

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1815 of 2017

In

Civil Writ Jurisdiction Case No.9313 of 2014

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1. The State of Bihar.
 2. The Principal Secretary, Department of Mines & Geology, Bihar, Patna.
 3. The Director, Department of Mines & Geology, Bihar, Patna.
 4. The Enquiry Officer-cum-Additional Secretary, Mines & Geology, Bihar, Patna.
 5. The Mineral Development Officer, Head Quarter, Patna.

... .. Respondents-Appellants

Versus

Shyam Narayan Singh Son of Late Sakal Deo Singh Resident of Mohalla - L - 75, Anugrah Puri Colony, P.S. Rampur, District - Gaya.

... .. Petitioner-Respondent

Appearance :

For the Appellant/s : Mr. Naresh Dikshit

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 16-08-2018

Heard Mr. Naresh Dikshit, learned counsel for the appellant-State.

In the nature of the order which we propose to pass, we do not deem it necessary to put the respondent-writ petitioner on notice. Suffice it to say that this Intra-Court appeal arises from a judgment and order of the learned Single Judge dated 08.09.2017, passed in CWJC No. 9313 of 2014, whereby



the learned Single Judge noticing that the lawful procedure provided under Rule 17 of the Bihar Government Servants (Classification Control and Appeal) Rules, 2005 (hereinafter referred to as 'the rules') as amended from time to time, has not been followed, causing violation of principles of natural justice, that the punishment order has been set aside but the learned Single Judge bearing note of the allegation facing the delinquent writ petitioner-respondent, has remitted the matter to the disciplinary authority for proceeding afresh in accordance with law.

Mr. Naresh Dikshit, learned counsel for the appellants submits that the writ petitioner-respondent has since superannuated on 31.10.2017 and the order of remand is not clear as to from which stage the inquiry is to proceed.

We have considered the submission of Mr. Dikshit, learned counsel for the appellants and find no confusion in the impugned order, because the learned Single Judge having noted that the Inquiry Officer has failed to abide by the procedure provided under Rule 17 of 'the rules', has remitted the matter for inquiry afresh, meaning thereby from the stage of inquiry by the Inquiry Officer appointed in this regard. Relevant portion of the impugned order is reproduced hereinbelow:-



“Therefore, I find that the enquiry officer did not hold the enquiry in accordance with the procedures laid down under sub-rule (11) and other sub-rules of section 17 of the CCA Rules, 2005 and, thus, the enquiry report is vitiated and the punishment on such enquiry report is in violation of principles of nature justice and not sustainable in the eye of law. This writ petition is, accordingly, allowed and the impugned order dated 28.03.2014, as contained in memo No. 1408 (Annexure-11), issued under the signature of Director, Mines, Bihar, Patna is set aside.”

We do note that in the meantime the respondent-writ petitioner has superannuated on 31.10.2017. Meaning thereby, the nature of penalty, if any, to be imposed, may undergo a change, inasmuch as the same would now have to be guided by the Bihar Pension Rules 1950 in case the disciplinary authority/State is of opinion that the allegation of misconduct is of such nature which would require such punishment. However, insofar as the procedure to be adopted is concerned, there is no distinction between a procedure to be followed in a disciplinary case relating to an in-service government servant or in a case of government servant who has been proceeded while in service but superannuated during the pendency of the proceeding because in such a case, the proceedings having already been



initiated while the delinquent was in service, the superannuation of the delinquent would make no difference.

In the nature of the discussion above, we find no reasons to interfere with the order of the learned Single Judge except that the period of six months stipulated in the impugned order for concluding the proceedings would be counted with effect from today.

With the modification above, the appeal is dismissed.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08.2018
Transmission Date	

