

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8408 of 2008

=====

Rabindra Nath Sinha, son of late Rambhaju Rai, resident of Village Gondpura, Post Alampur Gondpura, P.S. Phulwari Shariph, District Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. The Deputy Chief-cum-Finance Minister, Government of Bihar, Old Secretariat, Patna
3. The Secretary-cum-Director, Finance (National Saving) Department, Government of Bihar, Old Secretariat, Patna
4. The Joint Director, Finance Department (National Saving), Government of Bihar, Old Secretariat, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Arvind Kumar,
Mr. Gaurav Govind

For the State : Mr. Raj Ballabh Pd. Yadav, AAG 11,
Mr. Dinesh Maharaj

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 30-01-2018

Heard learned counsel for the petitioner and learned counsel for the State.

In the present writ petition, the petitioner is challenging the order dated 28.5.2007 passed by the Deputy Chief-cum-Finance Minister, Government of Bihar as well as order dated 29.8.2000 passed by the Joint Director (Disciplinary Authority) by which he has inflicted two punishments that petitioner will not be entitled to the salary for the period from 6.9.1990 and 31.5.1993 will not be entitled to any annual increment and promotion during the period aforesaid.

The petitioner was a clerk in the office of the National Saving (Finance) Department Scheme at Dhanbad. Thereafter Mr. Kaushal Kumar Singh had developed biasness against the



petitioner as he failed to satisfy his desire inasmuch as assaulted and compelled the petitioner to leave the office and to handover the charge to Uma Shanker Prasad (Annexure-10), on that account he left the place of working and reported to the head office but departmental proceeding was initiated for the misconduct of being remained absent for the period from 6.9.1990 to 31.5.1993.

Enquiry Officer was appointed and after holding the enquiry, he submitted the report which does not reflect that the Enquiry Officer has arrived to a definite finding on the charge of misconduct rather has only given suggestion to superior to improve the relationship with the petitioner also recommended for sympathetic consideration. Enquiry report does not disclose definite finding on the charge of misconduct rather he has given a very confusing report without any definite conclusion.

The Disciplinary Authority issued a show cause and whereupon the petitioner has filed his detailed reply (Annexure-19) explaining the situation of his absence and Disciplinary Authority vide order dated 29.8.2000 inflicted two punishments of depriving of his salary as well as annual increment for the period from 6.9.1990 to 31.5.1993.

Against that order petitioner moved this Court vide C.W.J.C. No.11357 of 2000 and vide order dated 23.4.2004 the



petitioner was directed to file an appeal as the Appellate Authority failed to pass reasoned order rather a cryptic order was passed and the same was challenged vide C.W.J.C. No. 13368 of 2004, this Court arrived to a finding that order of appellate authority is not proper, set aside the same and remanded back the matter for fresh consideration whereafter again the appellate authority passed fresh order dated 28.5.2007 which is under challenge before this Court in the present proceeding and on perusal of the order it appears that appellate authority has recorded the defence of the petitioner but nowhere he has given the analytical consideration but recorded definite finding against the petitioner. Mere recording of defence cannot be said to be proper consideration, more so, it is required that the Appellate Authority should apply his independent mind and pass reasoned order with definite finding but in the present proceeding the appellate authority without dealing with objection raised by the petitioner but ipsi dixit rejected the appeal of petitioner recording that no new evidence has been brought by the petitioner. The order of punishment dated 29.8.2000 suffers from illegality, as the Disciplinary Authority without following proper procedure by a cryptic order has been passed inflicted the punishment, but without consideration of the facts involved in the present case rather vaguely considered and rejected the explanation of the petitioner.



Learned counsel for the petitioner submits in pursuance of second show cause the explanation submitted by the petitioner was not at all taken into consideration by Disciplinary Authority as he should have dealt with the ground/objection which the petitioner has taken, only after proper consideration, the order could have been passed as well as the Appellate Authority has failed to exercise the jurisdiction properly which has been conferred upon him as order of Appellate Authority does not disclose the consideration of grounds taken in his appeal. Second question has been raised in the present case that the Enquiry Officer has not given a clear cut finding but vague finding has been recorded. In the case of Punjab National Bank and others v. Kunj Bihari Misra, reported in (1998) 7 SCC 84 wherein the Hon'ble Supreme Court has held if the Disciplinary Authority differs with the finding of the Enquiry Officer he will have to record a separate finding of disagreement and furnish the same to the delinquent and after receipt of the explanation, the disciplinary authority on consideration of explanation would pass reasoned order which is one of the facet of natural justice. Failure to follow the proper procedure the order vitiates. In this case the Disciplinary Authority has not followed the proper procedure as explained hereinabove as well as Appellate Authority dismissed the appeal of the petitioner without dealing with the objection which the petitioner has taken in his appeal.



Learned counsel for the State has tried to justify the order of the appellate authority and submitted that the order of the appellate authority is a reasoned one but the State has failed to show from the record of the appellate authority that proper consideration has been given to the grounds taken in appeal inasmuch as the Disciplinary Authority without following proper procedure and without recording reasoned order inflicted the punishment upon the petitioner even though Enquiry Officer has not given clear cut finding on charge of misconduct as well as the explanation of the petitioner has not been dealt with either by Disciplinary Authority or by the Appellate Authority.

In such view of the matter, both the orders dated 28.5.2007 and 29.8.2000 are set aside and matter is remanded back to take action in accordance with law. The whole process should be completed within a period of six months from the date of receipt/production of a copy of this order.

Accordingly this writ petition is allowed.

Vinay/-

(Shivaji Pandey, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.2.2018
Transmission Date	NA

