

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12710 of 2008

=====

Sharat Chandra Gupta, son of Late Baijnath Prasad Gupta, resident of Village-
Naubatpur, P.S.- Naubatpur, District- Patna, at present residing at Ramjichak, P.S.-
Digha, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. District Magistrate, Patna.
3. Sub-Divisional Officer, Danapur, Patna.
4. Deputy Collector, Nazarat, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Arjun Prasad Keshri, Advocate
For the Respondent/s : Mr. Arun Kumar, AC to GP-1

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 19-12-2016

A supplementary affidavit is being filed on behalf of the petitioner enclosing a copy of the judgment and order passed by the trial court in the criminal case instituted against the petitioner following the order of this Court on the writ petition preferred by the petitioner, a copy of which is present at Annexure-1 to the writ petition. The judgment and order of the trial court acquits the petitioner of all the charges. Let the supplementary affidavit be taken on record.

Heard Mr. Arjun Prasad Keshri, learned counsel appearing for the petitioner and Mr. Arun Kumar, learned Assisting Counsel to Government Pleader No.1 for the State.

With the consent of the parties this writ petition has



been heard with a view to its final disposal at the stage of admission itself.

The petitioner prays for issuance of a writ in the nature of certiorari for quashing the order bearing Memo No.2710 dated 13.6.2008, whereby the petitioner has been visited with the punishment of stoppage of pension for a period of five years by the District Magistrate, Patna. A copy of the order is impugned at Annexure-6 to the writ petition.

Facts of the case briefly stated is that the petitioner was appointed on the post of Peon in the Sub-Divisional Office at Danapur on 26.12.1974. A dispute as regarding interpolation in the date of birth of the petitioner in the official records led to a contest arising from CWJC No.4140 of 2005 and a Bench of this Court in consideration of the material on record was pleased to hold the petitioner guilty of interpolation in his service records to convert his date of birth from 1.4.1947 to 1.4.1948. While the figures had been converted as such, the date of birth in words form remained to read 'Nineteen forty-seven'. The writ petition was thus dismissed with a direction to the authorities to treat the date of birth of the petitioner as 1.4.1947 and the District Magistrate, Patna was directed to institute a criminal case against the petitioner. It is in the light of the order passed by this Court placed at Annexure-1 that an FIR was



instituted against the petitioner giving rise to Danapur P.S. Case No.232 of 2007. Although the petitioner had superannuated on 31.3.2005 but yet a disciplinary proceeding was initiated against the petitioner and a charge memo was served in Form 'क' under the signature of the District Magistrate, Patna bearing Memo No.1120 dated 17.4.2007. The petitioner responded to the charges. The enquiry report at Annexure-5/A holds the petitioner guilty. The petitioner was served with a second show cause vide Annexure-5 and which was followed by the impugned order, whereby the punishment of stoppage of pension for five years was imposed by the District Magistrate, Patna in exercise of powers vested under rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as 'the Pension Rules').

The criminal case on the other hand, was put on trial and in which the petitioner has been acquitted by a judgment and order of the trial court passed on 31.8.2015, a copy of which has been placed on record vide Annexure-9 to the supplementary affidavit.

I have heard learned counsel for the parties and I have perused the records.

In my opinion, the entire disciplinary proceedings are without sanction of law. Although the charge memo at Annexure-3 has been framed in Form 'क' which is the form prescribed



apparently under the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the 'Discipline Rules') for the alleged interpolation in the service records by the petitioner but midway perhaps the District Magistrate realized the mistake and a proceeding which was initiated under the 'Discipline Rules' got converted under the 'Pension Rules'.

The proceedings including the order impugned are unsustainable on several counts, namely:

- (a) Post-retiral, no disciplinary proceeding could have been initiated against the petitioner after his superannuation on 31.3.2005;
- (b) The initiation of proceedings by service of charge memo dated 17.4.2007 issued under the signature of the District Magistrate is apparently an initiation under the 'Discipline Rules' and is not an initiation under the 'Pension Rules' because the proceeding under the 'Pension Rules' has to be initiated by the State Government;
- (c) Neither the charge memo at Annexure-3 nor the punishment order at Annexure-6 are orders of the State Government and thus cannot be held as orders passed



under the 'Pension Rules';

- (d) The petitioner stands acquitted in the criminal case as no evidence was led by the prosecution to drive home the charges of interpolation levelled against the petitioner.

For the reasons aforementioned the entire proceedings initiated against the petitioner including the charge memo dated 17.4.2007 impugned at Annexure-3 and the order of punishment dated 13.6.2008 impugned at Annexure-6 cannot be upheld and is accordingly quashed and set aside.

The District Magistrate, Patna or the authority concerned is directed to take appropriate steps for refund of the recovered pension amount of the petitioner within a period of three months from the date of receipt/production of a copy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	25-12-2016
Transmission Date	NA

