IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16732 of 2010

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1. Rajrani Devi Wife of late Awadh Narayan Prasad
2. Prem Narayan Sinha S/o late Awadh Narayan Prasad
3. Purnendu Narayan Son of late AwadhNarayan Prasad All residents of Mohalla: Saristabad (Near Old Masjid), P.O. Anishabad, P.S. Gardanibagh, Patna-2.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. The Commissioner-Cum-Secretary, Road Construction Department, Bishwasaraiya Bhawan, Bailey Road, Patna.
3. The Deputy Secretary-Cum-Chief Vigilance Officer, Road Construction Department, Bailey Road, Patna.
4. The Engineer-in-Chief P.W.D. (Road) Bihar, Patna.
5. The Deputy Secretary, Accounts, Head Office, P.W.D., Road, Patna.
6. The Treasury Officer, Bishwasaraiya Bhawan, Bailey Road, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amarendra Nath Tiwary, Adv
For the Respondent/s : Mr. Suman Kumar Jha, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 27-11-2018

The petitioner/late Awadh Narayan Prasad came up before this Court with a challenge to the order dated 09.02.2007 (Annexure-3) whereby the Disciplinary Authority, differing with the opinion of the Conducting Officer who had exonerated the petitioner held him guilty and directed for deduction of ten percent of his pension with a further stipulation that nothing shall be due to him during the period while he remained under suspension.

During the pendency of the present petition, the petitioner died and was substituted by his wife by the order of this Court.

The brief facts necessary for disposal of this petition are hereunder. :

Rupees four lakhs was fraudulently withdrawn by the Executive Engineer, Road Division, Hazaribagh sometimes in the year 1991. With respect to the aforesaid forged allotment leading to excess withdrawal, two cases were registered with Sastri Nagar Police Station vide Sastri Nagar P.S. Case No. 795 of 2001 and Sastri Nagar P.S. Case No. 796 of 2001. The petitioner, at the relevant time was a Routine Clerk in the Issue Section of Road Construction Department, Bihar, Patna.

Though the employee was discharged by the Criminal Court but he was suspended by the Department and a departmental proceeding was initiated in the year 1994. The employee thereafter superannuated in the year 1998 and the departmental proceedings were converted into one under Section 43(B) of the Bihar Pension Rules, 1950.

The Conducting Officer, vide order dated 22.05.2005 exonerated the employee from all the charges. However, the Disciplinary Authority differed with the opinion of the Conducting Officer and found that the charges stood proved against him.

A show cause notice was issued to the employee seeking his response to the proposed punishment of deduction of ten percent of pension.

The response of the employee was that because of the overload of work, the employee could not make necessary entry in the register which had led to the fraudulent withdrawal of money by the Executive Engineer.

The aforesaid reply was not found to be acceptable to the Disciplinary Authority and the impugned order, directing for deduction of ten percent of the pension amount and that nothing shall be payable to him during the period of suspension was passed.

The learned counsel appearing for the petitioner has submitted that since the charges against him in the departmental proceedings and in the criminal case were similar, his discharge from the criminal case entitled him to be exonerated from the departmental proceedings as well.

The second argument which has been advanced on his behalf is that the Executive Engineer who had allegedly withdrawn rupees four lakhs from the State Treasury without any justification, under a feeling of remorse and facing qualms of conscience, committed suicide. Before doing so, he had admitted his guilt.

Thirdly, it has been submitted that the punishment meted out to the employee is disproportionate to the fault committed by him.

From the records, it appears that every opportunity was given to the employee for defending himself. Though the Conducting Officer did not find from the records that the charges were proved but the Disciplinary Authority differed with the same. The reason given by the Disciplinary Authority for differing with the opinion of the Conducting Officer is neither perverse nor is devoid of logic. The ground taken by the employee that he could not enter the necessary facts in the issue register is not fit to be accepted. It was only because of his negligence that the money was fraudulently withdrawn.

The law with respect to the departmental proceedings being conducted simultaneously with the criminal prosecution is too well known to be reiterated. The requirement under a criminal law is different from the requirement in a disciplinary proceeding. The criminal cases are decided on the probability whereas departmental proceeding is always decided on preponderance of evidence. More often than not, in a departmental proceeding, the opinion of the Disciplinary Authority is based on different considerations viz. to ensure discipline and to see that such kind of lapses do not occur repeatedly.

Apart from this, this Court is also conscious of the fact that the deceased employee did not face trial as he was discharged.

It is thus difficult for this Court to interfere with the order impugned even though the employee has died and his widow has to be content with the deducted amount of pension for her livelihood.

For the aforesaid reasons, there is no merit in the petition and the same is dismissed.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
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