

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5673 of 2014

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1. Arun Kumar Singh, Son Of Late Raj Narayan Singh, resident of village: Jhathopur, P.S.: Baheri, District: Darbhanga

2. Ram Padum Chaudhary Son of Sri Sukhdeo Choudhary Resident of Village: Pokhram, P.S. Biroul, District: Darbhanga

.... Petitioner/s

Versus

1. Bihar State Road Transport Corporation, Patna through Its Chief Administrator

2. The Chief Administrator, Bihar State Road Transport Corporation, Patna

3. The Administrator, Bihar State Road Transport Corporation, Patna

4. The Divisional Manager, Bihar State Road Transport Corporation, Darbhanga

5. The Divisional Manager, Gaya BSRTC.

6. The Pratisthan Superintendent Darbhanga, Bihar State Road Transport Corporation

7. The Superintendent, Gaya Pratisthan, BSRTC.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jagdish Prasad Singh, Advocate.

For the Respondent/s : Mr. Prabhat Kumar Verma, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

3 04-02-2015

Heard learned counsel for the parties as with regard to

the following relief prayed in this writ application :

(i) Certiorari: For setting aside of office orders (part) depriving petitioners from salary for suspension period as contained in memo No. 3856 dt. 25.07.13 (Annexure-10) and Memo No. 3857 dated 25.07.2013 (Annexure-11) issued under the signature of Chief Administrator Bihar State Road Transport Corporation whereby and whereunder departmental proceeding has been terminated, suspension was revoked and it has been held that petitioners would be paid nothing except subsistence allowance³ for the suspension period although in departmental proceeding conducting officer discharged the petitioners.

(ii) Mandamus: Directing the respondents to give full salary to the petitioners with continuity in service for the suspension period as the charges have not been proved against petitioners.

2. Learned counsel for the petitioner, in support of the
aforementioned prayer, has straightway drawn attention of this



Court to the impugned order dated 25.07.2013 passed by the Administrator of Bihar State Road Transport Corporation, Patna (hereinafter referred to as 'the Corporation') for the purposes that when the Enquiry Officer had held that none of the charges against the petitioners have been proved, the Administrator of the Corporation could not have either punished the petitioners or could not have withheld the payment of salary of the period of suspension in the name of punishment.

3. Mr. P.K.Verma, learned senior counsel appearing on behalf of the Corporation, on the other hand, has submitted that after the Enquiry Officer has exonerated the petitioners, a show cause notice, differing with the enquiry report, was given to the petitioners and the impugned order has been passed pursuant to the said show cause notice.

4. In answer to the aforementioned submission, Mr. Singh has very simply submitted that if the disciplinary authority had differed with the finding of the Enquiry Officer for the purpose of inflicting punishment, it ought to have served show cause notice to the petitioners and, in fact, the order of punishment had to reflect that there was an occasion of difference of opinion with the finding in the enquiry report of the Enquiry Officer and that an effective opportunity for filing of show cause against such



difference of opinion was to be given to the delinquent, whereafter a reasoned order ought to have passed as to how the charge was proved against the petitioners. In this regard, he has relied on a judgment of the Apex Court in the case of ***Punjab National Bank & Ors. Vs. Kunj Behari Misra*** reported in **(1998) 7SCC 84** , wherein it was held as follows:

"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

5. In the present case, the impugned order does not reflect that a show cause notice was ever issued to the petitioners differing with the enquiry report; nor there is anything to show that after such notice when the petitioners had filed reply itself, consideration was made by the Administrator.

6. In that view of the matter, this Court cannot uphold the correctness or legality of the impugned order, as contained in Annexure-11 of the writ application, and the same is hereby

quashed.

7. Nothing said in this order, however, will come in the way of the respondents in passing a fresh order in accordance with law within a period of three months from the date of receipt of this order.

(Mihir Kumar Jha, J)

Sujit/-

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