

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10452 of 2011

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Sanjay Kumar Sinha, S/o Late Ramchandra Prasad, R/O Vill.+ P.O. Gilani ,P.S.
Sare, Distt. Nalanda

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate Nalanda at Bihar Sharif
3. The Additional District Magistrate (Establishment) Nalanda At Bihar Sharif
4. The Block Development Officer, Sarmera, Distt. Nalanda

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajey Kumar, Advocate

For the Respondent/s : Smt. Binita Singh, S.C. 28

Mr. Siddharth Shankar Pandey, A.C. to SC28

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 19-08-2017

Challenging the order, (Annexure-15), dated 05.05.2011
by which punishment of stoppage of two increments with non-
cumulative effect, confirmation of the period of suspension and
treating the period of absence as no work no wages, the petitioner has
filed this writ petition.

Petitioner was working as a Clerk in the establishment
of District Collector/Magistrate, Nalanda. On 01.03.2004 the



petitioner took leave up to 05.04.2004 and proceeded. However, it seems that the petitioner while on leave fell ill and, therefore, could not attend duty from 28.02.2004 upto 04.04.2004. In view of the aforesaid absence from duty, petitioner was suspended vide order (Annexure-6) dated 10.05.2004. Petitioner vide Annexure-7 represented against his suspension. His representation was accepted and vide Annexure-8 on 23.08.2005 the suspension was revoked and petitioner was taken back on duty. After revocation of suspension and permitting him to join duty, when for a period of five years, nothing was done, the period of suspension was not regularized and even when a charge-sheet was not issued, petitioner submitted a representation, sought payment of salary for the period of suspension and regularizing the said period. When the representation was also not considered, he approached this Court in C.W.J.C. No. 15191 of 2010 and on 20th of September, 2010 a Bench of this Court directed the competent authority to consider and decide his representation about suspension. The petitioner vide Annexure-10 submitted a copy of the order passed in the writ petition and sought for regularization of the period of suspension on 04.12.2010. Instead of deciding the representation of the petitioner vide Annexure-11 on 28.01.2011 a charge-sheet was issued to him for the alleged act of unauthorized absence for the period in question and thereafter the impugned action



has been taken.

Challenging the impugned action, this writ petition has been filed and a three fold submission is made before this Court in support of the writ petition. The first submission is that when the petitioner was suspended and when after his suspension was revoked on 23.08.2005 in the writ petition decided by this Court on 20th of September, 2010 and the only direction was to decide the representation about suspension, the act of the respondents in not doing so and on the contrary initiating disciplinary action is unsustainable.

The second ground canvassed is that for the incident of unauthorized absence during the period March-April, 2004 the impugned disciplinary action taken after six years in the year 2011 is unsustainable and in view of the law laid down by the Supreme Court in the case of **State of Madhya Pradesh Vs. Bani Singh and another- 1990 (Supp) SCC 738**, the entire inquiry stands vitiated and the right of the petitioner is prejudiced because of the delay in initiating the departmental proceeding.

The third ground canvassed is that the petitioner in his explanation had produced documents along with medical certificate indicating his illness for the period in question and without adverting to consider the defence of the petitioner, the impugned action is



taken. The respondents have tried to justify their action and only say that as the petitioner in the intervening period of transfer from one office to another departmental action could not have taken and they contend that as a charge-sheet was issued to the petitioner and he was granted opportunity to give his defence, there is no error in the action undertaken which warrants consideration.

Having bestowed my anxious consideration on the grounds canvassed, I am of the considered view that on all the three grounds canvassed by the petitioner, this petition is liable to be allowed. If the department wanted to take action against the petitioner, they should have done so immediately after the petitioner was suspended on 10.05.2004 or within a reasonable period of revocation of the suspension on 23.08.2005. Keeping quiet over the matter and then reacting when this Court on 20th of September, 2010 directed for deciding the representation for regularization of suspension was an arbitrary and unreasonable action on the part of the State Government and the same cannot be upheld by this Court. That apart, if the incident had taken place in the year 2004 there was no justification on the part of the respondents in keeping the matter pending since 2011 and initiating the departmental proceedings after a period of more than six years. The delay in initiation of the departmental proceedings has not been explained properly and



apparently the same has caused prejudice to the petitioner in defending himself and, therefore, on this ground alone also the action taken is liable to be quashed. Finally, in the charge-sheet issued to the petitioner the allegations are with regard to unauthorized absence for the period in question and in the detailed explanation and document submitted by the petitioner the petitioner has indicated the reasons for his absence. He has enclosed copies of the medical certificate and the leave application submitted by him. However, in the order passed by the Disciplinary Authority these questions have not been adverted to. The Disciplinary Authority except for detailing the allegations levelled in the charge-sheet, the explanation submitted by the petitioner, the views of the departmental officers has imposed the order of punishment without showing application of mind and without adverting to consider the defence and explanation of the petitioner. There is nothing in the orders passed by the Disciplinary Authority which goes to show as to why and on what ground the explanation and defence of the petitioner is rejected and why the medical certificate and the documents produced by the petitioner in his defence are being ignored or not at all considered.

In view of the aforesaid, it is a case where the disciplinary action has been initiated and punishment imposed against the petitioner in violation to the rules of natural justice, the action is



taken without application of mind and without advertent to consider the defence and explanation of the petitioner. Accordingly, this writ petition is allowed. The impugned order dated 05.05.2011 (Annexure-15) is quashed.

(Rajendra Menon, CJ)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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