

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.476 of 2017

In
Civil Writ Jurisdiction Case No.12144 of 2016

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Anup Kumar Sharma Son of Late Lajdhari Sharma, Resident of Village-
Kiwal Basati Gosai Tola, P.S. Lakhisarai, District Lakhisarai.

... .. Appellant/s

Versus

1. The State of Bihar
2. The Divisional Commissioner, Munger.
3. The Collector, Lakhisarai.
4. The Block Development Officer, Halsi, District Lakhisarai.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Mahasweta Chatterjee, Adv.
For the Respondent/s	:	Mr. P.K. Verma, AAG-3
		Mr. Suman Kumar Jha, AC to AAG-3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 19-12-2017

Having heard learned counsel for the parties, we find that the legal question involved in this appeal is no more in dispute and, therefore, the matter can be disposed of at this stage itself. Petitioner Anup Kumar Sharma was working in the respondent Department and pending a departmental enquiry with regard to certain misconduct alleged to have been committed, he was suspended. The departmental enquiry culminated in his dismissal from service. Challenging the dismissal, a writ petition was filed.



The learned Writ Court, finding that there is certain procedural irregularity and violation of the principles of natural justice, allowed the writ petition, in part, quashed the order of dismissal and remanded the matter back to the disciplinary authority for proceeding with the enquiry from the stage of submission of the Enquiry Officer's report. After things were so existing, petitioner sought payment of subsistence allowance on the ground that once the termination was set aside and the matter was remanded back to the disciplinary authority, the order of suspension stood automatically revoked in view of setting aside of the dismissal order and the petitioner was entitled for subsistence allowance. When the same was denied by the departmental authorities, this Court by the impugned order has quashed the same.

Learned counsel appearing for the petitioner invites our attention to Rule 19(1) of C.C.A. Rules, 2005 which reads as under:

(1) Subject to the provisions of sub-rule (3) of Rule 18, no order imposing on a Government Servant any of the penalties specified in clauses (i) to (v) of Rule 14 shall be made except after-

(a) informing the Government Servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making



such representation as he may wish to make against the proposal;

(b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 17, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Government Servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;

(d) recording a finding on each imputation of misconduct or misbehaviour; and

(e) consulting the Commission where such consultation is necessary.

A perusal of the aforesaid Rule would clearly show that if a penalty of dismissal, removal or compulsory retirement originally passed has been set aside on technical ground, the government servant is deemed to be placed under suspension by the authority from the very date the original order of dismissal, removal or compulsory retirement is passed and he shall continue to remain under suspension till finalization of the departmental enquiry. That being the statutory rule, we see no reason to dismiss this appeal.

Even in the case of Managing Director, ECIL, Hyderabad & Ors. Vs. B. Karunakar & Ors., (1993) 4 SCC 727, the Hon'ble Supreme Court has laid down the aforesaid principle



in the matter of setting aside of a dismissal order and remand of the matter to the departmental authorities. In such cases also, the Hon'ble Supreme Court has held that the employee shall be deemed to be under suspension during the pendency of the departmental proceedings on remand and entitled to the benefit of subsistence allowance treating him to be a suspended employee.

Keeping in view the aforesaid, we see no reason to deny relief to the petitioner.

Accordingly, we allow the appeal, quash the order and issue a mandamus to the respondents to treat the petitioner to be under suspension from the date the dismissal order was set aside by this Court till a final decision on the departmental enquiry is not taken and grant him all benefits in accordance with law.

With the aforesaid, this appeal is allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.Jha/-

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