

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1361 of 2012

In

Civil Writ Jurisdiction Case No. 15694 of 2005

=====

Tribhuwan Singh, son of Late Chhedi Prasad Singh, resident of Shankarpur,
P.S. Bakhliarpur, District-Saharsa.

.... Appellant/s

Versus

1. The State of Bihar
2. The District Magistrate, Saharsa
3. The Sub-divisional Officer, Saharsa

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Ratan Kumar

Mr. Rupak Kumar

For the Respondent/s : Mr. Ravindra Kumar, A.C. to AAG-6

=====

**CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR
DATTA**

and

HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

6 24-11-2016 Heard learned counsel for the appellant and learned
counsel for the State.

The appeal has been filed against the order dated
20.06.2012 passed in CWJC No. 15964 of 2005, by which the writ
petition has been dismissed after holding that there being
concurrent findings of fact by the Disciplinary Authority and the
Appellate Authority, this Court in judicial view is not sitting in
appeal over the said decisions but is only concerned with the
decision making process and not the decision itself.

The writ petitioner-appellant was, at the relevant time,
working as an Assistant in Kahara Block in the District of Saharsa.



During the said period, it was alleged that he was instrumental in allowing the Panchayat Sewak to withdraw an amount of Rs.3,61,808/-. Without following the proper procedure, the appellant had initialed the voucher slips produced by the Panchayat Sewak, upon which the Block Development Officer had also approved it. On the said charge departmental proceedings were started against the petitioner in which charge memo was served upon him, with respect to which he filed a detailed 11 pages reply before the Enquiry Officer. The Enquiry Officer finding him guilty of the charges, the disciplinary authority by order dated 02.09.2004 awarded the punishment of stoppage of four increments with cumulative effect and it was directed that the appellant should not be given charge of any work in which financial and supervision work is involved.

In the appeal filed before the Divisional Commissioner, Kosi Division, Saharsa, the punishment was modified to the stoppage of two increments with cumulative effect and further providing that for the period of suspension no salary is to be paid. Aggrieved by the same, the petitioner approached this Court and by the impugned order dated 20.06.2012, the writ petition has been dismissed.

Learned counsel for the appellant has again sought to argue



before this Court that there has been violation of the principles of natural justice. The learned single Judge has held that the writ petitioner has not been able to establish any prejudice on account of so-called violation of the principles of natural justice on the basis of his own averments and the findings of both the authorities. It is admitted that the appellant had initialed and passed the voucher slips on the basis of which the Block Development Officer granted approval and thus the basic fact which has led to the finding of the charges against the petitioner stood proved by his own admission.

Having perused the materials on the record, we see no reason to take a different view in the matter.

Another aspect of the matter raised by the petitioner in the writ petition but appears not to have been pressed before the learned single Judge, is that before passing the order not to pay salary for the period of suspension as a further punishment by the Appellate Authority, the Divisional Commissioner, no opportunity of hearing was given to the petitioner which was a sine qua non under Rule 97 (3) of the Bihar Service Code, as consistently held by this Court starting from the case of Shri Mahabir Prasad vs. The State of Bihar and others: 1988 PLJR 82, in paragraph No.3 of which it has been held as follows:-



“3. Mr. Tarkeshwar Dayal, learned counsel appearing for the petitioner did not challenge the validity of the order of censure. Learned counsel, however, submitted that the order of the State Government that the period of suspension would be treated as on duty for the purposes of pension and gratuity but the petitioner would not get anything more than the subsistence allowance already received by him during the period of suspension is invalid, because the petitioner was not given an opportunity to be heard before the said order was passed. In support of this contention, learned counsel relied upon a decision of the Supreme Court in *M. Gopalkrishna Naidu v. The State of Madhya Pradesh* (AIR 1968 Supreme Court 240). There is substance in the contention of learned counsel. The facts of the Supreme Court case were, more or less, similar in the sense that the delinquent officer had been suspended pending the departmental enquiry. The enquiring officer found the officer not guilty, but the Government



disagreed with that finding and served a notice to show cause why he should not be dismissed. Subsequently, the Government held that the charges against the officer were not proved beyond reasonable doubt. It also held that the suspension and the departmental enquiry “were not wholly unjustified”. The order further directed, inter alia, that the entire period of absence from duty should be treated as period spent on duty under Fundamental Rule 54 (5) for purposes of pension only, but that he should not be allowed any pay beyond what he had actually received or what was allowed to him by way of subsistence allowance during the period of his suspension. The Supreme Court held that Fundamental Rule 54 contemplates a duty to act in accordance with the basic concept of justice and fairplay. The authority has to afford a reasonable opportunity to the officer concerned to show cause why clauses (3) and (5) should not be applied. In that case the order was held to be invalid as no reasonable opportunity to the officer to show cause was given. Rule 97 of the Bihar



Service Code, 1952, is in pari materia with rule 54 of the Fundamental Rules. The petitioner, therefore, ought to have been given an opportunity to show cause why clauses (3) and (5) of Rule 97 should not be applied in his case. As that had not been done. The application is allowed and the impugned portion of the order contained in Annexure 1 which reads “The period of suspension be treated as on duty for the purposes of pension and gratuity but he will not get anything more beyond the subsistence grant already received by him during the period of suspension” is struck down as invalid. It would be open to the competent authority to consider the question de novo, after giving the petitioner a reasonable opportunity to show cause against the action proposed against him. There will be no order as to costs.”

It is not in dispute that the same is a pure question of law, as no such order was passed by the competent authority imposing the punishment, rather it is the Divisional Commissioner who has passed the order for the first time. Not only for passing such order,



the competent authority was required to give a reasonable opportunity to the petitioner-appellant by virtue of the decision in the case of Shree Mahabir Prasad (supra) but as a matter of fact in view of the provisions of Rule 97 (3) of the Bihar Service Code, the order could have been passed only by the competent authority after giving an opportunity of hearing to the petitioner-appellant in the matter.

For the aforesaid reasons that part of the order of the Appellate Authority that he would not be entitled to salary for the period of suspension is contrary to what has been provided under Rule 97 (3) of the Bihar Service Code and is set aside. The case is remanded to the competent authority to pass a fresh order with respect to that matter after serving a notice to the petitioner-appellant under Rule 97 (3) of the Bihar Service Code.

The appeal is, accordingly, partly allowed with the aforesaid observations and directions.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Birendra Kumar, J)

U			
---	--	--	--

