

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9915 of 2008

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Satyendra Narayan Singh, Son of Late Ram Prasad Singh, R/o Ayarkhotha,
P.S. Darihat, District Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna,
2. The Principal Secretary, Road Construction Department, Govt. of Bihar, Patna,
3. The Deputy Secretary-cum-Chief Vigilance Officer, Road Construction Department, Govt. of Bihar, Patna,
4. The Special Officer-cum-Deputy Secretary, Road Construction Department, Govt. of Bihar, Patna,
5. The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department, Govt. of Bihar, Patna.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. P.N. Pathak, Advocate.

For the Respondent/s : Mr. (AAG 11).

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

4 30-01-2017 Heard both sides.

The petitioner seeks quashing of the Office Order No. 73, as contained in Memo No. 2155(S) dated 21.02.2007 (Annexure-1), by which the petitioner has been warned and save and except subsistence allowance, the petitioner has been denied of other payments during the period of suspension.

The petitioner was posted as Junior Engineer in Piro-2 under Road Sub-division, Piro of Shahabad Road Division, Ara. In contemplation of departmental enquiry under Rule 9 of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, the petitioner was suspended on 21.12.2005 vide Memo No.



9523(S) dated 21.12.2005 (Annexure-2) issued under the signature of Deputy Secretary, Road Construction Department, Bihar, Patna. Memo of charge was framed. In the departmental proceeding the Enquiry Conducting Officer did not find the petitioner guilty of any charges but the disciplinary authority, as aforesaid, inflicted punishment without giving point of difference from the report of the Enquiry Conducting Officer. The petitioner filed an appeal but the same was pending.

Learned counsel for the State has filed counter affidavit stating that the appeal filed by the petitioner has already been dismissed vide Order No. 207 dated 30.09.2008 as the petitioner did not produce any evidence contrary to the finding of the Enquiry Conducting Officer.

Learned counsel for the petitioner submits that the first punishment, i.e., 'Warning' is simple in nature but by the second punishment, the petitioner has been deprived of his salary during the suspension period although the petitioner has been exonerated in the departmental proceeding and in view of Rule 11 of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, the authority should inform the petitioner before forfeiting the salary of the petitioner except subsistence allowance during the period of suspension.



Rule 11 of Bihar Government Servants

(Classification, Control & Appeal) Rules, 2005 reads as under:

“11. Treatment of service on reinstatement and admissibility of pay and allowance after suspension.- (1) When a government servant under suspension is reinstated or would have been so reinstated but for his superannuation while under suspension, the disciplinary authority shall consider and make specific order regarding the following-

(a) the pay and allowances to be paid to the government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be, and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in rule-10 of these Rules, where a government servant under suspension has died before the disciplinary or court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as on duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended. While making such payment adjustment shall be made in respect of subsistence allowance and other allowances already paid and the adjustment of government dues or loans.

(3) Where the disciplinary authority is of the opinion that the suspension was wholly unjustified, the government servant shall, subject to the provisions of sub-rule (8) of this rule, be paid such full pay and allowances to which he would have been entitled, had he not been suspended. While making such payment adjustment shall be made in respect of subsistence allowance and other allowances already paid;



Provided that where such authority is of the opinion that the termination of the proceedings instituted against the government servant had been delayed due to reasons directly for which the government servant is liable, it may, give the government servant an opportunity to make his or her representation and consider the representation, if any, submitted by him or her. After that it may direct, for reasons to be recorded in writing, that the government servant shall be paid for the period of such delay only such proportion of such pay and allowances as may be determined by it.

(4) In cases falling under sub-rule (3) of this rule, the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3) of this rule, the government servant shall subject to the provisions of sub-rules (8) and (9) be paid such proportion of the full pay and allowances to which he would have been entitled had he not been suspended, as the disciplinary authority may determine. Such determination by the disciplinary authority shall be done after giving notice to the government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within sixty days from the date on which notice aforesaid is served on the government servant.

(6) Where suspension is revoked pending finalization of the disciplinary proceeding or proceedings in a court, any order passed under sub-rule (1) of this rule before the conclusion of the proceedings against the government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the disciplinary authority and an order shall be made by him in accordance with the provisions contained in sub-rule (3) or sub-rule (5), as the case may be.

(7) In a case falling under sub-rule (5) of this rule



the period of suspension shall not be treated as a period spent on duty, unless the disciplinary authority specifically directs that it shall be the period spent for any specified purposes.

(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) of this rule shall be subject to all other conditions under which such allowances are admissible.

(9) The proportion of the full pay and allowances determined under the proviso to sub-rule (3) or under sub-rule (5) of this rule shall neither be equal to full pay and allowances nor shall it be less than the subsistence allowance.”

From perusal of sub-rule (5) of Rule 11 of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, it appears that in cases other than those falling under sub-rules (2) and (3) of Rule 11, the government servant shall, subject to the provisions of sub-rules (8) and (9), be paid such proportion of the full pay and allowances to which he would have been entitled had he not been suspended, as the disciplinary authority may determine. Such determination by the disciplinary authority shall be done after giving notice to the government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within sixty days from the date on which notice aforesaid is served on the government servant.

It is evident that the Enquiry Conducting Officer did



not find the petitioner guilty of any charges during the departmental enquiry. The disciplinary authority, on receipt of the report of the Enquiry Officer, did not give his point of difference with the finding of the departmental enquiry officer and straightway imposed the punishment without considering any evidence on record. Even for imposing a simple punishment, the disciplinary authority is duty bound to assign reasons for such punishment in his finding of guilt and punishment but the order of the disciplinary authority sans reasoning and does not disclose any material found against the petitioner for withholding the salary during the suspension period and the order without giving reasoning and notice as envisaged under sub-rule (5) of Rule 11 of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 is illegal.

Accordingly, the Office Order No. 73, as contained in Memo No. 2155(S) dated 21.02.2007 (Annexure-1), as also the Order No. 207 dated 30.09.2008 passed in the appeal is set aside. The matter is remitted to the disciplinary authority to pass order afresh in accordance with law.

The Writ Petition is accordingly allowed.

(Prabhat Kumar Jha, J)

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