

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13199 of 2005

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Chandradip Sinha Son of Late Ram Charitra Singh resident of village Abagila
PO Mohanpur District Patna

... .. Petitioner/s

Versus

THE STATE OF BIHAR and ORS

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjeet Kumar

Mr. Raj Kunal

For the Respondent/s : Mr.Niraj Kumar, AC to GA

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 30-08-2019

Heard counsel for the petitioner and counsel for the
respondents-State.

Writ petition has been filed seeking quashing of the
order of punishment dated 16.09.2005 whereby the Under
Secretary to the Government of Bihar in Water Resources
Department has directed that 5 % be deducted from pension of the
petitioner. Recovery of Rs 2,07,446.45 has also been directed
under the punishment.

Petitioner was earlier proceeded against while he was in
service on the basis of a charge memo under the then Bihar CCA
Rules. Petitioner assailed the findings of the
Disciplinary authority in the said proceedings by filing a writ
petition. Petitioner's writ petition was numbered as CWJC
no.3362/1999. Petitioner in the meantime had retired on



30.09.1998. Petitioner's writ petition was finally allowed by this court under order dated 29.01.2004. This court had found that the order passed by the Disciplinary Authority did not assign any reasons in support of decision, and suffered from vice of non-application of mind. Having observed so, order of punishment dated 06.02.1998 was set aside. This court remitted the matter to the Disciplinary Authority to pass an order in accordance with law within a period stipulated in the order. Pursuant thereto, authorities have proceeded afresh in the matter by issuing a show cause to the petitioner. Show cause is dated 03.06.2004.

Counsel for the petitioner submits that the same issued roughly more than six years after his retirement was not maintainable in view of limitation in provision to rule 43(b) of Bihar Pension Rules. Action being taken against the petitioner was in light of remand by this court under order dated 29.01.2004. The same mandates reconsideration of the matter as earlier order of the Disciplinary Authority had been found without assigning any reason and suffering from vice of non-application of mind. The plea regarding proceedings being barred by delay would not be tenable in the facts and circumstance of this case, as delay occurred on account of pendency of the writ proceedings for five years and the petitioner was proceeded against in terms of order



passed by the writ court in CWJC no.3362/1999 which order was binding on both the parties.

Counsel for the petitioner, in the circumstance, submits that once show cause is issued and the petitioner had responded to the same by a detailed and elaborate reply (Annexure 6), authorities would be obliged to proceed as per procedure which is recognized by law and which contains the safeguard of compliance of principles of natural justice.

He submits that the petitioner submitted his reply to show cause/ charge memo dated 03.06.2004. As per averments made in the counter affidavit he was afforded an opportunity of hearing. Petitioner was subjected to an enquiry in accordance with the procedure prescribed under Bihar CCA Rules wherein Enquiry Officer enquired into the charge and submitted an enquiry report dated 25.06.2005 in respect of the allegations contained in show cause to the charge sheet dated 03.06.2004.

On submission of the enquiry report, Disciplinary Authority has notified punishment which is impugned in the instant writ proceedings.

Counsel for the petitioner submits that once the authorities had embarked upon an exercise as per the prescribed procedure under CCA Rules, they were obliged to continue the



same and conclude the same as per same procedure. In terms of the prescribed procedure under CCA Rules, it was incumbent upon the Disciplinary Authority to serve copy of the enquiry report upon the petitioner. The same has not been done. Specific averment to this effect made in the writ petition has not been denied by the respondents though they have filed their counter affidavit.

Counsel for the State further submits that scope of remand by the writ court was limited. For consideration of the petitioner's response, authorities were not obliged to serve copy of the enquiry report upon the petitioner.

Such stand of the respondents-authorities amounts to blowing hot and cold at the same time. Authorities were obliged to consider show cause submitted by the petitioner which was subject matter of the proceedings in CWJC no.3362/1999 in terms of order passed in the said proceedings. The authorities however, chose to proceed afresh and initiated proceeding as per the procedure prescribed under Bihar CCA Rules by appointing Enquiry Officer and subjecting the petitioner to departmental proceedings before the Enquiry Officer. Having done so, they could not have aborted the procedure midway at any stage as per their own convenience. The procedural safeguard which is inherent in the CCA Rules could not have been dispensed with in between. Relying upon



findings of the Enquiry Officer dated 25.06.2005, in view of law laid down by the Apex Court in the case of Punjab National Bank & others vs. Kunj Bihari Mishra reported in (1998) 7 SCC 84, copy of the Enquiry Report was required to be served upon the petitioner.

That has not been done admittedly in the instant proceedings. Notification of punishment dated 16.09.2005 which is product of such procedure which is contrary to the principles of natural justice, fairness and law as declared by the Apex Court in the case of Kunj Bihari Mishra (supra) is unsustainable in the eye of law.

The Notification of punishment dated 16.09.2005 is hereby quashed. Authorities on account of quashing of punishment would be obliged to pay consequential benefit including refund of the amount which has been recovered in the meantime within a period of three months from the date of receipt/production of a copy of this order.

Writ petition is allowed.

(Madhuresh Prasad, J)

s.hassan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.9.2019
Transmission Date	NA

