

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18386 of 2008

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Shiv Kumar Thakur, Son of Late Radha Kant Thakur, Resident of 2/A 2,
Anandpuri, West Boring Canal Road, P.S. S.K. Puri, District – Patna.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Vishweshwariya Bhawan, Baily Road, Patna.
2. Deputy Secretary-cum-Chief Vigilance Officer, Road Construction Department, Vishweshwariya Bhawan, Baily Road, Patna.
3. Chief Engineer Ganga Bridge Project Wing Road Construction Department-cum-Enquiry Officer, Vishweshwariya Bhawan, Baily Road, Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. Kishore Kumar Thakur, Advocate.
Mr. Rajesh Kumar, Advocate.

For the Respondents : Mr. P.K. Verma, AAG-3.
Mr. Ujjwaj Kumar Sinha, AC to AAG-3.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 17-02-2017

Heard Mr. Kishore Kumar Thakur, learned counsel for the petitioner and Mr. Ujjwaj Kumar Sinha, AC to AAG-3 for the State.

2. The petitioner seeks quashing of Resolution as contained in Memo No. 8662(S) dated 20.07.2007 Annexure-1 by which a departmental proceeding under Rule 43 (b) of the Bihar Pension Rules was converted against the petitioner and further the petitioner seeks quashing of the order dated 23.07.2014 as contained in Notification No. 6866(S) (Annexure-8) by which 20 percent of his pension from the date of his retirement is ordered to be deducted.

3. The petitioner was employee of Bihar Engineering Services, Class-2 and he was working as Assistant Engineer on



deputation in the Rural Engineering Organization Department along with other engineers. A complaint was made before the Lokayukta in the year 1991 and the same was forwarded to Cabinet Vigilance Department for instituting an enquiry relating to the genuineness of the complaint of the Mukhiya. After submission of enquiry report Lokayukta issued notice to the petitioner and other engineers. The petitioner filed his reply and after hearing the parties including the petitioner Lokayukta sent the record to the department with a direction to hold departmental proceeding under Rule 55 of the Civil Services (Classification Control and Appeal) Rules, 1930. Departmental proceeding was initiated during the service tenure of the petitioner. On 20.07.2007 (Annexure-1), the departmental proceeding was converted into Rule 43 (b) of the Bihar Pension Rules as contained in Memo No. 3739(s) dated 29.05.2002 but the resolution was not served upon the petitioner. The petitioner further received the order as contained in Annexure-1 and filed his show cause raising preliminary objection about initiation of the departmental proceeding after many years of his retirement. When no order was passed on the petition of the petitioner by the enquiry officer, the petitioner filed this writ petition but during pendency of this writ petition, the petitioner filed interlocutory application annexing Annexure-8 the order by which Government of Bihar inflicted punishment of deduction of



twenty percent of pension from the date of his retirement and thereafter the petitioner also prayed to quash the aforesaid order.

4. The State has filed counter affidavit and stated that the departmental enquiry was initiated on 27.04.1996 after receipt of the report of the Lokayukta dated 29.04.1995. On one account or other the departmental proceeding could not be concluded during the service tenure of the petitioner and vide order dated 29.05.2002 the proceeding was converted into under Rule 43 (b) of the Bihar Pension Rules. The State has further stated that the departmental proceeding was concluded in accordance with law, but the petitioner participated in the departmental proceeding after filing his show cause Annexure-5 and, thereafter, the enquiry officer submitted his report on the basis of which Annexure-8 was passed withholding 20 percent of pension of the petitioner.

5. Mr. Kishore Kumar Thakur, learned counsel for the petitioner firstly assailed the order impugned as contained in Annexure-8 that the departmental proceeding was not conducted in accordance with law and the procedure as mentioned in Rule 17 of the Bihar Civil Services (Classification Control and Appeal) 2005. The petitioner raised preliminary objection that he retired in the year 2000 and proceeding under Rule 43(b) was initiated after seven years of his retirement. Rule 43(b) says that the proceeding can be initiated within



four years from the date of knowledge of any irregularities or illegalities committed by the employee. It is further submitted that the petitioner got notice of initiation of departmental proceeding only on 20.07.2007 (Annexure-1).

6. On the other hand, learned counsel for the State has stated that the proceeding was initiated on 27.04.1996.

7. On the submissions of the learned counsel for the parties mainly two questions arose for consideration firstly, whether the proceeding initiated under Rule 43 (b) on 29.05.2002 and the notice which was given to the petitioner on 20.07.2007 is in accordance with law as contained in Memo No. 8662(S) dated 20.07.2007 and secondly whether a proper departmental enquiry was held in accordance with law and thereafter the petitioner was given punishment of withholding 20 percent of pension of the petitioner.

7. So far as the first question is concerned Rule 43 (b) of Bihar Pension Rule as follows:

“(b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:

Provided that -



(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;

(i) shall not be instituted save with the sanction of the State Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;

(b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and

(c) the Bihar Public Service Commission, shall be consulted before final orders are passed.

Explanation. – *For the purposes of the rule-*

(a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him or, if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to have been instituted:-

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the complaint is presented, or as the case may be, an application is made to a civil Court.

8. From the records, it appears that on the basis of the enquiry report sent by the Lokayukta on 29.04.1995 to the



department, a departmental proceeding was initiated on 27.04.1996. The enquiry officer was also appointed, but it seems that no notice was sent to the delinquent and the order remained in the file. On 31.01.2000 the petitioner was superannuated and he was paid all retiral benefits. Then again the departmental proceeding initiated on 27.04.1996 was converted into Rule 43(b) of the Bihar Pension Rules and another enquiry officer was appointed. From proviso (a) of Rule 43 (b), such departmental proceeding, if not instituted while the government servant was on duty either before retirement or during re-employment only then proceeding after four years from the date of retirement is prohibited. The departmental proceeding in the present case was initiated before the retirement of the petitioner and after his retirement vide order dated 29.05.2002 the same proceeding was converted into one under Rule 43(b) of Bihar Pension Rules, therefore, I do not find any illegality in the order 21.02.2002 as contained in Annexure-1.

9. So far as the second question is concerned, in pursuance of the notice given by the enquiry officer in pursuance of the order as contained in Memo No. 8662(S) dated 20.07.2007 Annexure-1, the petitioner filed his show cause on 05.11.2007 (Annexure-5) raising preliminary objection that the proceeding was initiated after seven years of his retirement and the incident for which proceeding was



initiated occurred in the year 1991. The petitioner stated in his show cause that after retirement the proceeding under Rule 43(b) of Bihar Pension Rules should have been initiated for the incident occurred four years before his retirement, but I do not find force in the submissions of the learned counsel for the petitioner and it is not acceptable as the departmental proceeding had already been initiated in the year 1996 i.e. four years before the retirement of the petitioner but the order remained in file. However, the enquiry officer did not pass any order and fixed the date asking the petitioner to appear in the departmental proceeding, but the petitioner on each and every date insisted on disposing of his preliminary objection. 13.08.2008 was the date fixed in the departmental proceeding. The enquiry officer fixed different dates, but when the petitioner did not appear, the enquiry officer submitted his report finding the petitioner guilty.

10. Shri Kishore Kumar Thakur, learned counsel for the petitioner submits that the presenting officer did not examine any oral and documentary evidence. The earlier enquiry officer Krishna Murari Prasad also submitted a report as contained in Annexure-C of the counter affidavit that the enquiry was held by the order of the Lokayukta and on the basis of which the departmental proceeding was initiated, therefore, there is no need of holding a departmental enquiry afresh on the same allegation, but the disciplinary authority again



appointed another enquiry officer who without allowing the presenting officer to adduce any oral and documentary evidence submitted his enquiry report. Enquiry Officer found the petitioner guilty on the basis of enquiry held by the Cabinet Vigilance and, in fact, no evidence was produced by the presenting officer during the pendency of the enquiry, therefore the order is vitiated.

11. Bihar Civil Servants (C.C.A.) Rules, 2005 Rule 11 of Sub-Rule 17 prescribed the procedure for imposing major penalties:

(11) The inquiring authority shall, if the government servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the government servant may, for the purpose of preparing his defence,-

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list in sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf;

Note:- If the government servant applies in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible.

(iii) give a notice within ten days of the order or within such further time as the inquiring authority may allow for the discovery or production of any documents which are in the possession of Government but not mentioned in the list specified in sub-rule (3) of this rule:

Provided that the government servant shall indicate the



relevance of the documents required by him to be discovered or produced by the Government.

12. From perusal of Sub-rule 11 of Rule 17 it appears that when the Government servant fails to appear within the specified time or refuses or omits to plead, the enquiry authority shall require the presenting officer to prove the articles of charge and shall adjourn the case to a later date not exceeding 30 days.

13. It appears from the records that the enquiry officer did not ever ask the presenting officer to prove the articles of charge made against the petitioner even in absence of the delinquent. In fact, the enquiry officer did not pass any order during the enquiry asking the presenting officer to present his case in absence of the petitioner who did not appear. Learned counsel for the State has fairly conceded on the basis of record that, in fact, the presenting officer did not adduce any evidence, but the enquiry officer submitted his enquiry report on the basis of earlier report on which a departmental proceeding was initiated. Therefore, I find that the enquiry officer has not conducted the enquiry in accordance with the procedure as prescribed under the rules and order of punishment on the basis of such report Annexure-8 is vitiated and not sustainable in the eye of law.

14. Having considered the facts and circumstances discussed above, I find that the orders as contained in Annexure-8 of



the interlocutory application is not sustainable. In the result the writ petition is allowed and the order dated 23.07.2014, as contained in notification No. 6866(S) (Annexure-8 of the I.A), is set aside.

15. The matter is remitted to the disciplinary authority to hold enquiry afresh, if at all desired by the Government, in accordance with law.

(Prabhat Kumar Jha, J.)

KKSINHA/-

AFR/NAFR	
CAV DATE	
Uploading Date	11.03.2017
Transmission Date	

