

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15818 of 2014

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Ashok Kumar Roy Son of Late Ram Prasad Roy Resident of Village -
Parwatti, P.O. - Bhagalpur City, P.S. - University Thana, District - Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Food & Consumer Protection Department, Govt. of Bihar, Patna.
3. The District Magistrate, Purnea.
4. The Secretary to the Commissioner, Purnea Division, Purnea.
5. The District Supply Officer, Purnea.
6. The Officer on Special Duty, Food & Consumer Protection Department, Government of Bihar, Patna.
7. The Sub Divisional Officer, Dhamdaha Sub Division, Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Tej Bahadur Singh, Sr. Adv, Mr. Brisketu Sharan Pandey, Adv and Mr. S.P. Pathak, Adv
For the Respondent/s	:	Mr. Rajeev Shekhar, AC to GA-13.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 04-04-2018

Heard learned counsel for the parties.

2. This writ petition under Article 226 of the constitution of India has been filed for quashing the order dated 15.05.2014 issued by respondent no. 2, by which 100 per cent pension of petitioner has been forfeited.

3. Briefly stated, the case of the petitioner is that petitioner at the relevant time was posted as Supply Inspector and has been alleged of demanding and accepting bribe of Rs.4000/- from one Anil Paswan for issuance of S.I.O in favour of aforesaid complainant and for such allegation memo of



charge containing such allegation was served upon the petitioner by the department. On the basis of complaint dated 27.05.2009 by the complainant-Anil Paswan before the Superintendent of Police, Vigilance Investigation Bureau, Patna, a trap team was constituted and a raid was conducted on 03.06.2009 at the residence of petitioner at Bhatta Road, Purnea. The petitioner was arrested and sent to custody on the statement of trap team that the petitioner was caught red handed. Petitioner was served memo of charge dated 02.11.2009 and departmental proceeding was initiated against him in which a single charge of being caught by the trap team while accepting bribe from Anil Paswan was made.

4. The Secretary to the Commissioner of Purnea Division was appointed as Enquiry Officer and the District Supply Officer, Purnea as Presenting Officer. Petitioner submitted his reply by letter dated 30.12.2009 stating therein that the complainant wanted him to change his ward but the petitioner was reluctant to do owing to the work load. Petitioner also informed that there is no pending S.I.O and the same is being released by the petitioner and no money was recovered from the petitioner and no S.I.O was found at the residence of petitioner. Petitioner co-operated in the departmental proceeding



and retired from service on 31.07.2009 during the pendency of departmental proceeding and the same was converted under Rule 43B of Bihar Pension Rules.

5. The Enquiry Officer after conclusion of departmental proceeding submitted his report dated 18.03.2011 and opined that as the charges in the departmental proceeding and charges in vigilance case are identical and in both proceedings charges are required to be proved by identical evidence, as such the department should await the outcome of vigilance case. The Presenting Officer also had opined that the proceeding should be kept under abeyance awaiting the outcome of vigilance case. The petitioner was served second show cause notice dated 20.03.2014 with a copy of enquiry report as to why major punishment should not be imposed upon him for charges having been proved by the Enquiry Officer.

6. Petitioner thereafter by letter dated 20.03.2014 addressed to the disciplinary authority stated that copy of inquiry report has not been enclosed along with second show cause notice and in absence of enquiry report it was not possible for him to submit reply on the findings of Enquiry Officer, however, same was never supplied to the petitioner. The petitioner all of a sudden was served with impugned order dated



15.05.2014 (Annexure-A) by which 100 per cent pension of the petitioner was forfeited. Petitioner thereafter filed a review petition before the respondent authorities by letter dated 03.07.2014 stating therein that a copy of enquiry report was not given to him but no action was taken on the representation filed by the petitioner.

7. A counter affidavit has been filed on behalf of respondents in which it has been stated that while posted as Supply Inspector, Purnea, petitioner was caught by the raiding party of the vigilance department while accepting bribe of Rs. 4000/- on 03.06.2009 giving rise to vigilance P.S. Case No. 063 of 2009, which was registered on 04.06.2009 under Sections 3/7/13(2) read with Section 13(1) of the Prevention of Corruption Act, 1988.

8. The petitioner was suspended on 19.06.2009 and departmental proceeding was initiated against him. The Secretary of Divisional Commissioner, Purnea Division was appointed as Enquiry Officer whereas District Supply Officer was appointed as Presenting Officer. In the memo of charge Prapatra (क), sole allegation was levelled against the petitioner that he was caught red handed by the raiding party of the vigilance department while accepting bribe of Rs. 4000/- from



complainant-Anil Paswan on 03.06.2009 giving rise to Vigilance P.S. Case No. 63 of 2009, and the same is in violation of conduct Rules. It has been further stated in para 9 of the counter affidavit that sufficient opportunity was granted to the petitioner after conclusion of departmental proceeding and inquiry report was submitted on 18.02.2011.

9. In para 9 of the counter affidavit, it has been further stated that after receipt of the enquiry report dated 18.02.2011 a notice vide memo dated 20.03.2014 was served by the Special Work Officer namely Sangita Singh to the petitioner to submit second show cause as to why not major punishment be imposed upon him but the petitioner did not submit any reply to the disciplinary authority cum Principal Secretary, Food and Consumer Protection Department, Government of Bihar.

10. After considering all the facts and circumstances as well as documents available including the enquiry report, the disciplinary authority found petitioner guilty of charges and ordered 100 per cent forfeiture of pension in terms of Rule-43B of Bihar Pension Rules. The petitioner denied the statement made in the counter affidavit that he was given a copy of the enquiry report. He was given second show cause notice vide letter dated 20.03.2014 which was received by petitioner on



19.05.2014 whereas order by the disciplinary authority was passed on 15.05.2014. Letter dated 20.03.2014 without any annexures was handed over to the petitioner and there is endorsement of Section Officer also that the report is not enclosed and petitioner made several representations dated 21.05.2014 and 21.06.2014 for supply of enquiry report but the same was never handed to him.

11. It is true that departmental proceeding as well as criminal proceeding can continue simultaneously even the charges in both are identical and in both proceedings, the charges is to be proved by the oral and documentary evidence and unless and until the departmental proceeding is stayed by a court of law there is no bar that both proceedings cannot continue simultaneously. Onus of proof in criminal proceeding and departmental proceeding is different whereas in criminal proceeding the charges has to be proved beyond reasonable doubt whereas in departmental proceeding it has to be established on pre-ponderance of probabilities. It is possible that accused may be acquitted by the criminal court but on the same evidence documentary and oral led before the department proceeding he can be held guilty. In the present proceeding any charge has not been found to be proved by the Enquiry Officer,



it is for the department to adduce oral or documentary evidence before the Enquiry Officer to prove the charges. The delinquent is granted liberty to cross-examine the oral evidence and to refute the documentary evidence as well as is entitled to lead his defence in form of oral as well as documentary evidence and Presenting Officer representing the department is entitled to cross-examine them as well as refute the documentary evidence produced by the delinquent. In the present case, the department has not produced any oral or documentary evidence and even the Enquiry Officer has not found charges to be proved. The Enquiry Officer has held that the petitioner could not prove his innocence.

12. In a departmental proceeding, charges has to be proved by the department and delinquent is not required to prove his innocence, as such on the basis of such enquiry report no punishment could have been imposed on the delinquent. Secondly, it has been emphatically denied by the petitioner that enquiry report was served upon him along with second show cause as such he had no opportunity to go through the enquiry report and finding recorded by the Enquiry Officer with respect to charges framed against him as such there was no occasion for him to file his reply to the second show cause. At the time of



issuance of second show cause, the disciplinary authority is not expected to form any opinion with respect to guilt of petitioner. The punishing authority has to form a final opinion after considering the reply of petitioner against the finding of Enquiry Officer. In the present case, the Enquiry Officer has not found charges to be proved against the petitioner and moreover the same enquiry report was not served upon the petitioner. Disciplinary authority without finding the charge to be proved and without giving any tentative reasons from differing with the findings of Enquiry Officer has imposed punishment of 100 per cent forfeiture of pension, which is not sustainable in the eye of law and is accordingly set aside. As the charges in criminal proceeding and departmental proceeding are identical and same are required to be proved by same set of evidence, this Court is not inclined to grant liberty to respondent-authorities to initiate fresh proceeding from the stage it stood vitiated and they can await the outcome of vigilance case for imposing any punishment on the petitioner as opined by the Enquiry Officer as well the Presenting Officer. The order passed by the Disciplinary Authority dated 15.05.2014 is set aside. Since petitioner has retired during the pendency of proceeding he is entitled for all retirement benefits, which has been illegally



withheld by the department and same to be paid within three months from the date of receipt/production of a copy of this order.

13. However, it is made clear that since vigilance case is pending against the petitioner, he is entitled for 90 per cent provisional pension and provisional gratuity and if the petitioner is held guilty by vigilance court, the respondents are at liberty for imposing punishment of forfeiture of part pension or gratuity or full pension and gratuity depending upon the nature of charges proved against the petitioner.

The writ petition stands allowed to the extent indicated above.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	24.04.18
Transmission Date	N.A.

