

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11997 of 2008

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Ganesh Kumar son of Dasrath Paswan, resident of Village-Tojatola, Ward
No.3, P.S. Sahayak, District-Katihar

.... Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner, Purnea.
3. The District Magistrate, Katihar.
4. The Sub-Divisional Officer, Barsoi, Katihar.
5. The Circle Officer, Barsoi, Katihar.
6. Ravindra Nath Gupta, not known, Circle Officer, Barsoi Circle, Katihar.

.... Respondents

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Appearance :

For the Petitioner : Mr. Suresh Pd. Baranwal, Adv.
For the Respondent/s : Mr. (GA4)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT
Date: 08-02-2017

Heard learned counsel for the petitioner and respondent-

State.

The present writ application has been filed by the petitioner in the year 2008 praying for issuance of direction to the respondent authorities to make the payment of arrears of salary and dearness allowance for the period May, 2006 and June, 2006, claiming that although the pay slip was prepared, the amount was deposited in the account of the Circle Officer, who retained the amount with himself but did not make the payments to the petitioner. The petitioner has further prayed to restore the increment which has been withheld with cumulative effect, pursuant to a departmental proceeding against the petitioner.



What culls out on the basis of the pleadings made on behalf of the learned Counsel for the petitioner and learned Counsel appearing for the respondent State is that, the petitioner, while being posted as Anchal Amin, Barsoi, absented himself from his duty in an unauthorized manner from 28.04.2016 till 08.05.2016, pursuant to which he was placed under suspension with effect from 07.07.2006. The petitioner was subjected to departmental proceeding on account of four charges. In the departmental proceeding, Mr. Santosh Kumar, Executive Magistrate, Katihar was designated as the Conducting Officer, while Mr. Jagarnath Viyogi, In-Charge, Establishment Section, Katihar was made the Presenting Officer. The four charges, which were framed against the petitioner, were as follows:-

Charge No.(1)-Remaining on unauthorized leave from 28.04.2016 to 08.05.2016.

Charge No. (2)- On account of unauthorized leave, appointment letters concerning the Three Tier Panchayat Elections could not be served within time.

Charge No.(3)- The map relating to the floods, which was called for by the Additional Collector, could not be dispatched within time, which amounts to flouting of orders.

Charge No.4:- Evidence could not be produced in the Sub-divisional Court in a Demarcation Case on 08.05.2006, as a result



of which the case could not be disposed on that date, which amounts to dereliction of duty.

After enquiry, the petitioner was exonerated of the latter three charges, but he was found guilty on the 1st charge of having absented himself from duty in an unauthorized manner. Consequently, the petitioner was inflicted with a minor punishment of withholding of one increment with cumulative effect, while at the same time it was also directed that the petitioner be paid the salary for the period he remained under suspension. The Enquiry Report was submitted by the Conducting Officer on 18.06.2007, whereas the order inflicting punishment was passed on 22.10.2007. The consequential order, by which the details of the punishment order dated 22.10.2007 was directed to be entered in the Service Book of the petitioner, was passed on 02.11.2007 being issued vide Memo No. 2114, as contained in Annexure-C to the counter affidavit.

Furthermore, the petitioner preferred an appeal against the order of punishment dated 22.10.2007, but the Appeal was dismissed by the Appellate Authority i.e., the Commissioner, vide order dated 24.04.2008 which was communicated vide Memo No. 1854 dated 08.05.2008.

The petitioner has himself claimed in Paragraph no. 5 of the writ application that he was verbally allowed to go on leave by the



Circle Officer. Thus, in view of this Court, amount to an admission made by the petitioner himself that he remained on unauthorized leave, without having his leave sanctioned, in writing.

So far as the claim of the petitioner with regard to the non-payment of salary for the period May, 2006 and June, 2006 (the period which included his suspension period), is concerned, it has been brought to the acknowledgement of this Court by way of Annexure-E to the counter affidavit filed by the respondent State, that such arrears of pay has already been paid to the petitioner vide Cheque No. 720662 dated 01.08.2006, amounting to ₹13614/- and the said amount has also been encashed by the petitioner on 02.08.2016 itself.

Seemingly, the prayer of the petitioner with regard to arrear of salary for the period May and June, 2006, is grossly misconceived and made casually. The writ application has been filed claiming arrears of salary, almost two years after having received the same. This Court finds that the petitioner has resorted to seek remedy under writ jurisdiction in the most unfair manner, and even without any cause of action for payment of arrears of salary, hence, he approached this Court with an infructuous prayer.

So far as the second prayer of the petitioner is concerned, wherein he has claimed for restoration of the increment



which has been withheld with cumulative effect, the same, in considered view of this Court is not tenable, unless the petitioner got the order of punishment gets unsettled in Appeal or by any consequential order. The order imposing punishment, as discussed above, has also been upheld by the Appellate Authority, vide order dated 24.04.2008, communicated vide Memo No. 1854 dated 08.05.2008, but the petitioner has chosen not to challenge either of them in the present writ application.

I.A. No. 722 of 2017 has been filed by the petitioner on 03.02.2017, whereby the petitioner has sought to amend the prayer to the extent of quashing the part of Memo No. 2114 dated 02.11.2007, issued under the signature of Deputy Collector, District Establishment, Katihar which has been brought on record by the petitioner as Annexure-7. I.A. No. 722 of 2017 is being allowed for the purpose of amendment of prayer.

Though, this Court allows I.A. No. 722 of 2017, for the purpose of amending the prayer, but at the same time, this Court would not hesitate to say that, on merits, the relief which has been sought by way of I.A., is outrightly misconceived. Rather than challenging the order inflicting punishment passed vide order dated 22.10.2007, or the Appellate order dated 24.04.2008, the petitioner has chosen to challenge the order issued vide Memo No. 2114 dated



02.11.2007, which is, at best, a format order. Since, vide Memo No. 2114 dated 02.11.2007, it has only been directed to make entries in the Service Book of the petitioner, regarding the details of order of punishment inflicted upon him vide order dated 22.10.2007 in pursuance to the Departmental proceeding conducted against him. The order dated 02.11.2007 is only a consequential order and unless the actual order inflicting punishment and the order passed by the Appellate order is set aside in an appropriate proceeding, the order dated 02.11.2007 cannot be quashed or set aside. This Court also does not have the opportunity to go through the order inflicting punishment dated 22.10.2007, since the same has not been brought on record, either by the petitioner or by the respondent State. Surprisingly, it has been wrongly stated by the learned counsel for the respondent-State in paragraph no.7 of the counter affidavit that the order imposing punishment was passed by the D.M. vide Memo No. 2114 dated 02.11.2007 and in paragraph no.8, it is wrongly stated that the appeal was preferred by the petitioner against the order dated 02.11.2007, whereas the appeal was preferred against the order dated 22.10.2007.

Moreover, it is a settled principle of law that the High Court in exercise of its power under Article 226, while exercising the power of judicial review, cannot normally interfere with the punishment imposed by the disciplinary/appellate authority, except



where it is shocking to the judicial conscience, then it can mould the relief either by directing the authority to reconsider the punishment/penalty imposed. While exercising the power of judicial review, the Court cannot venture into reappreciation of evidence or interfere with conclusions arrived at by Enquiry Officer, if the same are conducted in accordance with law. The Court cannot also go into reliability/adequacy of evidence or interfere if there is some legal evidence on which findings are based. The Court can only consider whether enquiry was held by competent authority, in accordance with procedure established by law and principles of natural justice. Interference is also permissible where finding is wholly arbitrary and capricious based on evidence which no reasonable man could arrive at.

In the instant case, charge-1, being unauthorized absence from duty, has been found proved during the course of enquiry and the same gets further substantiated by the own admission of the petitioner to the effect that he was absent but with oral permission of the Circle Officer. Moreover, this Court does not find any illegality, perversity or any procedural lapse, on account of which the order inflicting punishment could be interfered with. Particularly, under the circumstances, when neither the order inflicting punishment nor the Appellate order affirming the punishment has been challenged



by the petitioner.

Before parting, this Court would not hesitate to say that the prayer made in the writ application or in the Interlocutory Application is hopelessly misconceived on all scores and hence, fails to invite interference on any ground.

Hence, in view of the above discussions, this Court finds no merit in the present writ application.

Accordingly, the present writ application is dismissed.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	NAFR
CAV DATE	N/A
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