

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1314 of 2013

=====

Ram Briksh Sah son of Late Ramji Sah, resident of Village- Kanhauli Bishundutt,
Bela Imli Chowk, P.O.-R.K. Ashram, Bela, P.S.- Mithanpura, District- Muzaffarpur

.... Petitioner/s

Versus

1. The Chairman, Bihar Industrial Area Development Authority, Udyog Bhawan,
East Gandhi Maidan, Patna
2. The Managing Director, Bihar Industrial Area Development Authority, Udyog
Bhawan, East Gandhi Maidan, Patna
3. The Secretary, Bihar Industrial Area Development Authority, Udyog Bhawan,
East Gandhi Maidan, Patna
4. The Executive Director, Bihar Industrial Area Development Authority, Regional
Office, Muzaffarpur
5. The Officer-on-Special Duty, Bihar Industrial Area Development Authority,
Udyog Bhawan, East Gandhi Maidan, Patna

.... Respondent/s

=====

Appearance:

For the Petitioner/s : Mr. Prashant Sinha, Advocate
For the Respondent nos. 2 to 5: Mr. Rajeev Ranjan Prasad, Advocate
Mr. Sudhanshu Trevedi, Advocate
Mr. Abhishek Singh, Advocate
Ms. Surbhi, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 29-09-2016

Heard Mr. Prashant Sinha, learned counsel for the petitioner
and Mr. Rajiv Ranjan Prasad, learned counsel appearing for the Bihar
State Industrial Area Development Authority (hereinafter referred to
as the 'BIADA').

The petitioner though endeavours to raise grievance against
an order bearing Memo No. 7331 dated 06.12.2012 whereby the
stagnation increments granted to him vide Memo No. 6729 dated
12.10.2010 was withdrawn but in effect the petitioner has tried to
question an imposition of penalty vide order bearing Memo No. 235
dated 26.10.2007 whereby his three annual increments with

cumulative effect was withheld and which order was never appealed against.

Mr. Prashant Sinha has appeared for the petitioner to question the impugned orders on merits as well as procedural infraction. Learned counsel submits that the statutory procedure for holding a departmental proceeding has not been followed in the present case. According to Mr. Sinha the entire departmental proceedings which culminated in the punishment order dated 26.10.2007 impugned at Annexure-7 was a sham and since it was held in violation of the regulatory procedures provided under the Act and the Regulations followed by the BIADA, it was not worthy to be upheld. He submits that it is in this background of the matter and since the petitioner in the meantime had been terminated on 14.3.2008 that he never chose to question the punishment order. It is submitted that pursuant to the order passed in CWJC No. 12578 of 2008 that the petitioner filed a statutory appeal before the Principal Secretary which was allowed on 11.6.2009 resulting in his reinstatement and he gave his joining on 27.6.2009. The petitioner filed a representation on 10.9.2010 for review of the punishment order and which was accepted resulting in the release of the stagnation increment vide order passed on 28.9.2010 and 12.10.2010 vide Annexure-10. According to Mr. Sinha once the stagnation increment had been released by the respondents in consideration of the review petition filed by the petitioner on 10.9.2010, they could not have withdrawn the benefits.

In furtherance of the argument noted above, learned counsel has referred to a letter dated 17.1.2011 to submit that the Chief Administrative Officer has himself accepted that the date from which the increment was granted to the petitioner was correct, meaning thereby the release of stagnation increment was on review of the order of punishment.

Mr. Prasad, learned counsel for the BIADA has taken this Court through the order of punishment at Annexure-7 to submit that this order of withholding of three annual increments was never appealed against by the petitioner and thus has attained finality. He submits that a stagnation increment in 'BIADA' is granted to an employee every alternate year and thus the said increment was due on 01.1.2008 and 01.1.2010 but in the meanwhile the petitioner was dismissed from service on 14.3.2008. He appealed against the order of dismissal which was set aside and he joined back duty on 23.6.2009. He submits that it is due to oversight that the Chief Administrative Officer under the orders of the Managing Director granted stagnation increment to the petitioner vide order dated 28.9.2010 and 12.10.2010 present at Annexure-10 although the petitioner was not entitled to the same in view of the punishment order present at Annexure-7 and when this error was discovered that this order has been withdrawn by the order bearing Memo No. 7331 dated 06.12.2012 and which has aggrieved the petitioner. He submits that the petitioner not having questioned the punishment order before any forum, the order

impugned dated 06.12.2012 is only a consequence of the same and to rectify an error which was committed in the order dated 12.10.2010.

At this stage Mr. Prasad informs that even the second stagnation increment had been withdrawn from the petitioner.

I have heard learned counsel for the parties and I have perused the records. It has taken almost six years for the petitioner to rise from his slumber to realize that a punishment was imposed on him vide order dated 26.10.2007. The order dated 06.12.2012 impugned at Annexure-17 merely confirms the entitlement of the petitioner to the grant of annual stagnation increment in view of the punishment order dated 26.10.2007. It is undisputed that since after passing of the punishment order dated 26.10.2007 the petitioner did nothing to question it. He neither moved the Court nor moved the statutory authority for reversal thereof. Although Mr. Sinha has tried to explain the delay under the cover that the petitioner got terminated but this would not come to the aid of the petitioner because whereas the termination of the petitioner took place on 14.3.2008, the punishment order passed on 26.10.2007 had taken its effect and the petitioner had already suffered withholding of stagnation increment in January 2008. Meaning thereby the punishment imposed had taken its effect and it did not aggrieve the petitioner rather he suffered it silently without lodging a protest. It is again not disputed that the petitioner was dismissed but his dismissal was set aside by the appellate authority and he joined back his post on 23.6.2009. Again



he does not choose to question the punishment order before any authority and it is almost a year and a quarter thereafter that on 10.9.2010 the petitioner chooses to pray for a review of the punishment order passed three years back. An order granting stagnation increment was passed by the Chief Administrative Officer on 28.9.2010 and 12.10.2010 which also amongst others included the name of the petitioner and when he got a cause of action to question an order which was passed three years back.

It is the case of BIADA that although inadvertently the stagnation increment was granted to the petitioner but when it transpired that in view of the punishment order dated 26.10.2007, the petitioner was not entitled to any stagnation increment that the order impugned dated 06.12.2012 was passed. Although an adventurous argument has been advanced by Mr. Sinha to question the order restricting stagnation increment to submit that whereas the punishment order merely talks about withholding of increment, it would not apply to a stagnation increment but even while making such submission, Mr. Sinha would agree that there is no other kind of increment to which the petitioner is entitled except stagnation increment. In fact the order of punishment dated 26.10.2007 having taken its effect and the petitioner having suffered the punishment of withholding of stagnation increment in January 2008 in pursuance of the punishment order, not having chosen to contest the same at any stage, he cannot take the benefit of a bona fide error committed by the

respondents consequent upon his reinstatement.

As I have observed hereinabove, the grant of stagnation increment was apparently in teeth of the punishment order and when it was discovered that it had been wrongly granted to the petitioner, then the error was rectified by the impugned order passed on 06.12.2012. No cause for indulgence is made out. In the entire gamut of contest, it is the petitioner himself, who is to be blamed for the situation and for waking from his slumber to challenge the effect of an order passed almost six years back, as the impugned order is a mere consequence of the order passed on 26.10.2007.

The writ petition is dismissed.

(Jyoti Saran, J)

S.Sb/-

AFR	
CAV DATE	
Uploading Date	
Transmission Date	