

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.415 of 2016

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Narayan Mishra, Son of Shri Krishna Chandra Mishra, resident of 36, Ved Nagar,
Rukanpura, P.S. Danapur, District - Patna, Pin - 800014.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Home (Police) Department, Government of Bihar, Patna.
3. The Joint Secretary (Police), Ministry of Home Affairs, Government of India, New Delhi.

.... Respondent/s

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Appearance :

For the Petitioner	:	Mr. Narayan Mishra (in person)
For the State	:	Mr. Vivek Prasad, GP-18
For the Union	:	Mr. Anjani Kumar Sharan, CGC

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: **HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH**)

Date: 21-06-2016

This writ petition is directed against the order
of the Central Administrative Tribunal, Patna Bench, Patna dated
19.11.2015, passed in O.A. No. 294/2015 along with M.A.
252/2015.

We have heard the petitioner in person, Sri
Vivek Prasad, GP-18 and Sri Anjani Kumar Sharan, CGC and
with their consent this writ petition is being disposed of at this
stage itself as exhaustive counter affidavit has already been filed
by the State Government.



The petitioner is an I.P.S. officer of the All India Cadre and is governed by the All India Service (Discipline and Appeal) Rules, 1969 (for short 1969 Rules). While posted as Director General, Homeguard and Fire Services, an F.I.R. was lodged against him on 06.02.2007 in relation to alleged disproportionate assets. On 09.02.2007 the State Government in exercise of powers under Rule 3(3) of the 1969 Rules, in view of the First Information Report as instituted, suspended him. His suspension having continued for over 90 days, petitioner appealed to the Central Government questioning the suspension. The Central Government by its order dated 29.06.2007 held that as no departmental proceeding was initiated and no charge-sheet submitted against the petitioner within 90 days of his suspension, the suspension stood revoked. This date of revocation was subsequently changed but the fact remains that the suspension was revoked prior to petitioner's superannuation which was on 30.06.2007. He was admittedly not under suspension then. Subsequently, in 2011, the State Government approached the Central Government for grant of sanction to initiate departmental proceedings in terms of All India Services (Death-cum-Retirement Benefits) Rules, 1958 (for short 1958 Rules), in particular Rule 6(1)(b)(ii) and the Central Government considered the whole



aspect of the matter and refused to sanction disciplinary proceedings clearly holding that the allegations against the petitioner pertain to the period 2004 to 2006 and the petitioner had superannuated on 30.06.2007, the proposal to initiate departmental proceedings was received from the State Government on 07.02.2011, hence, this was in relation to an incident which was far in excess of the period of four years as provided in the said Rules. Sanction was, thus, refused. When petitioner thereafter sought payment of his full retiral dues, the State Government opposed it on the ground that departmental proceedings were pending. The stand of the State apparently was that the moment he had been put under suspension, it would be deemed that the departmental proceedings had been initiated. Being aggrieved by this, petitioner ultimately moved the Tribunal. Tribunal accepted the contention of the State that as the petitioner had been put under suspension while in service it would be deemed that he was under suspension in contemplation of departmental proceedings and as such seeking sanction from the Central Government was under a wrong impression. It was not required, as the departmental proceeding would be deemed to have been commenced prior to his superannuation itself. The correctness of this decision of the Tribunal is under challenge before us.

The facts noted above would show firstly that the petitioner was suspended in terms of Rule 3(3) of the 1969 Rules. It would be appropriate to refer it, which is quoted hereunder :

3(3) A member of the Service in respect of, or against whom an investigation, inquiry or trial relating to a criminal charge is pending may, at the discretion of the Government be placed under suspension until the termination of all proceedings relating to that charge if the charge is connected with his position as a [member of the Service] or is likely to embarrass him in the discharge of his duties or involves moral turpitude.

No departmental proceeding was initiated or even contemplated at that time. Thus, clearly the suspension was not in contemplation of any departmental proceeding but merely because a F.I.R. had been lodged against him. From the facts it is clear that once the petitioner superannuated and that too almost four years after his superannuation, department realized that a departmental proceeding ought to have been initiated. They, accordingly, in the year 2011, sought sanction of the Central Government. Rule 6(1)(b)(ii) of the 1958 Rules is clear in this



respect. It is in pari materia to Rule 43(b) of the Bihar Pension Rules and Rule 9 of CCS Pension Rules, 1972. Rule 6 of 1958 Rules also predicates that if an employee has retired and then a departmental proceeding is contemplated to be initiated it cannot be so initiated without proper sanction and further that if the departmental proceeding is in relation to an event that took place more than four years prior to seeking of initiation of the proceedings, the same could not be done.

In our view, the contention of the State, as was accepted by the Tribunal, that suspension would be deemed to be suspension in contemplation of departmental proceeding on the facts noted above is wholly unfounded. It is not disputed nor can it be disputed that the State Government passed the order of suspension in terms of Rule 3(3) of the 1969 Rules. As quoted above, suspension with reference to Rule 3(3) of the 1969 Rules would be a suspension merely upon filing of F.I.R. and it is not and it is distinct from suspension in contemplation of departmental proceeding. That being so, the order of the Tribunal cannot be sustained in this regard. It has got to be held that so far as petitioner is concerned there were no disciplinary proceedings in the shape of departmental proceedings either initiated or pending at the time when he superannuated. This position was correctly

appreciated by the State Government itself when sanction was sought from the Central Government in terms of Rule 6(1) of the 1958 Rules, which was rightly refused by the Central Government in terms of Rule 6(1)(b)(ii) of the 1958 Rules.

The position, thus, emanates is that there cannot be any departmental proceeding against the petitioner. We are pained to note that notwithstanding refusal of the Central Government to grant sanction to initiate departmental proceeding the State Government curiously took upon itself now to proceed with the departmental proceeding. This cannot be done. We, accordingly, set aside the departmental proceedings in view of refusal of sanction by the Central Government.

Now, the position is, what is to be done with retiral benefits. The answer to be found is in Rule 6(2) of the 1958 Rules. It clearly contemplates that 100% provisional pension would be sanctioned and paid by the State Government which instituted such proceedings but no part of gratuity would be paid till final orders are passed in the judicial proceedings which includes pending criminal case. We order accordingly.

However, it will be open to the State Government to consider this aspect of the matter in relation to payment of gratuity as the State Government may think fit and



proper.

This writ petition is, accordingly, allowed.

Order of the Tribunal is set aside.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh

AFR/NAFR	AFR
CAV DATE	
Uploading Date	23.06.2016
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