

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10418 of 2015

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Surendra Pandey, son of late Balgovind Pandey, R/o Vilalge- Sheo Nagar,
P.O- Madhopur, P.S.- Tekari, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Development Department, Government of Bihar,
2. The District Magistrate, Gaya.
3. S.D.O., Tekari, Gaya.
4. B.D.O., Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dinu Kumar, Advocate.
Mr. Shiw Kumar Prabhakar, Advocate.
Mr. Rajesh Kr. Singh, Advocate.
Mr. Arvind Kumar Sharma, Advocate.

For the Respondent/s : Mr. Prabhu Narain Sharma, AC to AG.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 31-07-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application
reads as follows:

"1. For quashing the office order vide memo no. 578 dated 10.04.2015 issued by the District Magistrate, Gaya as contained in Annexure-11 by which the petitioner has been punished in award and following punishment in departmental proceeding.

A. Three increments have been withheld with cumulative effect under Rule 14(vi) of Chapter-5 of Bihar Government Servant (Classification, Control and Appeal) Amended Rules, 2007.

(B) The petitioner will not be paid anything save and except subsistence allowance.

II. Also for directing the respondents to give all consequential service benefits for the period of suspension and other consequential benefits for which the petitioner is entitled to get receive after quashing the order of punishment as contained in Annexure."

3. It is to be noted at the outset that despite a preliminary objection raised by learned counsel for the State as with regard to maintainability of the writ petition or the ground the petitioner not filing an appeal against the impugned order of punishment, Mr. Dinu Kumar, Learned counsel for the petitioner, in support of the aforementioned prayer, has sought to resist by taking the impugned order is bad and inherently defective and incurable by way of appeal.

4. In this regard he has firstly submitted that once the departmental proceeding against the petitioner was initiated under the Provision of Bihar & Orissa Subordinate Services (Discipline and Appeal) Rules, 1935 (hereinafter referred to as 'the 1935 Rules') by memo of charge dated 13.03.2004, the petitioner could not have been dealt with the provision of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the 2005 CCA Rules').

5. Unfortunately, this submission of learned counsel for the petitioner overlooks the provision of repeal and savings under Rule 32 of the 2005 CCA Rules which lays down as follows:

32. Repeal and Savings.-(1) The Notificaton No.-III/RI-101/63-8051-A dated 3rd July, 1963 adopting the Civil Services (Classification, Control and Appeal) Rules, 1930 and the Bihar & Orissa Subordinate Services (Discipline

and Appeal) Rules, 1935 as well as the Notifications making amendments in the said two Rules are hereby repealed.

(2) All instructions issued under the Civil Services (Classification, Control and Appeal) Rules, 1930 and the Bihar & Orissa Subordinate Services (Discipline and Appeal) Rules, 1935 from time to time are hereby repealed.

(3) Anything done or any action taken in exercise of the powers under the Civil Services (Classification, Control and Appeal) Rules, 1930 and the Bihar & Orissa Subordinate Services (Discipline and Appeal) Rules, 1935 shall be deemed to have been done or taken in exercise of the powers conferred by or under those Rules as if those Rules were in force on the day on which such thing or action was done or taken.

(4) Nothing in these Rules shall operate to deprive any person of any right of appeal, which he would have had if these Rules had not been made in respect of any order passed before they came in force.

(5) Notwithstanding anything contained in these Rules any departmental proceedings initiated under the Rules repealed shall continue under those Rules including the Appeal preferred against any punishment imposed as if those Rules were still in existence."

6. As would be evident, when 2005 CCA Rules came into force in 2005 nothing had happened in the departmental proceeding against the petitioner and only the memo of charge had been issued and, therefore, the pending departmental proceeding under 1935 Rules shall be deemed to be continuing in terms of 2005 CCA Rules.

7. The submission of learned counsel for the petitioner that the enquiry officer had already submitted his enquiry report on 28.12.2005, in no view of the matter will amount to close the

proceeding. Since the final order in the departmental proceeding has not been passed till 2005, the departmental proceeding will be deemed to be continuing and, therefore, capable of being dealt in terms of the provision made 2005 CCA Rules. Thus, there is no merit this submission of the learned counsel for the petitioner.

8. Learned counsel for the petitioner then has submitted that the impugned order does not record any reason.

9. In the considered opinion of this Court, there are three situations envisaged in a departmental enquiry as was explained by the Apex Court in the case of *The State of Assam & Anr. v. Bimal Kumar Pandit* reported in *AIR 1963 SC 1612*. Here in this case, the enquiry officer had found the petitioner guilty and therefore, the disciplinary authority was not required to record a detailed order because he had agreed with the finding of the enquiry officer. Thus, this Court does not find any error in the impugned order only because in total 10 pages representation filed by the petitioner, was not required to deal entering into all 10 pages.

10. That would bring this Court to another submission as raised by the learned counsel for the petitioner that in course of departmental enquiry, no presenting officer was appointed.

11. This Court is afraid that non appointment of the presenting officer, in any way, did not prejudice the petitioner



because the job of the presenting officer is to produce the evidence or materials in support of the charges on behalf of department. If that was not done that will however not vitiate the entire departmental proceeding. The principle of prejudice departmental proceeding infact has now been made recognized and upheld by the Apex Court in the *State Bank of Patiala & Ors. v. S.K.Sharma* reported in *AIR 1996 SC 1669*. This Court, therefore, finds that on account of presenting officer, being not appointed, the petitioner was not prejudiced in any manner and at least the impugned order of punishment cannot be interfered on this ground.

12. The last submission of the learned counsel for the petitioner is that in course of enquiry before the enquiry officer, no documentary/oral evidence were led. As a matter of fact, a detail discussion has been made in the impugned order which has to be looked into from the order sheet of the proceeding of the enquiry officer. It is here that this Court will have to uphold the preliminary objection of the learned counsel for the State that the petitioner's writ application will not be maintainable because there is a statutory appeal against the order of punishment. The petitioner infact, without exhausting that statutory alternative remedy, has moved this Court by filing this writ application. As a matter of fact, no order of punishment can be said to have become

final unless it has been subjected to an appeal. It is only the appellate order which affirms and brings the disciplinary proceeding to an end in terms of 2005 CCA Rules.

13. Learned counsel for the petitioner then submits that on account of reason being not assigned, filing of the appeal by the petitioner will be mere formality. The question will be, if the petitioner, in respect of entire departmental proceeding, says that on account of that no documentary/oral evidence was led, the appellate authority can definitely look into the records of the departmental proceeding to decide the issue one way or the other in a better manner.

14. Thus, for the reasons indicated above, this writ application must fail and is hereby dismissed.

15. Nothing said in this order shall come in the way of the petitioner in filing his appeal and if it is done in a period of sixty days from today such appeal shall be disposed of on its own merit without being prejudiced by any thing said in this order.

(Mihir Kumar Jha, J)

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