

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15901 of 2007

=====

Ram Pravesh Prasad Ex. Peon, Sub-Regional Employment Exchange, Dalmiya Nagar, Sasaram, Rohtas, son of Late Sheo Prasad, resident of Gram Patingra P.O. and P.S. Segori, Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner cum Secretary to the Govt of Bihar, Department of Laobour, Employment and Training, Vikash Bhawan, New Secretariat, Patna
2. The Director, Department of Laobour, Employment and Training, Vikash Bhawan, New Secretariat, Patna
3. The Assistant Director (Employment) Sub Regional Employment Exchange, Dalmiya Nagar, Sasaram, Rohtas

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Pradip Kumar 2
Mr. Vikash Jha
For the Respondent/s : Mr. (SC17)

=====

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT
Date: 08-05-2015

Heard the parties.

The petitioner was departmentally proceeded against for his gross indiscipline in absenting for more than nine months without leave granted or permission accorded. He was transferred to a place where he submitted his joining and thereafter absented himself for a long period of time. This prompted the respondents to initiate a departmental proceeding in which charges (Annexure-E series to the counter affidavit) were framed. The same was sent to the address of the petitioner as recorded in the service record. At least on two-three occasions the respondents made efforts to serve the charges on the



petitioner. It further appears that paper publication was thereafter made in two daily newspapers namely Aaj and Hindustan. The petitioner did not appear in the proceeding. In such circumstances, the respondents proceeded ex parte. The Enquiry Officer found the charge(s) proved. A notice enclosing copy of the enquiry report was also sought to be served on the petitioner. No reply was filed. In such circumstance the disciplinary authority by order dated 22.02.2005 finding the charges proved and the same being grave in nature, dismissed him from service. Several years thereafter the petitioner filed an application before the appellate authority, i.e. respondent Commissioner-cum-Secretary to the Government, Department of Labour and Training(now re-designated as Principal Secretary) for reconsideration of the order passed by the disciplinary authority. The appellate authority by a notice which has been enclosed along with the writ application (Annexure-2/1) directed the petitioner to appear for personal hearing before the appellate authority. It appears that personal hearing was afforded to the petitioner. Subsequently, the appeal of the petitioner was disposed of and a communication in this regard was issued vide letter dated 12.04.2007 (Annexure-13). The petitioner has impugned the order dated 22.02.2005 (Annexure-11) passed by the disciplinary authority as well as the order dated 12.04.2007 (Annexure-13) by which disposal of the appeal was

communicated to the petitioner.

In the counter affidavit the respondents have explained the manner in which notices were issued time without numbers soliciting appearance of the petitioner in the departmental proceeding and filing a reply. It has also been set out therein that conflicting stand has been taken by the petitioner in explaining the circumstance under which he remained absent.

This Court would not delve into the said aspect of the matter. The contention of the petitioner is that the order by which the appeal was disposed of was never communicated to him. In fact, this is the assertion of the petitioner that the disciplinary authority has passed the appellate order. However, in the counter affidavit it has been explained that the Commissioner-cum-Secretary considered the appeal of the petitioner after affording a personal hearing. However, the communication (Annexure-13) does not enclose any order which the appellate authority passed on the appeal of the petitioner.

Counsel for the petitioner in this regard has placed reliance on Rule 27 of Bihar CCA Rules 2005 (for short 'the Rules') which provides manner in which the appeal is required to be considered and disposed of. Relevant part of the Rule 27 is extracted hereinbelow:-

“27. Consideration of appeal (1) in the case of an appeal against an order of suspension the appellate authority shall consider whether in view of the

provisions of rule 9 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke or modify the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in rule 14, the appellate authority shall consider-

(a) whether the procedure laid down in these Rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty imposed is adequate, inadequate or severe; and pass orders-

xxx	xxx	xxx
xxx	xxx	xxx

(3) The appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable.”

On perusal thereof it appears that the appellate authority has to record a finding on perusal of records as to whether the same was at all warranted by the evidence on the record and whether the penalty imposed was adequate, inadequate or severe. At this stage,



this Court may notice that the petitioner joined the service of the government in the Department of Labour and Training as Peon in 1975 and finding his services satisfactory he was granted first and second time bound promotions. The order of dismissal will forfeit his many of the retiral claim(s). It is one of the contentions of the petitioner that the punishment imposed on him is excessive considering the charge framed against him which has been found to be proved/true at the enquiry.

Counsel for the State has not been able to demonstrate from the relevant pleadings and annexures attached thereto that the order which the appellate authority passed on the appeal of the petitioner was actually served on the petitioner. This Court, in view of aforesaid, finds that the order which the appellate authority might have passed separately was not communicated to the petitioner. In not doing so this Court has been prevented from appreciating the submission of the petitioner regarding adequacy/inadequacy of the punishment as also the reasons which prevailed upon the appellate authority for rejecting the appeal of the petitioner.

Considering the facts and circumstances of the case, in my view, the ends of justice shall be subserved if the appellate authority is directed to pass a fresh order on the appeal of the petitioner already filed.



Let such order be passed by the appellate authority within six weeks from the date of receipt/production of a copy of this order before him along with the copy of memo of appeal. This Court is not directing for affording any further opportunity of hearing since it is the case of the petitioner that personal hearing was afforded to him by the appellate authority. The order present shall, however, not preclude the respondent appellate authority from granting such opportunity to the petitioner, if deemed necessary. The petitioner shall produce a copy of the present order within three weeks before the appellate authority enabling him to pass a fresh order in the light of the present order within six weeks. In doing so, the appellate authority shall not be precluded in any manner by the earlier consideration and the order he might have passed on the appeal of the petitioner.

The writ application is disposed of with aforesaid observation/direction.

(Kishore Kumar Mandal, J)

HR/-

U			
---	--	--	--