

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8337 of 2005

RAM KESHWAR RAM SON OF LATE HARKHU RAM, R/O HOUSING COLONY, MIG-325, KANKARBAGH, P.S.-KANKARBAGH, DISTRICT PATNA.

... .. Petitioner/s

Versus

THE STATE OF BIHAR THROUGH SECRETARY, ROAD CONSTRUCTION DEPARTMENT, HAVING HIS OFFICE IN VISHWESHARAIYA BHAWAN, P.S. - SHASTRI NAGAR, DISTRICT PATNA.

2.THE JOINT SECRETARY, ROAD CONSTRUCTION DEPARTMENT,VISHWESHARAIYA BHAWAN, P.S. - SHASTRI NAGAR, DISTRICT PATNA.

3.THE DEPUTY SECRETARY, ROAD CONSTRUCTION DEPARTMENT,VISHWESHARAIYA BHAWAN, P.S. - SHASTRI NAGAR, DISTRICT PATNA.

4.THE DEPUTY SECRETARY CUM CHIEF VIGILANCE OFFICER, ROAD CONSTRUCTION DEPARTMENT,VISHWESHARAIYA BHAWAN, P.S. - SHASTRI NAGAR, DISTRICT PATNA.

5.THE DIRECTOR-IN-CHIEF, HEALTH MEDICAL EDUCATION & FAMILY WELFARE DEPARTMENT, GOVT. OF BIHAR, PATNA.

6.THE SECRETARY,HEALTH MEDICAL EDUCATION & FAMILY WELFARE DEPARTMENT, GOVT. OF BIHAR, PATNA.

7.THE ACCOUNTANT GENERAL(A &E), BIHAR VIRCHAND PATEL PATH, PATNA.

8.THE ACCOUNTANT GENERAL, HINOO, RANCHI.

9.THE DIRECTOR, TREASURY, BIHAR,PATNA.

10.THE TREASURY OFFICER, SECRETARIAT, TREASURY, BIHAR, PATNA.

11.THE DEPUTY SECRETARY, HEALTH MEDICAL EDUCATION & FAMILY WELFARE DEPARTMENT, GOVT. OF BIHAR, PATNA.



... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Choudhary, Sr. Adv, Mr. Rupak Kumar, Adv and Mr. Akshansh Ankit, Adv
For the Respondent/s : Mr. Kumar Ravish, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 29-06-2018

Heard parties.

2. This writ petition under Article 226 of the Constitution of India has been filed for setting aside the order dated 16.05.2006 passed by Road Construction Department, forfeiting 25 per cent pension of the petitioner as enclosed in Annexure-23 of this writ petition.

3. Petitioner had filed writ petition against the decision dated 10.09.2003 of Disciplinary Authority converting departmental proceeding against the petitioner under Rule 43(B) of Bihar Pension Rules, after his retirement as well as issuance of second show cause notice of proposed punishment of forfeiture of 25 per cent pension but during pendency of writ petition final order of punishment was passed and same was brought on record through an amendment petition which was allowed by order dated 13.03.2018 to challenge the final order dated 16.05.2006.



4. Briefly stated, the facts of the case is that petitioner was posted as Executive Engineer, Engineering Cell, State Family Welfare Bureau, Patna on deputation and he joined on 31.12.1991. The State Family Welfare Bureau, Patna, was under the direct administrative control of Health Medical Education and Family Welfare Department, doing construction and repair.

5. Departmental proceeding was initiated against petitioner by issuance of resolution dated 09.04.1999 under Rule-55 of Civil Services (Classification, Control & Appeal) Rules-1930, for financial irregularities and Enquiry Officer as well as Presenting Officer were appointed.

6. Rupees 2.60 Crores was sanctioned and allotted to Engineering Cell, State Family Welfare Bureau, Patna, for constructing 30 bedded Referral Hospital in different districts in Bihar for the period 1991-92 vide letter dated 19.08.1991 (Annexure-5) issued by Director-in-Chief, Health Services, Bihar, Patna, addressed to Accountant General, Bihar, Patna, whereunder Executive Engineer, Engineering Cell, Family Welfare, Bureau, Patna, was made by post as Drawing and Disbursing Officer and 40 per cent of the allotment was to be released by 30.09.1991 and next 30 per cent by 31.12.1991 and remaining 30 per cent by 31.03.1992 which allotment had the



sanction of Empowered Committee and Deputy Internal Financial Advisor.

7. Finance Department, Govt. of Bihar, Patna, on 28.09.1991 released 25 per cent of sanctioned amount i.e. Rs. 65 Lacs and remaining amount 1.95 Crores was released by memo dated 24.10.1991 issued by Finance Department and Executive Engineer, Engineering Cell, State Family Welfare Bureau, to draw and spend time to time on construction of 30 bedded Referral Hospital.

8. The Joint Secretary, Health, Medical Education and Family Welfare Department, informed Accountant General, Bihar, Patna/Ranchi, about the administrative sanction for the construction of 30 Bedded Referral Hospital for the financial year 1990-91 and Executive Engineer, Engineering Cell, State Family Welfare Bureau, Patna, was made Drawing and Disbursing Officer.

9. Petitioner submitted his defence on 06.09.1999. Enquiry Officer in its enquiry report dated 22.09.2000 found the charges against the petitioner not to be proved.

10. Petitioner was issued second show case notice vide letter dated 22.09.2000 along with a copy of enquiry report asking him to file reply to the second show cause for the



proposed punishment. Petitioner submitted his reply to second show cause on 12.06.2001 before the Dy. Secretary-Vigilance Officer, Road Construction Department, Patna.

11. Petitioner superannuated from service on 30.09.2002 during pendency of departmental proceeding and same was converted into proceeding under Rule 43(B) of Bihar Pension Rules vide resolution dated 10.09.2003.

12. Counter Affidavit has been filed on behalf of respondents in which it has been stated that when petitioner was posted in Engineering Cell of the State Family Welfare Bureau under Health Medical Education and Family Welfare Department, a sum of Rs. 2.60 Crores had been allotted for construction of Referral Hospital. The Director-in-chief, Health Services (Health Department), Bihar, Patna had directed petitioner to transfer 80 lacs to State Construction Corporation but despite the said direction the petitioner did not transfer the amount and made expenditure of the amount for which departmental proceeding was initiated against him on 09.04.1999. The Enquiry Officer found him not guilty.

13. In its counter affidavit respondent-department has admitted in the report dated 23.02.2000 of the Cabinet (Vigilance) Department that quality of the work and expenditure



on construction of Hospitals was found as per administrative sanction but the amount of Rs. 80 Lacs which was disbursed was meant for construction of new Hospitals and as such petitioner was guilty of diversion of Rs. 80 Lacs allotment meant for construction of New Building. Such logic and reasons are beyond understanding of this Court and Enquiry Officer had rightly found charges against petitioner to be not proved.

14. The findings of Enquiry Officer was not accepted by the department and enquiry report of the Cabinet (Vigilance) Department, the Road Construction Department reviewed the matter and came to conclusion that charges against petitioner stands proved and he was guilty for diversion of Rs. 80 Lacs fund and also decided to impose punishment of reversion on him and a second show cause was issued to him and after getting reply of petitioner BPSC was consulted on proposed punishment but in the meantime petitioner superannuated from service on 30.09.2002.

15. After retirement of petitioner, departmental proceeding was converted into Rule 43(B) of Bihar Pension Rules. Second show cause notice with proposed punishment of 25 per cent reduction in pension was given to petitioner against which petitioner submitted his reply on 13.07.2005, and after



obtaining opinion of BPSC against proposed punishment which concurred with proposed punishment and accordingly punishment of reduction of pension by 25 per cent was imposed by order dated 16.05.2006 as contained in Annexure-23 of the writ petition.

16. Counter affidavit has been filed on behalf of respondent no. 7 in which it has been stated that Pension Sanctioning Authority vide memo dated 22.04.2003 sent the sanction order of 90 per cent pension and DCRG provisionally in favour of petitioner and accordingly office of Accountant General authorize 90 per cent pension and 90 per cent of DCRG in favour of petitioner and thereafter full pension and full gratuity provisionally was authorized.

17. After hearing the parties and considering the materials available on record, the order passed by respondent imposing reduction of pension of 25 per cent under Bihar Pension Rules as contained in Annexure-23 is not sustainable in the eye of law for following reasons:-

(i) Enquiry Officer had exonerated petitioner and found both of the charges as not proved and Disciplinary Authority without giving tentative reasons for differing with the findings of Enquiry Officer held unilaterally the charges to be proved



without giving any second show cause notice with respect to reasons to differ with findings of Enquiry Officer, which is in teeth of law laid down by Apex court in the case of **Punjab National Bank & Ors Vs. Kunj Behari Mesra** since reported in (1998) 7 SCC 84 para 14, which reads as follows:-

“14. In *Ram Kishan vs Union of India & Ors* since reported in (1995) 6 SCC 157 disciplinary proceedings on two charges were initiated against Ram Kishan. The enquiry officer in his report found the first charge not proved and the second charge partly proved. The disciplinary authority disagreed with the conclusion reached by the enquiry officer and a show-cause was issued as to why both the charges should not be taken to have been proved. While dealing with the contention that the disciplinary authority had not given any reason in the show-cause to disagree with the conclusions reached by the enquiry officer and that, therefore, the finding based on that show-cause notice was bad in law, a two-Judge Bench at p. 161 observed as follows:

“The purpose of the show-cause notice, in case of disagreement with the findings of the enquiry officer, is to enable the delinquent to show that the disciplinary authority is persuaded not to disagree with the conclusions reached by the enquiry officer for the reasons given in the enquiry report or he may offer additional reasons in support of the finding by the enquiry officer. In that situation, unless the disciplinary authority gives specific reasons in the show-cause on the basis of which the findings of the enquiry officer in that behalf is based, it would be difficult for the delinquent to satisfactorily give reasons to persuade the disciplinary authority to agree with the conclusions reached by the enquiry officer. In the absence of any ground or reason in the show-cause notice it amounts to an empty formality which would cause grave prejudice to the delinquent officer and would result in injustice to him. The mere fact that in the final order some reasons have been given to disagree with the conclusions reached by the disciplinary authority cannot cure the defect.

19. The result of the aforesaid discussion would be that the



principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

(ii) Disciplinary Authority issued second show cause notice with a copy of enquiry report to the petitioner. Disciplinary Authority without considering reply of petitioner held petitioner to be guilty of charges and proposed punishment of reduction of 25 per cent of pension, which is also in teeth of law laid down by the Apex Court in the case of **H.P. Electricity Board vs Mahesh Dahiya** since reported in **(2017) 1 SCC 768**, which reads as follows:-

“31. Both the learned Single Judge and the Division Bench have heavily relied on the fact that before forwarding the copy of the report by the letter dated 2-4-2008 the disciplinary authority-cum-whole-time members have already formed an opinion on 25-2-2008 to punish the writ petitioner with major penalty which is a clear violation of the principles of natural justice. We are of the view that before making opinion with regard to punishment which is to be imposed on a delinquent, the delinquent has to be given an opportunity to submit the representation/reply on the enquiry report which finds a charge proved against the delinquent. The opinion formed by the disciplinary



authority-cum-whole-time members on 25-2-2008 was formed without there being benefit of comments of the writ petitioner on the enquiry report. The writ petitioner in his representation to the enquiry report is entitled to point out any defect in the procedure, a defect of substantial nature in appreciation of evidence, any misleading of evidence both oral or documentary. In his representation any inputs and explanation given by the delinquent are also entitled to be considered by the disciplinary authority before it embarks with further proceedings as per statutory rules. We are, thus, of the view that there was violation of principle of natural justice at the level of disciplinary authority when opinion was formed to punish the writ petitioner with dismissal without forwarding the enquiry report to the delinquent and before obtaining his comments on the enquiry report. We are, thus, of the view that the order of the High Court setting aside the punishment order as well as the appellate order has to be maintained.”

17. For the reasons as stated above, the order passed by the Disciplinary Authority issued vide notification no. 4992(s) dated 16.05.2006 as contained in Annexure-23 issued in the name of Deputy Secretary cum Chief Vigilance Officer, Road Construction Department, Govt. of Bihar, Patna, is not sustainable and is accordingly, quashed. Petitioner is directed to be paid 100 per cent pension and 100 per cent gratuity as well as arrears of pension and Pension Sanctioning Authority will issue revised pension sanction order within three months from the date of receipt of a copy of the order and Accountant General will issue Authority Slip of revised pension of petitioner with arrears of pension. As petitioner has retired in the year 2003



itself and he was exonerated by the Enquiry Officer and allegations made also appears to be misconceived, this Court is not inclined to remit the matter to the Disciplinary authority from the stage the proceeding stood vitiated.

The writ petition is allowed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	05.09.2018
Transmission Date	N.A.

