

W.P. No.899/2010

29/2/2012:

Shri Deepak Awasthy, learned counsel for the petitioner.

Shri Rajesh Tiwari, learned Govt. Adv. for respondent State.

Petitioner is a retired Veterinary Assistant Surgeon and has filed this writ petition seeking quashment of the departmental enquiry initiated against the petitioner. Placing reliance on the provisions of Rule 9 of M.P. Civil Services (Pension) Rules, 1976 and interpretation to the said rules made by the Division Bench of this Court in the case of **State of M.P. and others Vs. R. L. Ogale - 2006(1) MPLJ 412** challenge to the departmental enquiry is made on the ground that as the enquiry is not completed within a period of two years, the same is deemed to have been quashed in view of law laid down in the case of **R.L. Ogale** (supra). That apart, it is contended that finding recorded by the Enquiry Officer is perverse by referring to the merit of the allegation leveled in the charge sheet it is said that findings recorded by enquiry officer are perverse, on this ground prayer made is that enquiry pending against the petitioner be quashed.

Having heard Shri Deepak Awasthy, learned counsel for the petitioner and Shri Rajesh Tiwari, learned Government Advocate for the respondents, it now transpires that the law laid down by the Division Bench in the case of **R.L. Ogale** (supra) has been over ruled by a Full Bench of this Court in the case of

State of Madhya Pradesh and Anr. Vs. Puranlal Nahir - W.A. No.311/2011 decided in 23rd January 2012, it has been held that interpretation to Rule 9 given in the case of **R.L. Ogale** (supra) is not correct and even after a period of two years of retirement, departmental enquiry may go on.

In view of law laid down in the case of **State of Madhya Pradesh and Anr. Vs. Puranlal Nahir** (supra) on the ground that enquiry is not completed within two years of retirement, interference into the matter is not called for.

As far as other ground is concerned the Enquiry Officer has completed the enquiry and finding is submitted to the disciplinary authority, who is yet to take a final decision on the findings recorded by the enquiry officer. On the ground that the enquiry officer has not evaluated the evidence properly and findings are based on certain documents which came subsequent to the act alleged against the petitioner and therefore, cannot be taken note of for holding the petitioner guilty interference cannot be made at this stage by this Court. The aforesaid contention advanced by the petitioner is to be considered by the disciplinary authority and at this stage when the disciplinary authority is yet to take a final decision with regard to the finding recorded by the Enquiry Officer, this Court cannot step into the shoes of the disciplinary authority and usurp the power of Disciplinary authority. It is for the petitioner to raise all such objections with regard to defect or perversity in the finding of the enquiry officer before the disciplinary authority and it would be for the disciplinary

authority to consider these objections and thereafter take a decision in the matter.

Accordingly, for the present finding no case for interference into the matter, this petition is disposed of with the following directions :

On the petitioner's filing certified copy of this order along with a detailed objection if any, in addition to the objection already filed to the report of enquiry officer, the disciplinary authority shall consider the objections and grounds raised by the petitioner and thereafter decide the disciplinary proceedings in accordance to law within a period of two month from the date of receipt of certified copy of this order. Needless to emphasize that if still aggrieved petitioner shall have right to assail the final order of disciplinary authority in accordance with law.

With the aforesaid direction, this petition stands disposed of.

c.c. as per rules.

(Rajendra Menon)
Judge