

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1157 of 2005

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1. Most. Manju Srivastava, wife of Late Birendra Prasad Srivastava
2. Amitabh Srivastava, son of Late Birendra Prasad Srivastava
3. Alok Srivastava, son of Late Birendra Prasad Srivastava
All residents of Pragati Path, West Boring Canal Road, P.S.- S.K. Puri,
District-Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Department of Personnel and Administration Reform,
Government of Bihar, Patna
3. The Deputy Secretary, Department of Personnel and Administrative Reform,
Government of Bihar, Patna
4. The Under Secretary, Department of Personnel and Administrative Reform,
Government of Bihar, Patna
5. The Departmental Inquiry Commissioner, Government of Bihar, Patna
6. The Accountant General, Bir Chand Patel Marg, Bihar, Patna

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. SATYAVRAT VARMA
Mr. Vatsal Verma

For the State : Mr. R.B.N. Singh, A.C. to G.A.-10

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 23-08-2018

The present writ petition has been filed for quashing the order of punishment dated 16.11.2004, whereby and where under the petitioner has been inflicted with the punishment of deduction of 25 per cent of pension and gratuity each.

The brief facts of the case are that a charge sheet was served on the petitioner which is dated 11.06.1999 and a departmental proceeding was initiated primarily on the charge of the petitioner having not joined his place of transfer and having avoided being transferred. The petitioner had appeared in the disciplinary enquiry and thereafter the Enquiry Officer had submitted his enquiry report



dated 25.06.2003, whereby and where under the petitioner was exonerated of the charges no. 1, 3 and 4, however, charge no. 2 was partly proved. The disciplinary authority had then issued a second show cause notice dated 10.02.2004 to the petitioner whereafter the order of punishment dated 16.11.2004 has been inflicted upon the petitioner herein.

The learned counsel for the petitioner has raised a short issue for consideration i.e. to the effect that while the disciplinary authority was issuing a second show cause notice especially upon differing with the opinion of the Enquiry Officer, he ought to have granted an opportunity to the petitioner to rebut to the said grounds for difference of opinion and should have granted the petitioner an opportunity to place his defence before deciding to inflict punishment upon the petitioner herein. However, in the instant case, it is submitted that the disciplinary authority while issuing the second show cause notice dated 10.02.2004 has not only failed to elaborate the reasons from differing with the opinion of the Enquiry Officer as far as charge nos. 1, 3 and 4 are concerned, but has also illegally sought reply of the petitioner on the proposed punishment. Hence, the learned counsel submits that on this ground alone the order of punishment dated 16.11.2004 is vitiated and fit to be set aside.

Per contra, the learned counsel for the respondents has submitted that there is no irregularity in the proceeding conducted for



the purposes of passing the impugned order of punishment dated 16.11.2004, however, the respondents have not been able to dispute the issue raised by the learned counsel for the petitioner hereinabove.

The law in this regard is well settled as has been laid down by the Hon'ble Apex Court in a judgment reported in **(1999) 7 SCC 739 (Yoginath D. Bagde vs. State of Maharashtra & Anr.)**, paragraph no. 37 whereof is reproduced herein below:-

“37. The contention apparently appears to be sound but a little attention would reveal that it sounds like the reverberations from an empty vessel. What is ignored by the learned counsel is that a final decision with regard to the charges levelled against the appellant had already been taken by the Disciplinary Committee without providing any opportunity of hearing to him. After having taken that decision, the members of the Disciplinary Committee merely issued a notice to the appellant to show-cause against the major punishment of dismissal mentioned in Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. This procedure was contrary to the law laid down by this Court in the case of Punjab National Bank (supra) in which it had been categorically provided, following earlier decisions, that if the Disciplinary Authority does not agree with the findings of the Enquiry Officer that the charges are not proved, it has to provide, at that stage, an opportunity of hearing to the delinquent so that there may still be some room left for convincing the Disciplinary Authority that the findings already recorded by the Enquiry Officer were just and proper. Post-decisional opportunity of hearing, though available in certain cases, will be of no avail, at least, in the circumstances of the present case.”

For the reasons mentioned herein above as also having regard to the facts and circumstances of the present case, this Court has no option but to quash the order of punishment dated 16.11.2004 on the ground that the second show cause notice dated 10.02.2004 is illegal, in view of the law laid down by the Hon'ble Apex Court in the case of **Yoginath D. Bagde** (supra), whereby and where under the



disciplinary authority was first required to grant an opportunity to the petitioner to place his defence with regard to difference of opinion of the disciplinary authority with the Enquiry Officer and then in case if the disciplinary authority still did not find favour with the petitioner, it was supposed to then issue a show cause to the petitioner seeking reply to the punishment proposed to be inflicted. However, in the instant case the disciplinary authority appears to have already made up its mind for inflicting the punishment, hence the same was proposed in the second show cause notice itself which is contrary to the law of the land.

For the reasons stated hereinabove, the order of punishment dated 16.11.2004 is quashed. The writ petition is allowed with a direction to the authorities to give the consequential reliefs to the petitioner herein by way of refund of the amount of pension and gratuity recovered from the petitioner as a result of the passing of the punishment order dated 16.11.2004.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	01.09.2018
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