

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6408 of 2016

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1. Braj Bihari Prasad Retired I.P.S. son of Late Ram Nagina Prasad, resident of villae - Ramdatahi, PS - Shahpur, District - Bhojpur (Bihar).

.... Petitioner

Versus

1. The Union of India through the Home Secretary, Department of Home, Government of India, New Delhi.
2. The Secretary, Department of Personnel, Training & Public Grievance, Government of India, New Delhi.
3. The Secretary, Union Public Service Commission Dholpur House, Shahjahan Road, New Delhi - 1100069.
4. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
5. The Secretary, Department of Home, Government of Bihar, Patna.
6. The Director General of Police, Old Secretariat, Patna.
7. The Accountant General (A & E), Birchand Patel Path, Patna.
8. The Department of Social Welfare, Government of Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Rama Kant Jha, Advocate
For the State	:	Mr. S.D. Yadav, AAG-9
For the U.O.I.	:	Mr. S.D. Sanjay, Addl. S.G. Mr. Rajesh Kumar Verma, CGC
For Accountant General	:	Mr. Bindhyachal Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 08-08-2016

Heard learned counsel for the parties.

2. The challenge in the present writ application is to an order dated 2nd of February, 2016 passed by the Central Administrative Tribunal, Patna Bench, Patna (for short “the Tribunal”) in O.A. No. 456 of 2010, whereby an Original Application

filed by the petitioner under Section 19 of the Administrative Tribunals Act, 1985 remained unsuccessful.

3. The petitioner was a member of Indian Police Service (Bihar Cadre). He superannuated on 30th of November, 2005. Just before his retirement, a memorandum of charges was served upon him on 29th of October, 2005. The petitioner submitted representation against the action of continuing with the disciplinary proceedings after superannuating him. The argument of the petitioner is that the disciplinary proceedings can continue only against an Serving Officer. Therefore, to continue the disciplinary proceedings against him, the respondents must declare him as a Serving Officer and he should be paid salary till the decision in the departmental proceedings.

4. Such claim of the petitioner was declined vide Annexure A/2 dated 05th/06th day of August, 2008 and Annexure A/6 dated 24th/25th day of February, 2010. Aggrieved against the rejection of the claim of the petitioner having not treated the petitioner in service, the petitioner invoked the jurisdiction of the Tribunal, which has remained unsuccessful.

5. Learned Counsel for the petitioner relies upon Rules 6 of the All India Services (Discipline and Appeal) Rules, 1969 (hereinafter referred to as “Discipline and Appeal Rules”) and Rule 6(b)(ii) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 (hereinafter referred to as “Death-cum-Retirement

Benefits Rules”) in support of his contentions.

6. The relevant extract of Rule 6 (1) of the Death-cum-Retirement Benefits Rules reads as under:-

“6(1) The Central Government reserves to itself the right of withholding a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Central or a State Government, if the pensioner is found in a departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to the Central or a State Government by misconduct or negligence during his service, including service rendered on re-employment after retirement

Provided that no such order shall be passed without consulting the Union Public Service Commission.

Provided further that –

(a) such departmental proceedings, if instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall, after the full retirement of the pensioner, be deemed to be a proceeding under this sub-rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the pensioner had continued in service;

(b) such departmental proceedings, if not instituted while the pensioner was in service, whether before his retirement or during his re-employment;

(i) shall not be instituted save with the sanction of the Central Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceeding; and

(iii) shall be conducted by such authority and in such place or places as the Central Government may direct and in accordance with the procedure applicable to proceeding on which an order of dismissal from service may be made;

(c) such judicial proceeding, if not instituted while the pensioner was in service whether before his retirement or during his re-employment, shall not be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution.

Explanation.- For the purpose of this rule :

(a) a departmental proceeding shall be deemed to be instituted when the charges framed against the pensioner are issued to him or, if he has been placed under suspension from an earlier date, on such date and

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7. We do not find any merit in the said argument. The argument that the proceedings cannot continue against the petitioner in terms of Rule 6(1)(b)(ii) of the Death-cum-Retirement Benefits Rules is not tenable and is not applicable to the facts of the present case.

8. The Rule 6(1)(a) of the Death-cum-Retirement Benefits Rules, contemplates that if the departmental proceedings are instituted when the pensioner was in service then such departmental proceedings shall be deemed to be a proceeding under the said sub-rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the pensioner had continued in service.

9. Though the Rule 6 of the Discipline and Appeal Rules contemplates the penalties which can be imposed for good and sufficient reasons on a member of the service but in view of Rule

6(1)(a) of the Death-cum-Retirement Benefits Rules, any of the penalties can be imposed. Clause 6(1)(b)(ii) is applicable if departmental proceedings are not instituted when an officer was in service. Since the proceeding against the petitioner was instituted during service, clause (b) has no application.

10. In the present case, the proceedings are instituted against the petitioner when he was in service though he attained the age of superannuation soon thereafter. After retirement, the recovery can be affected from pension and such proceedings would continue as if the pensioner had continued in service. Therefore, after retirement, the petitioner cannot claim to be in service as the disciplinary proceedings can continue against him. It is Rule 6 of the Death-cum-Retirement Benefits Rules which is applicable and as per such Rule the proceedings after retirement can continue.

11. In view thereof, we do not find any merit in the present writ application. The same is dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Narendra/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	16.08.2016
Transmission Date	