

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16214 of 2006

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Jai Narayan Prasad, son of Sri Mohan Prasad Singh, resident of Mohalla-Sector-K,
Plot No. 38, P.C. Colony, P.O.- Lohianagar, Kankarbagh, Patna-20.

.... Petitioner/s

Versus

1. The State of Bihar through the Deputy Secretary, Government of Bihar, Road Construction Department, Bihar, Patna, Vishveshvaraiya Bhawan, Patna.
2. The Additional Secretary, Road Construction Department, Bihar, Nirman Bhawan, Patna.
3. The Chief Engineer (Anusharwan)-cum-the Conducting officer of Disciplinary Proceeding, R.C.D., Bihar, Patna.
4. The Secretary (Pravadhik) to the Engineer-in-Chief-cum-Disciplinary Conducting Officer, R.C.D., Bihar, Patna.
5. The Awar Sachiv to the Government of Bihar-cum-Prosecution Officer, R.C.D., Bihar, Patna.
6. The Secretary-cum-Commissioner, R.C.D., Bihar, Nirman Bhawan, Patna.
7. Joint Secretary, Road Construction Department, Bihar, Patna.
8. The Secretary, Bihar Public Service Commission, Bailey Road, Patna.
9. The Deputy Secretary-cum-Chief Vigilance Officer, Road Construction Department, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s :	Mr. Rajendra Prasad Singh
	Mr. Amit Prakash
For the Respondent/s :	Mr. Ashok Kumar Keshri-AAG11
	Mr. Subodh Chandra Jha
	Mr. Kumar Brajendra Nath

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT
Date: 04-05-2015

The petitioner, during the relevant time, was functioning as the Executive Engineer, Road Construction Department and was posted at Jehanabad. On certain charges of dereliction of duty, he was placed under suspension w.e.f. 2.9.1999 in contemplation of a departmental proceeding which was later on revoked on 2.9.2001. The departmental proceeding against the



petitioner was, however, continued. He was later served with a charge memo containing as many as 07 charges/allegations through Government resolution dated 28.11.2000. Subsequently, charge-sheet dated 27.12.2000 (Annexure-3 series) was also served on him. An enquiry officer was appointed and the departmental proceeding continued. On conclusion of the proceeding, the enquiry report (which has been brought on record as Annexure-C) was submitted in which out of altogether 09 charges, 06 were found fully proved whereas one charge was found partly proved. In the light of the enquiry report, the respondents by communication dated 28.5.2004 solicited the second show cause from the petitioner. The reply (Annexure-11) was submitted by the petitioner. While the proceeding was going on, the petitioner superannuated from service w.e.f. 30th November, 2002. Upon his retirement, the proceeding was allowed to continue by another Resolution of the government issued under Rule 43b of the Bihar Pension Rules. The disciplinary authority, on consideration of the show cause and the enquiry report, inflicted the following punishment(s) on him:

(i) Withholding of 20 % of pension for 5 years and thereafter 10 % of pension on permanent basis.

(ii) The petitioner would not be entitled to any further pay/allowance for the period remained under suspension (2.9.1999 to

2.9.2001) save and except the subsistence allowance.

The same has been challenged by the petitioner in this writ application which was filed in 2006 whereafter pleadings have been exchanged/completed.

Heard Mr. Amit Prakash in support of the petitioner and Mr. Sinha, A.C. to A.A.A.-XI for the State.

An objection has been raised on behalf of the State. It has been stated that the infliction of punishment is minor. What has been inflicted is withholding of full pay and allowance for the period he remained under suspension. Pension is deferred amount of salary. It is not a bounty. The order, therefore, should be construed as one inflicting minor punishment. The same has been controverted by the Counsel for the petitioner. He draws attention of the Court to the relevant provisions of Rule 43(b) and relies on *Md. Fakhruddin vs. The State of Bihar and Ors. (2001 (3)PLJR 687)* wherein the provision of the Bihar Pension Rules (for short “the Rules”) was taken into account and noted that the procedure prescribed for any proceeding continued under Rule 43(b) of the Rules shall be the same as provided in Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 2005 (for short “Rules 2005”) which, in turn, provides for the procedure for infliction of major punishment.

In my view, the said objection of the State, in view of

the provision of the Bihar Pension Rules, 1950 as interpreted in *Md. Fakhruddin (supra)* appears to be misplaced.

Second objection is that the petitioner has an efficacious remedy of filing appeal against the impugned order before the Appellate Authority/forum. The same has not been availed off. To this, Counsel for the petitioner has submitted that considering the time which already consumed in consideration of the matter as also the fact that pleadings have been exchanged between the parties, the availability of alternative remedy would not be a bar in the exercise of writ jurisdiction. It has, therefore, been submitted that the matter be considered on merit. I find from the record that the proceeding was initiated in the year 2000. The order of punishment (Annexure-13) was passed in October, 2006. Immediately thereafter, the writ petition was lodged in this Court. Parties took adjournment on diverse grounds and, in the meanwhile, counter affidavit and supplementary counter affidavit have been filed. The petitioner has filed reply thereto. Considering the stand taken by the petitioner as also the aforesaid facts, this Court overrules the objection of the respondent State and proceeds to examine the case on its own merit.

While assailing the order, Counsel for the petitioner has raised two points. Firstly, the order is non-speaking/non-reasoned. According to him, the disciplinary authority has noted the facts



manifested from the record and thereafter observed that the reply filed by way of second show cause was unsatisfactory and the petitioner deserves infliction of punishment as noted above. Secondly, it has been submitted that the punishment contained in item (ii), as noted hereinabove has been inflicted without giving an opportunity of filing representation /show cause against the notice to be issued in this regard by the respondents. Indisputably, the same has not been done as evident from the pleadings on record. The order being composite in nature, therefore, merits to be interfered with and quashed.

Counsel for the State, per contra, submits that the departmental proceeding cannot be equated with the other proceeding. The order impugned records the relevant facts relating to formation of charge, service thereof, the enquiry report submitted by the Enquiry Officer finding major part/portion of the charges proved, giving a show cause notice to the petitioner and on consideration of the show cause notice and finding the same unsatisfactory, the punishment was imposed. This should be considered as recording of satisfaction of the disciplinary authority for infliction of major punishment. With regard to non-issuance of notice before inflicting the punishment under item (ii), it has been submitted that admittedly the petitioner, during the pendency of the proceeding, had

superannuated from service. There was no question of his reinstatement in service. The same is not conceived in Rule 97 of the Bihar Service Code whereas the said circumstance has been conceived in Rules 2005. Reliance placed on Rule 97(3) of the Code by the Counsel for the petitioner in support of his submission and the judgment would, therefore, be of no help to the petitioner.

I have considered the rival submissions of the parties. I would first deal with the submission of the parties on infliction of punishment contained in item (ii) i.e. non-payment of pay/allowance for the period the petitioner remained under suspension (2.9.1999 to 2.9.2001) save and except the subsistence allowance. The Bihar Service Code is the substantive law which deals with different aspects of the service conditions of an employee of the Government whereas Rules 2005 provides the procedure for initiation, continuance and imposition of punishment. Rule 97(3) of the Code reads as under:

‘97(3) In other cases, the Government servant shall be given such proportion of such pay and allowances as such competent authority may prescribe:

Provided that the payment of allowance under clause (2) or clause (3) shall be subject to all other conditions under which such allowance are admissible.”

Mr. Prakash has cited a Division Bench judgment of this Court in the case of Dinesh Prasad versus The State of Bihar (2006 (4) PLJR 514) wherein this Court while dealing with the

fascicules of provision contained in Rule 97 of the Code and finding support from 2003 (4)PLJR 68 in paragraph 10 of the report held as under:-

“10. Admittedly, it appears from the materials on record and also from the record produced before us by the State Counsel that no such opportunity was given to the petitioner in terms of Rule 97(3) of the Code. A Bench of this court while considering this question in the case of **Pramod Kumar vs. The Champaran Kshetriya Gramin Bank and Ors. reported in 2003(4) PLJR 68** relying upon a decision of this court rendered in the case of **Mahabir Prasad vs. State of Bihar reported in 1988 PLJR 82**, held that non-observance of the provisions of Rule 97(3) of the Code would amount to violation of the principles of natural justice. The orders impugned on these scores, appear to be violative of the principles of natural justice as referred to above.”

Counsel for the State, on the other hand, has relied upon Rule 11 of the Rules 2005 wherein different provisions have been set out relating to treatment of service on reinstatement and admissibility of pay and allowances after suspension. Sub-Rule (2) thereof provides a situation where the delinquent during the proceeding died. In that event, the delinquent would be entitled to full salary and allowances for the period he would have been entitled had he not been suspended after adjustment of payment of subsistence allowance etc. Rule 5, in particular, requires notice which deals with other cases where the authority can either direct for payment of full salary/allowances or non-payment of any allowance/salary except the

subsistence allowance. Sub-Rule (5) of Rule 11 of Rules 2005 reads thus:

“(5). In cases other than those falling under sub-rules (2) and (3) of this rule, the government servant shall subject to the provisions of sub-rules (8) and (9) be paid such proportion of the full pay and allowances to which he would have been entitled had he not been suspended, as the disciplinary authority may determine. Such determination by the disciplinary authority shall be done after giving notice to the government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within sixty days from the date on which notice aforesaid is served on the government servant.”

It thus appears that even for an order directing non-payment of full salary/allowance during the suspension period, save and except the subsistence allowance, a notice is required to be issued although this is not specifically provided in the Bihar Service Code even then this Court considering the legal effect thereof on numerous occasions interpreted those provisions to mean that a notice in this regard is required to be issued soliciting the reply of the delinquent before directing for withholding of full salary/allowance for the period of suspension. This Court, therefore, has no hesitation in holding that the respondents completely erred in not affording an opportunity of hearing and/or filing of representation before infliction of the punishment under item (ii) under the impugned order (Annexure-13) which is composite in nature.

The second submission of the petitioner is that order under



challenge (Annexure-13) is non-speaking one. On perusal of the same, it appears that the order has been passed recording that the show cause reply of the petitioner was found unsatisfactory. Nothing more on the charges and reply thereto by the petitioner has been referred to in the order which according to the disciplinary authority was held unsatisfactory. True it is that no detail reason is required to be assigned by the authority but it should appear from the order itself that the authority applied its mind to the facts of the case before inflicting the punishment. Such order passed in the proceeding is quasi-judicial in nature. Even in case of administrative order/matters, the Courts always insist on recording reason in support of the order which has been held to be soul of the order providing an opportunity to the higher Court/authority to consider in case a challenge is made. Mr. Prakash has rightly in this regard relied on ***Ravi Yashwant Bhoir vs. District Collector, Raigad 2012 (3) PLJR 86(SC)*** wherein the Hon'ble Apex Court considered the importance of recording reasons in support of either the administrative order or the quasi-judicial order.

For the reasons aforementioned, this Court finds much substance in the submission of the Counsel for the petitioner in challenging the correctness/legality of the order contained in Annexure-13. Consequently, the order dated 18.10.2006 (Annexure-

13) passed by the Deputy Secretary to the Government in the Department of Road Construction is quashed and set aside. The Court grants liberty to the respondents (the disciplinary authority) to pass a fresh order in accordance with law but after giving an opportunity to the petitioner to file his reply to the punishment at item No. (ii) i.e. withholding of full pay and allowances for the period the petitioner remained under suspension save and except the subsistence allowance. If the authority in the light of the present order proposes to proceed and pass fresh order, he is expected to issue the required notice to the petitioner within two months from the date of receipt/production of a copy of this order before him. This Court records that in case an order adverse to the petitioner is passed, the petitioner would be at liberty to assail the same before appropriate authority/forum in accordance with law.

(Kishore Kumar Mandal, J)

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