

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14094 of 2010

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NIRDULA JHA W/O LATE MAHESHWAR JHA R/O VILLAGE + POST
OFFICE- MALIKAUR, VIA-DIGHRA, P.S.- PUSA, DISTT.-
SAMASTIPUR

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE SECRETARY ENVIRONMENT
AND FOREST DEPARTMENT, PATNA
2. THE DIVISIONAL FOREST OFFICER-CUM-DEPUTY DIRECTOR
VALMIKI TIGER PROJECT DIVISION-2, VALMIKINAGAR, DISTT.-
WEST CHAMPARAN
3. THE DIVISIONAL FOREST OFFICER TIRHUT DEVELOPMENT
FOREST DIVISION, MUZAFFARPUR
4. THE CHIEF FOREST CONSERVATOR STATE OF BIHAR, PATNA
5. THE FOREST CONSERVATOR, REGIONAL CIRCLE, RANCHI
6. THE PROJECT DIRECTOR, CHAMPARAN FOREST PROJECT CIRCLE,
BETTIAH

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. K.N.Choubey, Sr. Advocate Mr. Ashok Kumar Garg, Advocate Mr. Amboj Nayan Choubey, Advocate Mr. Dineshwar Pandey, Advocate
For the State	:	Mr. R.B.N. Singh, AC to GA-10

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 07-09-2018

The petitioner by way of the present writ petition has
prayed for quashing of the inquiry report dated 05.05.1994 as
also the order dated 16.10.2004 whereby and whereunder the
husband of the petitioner has been inflicted with a punishment,
to the effect that he would not get anything except his



subsistence allowance, for his suspension period and the amount of loss caused to the department would be assessed and the same would be recovered from the retiral dues of the husband of the petitioner.

2. The brief facts of the case are that a departmental proceeding was initiated against the husband of the petitioner herein and a charge-sheet dated 29.01.2004 was served on the husband of the petitioner on the allegation of the husband of the petitioner having conspired resulting in theft of various types of pieces of woods from the forest area resulting in huge loss to the Forest Department. The Inquiry Officer had conducted the inquiry and submitted an inquiry report dated 05.05.1994 whereby and whereunder charge nos. 1, 2 and 4 to 6 were found to have been proved while charge no. 3 was not found to have been proved. Thereafter, it appears that the husband of the petitioner had retired on 31.03.2002 and subsequently, he died on 11.09.2005, but during the interregnum period, the impugned order dated 16.10.2004 was passed.

3. The learned counsel for the petitioner has submitted that no witness has been examined by the prosecution / department during the course of the inquiry proceeding, hence, the present case is a case of no evidence. It is further submitted that no



second show cause notice has been issued to the petitioner herein, hence, the order of punishment could not have been passed without granting an opportunity to the petitioner to respond to the findings of the inquiry officer, thus, the impugned order of punishment dated 16.10.2004 is fit to be set aside on the ground of violation of the principles of natural justice.

4. Per contra, the learned counsel for the respondents has submitted that the proper procedure has been followed and the copy of the impugned order of punishment dated 16.10.2004 has also been supplied to the petitioner herein.

5. I have heard the learned counsel for the parties and gone through the materials on record.

6. Firstly, this Court finds that the present case is a case of no evidence inasmuch as no witnesses has been examined in the present case during the course of the departmental inquiry, thus, resulting in the inquiry being non est in the eyes of law. Reference, in this connection, be had to the judgments rendered by the Hon'ble Apex Court in the case of ***State of U.P. vs. Saroj Kumar Sinha in (2010) 2 SCC 772*** and the one rendered by the Hon'ble Apex Court in the case of ***Roop Singh Negi vs. The Punjab National Bank in (2009) 2 SCC 570***.

7. I have gone through the records produced by the



respondent-State pertaining to the conduct of the departmental proceeding against the husband of the petitioner herein and I find that no systemic departmental inquiry has been held and the procedural lacuna is writ large from the records. This Court further finds from the perusal of the records produced by the State that no second show cause notice was ever issued to the husband of the petitioner herein, before passing of the impugned order of punishment dated 16.10.2004 and after submission of the inquiry report dated 05.05.1994, which alone is enough to quash the order of punishment dated 16.10.2004 on the ground of denial of a fair opportunity to the husband of the petitioner to respond to the findings of the inquiry officer and place his defence before the disciplinary authority which has resulted in violation of the principles of natural justice, hence, the order of punishment dated 16.10.2004 is not sustainable in the eyes of law.

8. Having regard to the facts and circumstances of the case as also for the reasons mentioned hereinabove, the writ petition is allowed and the order of punishment dated 16.10.2004 is quashed, consequently whereof, all the action taken by the respondents pursuant to the order of punishment dated 16.10.2004 are also quashed.



9. It is needless to state that the petitioner herein i.e. the widow of the employee of the respondents, namely, late Maheshwar Jha shall be entitled to all the consequential benefits.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	AFR
CAV DATE	NA
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