

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11650 of 2007

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Subodh Thakur, son of late Kaladhar Thakur, at present posted as Anchal Amin, Alaulia, Khagaria Collectorate, District- Khagaria.

.... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Bihar, Patna.
2. The Divisional Commissioner, Munger Division, Munger.
3. The District Magistrate, Khagaria.
4. The deputy Collector, Establishmet, Khagaria Collectorate, Khagarai.
5. The District Lnad Acquisition Officer, Khagaria.
6. The Sub Divisional Officer, Gogri, Distt-Khagaria.
7. The Circle Officer, Parbatta, District-Khagaria.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Mishra, Advocate.

For the Respondent/s : Mr. Harishankar Ray, AC to PAAG

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

8 20-07-2015 Heard learned counsel for the parties as with regard to
the following relief prayed in this writ application:

"1.(i) A certiorari setting aside the office order dated 12.12.1997 containing in memo no. 348 (Anenxure-10) whereby and whereunder the respondents concerned has stopped two annual increments of the petitioner with cumulative effect which amounts to a major punishment and as such is disproportionate to the allegations.

(ii) A certiorari setting aside the order dated 13.02.2002 passed by the respondents Divisional Commissioner, in Service Appeal Case NO. 23-3/98 filed by petitioner against the order dated 12.12.97 by which he has been punished in departmental proceeding, which stood dismissed by default without giving sufficient opportunity to the petitioner to present his case.

(iii) A mandamus commanding and directing the respondents to grant the petitioner annual increment in question as also to pay the petitioner full salary for the period of his suspension, which has been although vacated

after one year but not full salary of the period in question was paid."

2. Mr. Pramod Mishra, learned counsel for the petitioner, in support of the aforementioned prayer, has submitted that even if the order of punishment of withholding of two increments on cumulative basis is upheld, there are other reasons for its being interfered inasmuch as the disciplinary authority, while disposing of the disciplinary proceeding, did not pass any order for stoppage of payment of salary for the period 18.09.1995 to 04.09.1996 in which the petitioner was put under suspension, which by itself would vitiate the order. He has further submitted that the petitioner has also retired from service sometime in the year 2013 and, therefore, the direction should be given to the respondents to make payment of arrears of salary for the period 18.09.1995 to 04.09.1996.

3. Learned counsel for the respondents, while supporting the impugned order of punishment, has explained that the petitioner has been deprived from payment of salary for the period of suspension after the charges were found to be proved, and he could not have been dealt leniently by the disciplinary authority specially when the charges against the petitioner were also grave in nature. He explains that the petitioner was an Anchal

Amin and had submitted a false report of measurement when a military man had sought settlement of 10 decimal of land and once such charge was found to have by itself could have led to a major punishment including his removal from service, but then he has been given only a punishment of stoppage of two increments on cumulative basis.

4. The difficulty of this Court are two fold. It cannot encourage the petitioner to question the order of punishment which was passed way back in the year 1997. The departmental proceeding against the petitioner was initiated sometime in the year 1995 and he was placed under suspension and thereafter when the enquiry had been conducted for the period over one year, his suspension was revoked on 04.09.1996 and thereafter, he was given punishment of stoppage of two increments of cumulative basis on 12.12.1997. Such order being appellable, the petitioner had filed an appeal, which was dismissed, of course, by way of default on 13.02.2002. This writ application, however, was filed after more than 05 years of the appellate order dated 13.02.2002, only on 07.09.2007.

5. The effect of the order of punishment against the petitioner was only stoppage of two increments of cumulative basis and, therefore, the petitioner, in all fairness, had already

accepted the same while undergoing the punishment inflicted by the disciplinary authority in his order dated 12.12.1997 even before approaching this Court.

6. This Court has also carefully perused the materials on record and it has not found any material infirmity in the procedural aspect of the departmental enquiry and, therefore, even otherwise, this Court is not inclined to interfere with the order of punishment and/or the order of the appellate authority.

7. The only grievance, therefore, now left with the petitioner as with regard to payment of salary for the period of suspension i.e. 18.09.1995 to 04.09.1996, which has not been at all dealt with by the disciplinary authority, namely, the Collector of Khagaria District and the requirement of Rule 97(3) of the Bihar Service Code laying down a fresh opportunity of hearing to be given, in the event of denial of payment of salary for the period of suspension.

8. That being so, this Court would direct the Collector of Khagaria District to pass necessary order for payment of salary of the suspension period of the petitioner after giving show cause notice and/or opportunity of hearing to the petitioner in terms of Rule 97(3) of the Bihar Service Code. This exercise shall be completed within a period of six months from the date of receipt

of a copy of this order.

9. Barring this limited aspect relating to payment of salary of the petitioner for the period of suspension between 18.09.1995 to 04.09.1996, no other aspect shall be reopened by the disciplinary authority and/or appellate authority.

10. Before parting with, this Court must make it clear that the question of payment of increment during period of suspension, as being raised in this writ application, is also wholly misconceived because once the order of punishment of stoppage of two increments with cumulative basis was passed, its effect will be forever and since that part of the order has not been interfered by this Court, the petitioner will not be entitled for any increment for the period of suspension in question.

11. With the aforementioned observation and direction, this writ application is disposed of.

(Mihir Kumar Jha, J)

Sujit/-

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