departmental proceedings are not completed within a period of two years from the date of institution, the entire amount of pension so withheld stand restored on the expiration of the aforesaid period of two years; and

(c) if in the departmental proceedings final order is passed to withhold or withdraw the pension or any recovery is ordered, the order shall be deemed to take effect from the date of the institution of departmental proceedings and the amount of pension since withheld shall be adjusted in terms of the final order subject to the limit specified in sub-rule (2) of Rule 43."

**21.** So far as gratuity is concerned, Rule 64 of the Rule, 1976 provides as under :-

“64. Provisional pension where departmental or judicial proceedings may be pending-

(1) (a) and (b) xxx xxx xxx

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon:

Provided that where departmental proceedings have been instituted under Rule 16 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966, for imposing any of the penalties specified in clauses (i), (ii) and (iv) of Rule 10 of the said rules, the payment of provisional gratuity to the extent of 90% of the gratuities admissible under the rules shall also be authorised to be paid to the government servant.

(2) xxx XXX XXX.”

**22.** Admittedly, in instant case, as has been observed hereinabove, neither any departmental proceeding nor any judicial proceeding (criminal case) was initiated or pending against the petitioner on the date of his retirement i.e. 29-2-2024, therefore, withholding of pension and gratuity of the petitioner, is not found to

be valid in view of above judgment rendered by the Apex Court and further in view of Rule 9 and Rule 64 of the Rules, 1976. Therefore, the petitioner is entitled for full pension and gratuity payable to him on the date of his retirement. In that view of the matter, the respondents are also unjustified in withholding the amount of leave encashment, GPF, GIS etc. of the petitioner, which otherwise he is entitled for.

**23.** In view of above discussion, both the petitions are allowed. Show cause notice/adjustment notice dated 11-9-2015 (Annexure P-1 in WPS No. 8586/2019) and recovery order dated 16-11-2015 (Annexure P-2 in WPS No. 8586/2019) issued by the respondent No. 3/Superintendent of Police, Raipur, District Raipur are quashed. Respondents are directed to pay to the petitioner the amount of full pension and all retiral dues i.e. gratuity, leave encashment, GPF and GIS etc. within a period of 45 days from today in accordance with law. Petitioner is also entitled to get interest at the rate of 8% per annum from the date of his retirement till date of actual payment of outstanding amount. Respondents are further directed to refund to the petitioner the amount recovered from him against said show cause notice/adjustment notice Annexure P-1 and recovery order Annexure P-2 along with interest at the rate of 8% per annum till its final payment.

**24.** It is made clear that, this order will not preclude the respondent authorities to proceed against the petitioner in accordance with law.

**25.** Accordingly, both the petitions are allowed to the above extent.

**26.** There shall be no order as to cost(s).

Sd/-  
**(Naresh Kumar Chandravanshi)**  
**Judge**