

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10445 of 2000

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Krishna Ballava Singh, son of Late Nandlal Singh, resident of village- Ramdiri,
P.S. Matihani, District- Begusarai, at present posted as Assistant Professor of Civil
Engineering, Govt. Polytechnic Barauni, Begusarai

.... Petitioner

Versus

1. The State of Bihar, through the Secretary, Science and Technology, Govt. of Bihar, Technology, Government of Bihar, Technology Bhawan, Patna
2. The Special-cum- Joint Secretary, Science & Technology, Govt. of Bihar, Technology Bhawan, Patna
3. The Additional Secretary, Science and Technology , Govt. of Bihar, Technology Bhawan, Patna-1
4. The Director, Science and Technology, Govt. of Bihar, Technology Bhawan, Patna-1

.... Respondents

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Appearance :

For the Petitioner/s : Mr. C.M.CHAURASIA

For the Respondent/s : Mr. AC to GA-2

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 16-07-2015

Heard Sri C.M. Chaurasia, learned counsel for the
petitioner and Sri Prabhat Kumar, learned AC to GA-2.

2. The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for quashing of an order, contained in Memo no.2158 dated 13.11.1996, issued by the Special Secretary, Science and Technology, Govt. of Bihar(Annexure-10 to the writ petition), whereby the disciplinary authority after conclusion of the departmental proceeding imposed punishment of recording 'Censure' in the service record of the petitioner and also directed that save and except subsistence



allowance , the petitioner shall not be entitled to get anything during his suspension period. The petitioner has further prayed for setting aside the communication, contained in letter no.1608 dated 11.09.2000 issued by the Additional Secretary, Science and Technology, Govt. of Bihar, Patna, whereby the petitioner was communicated regarding rejection of his application. It was asserted by learned counsel for the petitioner that the petitioner had made a prayer to review or recall of the order of two punishments.

3. Short fact of the case is that on five charges, the petitioner was proceeded departmentally and by order, contained in Memo No.3154 dated 30.11.1990, the petitioner was put under suspension. By the said order, the Departmental Enquiry Commissioner was appointed as conducting officer for conducting departmental proceeding. Since along with memo of charge, no documents were supplied to the petitioner, the petitioner requested the Departmental Enquiry Commissioner by its letter dated 10.01.1991 for providing documents, so that he may file his show cause. Subsequently, vide Annexure-3 to the writ petition, being dissatisfied with the action of the Administrative Department on the point that without supplying any document and without any specific reason, the departmental proceeding was initiated against the petitioner, the Departmental Enquiry Commissioner refused to conduct the enquiry



and returned the file to the Administrative Department with a request to complete other formalities. Thereafter, the petitioner, vide Annexure-5 to the writ petition, submitted his show cause reply on 25.04.1991 refuting all five charges, which were alleged in the memo of charge. It is the case of the petitioner that despite filing detailed show cause, no step was taken in the departmental proceeding and the petitioner remained under suspension for more than two years. After expiry of two years, the petitioner in view of government instruction issued from time to time, particularly the instruction, contained in letter no.4M/R-1-046/78/605 dated 18.08.1978 an administrative instruction of the Department dated 21.07.1986, which contemplates revocation of suspension after expiry of two years, the petitioner requested the Department for revocation of his suspension. However, in spite of that no heed was paid by the Department. In the meanwhile, the Administrative Department requested the Divisional Commissioner, Bhagalpur to conduct an enquiry in the departmental proceeding and finally, the matter was entrusted to the Divisional Commissioner, Munger for conducting enquiry. Learned counsel for the petitioner, by way of referring to Annexure-7 to the writ petition i.e. enquiry report dated 25.02.1993 issued under the signature of Sri Shiv Basant, Divisional Commissioner, Munger, submits that the Divisional Commissioner, Munger in its enquiry report has not



recorded any finding to suggest that any of the charges was proved against the petitioner. However, in respect of charge no.5, the conducting officer submitted its report keeping open the matter to the Administrative Department to take decision on its own wisdom, particularly after enquiry from Sri R.L. Das, who was at the relevant time the Incharge Principal.

4. Learned counsel for the petitioner submits that though the enquiry report with no finding suggesting prove of any charge was submitted on 25.02.1993, still thereafter, Administrative Department did not take final decision in departmental proceeding and the petitioner remained under suspension for an inordinate period. Thereafter, the petitioner again and again approached authority concerned either for taking any final decision in the departmental proceeding or for revocation of his suspension. However, at much belated stage, the disciplinary authority has come out with an order, whereby the punishment has been imposed against the petitioner, as indicated herein above.

5. Learned counsel for the petitioner submits that once after conclusion of the departmental enquiry, the petitioner was reinstated with minor punishment of 'censure', the order forfeiting salary for the suspension period was itself violative in view of non-compliance of provision, contained in Rule-97 (3) & (5) of the Bihar

Service Code. On this point, he has placed reliance on a Division Bench Judgment, reported in 1982 PLJR 82; Sri Mahabir Prasad Vs State of Bihar & Ors. He has particularly placed reliance on paragraph-3 of the said Judgment.

6. On the aforesaid ground, Sri Chaurasia , learned counsel for the petitioner submits that the entire departmental proceeding initiated against the petitioner was unwarranted and moreover the enquiry officer, who had submitted its report in the year 1993 without suggestive proof of any charge, the disciplinary authority after about three years from the submission of enquiry report has illegally and incorrectly passed punishment order, which is required to be set aside. He submits that after order of punishment, the petitioner approached the authority concerned for recall or review of the order which, too, was rejected vide Annexure-14 to the writ petition and, as such, a prayer is being made to direct the concerned Respondents to pay all the benefits of suspension period of the petitioner.

7. Learned State Counsel has vehemently opposed the prayer of the petitioner. He submits that of course, the enquiry report did not suggest the prove of charge, but on perusal of enquiry report, it is evident that the petitioner was not exonerated from the charges. He further submits that the stand taken by the petitioner that Divisional Commissioner, Bhagalpur was appointed as conducting

officer is not correct and the same has been denied in its counter affidavit.

8. Besides hearing learned counsel for the parties, I have also perused the materials available on record. It is a peculiar case in which, on certain charges, the petitioner was put under suspension by order dated 30.11.1990. By Annexure-1, while putting the petitioner under suspension, an enquiry officer i.e. Departmental Enquiry Commissioner was appointed to conduct enquiry. The matter was referred to the enquiry officer, however no relevant documents were provided to the petitioner. The petitioner approached the conducting officer regarding supply of documents. On request made by the petitioner, it appears from Annexure-3 that the conducting officer i.e. the Departmental Enquiry Commissioner was surprised with the behavior of the department. He also noticed that without supply of any relevant documents, proceeding was initiated against the petitioner. Accordingly, vide Annexure-3 the conducting officer had returned the file to the Administrative Department for completing all formalities and, thereafter, send the record. Surprisingly, after the request was made by the conducting Officer at subsequent stage, the Department instead of sending record to the Departmental Enquiry Commissioner, appointed Divisional Commissioner, Munger to conduct enquiry. The enquiry report has been brought on record. Of



course, at the time of exercising judicial review, it is not required for the High Court to examine enquiry report, but since the punishment was imposed on the basis of enquiry report, which has not suggested prove of any charge, this Court was persuaded to examine the enquiry report. On perusal of enquiry report, it is evident that the enquiry officer had not recorded its opinion regarding prove of any charges, which were framed against the petitioner. This enquiry report was submitted on 25.02.1993. Even thereafter, the disciplinary authority did not bother to take any decision in the departmental proceeding; rather the petitioner was compelled to continue under suspension for a long period. Finally, vide Annexure-10, the disciplinary authority came out with punishment of 'censure and also forfeiting the benefits of salary during the suspension period save and except subsistence allowance. The Court is of the opinion that once, the conducting officer had not recorded any opinion regarding prove of charges and the disciplinary authority at subsequent stage was of the opinion to impose punishment, in that event, it was necessary for the disciplinary authority to ask for show cause from the delinquent regarding his differing with the opinion with the enquiry officer. It is not case of the Respondents that any further opportunity was given to the petitioner. It is also not a case that before passing punishment order, the enquiry report was provided to the petitioner and he was asked to explain on



the enquiry report. Primarily, the court proceeding was violative of principles of natural justice. Moreover, the second punishment i.e. forfeiture of salary during suspension period of the petitioner is also violative of Rule 97(3) and (5) of Bihar Service Code. The present case is squarely covered by the Division Bench Judgment of this Court reported in 1988 PLJR 82, on which reliance was placed by learned counsel for the petitioner. It would be appropriate to quote paragraph-3 of the Judgment, which is as follows.

“3. Mr. Tarkeshwar Dayal, learned counsel appearing for the petitioner did not challenge the validity of the order of censure. Learned counsel however, submitted that the order of the State Government that the period of suspension would be treated as on duty for the purposes of pension and gratuity but the petitioner would not get anything more than the subsistence allowance already received by him during the period of suspension is invalid, because the petitioner was not given an opportunity to be heard before the said order was passed. In support of this contention, learned counsel relied upon a decision of the Supreme Court in M. Gopalkrishna Naidu V. The State of Madhya Pradesh (AIR 1968 Supreme Court 240). There is substance in the contention of learned



counsel. The facts of the Supreme Court case were, more or less, similar in the sense that the delinquent officer had been suspended pending the Departmental enquiry. The enquiring officer found the officer not guilty, but the Government disagreed with that finding and served a notice to show cause why he should not be dismissed. Subsequently, the Government held that the charges against the officer were not proved beyond reasonable doubt. It also held that the suspension and the Departmental enquiry “were not wholly unjustified”. The order further directed, inter alia that the entire period of absence from duty should be treated as period spent on duty under Fundamental Rule 54(5) for purposes of pension only, but that he should not be allowed any pay beyond what he had actually received or what was allowed to him by way of subsistence allowance during the period of his suspension. The Supreme Court held that Fundamental Rule 54 contemplates a duty to act in accordance with the basic concept of justice and fairplay. The authority has to afford a reasonable opportunity to the officer concerned to show cause why clauses (3) and (5) should not be applied. In that case the order was held to be



invalid as no reasonable opportunity to the officer to show cause was given. Rule 97 of the Bihar Service Code, 1952, is in parimateria with rule 54 of the Fundamental Rules. The petitioner, therefore, ought to have been given an opportunity to show cause why clauses (3) and (5) of Rule 97 should not be applied in his case. As that had not been done, the application is allowed and the impugned portion of the order contained in Annexure-1 which reads “The period suspension be treated as on duty for the purposes of pension and gratuity but he will not get anything more beyond the subsistence grant already received by him during the period of suspension” is struck down as invalid. It would be open to the competent authority to consider the question de novo, after giving the petitioner a reasonable opportunity to show cause against the action proposed against him. There will be no order as to costs.”

9. Though, in this case, a counter affidavit has been filed on behalf of the Respondents, it has not given detail as to whether before imposing punishment i.e. forfeiture of salary during suspension period, the petitioner was given any show cause notice or not. In that view of the matter, the Court is of the opinion that the order contained in Annexure-10 is perverse and violative of principles

of natural justice and, as such, the order impugned is set aside.
Consequently, the order contained in Annexure-14 is also set aside.

10. The writ petition stands allowed with a direction to take steps to pay all consequential benefits to the petitioner within a period of two months from the date of receipt/production of a copy of this order.

(Rakesh Kumar, J)

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