

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3624 of 2011

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Ramakant Prasad, Son of Late Singhashan Prasad, R/o Govt. Qr. No. C/39, Raja Bazar, Motihari, P.S. Motihari Town, District East Champaran

.... Petitioner

Versus

1. The State of Bihar,
2. The High Court of Judicature at Patna through its Registrar General, Patna High Court,
3. The Civil Court of Judicature at Motihari, East Champaran through its Registrar, Civil Court, Motihari, East Champaran,
4. The Civil Court of Judicature at Motihari, East Champaran through the District & Sessions Judge, East Champaran at Motihari.

.... Respondents

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Appearance:

For the Petitioner: Mr. Vijay Shankar Shrivastava, Advocate.

For the State: None.

For the Respondents no. 2-4: Mr. Mrigank Mauli, Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 18-01-2018

Heard learned counsel for the petitioner and learned counsel representing respondents no. 2 to 4.

2. No one appears on behalf of the State.

3. At the outset, learned counsel for the petitioner informs this Court that during the pendency of the Writ Application the petitioner has already retired from service and, therefore, now this Writ Application remains open only to the extent it is challenging the order of punishment by which the petitioner has been deprived of his



salary of the suspension period and in addition to that one increment has also been permanently stopped which has a consequence upon his post-retiral benefits.

4. Submission of the learned counsel is that even though in the enquiry report it was found that there was no deliberate attempt to commit any irregularity in the matter of recording of date in the court diary in respect of the case in question and that there was no *mala fide* intention behind it, he has been inflicted with the punishments which have a civil consequence inasmuch as the stoppage of increment permanently not only deprives this petitioner from getting one increment but, in turn, it also affects his post retiral benefits.

5. So far as the charges against the petitioner for which the disciplinary proceeding was initiated are concerned, those are quoted hereunder for a ready reference:-

“Shri Rama Kant Prasad
The then Bench Clerk of the court of
Shri Rakesh Kumar, J.M., 1st Class, Motihari,
Presently posted as O.C. of the court of 8th A.D.J.,
Motihari.

1. You Shri Rama Kant Prasad, was posted as the Bench Clerk in the court of Shri Rakesh Kumar, J.M., Ist Class, Motihari during the year 2009. During the said period you knowingly and deliberately has posted the case bearing Tr. No. 2781/09 on 9.7.2009 when after 13.4.2009 it has been adjourned to 4.8.2009 in the order sheet and you have again dared to adjourn the case on 14.9.2009 and it can not be expected that the Bench Clerk (you) has done so due to over load of the work and the question is how a particular case has been



mentioned on 9.7.09 when there was no such date in the order sheet and how it is adjourned to another date i.e. 14.9.2009 and further.

2. It is also out and out clear with respect to your mala fide intention and your involvement in the present matter. In the court diary the case is fixed on 9.7.2009 and has been adjourned to 14.9.2009. Therefore your hand is very clear with respect to such act and you deserve to be punished.

Sd/- (Illegible)
District & Sessions Judge
East Champaran, Motihari.
10-5-2010.”

6. It appears that in the departmental proceeding before the Enquiry Officer this petitioner submitted his reply in which he took a plea that by mistake and under mental pressure, inadvertently the date ‘4.8.09’ was mentioned as ‘14.9.09’. He accepted his mistake that earlier the Case No. 2781/09 was fixed on ‘12.04.09’, on the said date itself, he committed a mistake and recorded next date as ‘9.7.09’, thereafter the next date was fixed on ‘14.9.09’ in the court diary. He prayed for a pardon, accepting his mistake. He also pleaded that he was going to retire in the month of December, 2011, his service career had been without any allegation or blemish to his record, therefore, this human error committed by him may be pardoned and he should be exonerated from the charge taking a lenient view.

7. From the enquiry report placed at Annexure-11 with the Supplementary Affidavit filed on behalf of the petitioner, it appears



that in proof of the charge the Presenting Officer examined only one witness, namely, Sri Vijay Kumar (the complainant) who happened to be an Advocate practicing in the Civil Courts at Motihari. He stated that he was the accused in the said case and had come to appear on the date fixed, i.e., on 09.07.2009 in the court, but due to non-availability of the record, he could not appear on that date. He was given '14.09.2009' as the next date in the case. He verified the date and found that in the cause list of 09.07.2009 sent to Vakalatkhana the next date in the case was '14.09.2009' but on 14.09.2009 when he again went to the court to appear in the case, he could not appear on that date also due to non-availability of the record. Thereafter, he obtained certified copies of the cause list of 09.07.2009 and 14.09.2009 of the concerned court; those certified copies were sent to the Hon'ble Court with a complaint. He further stated that though in the cause list of 09.07.2009, against his case the next date was not mentioned as '4.8.09' but on the record order-sheet the date was 4.8.2009. In these circumstance, an order for issuing bailable warrant (B/W) was passed. This witness was allowed to be cross-examined in which he did not agree with a suggestion given to him that such irregularity may occur due to work load; he, however, stated that he had no knowledge regarding any irregularity committed by the petitioner in any other case.



8. The Enquiry Officer went through the statements of the complainant, who had deposed and was subjected to cross-examination as also he had examined the court diary and two cause lists which were Exhibits 1 & 1/1 respectively. The irregularity was found apparent and since the delinquent employee, i.e., the petitioner, had, in the opinion of the Enquiry Officer, fairly admitted the charge regarding the irregularity, there was no need to deliberate further regarding the charge. In Paragraph 8 of the enquiry report, the Enquiry Officer considered as to whether the irregularity was an error or mistake due to mental pressure due to overload of work. The petitioner had brought to the notice of the Enquiry Officer that there were about 3000 cases pending in the court and from the court diary also the Enquiry Officer found that the Trial No. exceeded 3000 in the year 2009. The petitioner was in dual charge of the work of Bench Clerk as well as Office Clerk.

9. Considering these facts the Enquiry Officer, though refused to entertain the plea of the petitioner that the mistake was a result of work load under mental tension, but accepted to this extent that only one person had to deal with 60-70 records every day besides doing other works, such as, maintaining case diary, preparing cause list, etc. In Paragraph 9, the Enquiry Officer held that the complainant is a lawyer and from the record of Trial No. 2781/09 it transpired that



the informant was none-else than his client and both of them had already compromised the case, therefore, it cannot be a case that the delinquent did commit such mistake at the instance of the informant. There was no rivalry between the petitioner and the complainant and the records were not available in the court only because of the wrong dates recorded in the case record. In ultimate analysis, the Enquiry Officer came to a conclusion that the irregularity committed was not deliberate with *mala fide* intention. However, since the mistake was committed on two dates, he recorded that the mistake was repeatedly committed, therefore, it was a case of carelessness which should not have happened as he was a senior staff and was going to superannuate in December, 2011.

10. In the enquiry no other record in which any similar kind of irregularity ever committed by the petitioner could be brought to the notice of the Enquiry Officer and no other enquiry or departmental proceeding against this petitioner was found. Learned counsel for the petitioner submits and a statement to this effect has been made in the Supplementary Affidavit that a copy of the enquiry report was never served upon the petitioner, however, the Disciplinary Authority considered the same and passed the impugned order of punishment without differing with the enquiry report and without providing him any opportunity to controvert the finding, if any,



against him in the enquiry report.

11. Learned counsel submits that non-supply of a copy of the enquiry report and non-affording of opportunity to the petitioner to submit his reply has prejudiced him inasmuch as the order of punishment as contained in Annexure-8 has been imposed upon him without appreciating that in the enquiry the charges levelled against the petitioner have not been proved. He would further submit that on perusal of the charge as contained in Annexure – 6 series it would appear that the charge against the petitioner was that of committing the wrong knowingly and deliberately whereas in the enquiry report it was clearly held that the petitioner had not committed the wrong knowingly and deliberately and it was only a result of human error. The Disciplinary Authority did not differ with the enquiry report. He would submit that non-supply of a copy of the enquiry report could itself vitiate the whole order of punishment.

12. Learned counsel relies upon a judgment of this Court in the case of **Jagannath Singh Choudhary Vs. State of Bihar & Ors.**, reported in **2004 (3) PLJR 253**; Paragraph 7 of the judgment reads as under:-

“7. In view of the decisions in the cases of the **Union of India and Ors. vs. Md. Ramzan Khan** [AIR 1991(1) Supreme Court, 471] and **Managing Director, ECIL, Hyderabad and others vs. B. Karunakar and Ors.** (1993) 4 Supreme Court Cases, 727] the copy of the inquiry report was required to be given prior to passing



of the order of punishment and since it has not been done, the order impugned must be held to be violative of the principles of Natural Justice.”

13. Learned counsel further relies upon a Division Bench judgment of this Court in the case of **Dinesh Prasad Vs. State of Bihar & Ors.**, reported in **2006 (4) PLJR 514**; Paragraph 8 of the judgment is being taken note of as under for the purpose of adjudication this case:-

“8. From the materials on record, we are satisfied that neither a copy of the enquiry report was served upon the petitioner, the delinquent nor a separate show cause notice was served upon him in terms of Rule 97(3) of the Code. The question as to the effect of non-serving of enquiry report, is no more *res integra* and it has been settled by various judgments of this Court and the Apex Court. In the case of **Union of India and Ors. Vs. Md. Ramjan Khan** reported in A.I.R. 1991(1) SC 471 and in the case of **Managing Director, ECIL, Hyderabad and Ors. vs. B. Karunakar and Ors.** reported in (1993)4 SCC 727, it has been held that copy of the enquiry report is required to be served upon the delinquent employee prior to the passing of the order of punishment and non-service of the same would amount to violation of the principles of natural justice. This court, recently, in the case of **Jagannath Singh Choudhary vs. State of Bihar and Ors.** reported in 2004(3) P.L.J.R. 253 relying upon the judgment of the Supreme Court as referred to above, took the same view and held the order of punishment to be bad in law.”

14. Learned counsel further submits that in the present case also punishment of depriving the petitioner from his salary during the period of suspension has been imposed but without giving any opportunity of hearing before passing an order in terms of Rule



97(3) of the Bihar Service Code. This was the issue considered by the Hon'ble Division Bench of this Court in the case of **Dinesh Prasad Vs. State of Bihar & Ors.** (Supra). On all these grounds, learned counsel prays to set aside the impugned order.

15. On the other hand learned counsel representing respondents no. 2 to 4 submits that the order of punishment as contained in Annexure-8 has been passed taking a lenient view of the matter and, therefore, no interference is required by this Court. Learned counsel further submits that even though a copy of the enquiry report was not served upon the petitioner that did not cause any prejudice to him and, therefore, non-supply of the copy of the enquiry report alone cannot be a ground to set aside the order of punishment.

CONSIDERATION

16. I have heard learned counsel for the parties and perused the records. It is true that the charge against the petitioner was that he had knowingly and deliberately posted the case bearing Tr. No. 2781/09 on 09.07.2009 when after 13.04.2009 it was adjourned to 04.08.2009 in the order sheet and he had again dared to adjourn the case on 14.09.2009. The charge was also that it is also out and out clear with respect to *mala fide* intention and his involvement in the present matter, but in course of enquiry, the Enquiry Officer has



categorically held that nothing deliberate or *mala fide* could be found on the part of the petitioner in matter of posting of the dates in the case record. The Enquiry Officer has, in fact, also held that there were at least 60-70 records which every day the petitioner had to deal with while doing other works, such as, maintaining case diary, preparing cause list, etc. He has held as under:-

“I am of the opinion that the irregularity committed was not deliberate with *mala fide* intention. However, since the mistake was repeatedly committed it is a case of carelessness which should not have happened as delinquent is a senior staff and is to superannuate in December, 2011 as per his own version

17. It is an admitted position that the copy of the enquiry report dated 24.07.2008 was not supplied to the petitioner and he had no occasion to go through the same and to controvert the findings whatsoever had come against him. One thing is crystal clear that the Enquiry Officer had not found the charge of committing deliberate act and with *mala fide* intention correct and had held that it was a mistake due to overload of work. A lenient view was recommended. Before passing the order for partial payment only i.e. subsistence allowance no hearing was provided to the petitioner which was necessary before passing an order in terms of Rule 97(3) of the Bihar Service Code but the petitioner has been deprived of his salary for the period of suspension which is though technically not an imposition of penalty in



terms of Service Rule is nonetheless penal in its effect. One increment has also been stopped permanently meaning thereby that it has affected the post-retirement benefits of the petitioner as well. The impugned order, therefore, suffers from violation of principles of natural justice and is bad in law. In these circumstances, if the Disciplinary Authority wanted to differ with the enquiry report and to take a different view of the matter he was required to serve upon the petitioner the points of differences and to give an opportunity of hearing to the petitioner before passing the impugned order. The Disciplinary Authority did not follow the established procedure of law and the judicial pronouncement on the subject.

18. The Counter Affidavit filed on behalf of respondents no. 2 to 4 is in fact totally silent on all these aspects of the matter.

19. In the circumstances, I am of the considered opinion that the impugned order of punishment, as contained in Annexure-8 to the Writ Application, cannot sustain and the same being violative of the principles of natural justice is hereby set aside.

20. Since the petitioner has already retired from service in the year 2011 itself and the charge against him has not been found proved in the enquiry report, in the opinion of this Court no fruitful purpose would be served by re-opening the matter at this stage.

21. Consequent upon setting aside of the impugned order,



the petitioner would be entitled to get the consequential benefits.

22. The Writ Application is allowed.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	AFR
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