

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19188 of 2010

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Gautam Pathak S/O Late Raj Kumar Pathak R/O Vill.- Markanj, Police Station-
Hussainganj, Distt.- Siwan Petitioner/s

Versus

1. The Principal Secretary-Cum-Chairman of Bihar Industrial Area Development Authority New Secretary, Bailey Road, Ii Floor, Patna
2. The Bihar Industrial Area Development Authority Through Its Managing Director Udyof Bhawan, East Gandhi Maidan, Patna-800004
3. The Managing Director Of Bihar Industrial Area Development Authority Udyog Bhawan, East Gandhi Maidan, Patna-800004
4. The Secretary Of Bihar Industrial Area Development Authority Udyog Bhawan, East Gandhi Maidan, Patna-800004
5. The Executive Director Of Bihar Industrial Area Development Authority Udy of Bhawan, East Gandhi Maidan, Patna-800004

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prashant Sinha, Adv.
Mr. Ranjan Kumar Singh, Adv.
For the Respondent/s : Mr. Lalit Kishore, Sr. Adv.
Mr. Piyush Lal, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 29-01-2015

Heard learned counsel for the petitioner and learned
counsel for the State.

In the present case the petitioner is challenging the order
dated 15/23.12.2009 passed in Appeal No. 28 of 2008 passed by the
Chairman, Bihar Industrial Area Development Authority (hereinafter
referred to as the BIADA) by which the appeal has been rejected and
also for quashing the order of punishment dated 17.03.2008 vide
memo no. 2210 which was issued under the signature of the

Managing Director, BIADA.

The petitioner was working as a typist. It appears from the record that the petitioner had filed application for leave on 23.10.2007 for the period 24.10.2007 to 27.10.2007 further he filed application for leave on 29.10.2007 for the period 27.10.2007 to 18.11.2007 and again filed application for leave on 19.11.2007 for the period 19.11.2007 to 30.11.2007 and thereafter the petitioner had joined on 03.12.2007. All the copies were forwarded to the Headquarters as the petitioner was posted at Biharshariff.

The application dated 23.10.2007 was forwarded by the Regional In-charge to the Managing Director at Head Office on 27.10.2007 and also forwarded the 2nd application on 03.10.2007 for approval but the Regional Office did not receive any reply to the leave application that was filed by the petitioner. The ground which is assigned in the leave application was his illness. A charge sheet was issued to the petitioner on 07.11.2007 where altogether five charges have been mentioned. charge no. 1: is with regard to his transfer to Buxar from Biharshariff but he did not join there which was construed as misconduct. Charge no. 2 : it has been mentioned that without taking any permission he left the office but in the said charge the date is missing. Charge no. 3 : is related to of the year 1981 with respect to typing of some documents which he had not done in time for that a show cause was issued that he had replied is a part of the

charge sheet. Charge no. 4 is of the year 1995 which is also related to the typing material, not submitting in time for that he was served show cause but he had not filed reply. Charge no. 5 is also related to the year 2005 for absence from the office without permission and for that his one day salary was forfeited. It appears that the chargesheet was sent to his Regional Office, Buxar.

The counsel for the petitioner submits that the petitioner could know about the proceeding after joining at Headquarter when he was served 2nd show cause notice vide office order dated 06.11.2007 along with enquiry report. As per the statement made in the writ application he had gone to submit the second show cause but the petitioner was not allowed to enter into the premises to file his explanation as on the order of the Managing Director, on account of strike, the gate was found closed and no one was allowed to enter into the premises, ultimately the petitioner was served with the order of dismissal. It has further been submitted that ex parte enquiry is completely bad on account of none serving of the charge sheet and notice of enquiry. He further submitted that the punishment is so harsh, no prudent person would like to pass such order of punishment considering the nature of charge alleged against him. He has further submitted that the enquiry officer has gone beyond the charge as altogether five charges have been mentioned in the charge sheet but the enquiry officer has added one more charge and gave its finding

against the petitioner.

Counsel for the BIADA submitted that when the petitioner had knowledge about the proceeding even then he did not participate. When he had not taken any effort to participate in the enquiry now he cannot raise grievance of violation of principles of natural justice. The counsel for the BIADA in support of his contention has relied upon the judgment of the Hon'ble the Supreme Court in the case of **Board of Directors Himachal Pradesh & Anr. vs. K.C. Rahi** reported in **(2008) 11 SCC 502**. It is submitted that the Hon'ble Supreme Court has taken into consideration the knowledge of enquiry by the delinquent. Later on he cannot complain that he was given chance to participate in the enquiry. With regard to the point of delay and staleness of the charge it has been submitted that no such point has been taken in the writ application.

Having considered the rival contentions of the parties, in the present case, it is not in dispute that the petitioner had applied for leave but his leave applications were neither rejected nor were allowed. It remained pending consideration to the Managing Director till he has joined the service on 03.12.2007. Now the question would arise when the Managing Director had decided to initiate departmental enquiry against the petitioner, he should have disposed of his leave applications as well as at least was required to serve the copy of the charge sheet. From the counter affidavit it has not been denied that



charge sheet was not ever served upon the petitioner. A plea has been taken by the Respondents that as per the averment made in the writ application that when the order of suspension was revoked he could know the pending proceeding of departmental enquiry and as such he should have traced out the pendency of the enquiry proceeding against him and as such when he had not made any effort he cannot blame that he was not given opportunity. It does not appear from the record when the enquiry officer was appointed to enquire into the misconduct against the petitioner the Enquiry Officer without serving notice of date of enquiry conducted the same. Revocation of order suspension does not mean that the petitioner had knowledge about the date of enquiry. It was required for the enquiry officer to have served notice of enquiry upon him fixing the date of enquiry. If the petitioner would have failed to appear in the enquiry then in that circumstance ex-parte enquiry could be said to have been taken rightly.

In such view of the matter, facts relates to (2008) 11 SCC 502 is quite variants to this case as in that case a charge sheet was sent to him, was returned and later on it was published in the newspaper only thereafter enquiry was conducted ex parte. Here the fact is quite different. Charge sheet was not issued nor served upon him nor any such notice was published in the newspaper.

In this view of the matter, this Court is of view that the

departmental enquiry has not been conducted in accordance with law from any angle. Charge no. 3 is 27 years old whereas the charge no. 4 is 12 years old. Even if the petitioner has not taken the plea of delay in the writ application. Said facts are glaring from the chargesheet that charges are too stale and that could not have been subject matter of enquiry after such a long delay. So far charge no. 2 is concerned, it is completely vague. Charge no. 5 : as the management had already deducted the salary of one day for his absence and that can not be again subject matter of departmental enquiry. So much so that the punishment is completely disproportionate to the charge leveled against the petitioner rather outrageous to judicial conscience.

In view of the aforesaid discussion about the holding of the enquiry as well as allegations mentioned in the charge sheet and punishment awarded to the petitioner by the Managing Director and approved by the Appellate Authority vide Annexure 1 and Annexure 1/1, are hereby quashed. In view of the fact that the petitioner has already crossed the age of superannuation, the Managing Director is directed to release all dues which the petitioner is entitled to within a period of six months.

(Shivaji Pandey, J)

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