

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6132 of 2009

Suresh Chandra Kumar, s/o- of Late Rajiv Ranjan Sahay,
resident of Stadium View Apartment, Flat No. 303, Bazar
Samiti, Rajendra Nagar, P.S. Kadamkuan, District – Patna

.... Petitioner/s

Versus

1. The State of Bihar, through the Secretary-cum-commissioner,
Deptt of Revenue, Govt of Bihar, Patna
2. The District Magistrate, Patna
3. The Commissioner, Patna Division, Patna
4. The Additional District Magistrate (Establishment).
5. The District Certificate Officer-cum-Enquiry Officer, Patna
6. The Deputy Collector (In-charge Legal Section)
7. The District Land Acquisition Officer, Patna Collectariat,
Patna

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Subodh Kumar Jha
Mr. Bidhan Chandra Jha
Mr. Jitendra Kumar Pandey
For the Respondent/s : Mr. Hari Shankar Roy, AC to AAG

CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

C.A.V. JUDGMENT

Date: 20-05-2016

The present writ application has been filed,
seeking issuance of a writ in the nature of certiorari, for
quashing the order dated 27.09.2001 and also order
dated 28.05.2008 issued by the District Magistrate,
Patna, awarding punishment to the petitioner, beyond
the materials available on the records of the
departmental proceeding, which is in violation of the
Bihar Govt. Servants (Classification Control and Appeal)



Rules, 2005 and the Bihar Pension Rules. The petitioner has also prayed for an appropriate writ, order or direction to the respondent to release all the retiral benefits and arrears to the petitioner which have been arbitrarily withheld on account of the punishment, inflicted on the petitioner, after setting aside the order, as contained in letter dated 27.09.2001 and order dated 28.05.2008.

The facts which have been brought on record by the petitioner is that:-

(i) He joined as an Assistant in the Patna Collectorate on 30.01.1966 and continued to work there till his retirement i.e. 30.04.2001. It was contended that in his 35 years of his service, no adverse remarks were made against him.

(ii) In the year 1983, the petitioner took over charge as Legal Assistant from one Hemchandra Gupta, the then Legal Assistant of Legal Section of Patna Collectorate on his suspension (including file of Impounding Case No. 79/81-82).

(iii) Thereafter, in May, 1984, the petitioner handed over the charges of all impounding cases including Impounding Case No. 79/81-82 to one



Samarendra Nath Bhattacharya, the then Legal Assistant of Patna Collectorate. Thus, the petitioner had remained in charge of Impounding cases of the Legal Section for only six months, which was evident from the perusal of relevant copy of taking over charge of petitioner to Samarendra Nath Bhattacharya preserved in the guard file of legal section.

(iv) After lapse of ten years i.e. 22.11.1994, the petitioner was asked to show cause vide Memo No. 1151, regarding the disappearance of the file of Impounding Case No. 79/81-82.

(v) The petitioner duly answered the same on 04.04.1995. In his show cause, the petitioner contended that Impounding case No. 79/82-82 had been handed over to Samarendra Nath Bhattacharya which could be evident from the perusal of the taking over/handing over charge, which are supposed to be preserved in the guard file of the section.

(vi) The Enquiry Officer vide orders dated 04.04.1995 and 05.04.1995, directed Shri Samarendra Nath Bhattacharya and Deputy Collector (Legal) to appear before him with the concerned file of taking



over/handing over charges vide letter dated 04.04.1995 and 05.04.1995. The said fact is evident from Memo No. 66 dated 25.04.1995. The aforementioned authorities were then directed to appear before the Enquiry Officer on 05.05.1995 along with the concerned files.

(vii) Despite the fact that the guard file was not produced before the Enquiry Officer which alone could have conclusively established the innocence of the petitioner, an enquiry report was submitted by him, holding the petitioner to be guilty of the charge of disappearance of the records, in connivance with S.N. Bhattacharya.

(viii) The said enquiry report dated 06.07.1995 (Annexure-5) led to issuance of Memo No. 2127 dated 09.02.1996 calling upon the petitioner to show cause, as to why he be not dismissed from service.

(ix) The petitioner before replying the show cause requested the respondent no.5 District Certificate officer-cum- Enquiry Officer, Patna to make available to him, the paper of handing over/taking over charge to Shri Samarendra Nath Bhattacharya which could help him to prove his innocence but despite issuance of letter dated

04.03.1996 by the Deputy Collector, Establishment to the Deputy Collector, (Legal), the aforementioned document was not made available to him.

(x) It is also important to mention here that a Criminal case was also instituted against the petitioner and S.N. Bhattacharya under Sections 406 and 409 of the Indian Penal Code on the basis of the report submitted by the Enquiry Officer but the petitioner was acquitted by the court of Shri A.C. Srivastava, Judicial Magistrate, 1st Class, Patna vide order dated 29.11.2002 passed in G.R. Case No. 618 of 1998.

(xi) Despite the order of acquittal passed by the Judicial Magistrate, the other delinquent namely, Shri Samarendra Nath Bhattacharya was exonerated whereas, the petitioner was singled out and was awarded punishment without assigning any cogent reason.

(xii) Against the aforesaid order of punishment, the writ petitioner filed C.W.J.C. No. 1479 of 2002 but since the order was an appealable order, the petitioner was advised to prefer an appeal before the Divisional Commissioner, Patna challenging the order of punishment.



(xiii) Accordingly, the petitioner filed Appeal No. 11 of 2004-2005 before the D.C., Patna challenging the order of respondent no. 2. Vide order dated 17.08.2007, the Divisional Commissioner, Patna quashed the order dated 27.09.2001 imposing penalty upon the petitioner and the case was remitted back to the District Magistrate, Patna with the following observations :-

(a) It is not clear as to from which date the same (record) was found missing.

(b) The possibility of the loss of the record from the hands of Shri Samarendra Nath Bhattacharya is as much probable as from the hands of the appellant, as there is nothing substantive on record to show that the record was lost only by the appellant.

(c) Enquiry officer has found both the appellant and his successor Sri Bhattacharya jointly responsible for the loss of the record, but the Disciplinary Authority in his order has not assigned as to why and how he found only the appellant responsible for the loss of the record.



(xiv) Thus, the respondent-Commissioner remitted back the matter and directed the District Magistrate, Patna to ask for a second show cause from the petitioner and thereafter, dispose of the matter by a reasoned order within a period of four months from the date of production of a copy of the order.

(xv) Thereafter, the petitioner was issued a second show cause notice dated 01.11.2007 in a wholly mechanical manner, which was duly responded to, by the petitioner. However, the respondent no. 2- District Magistrate without considering the petitioner's show cause or the directives of the Divisional Commissioner, Patna rejected the show cause of the petitioner vide his order dated 28.05.2008, in a wholly arbitrary and discriminatory manner. The order was passed without any reasoning, upholding the earlier order of punishment (Annexure-10).

(xvi) The petitioner again preferred an appeal before the Commissioner Patna Division, Patna assailing the order dated 26.05.2008 passed by the District Magistrate but the same was dismissed without application of mind and in a wholly mechanical manner.



Faced with no other remedy, the petitioner has once again knocked the doors of this court, seeking redressal of his grievance, as following punishments have been imposed against him vide order dated 27.09.2001 and also order dated 28.05.2008 (Annexure 1 & 10).

(1) The 25 percent amount of the monthly pension of the petitioner has been ordered to be deducted.

(2) Three increments with cumulative effect has been ordered to be withdrawn with effect from 1995.

(3) No promotion to the petitioner with effect from 31.12.1995.

(4) Ten times of amount of the stamp shortage of Rs. 720.25 with interest thereon @ 12.5 per cent w.e.f. 1981 has been ordered to be realized from unutilized earned leave of the petitioner.

It is contended on behalf of the writ petitioner that the impugned orders, as contained in Annexure- 1 & 10, are wholly illegal, arbitrary and against the settled principle of law. It is submitted that the impugned order



contained in Annexure-1 whereby the petitioner was inflicted the punishment, such as; reduction of pension by 25 per cent, stoppage of three increments with cumulative effect w.e.f 1995, adjustment of increment, if already given to the petitioner and denial of promotion to the petitioner with effect from 31.12.1995, and recovery of above all, the punishment of recovery of 10 times of value of stamp which was found short that is Rs. 7202.50/- (shortage of Rs. 720.25) with interest @ 12.5 per cent, was wholly illegal and arbitrary, as the respondents had acted against the procedure prescribed in the Bihar Govt. Servant (Classification Control and Appeal) Rules, 2005. It was submitted on behalf of the petitioner that the impugned order, as contained in Annexure 1, was passed without consideration of the petitioner's second show cause. It was further averred on behalf of the petitioner that petitioner superannuated on 30.04.2001, and therefore, it was incumbent upon the respondents to convert the departmental proceeding into a proceeding under Section 43(b) of the Bihar Pension Rules. It was contended that no such procedure was followed by the respondents.



Learned counsel for the petitioner further submitted that the entire enquiry against the petitioner, was against the procedure prescribed under Rule 17 of Bihar Government Servant (CCA), Rules, 2005, inasmuch the enquiry officer submitted the report, as contained in Annexure -5 without following the mandatory procedure of supply of relevant documents. Thus, non-supply of the relevant documents to the delinquent seriously prejudiced the petitioner and vitiated the enquiry report. The other lacuna pointed out by the petitioner is that the Enquiry Officer could give no definite finding in the absence of the guard file which was not produced at the enquiry. Furthermore, no list of witnesses proposed to be examined was ever given to the delinquent petitioner nor was he permitted to be examined.

It was also contended that though there were two persons against whom the enquiry officer proceeded to enquire, and both have been held responsible for disappearance of the records of Impounding Case No. 79/81-82, yet the Enquiry Officer singled out the petitioner and the other delinquent Samarendra Nath Bhattacharya was allowed to go scot free whereas the

petitioner was inflicted with punishment as stated above.

Learned counsel for the petitioner further contended that the petitioner had also been acquitted in the criminal case lodged against him and though he pleaded that since he had already been acquitted, the petitioner may be permitted to avail the said benefit of the findings recorded yet on the basis of no evidence the Enquiry Officer has proceeded to indict the petitioner.

Relying upon the principle, enshrined in the case of **Roop Singh Negi Vs. Punjab National Bank & Ors reported in 2009 (2) SCC 570**, learned counsel for the petitioner contended that a departmental proceeding, being a quasi judicial proceeding, bestows upon the enquiry officer, a quasi judicial function thus at the enquiry, the charge leveled against the delinquent officer must be found to have been proved. The Enquiry Officer has a duty to arrive at a finding upon taking into consideration the material brought on record by the parties.

In the aforesaid judgement, the principle of service law and departmental enquiry stands clearly spelt out at paragraph- 23.



23. “Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision cannot be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however, high may be, can under no circumstances be held to be a substitute for legal proof”.



Learned counsel for the petitioner further contended that the finding arrived at by the Enquiry Officer that the records had been made to disappear at the behest of the petitioner in connivance with the said Samarendra Nath Bhattacharya, was also not based on any cogent evidence but was made on the basis of conjectures and surmises and thus, could not be sustained. The action of the respondents in ignoring the order of acquittal of the petitioner at the criminal proceeding was also indicative of the arbitrary attitude of the concerned respondents.

Learned counsel for the petitioner further contended that the impugned order of punishment passed against the petitioner being based on the enquiry report, submitted by the Enquiry Officer indicting both the persons, was well before the Disciplinary Authority. However, the petitioner was singled out and inflicted with punishment whereas; the other officer namely, Samarendra Nath Bhattacharya was not punished and on his superannuation and all retiral benefits were released in his favour. However, the petitioner was discriminated and even after retirement, the respondents



have visited the petitioner with civil consequences and deprived him of his pensionary benefits, increments and more so, recovery has also been directed to be made in the case of the petitioner. It was contended that the Enquiry Report was also vitiated on account of the respondent having adopted the wrong procedure inasmuch as the documents were not supplied to the delinquent petitioner. Such documents were also not proved during the course of departmental proceeding by examining and cross-examining the witnesses, which is a clear violation of the mandate of law, as prescribed in the CCA rules.

It was accordingly, contended that the entire order of punishment, as contained in Annexures- 1 and 10, were illegal and arbitrary against the statutory provisions and were also in violation of the Principle of Natural Justice and in direct contravention of Articles 14 of the Constitution of India. Thus, the orders impugned are fit to be set aside and the respondent be directed to release all the retiral benefits and other consequential payments.

Responding to the arguments advanced by the



petitioner, learned counsel for the State submitted that the present writ petition was barred by the principle of res judicata and inasmuch as the petitioner has come to this court for the same relief as was in CWJC No. 1479 of 2002, which was dismissed vide Annexure- 7, for the reason that statutory appeal was available to the petitioner.

Moreover, the contention of the petitioner that the proceeding, having not been converted into one under Rule 43(b) of the Bihar Pension Rules, was not available to the petitioner, as no such plea had been raised by him on any earlier occasion. Thus, the writ application is fit to be dismissed.

Having heard learned counsel for the parties and on consideration of the documents annexed to the writ application, it appears that the petitioner has been imposed serious punishment on the basis of the report of the departmental enquiry (Annexure-5). A perusal of the aforesaid report indicates that Enquiry Officer had indicted both the petitioner as well as one Samarendra Nath Bhattacharya responsible for the disappearance of the impounding records of Impounding Case No. 79/81-



82. The relevant documents which perhaps could have established the stage and the point, on which the said records had disappeared, have not been produced during the course of the enquiry. The request of the petitioner to supply the same was also not acceded to. The finding, arrived at by the Enquiry Officer, indicting the petitioner was not on the basis of any documents rather on the basis of blind statement, made by the certain witnesses who were not cross-examined. Thus, there was a clear deviation from the procedure to be followed under the relevant rules. As such, the respondents could not make such a finding based on no evidence, which in effect came to be the basis of the punishment order inflicted on the petitioner.

So far as the issue relating to the principle of application of res judicata is concerned, this court had not heard and decided the matter on merits and having left the petitioner to avail the alternate remedy at the earlier stage. As such, it would not be appropriate to entertain such a plea made by the respondents and the plea of the respondents regarding the application being barred by the principle of res judicate is also rejected.



It also appears from a perusal of the order passed by the Appellate Authority that in the Appeal Case No. 11 of 2005 which was disposed of on 27.08.2007, the Commissioner quashed the order dated 27.09.2001 and remitted the case of the petitioner to the back to the District Magistrate with a direction to the Disciplinary Authority to issue a second show cause notice and to proceed in accordance with law. While doing so, it has also been noted as such:-

“the possibility of the loss of the record from the hand of Shri Samarendra Nath Bhattacharya is as much probable as from the hands of the appellant, as there is nothing substantive on record to show that the record was lost only by the appellant. Another flaw in this case is that the Enquiry Officer has found both the appellant and his successor Shri Bhattacharya jointly responsible for the loss of the record, but the disciplinary authority in his order, has not assigned reasons as to why and how he found only the appellant responsible for the loss of the record.”

However, once again the District Magistrate



could not assign any reason for not proceeding against the said Sri Bhattacharya. The only reason assigned for imposing punishment upon the petitioner is that he could not escape his liability for the reason that another delinquent had not been proceeded upon. Such a treatment by the District Magistrate clearly shows non application of mind and cannot be sustained in the eyes of law. The impugned order as contained in Annexure- 1 and 10, being thus, violative of not only the rules regarding departmental proceeding but also being discriminatory and against the constitutional mandate cannot be sustained and is fit to be set aside.

Accordingly, orders dated 27.09.2001 (Annexure- 1) and 28.05.2008 (Annexure-10) are set aside. The petitioner, having already superannuated, is entitled to his full pension in accordance with the prevalent rules. It is further directed that all payments, retiral as well as other consequential benefits which have been withheld on account of the impugned order should be paid to the petitioner within a period of three months from the date of receipt of a copy of this order.

The writ application stands allowed. However,

there will be no order as to costs.

(Anjana Mishra, J)

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