

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2949 of 2011

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Om Prakash, son of Late Virja Singh, resident of Hathiyakandh, P.S.-Sahpur,
District-Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna
3. The Engineer-in-Chief, Water Resources Department, Government of Bihar, Patna
4. The Deputy Secretary, Water Resources Department, Government of Bihar, Patna
5. The Executive Engineer, Tube Well Division, Begusarai
6. The Executive Engineer, Western Koshi, Canal Division, Benipatti, Rahika, District-Madhubani

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. DIPAK KUMAR

For the Respondent/s : Mr. KUMARI AMRITA GP10

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date: 10-08-2017

Challenging an order of punishment passed on 22.06.2007 under Rule 43(b) of the Bihar Pension Rules imposing punishment of withholding 50 per cent of the pension and further confirming the period of suspension, this writ petition has been filed under Article 226 of the Constitution.

The petitioner was working as a Junior Engineer in the Tube Well Division Begusarai and he retired on attaining the age of superannuation on 31.07.2003. In the year 1988, petitioner was transferred as Junior Engineer to Western Kosi, Canal Division, Benipatti at Rahika. On 26.12.1996, the petitioner was transferred



from this office to the Tube Well Division, Begusarai. It is alleged against the petitioner that after his transfer to Begusarai on 26.12.1996, the petitioner did not give charge to the incumbent who was to replace him, as a result, inventories of the government material in the custody of the petitioner could not be made and thereby certain loss was caused to the State Exchequer. On the ground that petitioner did not give charge after his transfer in the year 1996 and on the ground that in spite of repeated communications made to him even till the date of retirement he did not give charge on the post in question, chargesheet was issued to the petitioner after his retirement on 22.06.2007 under Section 43(b) of the Bihar Pension Rules. A departmental proceeding was initiated and based on the evidence and material that came on record, the Enquiry Officer submitted his report on 18.03.2008. Thereafter, second show cause notice was issued and the impugned punishment imposed.

Challenge to the chargesheet has been made on various grounds including procedural irregularities in conducting of the departmental enquiry and one of the grounds raised was that there is inordinate delay in initiating departmental proceedings. It is alleged that cause of action for initiating the departmental proceedings commenced on 26.12.1996 when the petitioner was transferred and within a reasonable period thereof, he did not hand over charge to the incumbent who has to come to join his place and therefore on this



count alone, it is stated that the enquiry conducted after a period of more than six years of the incidence, is unsustainable and in support of the same, reliance is placed on a judgment of the Supreme Court in the case of ***State of Madhya Pradesh versus Bani Singh and Another reported in 1990 supp SCC 738.***

Learned counsel also invited my attention to the findings recorded by the Enquiry Officer and alleged that the Enquiry Officer has also taken note of the fact that in the matter of taking over charge, no concrete action was taken by the Department and while assessing value of the material based on which loss to the government exchequer was calculated, was calculated on the basis of value of the material in the year 2005, whereas petitioner has relinquished the charge in the year 1996. Taking note of all these circumstances, learned counsel has argued that it is a fit case where the proceedings held against the petitioner should be quashed.

The respondents represented by the Government vehemently opposed the aforesaid prayer and invited my attention to the averments made in the counter affidavit and the facts indicate therein to show that after the petitioner was relieved on 26.04.1997 to join on the transferred post and before his superannuation on 31.07.2003 various communications were made to the petitioner directing him to hand over the charge but the petitioner did not take any action and therefore the impugned action was taken.



Having heard leaned counsel for the parties, it is seen that the allegations levelled against the petitioner are that after he was transferred on 26.12.1996 and when he was relieved on 26.04.1997 for joining at Begusarai, he did not hand over the charge to the incumbent and as per rules to the delinquent who was to take over charge and it is on this ground that the departmental enquiry was conducted and therefore the question would be as to whether the ground of delay in initiating the departmental enquiry is established.

It is a well settled principle of law and it has been clearly held by the Supreme Court in various cases including the case of *Bani Singh(supra)* that when departmental proceedings are to be initiated, it is required to be initiated within a reasonable period of time, inordinate, unexplained delay in holding departmental enquiry causes prejudice to the defence to the delinquent employee and it has been held that this is sufficient ground for quashing the departmental enquiry.

If the case in hand is analyzed on the backdrop of the aforesaid principles governing delay in initiating the departmental proceedings, it would be clear that delay in initiating the departmental proceedings can be justified by the department if the cause of action for which the delinquent is held responsible was not within the knowledge of the departmental authorities and they could come to know of the acts of commission and omission only after certain



period of time due to happening of certain events. In such cases when the department is not aware of the acts of commission and omission, delay can be justified and from the date of knowledge the initiation of the Departmental Enquiry can be withheld.

In the present case, the only allegation against the petitioner was that after he was transferred on 26.12.1996 and when he was unwilling to give the charge and join on the transferred post, he was forcefully relieved on 26.04.1997. The case of the department itself is that the petitioner is guilty of not having hand over the charge and it is stated that after his transfer on 26.12.1996, he was not handing over the charge and on 26.04.1997, he was forcefully relieved and charge was forcefully taken from him.

That being so, between 26.12.1996 and 26.04.1997 the Departmental Authority had acquired knowledge that petitioner has not handed over charge and on 26.04.1997, he was forcefully relieved for joining at Begusarai. That being the factual position as is evident from the materials available on record, which can be safely considered that the Departmental Authorities acquired knowledge about the misconduct and the acts of commission and omission conducted by the petitioner on 26.04.1997 and if that was the position, it is not known as to why no action was taken between 1997 up to July, 2003 i.e. the date of superannuation of the petitioner and even after superannuation of the petitioner on 31.07.2003, why for a



period of more than two years, no action was taken and the charge-sheet was issued only in the year 2005. It is the case where in spite of knowledge about acts of commission and omission and the misconduct committed by the petitioner, the Departmental Authority slept over the matter. The enquiry was held after a period of more than nine years of the happening of the event in question.

That being so, in the background of the facts of the case, materials came on record and the principles of law as laid down by the Supreme Court and discussed hereinabove, I have no hesitation in holding that it is a case where Departmental Enquiry has been conducted after an inordinate delay of more than nine years and therefore, it is a fit case where it can be assumed that delay has caused prejudice to the employee concern and it is a good ground for quashing the entire proceedings.

Accordingly, the writ petition stands allowed.

(Rajendra Menon, CJ)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
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