IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14143 of 2014

==

Uday Chandra Choudhary, Asst. (Retd.) son of Late Murali Bihari Choudhary, resident of village + P.O.- Beri, P.S.- Kusheshwar Asthan, District- Darbhanga, at present residing at Village+ P.O. + P.S.- Kewti, District- Darbhanga

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The District Magistrate/Collector, Darbhanga
3. The Deputy Collector Establishment Collectorate, Darbhanga
4. The Circle Officer, Darbhanga Sadar, Darbhanga
5. The Block Development Officer, Kewti, Darbhanga
6. The Accountant General (A&E), Bihar, Patna
7. The District Account Officer, Darbhanga
8. The District Treasury Officer, Darbhanga
9. The District General Provident Fund Officer, Darbhanga

.... Respondents

==

Appearance :

For the Petitioner : Mr. Rajednra Prasad, Senior Advocate
Mr. Ritesh Kumar, Advocate, Advocate
Mr. Raj Kumar Mishra, Advocate

For the State : Mr. Kumar Alok- S.C.8

==

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 03-10-2017

1. Heard both sides.
2. The petitioner seeks the following reliefs :

" (a) A writ in the nature of certiorari of any other appropriate writ(s) order or direction to quash/set aside the order vide Memo no.2-13/09-12-440/East Laheriasarai dated 4.3.2014 passed by the Collector, Darbhanga.

(b) A further writ of mandamus also be issued commanding the respondents to settle the genuine claim of the petitioner which are as follows :

(i) pay 10% deducted amount of pension of the petitioner and its arrear.

(ii) pay Group Insurance amount of the petitioner and with interest.

(iii) unutilised leave amount of the petitioner as per circular No.819 dated 23.09.2009 issued by the finance department as its penal interest as admissible as per rule of the Govt. of Bihar.

(c) pay any other dues for which the petitioner be found entitled under Bihar Service Rule.

(d) Any other appropriate writ order or direction as your Lordship may deem fit and proper."

3. During the pendency of this writ petition, the State annexed the order of the Collector dated 4.9.2017 as contained in Memo No.1410 by which the petitioner is inflicted with the following punishments.

> " The petitioner is directed to pay a sum of Rs.1,19,946.74 as interest of Rs.1,29,225/- the amount which was defalcated by the petitioner on 29.7.2002 till 4.3.2014 and withholding of 10% pension of the petitioner permanently."

4. The petitioner thereafter filed I.A. No.6726 of 2017 and prayed for quashing of the order dated 4.9.2017 as annexed in Annexure-6.

5. Mr. Rajendra Prasad, learned Senior Counsel for the petitioner submits that the petitioner retired on 30.6.2007 from the post of Accounts Clerk-Cum-Cashier from the office of Block Development Officer-Cum- Circle Officer, Kewti. The petitioner filed C.W.J.C. No.9623 of 2009, when the retrial benefits of the petitioner was not paid and this Court, vide order dated 4.8.2009, directed the respondents to dispose of his representation within a period of four months. Then the Department served memo of charges on 11.12.2009 (Annexure-D of the supplementary counter affidavit) and a proceeding under Section 43B of the Bihar Pension Rule was initiated. Learned counsel for the petitioner further submits that the Enquiry Officer submitted his report (Annexure-B) and from the report of the Enquiry Officer itself, it would appear that no enquiry in accordance with the procedure prescribed under Rule 17 of the C.C.A. Rule, 2005 was held. The Presenting Officer did not examine any witness nor produce any documents to prove the charge. The Enquiry Officer, on his own, usurped the duty of the Presenting Officer and submitted reports on 30.3.2011. Even thereafter the Collector did not pass any order for more than six years. When the petitioner filed this writ petition, the Collector issued order dated 4.9.2017 (Annexure-F) inflicting punishment on the petitioner. Mr. Rajendra Prasad, learned Senior Counsel for the petitioner submits that the enquiry report itself

is not in accordance with law. Even the Disciplinary Authority did not serve the enquiry report to the petitioner nor asked the petitioner to show cause on the finding of the enquiry report and directed the petitioner to pay a sum of Rs.1,19,946/- as interest and also permanently withheld 10% pension of the petitioner. Therefore, the order is illegal.

6. On the other hand, the learned counsel for the State contended that the order of the Collector does not suffer from any illegality. From the internal enquiry report as contained in Annexure-1, it would appear that the petitioner was posted as Nazir from 29.7.2002 till 19.1.2007 and during his tenure as Nazir in block office, Kewti, he committed different illegality and made interpolation in the account register, the petitioner is alleged to have defalcated a sum of Rs.1,29,225/.

It is submitted that the proceeding under Section 43B of the Bihar Pension Rule is initiated on 11.12.2009 which is well within four years from the date of defalcation of the government money.

Learned counsel for the State has further submitted that the Enquiry Officer submitted his report on 13.3.2011 and the proceeding was conducted in accordance with the rules and the Collector thereafter passed the order inflicting punishment on the petitioner.

7. Having considered the submissions of both sides and on perusal of records, I find that the question falls for consideration as to whether the Enquiry Officer conducted the departmental enquiry initiated under Section 43B of the Bihar Pension Rules in accordance with the procedure as laid down under Rule 17 of the C.C.A. Rule, 2005 and the enquiry report submitted by the Enquiry Officer was given to the petitioner by the Disciplinary Authority. On perusal of records, it appears that the Enquiry Officer submitted his report to the Deputy Collector, Darbhanga vide letter no.289 dated 3.4.2011. The entire order sheet along with the report is annexed as Annexure-B to the counter affidavit filed on behalf of respondent nos.2 to 5. From the order sheets and the enquiry report of the Enquiry Officer, it is manifest from the record that the Enquiry Officer did not conduct the enquiry according to Rule 17 of the C.C.A. Rule, 2005. The enquiry was initiated on 3.4.2010 but from perusal of the entire order sheet, it appears that neither the petitioner nor the Presenting Officer appeared on any date save and except one date, i.e., 26.5.2010 but the Enquiry Officer submitted his report on 30.3.2011 holding the petitioner guilty for defalcation of Rs.1,29,225/- during his tenure running from 29.7.2002 to 19.1.2007.

8. Even in a proceeding under Section 43B of the Bihar Pension Rules, the Enquiry Officer is legally bound to conduct the

enquiry in accordance with the procedure meant for the departmental enquiry. The Enquiry Officer should have given opportunity to the Government servant to show cause and should have asked the Presenting Officer to produce the evidence on behalf of the Disciplinary Officer to prove the charge but the Enquiry Officer himself took up responsibility of the Presenting Officer and perused the records and submitted the report holding the petitioner guilty of defalcation. The Enquiry Officer did not act as independent arbitrator rather he took the duty of the Presenting officer as well and thereby his action and report is vitiated as it carries the elements of biasness. It is also settled law that of course the strict rules of Evidence Act is not adhered to during the course of departmental proceeding but the evidence has to be adduced and the document has to be proved in accordance with law. The Enquiry Officer based his enquiry report on the basis of internal enquiry (Annexure-1) but that enquiry report is not proved during the course of departmental proceeding in accordance with law. It further transpires that the Collector, after receipt of the enquiry report, sat over the matter for more than six years and when the petitioner filed writ petition, the Collector issued the letter on 4.9.2017 inflicting punishment of withhelding 10% pension of the petitioner permanently but the Disciplinary Authority did not serve the copy of the enquiry report to the petitioner nor asked the petitioner to show cause and therefore the order of the Collector is also bad on account of violation of natural justice.

9. Thus the writ petition is allowed. The order dated 4.9.2017 as contained in Memo No.1410 is set aside. Since the petitioner did not get his full pension for the last ten years, the Collector is directed to pay arrears of pension and other amount, if any, lying due to the petitioner within two months.

(Prabhat Kumar Jha, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	12-10-2017
Transmission Date	