

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1496 of 2011

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Birendra singh "Prabhakar" s/o Late Parmeshwar Singh, Executive Engineer,
Water Resources Department, Government of Bihar, Retired As Technical
Advisor, Punpun Food Protection Circle, Patna

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna
3. The Principal Secretary, Water Resources Department, Government of Bihar,
Patna.
4. The Deputy Secretary, Water Resources Department, Government of Bihar,
Patna.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Nageshwar Prasad Sinha
For the Respondent/s : Mr. Dhurandhar Pd. Chy Sc2

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 17-01-2019

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

2. In this case, the petitioner is challenging the Notification no.528 dated 10.07.2008 (Annexure-19), by which the punishment of reduction of 10% pension for one year and will not be entitled to the salary during the period of suspension except subsistence allowance, has been inflicted upon the petitioner. The petitioner is also challenging the order dated 05.03.2009 (Annexure-20), whereby he was communicated by the Deputy Secretary, Water Resources Department Government of Bihar, that after perusal of the Notification no.528 dated



10.07.2008 he has been awarded the punishment of reduction of 10% pension for one year and except subsistence allowance he will not be paid any salary for the period of suspension, but the period of suspension will be counted for the purposes of pension.

3. At the relevant time, the petitioner was holding the post of Executive Engineer in Water Resources Department, posted at Sone Canal Division, Ara. The petitioner was served the charge memo bearing no.2502 dated 20.08.1997, mentioning five charges levelled against the petitioner and the petitioner was communicated that the departmental proceeding initiated against the petitioner as per Rule-55 of the Bihar Civil Services (Classification, Control and Appeal) Rules, 1930. The petitioner filed his reply and categorically denied the charges levelled against him and also filed a supplementary reply to the show-cause on 31.07.1998 to the Inquiry Officer.

4. The Inquiry Officer submitted his report vide letter no.932 dated 23.09.1998, without following the proper procedure of the departmental proceeding. The departmental proceeding was conducted in violation of the natural justice, inasmuch as, without giving any proper and reasonable opportunity to defend his case, thereby violated the provision of



Article-311(2) of the Constitution of India. The Presenting Officer did not produce single witness in support of charges levelled against the petitioner nor any document was exhibited to corroborate the charges, even the relevant records demanded by the petitioner were not supplied to him. The Inquiry Officer found charges proved partly, issued the second show-cause notice to the petitioner vide letter no.1727 dated 09.08.1999, communicated three proposed punishment to be inflicted upon the petitioner; first withholding the promotion for three years, second, stoppage of two increments of the petitioner with cumulative effect and third, non-payment of salary during the period of suspension except the subsistence allowance. The petitioner filed a show-cause dated 24.09.1999 against the aforesaid proposed punishment. After lapse of three years, the Government served another show-cause vide letter no.747 dated 02.07.2002, amended the earlier decision of proposed punishment in the following manner:- demotion from the post of Executive Engineer to Assistant Engineer and will not be entitled to salary except the subsistence allowance during the period of suspension. The petitioner replied the same, again a supplementary show-cause was issued mentioning the earlier punishment, but in the meantime, this Court vide order dated



06.05.2003 passed in C.W.J.C. No.9468 of 2002 quashed the order of suspension. The petitioner filed reply to the second show-cause. The Government vide Notification no.658 dated 30.08.2004 (Annexure-9) punished the petitioner and demoted the petitioner from the post of Executive Engineer to the post of Assistant Engineer and he will not be entitled to the salary except the subsistence allowance during the period of suspension and that was challenged before this Court in C.W.J.C. No.2225 of 2004 (Annexure-10) and ultimately the order of punishment was set aside by this Court.

5. It will be relevant to mention here that for embezzlement of Government fund a criminal case vide Ara P.S. Case No.161 of 1997 was also instituted, but the Police has filed the Final Form, did not find any connecting material against the petitioner. When the order of punishment was set aside, again the petitioner approached this Court in C.W.J.C. No.7074 of 2004 (Annexure-11) and this Court vide order dated 18.08.2005 gave a direction to the respondents to refer the matter to the B.P.S.C. for consideration of promotion by the D.P.C. and the issue will be decided within 8 weeks. The Government, vide memo no.1275 dated 07.10.2005 has again decided to initiate a fresh departmental proceeding under Rule-55 of the Bihar Civil



Services (Classification, Control and Appeal) Rules, 1930 and he was served the charge sheet with five imputations. The Inquiry Officer conducted the inquiry, did not find any charge proved against the petitioner, but the disciplinary authority recorded his difference of opinion and communicated vide letter dated 08.07.2006 (Annexure-14) and proposed to award the punishment of censure for the year 1997-98, stoppage of two increments with non-cumulative effect. The petitioner has replied the same, but ultimately, the Government again issued a fresh show-cause dated 08.01.2007 (Annexure-15) and by subsequent show-cause instead of two proposed punishments it was enhanced to three proposed punishments, added the punishment, he will not be entitled to salary except the subsistence allowance for two years and for rest period of pension 90% of full salary with annual increments will be paid to him and the period of suspension will be considered for pension.

6. Again the petitioner has replied the same in the second show-cause. Before the order could have been passed, the petitioner superannuated from the service and the proceeding was converted under Section 43(b) of the Bihar Pension Rules, and accordingly, he was communicated vide



order dated 09.01.2008 (Annexure-17) and after conversion of the proceeding under Section 43(b) of the Bihar Pension Rules, the petitioner was again served the letter dated 09.01.2008 (Annexure-18) proposing three punishments and ultimately, the petitioner has been awarded three punishments in the following term;- censure for the period of 1997-98, stoppage of two increments with cumulative effect and during the suspension period for two years he will not be paid only the subsistence allowance but for the rest period he will be paid 90% of pension. The period under suspension will be counted for the purposes of pensionary benefit but finally the order no.528 dated 10.07.2008 has been passed, whereby he has been inflicted the punishment of stoppage of 10% pension for one year and will not be entitled to anything except subsistence allowance during the period of suspension.

7. Two points have been raised by learned counsel for the petitioner; first it has been submitted that the petitioner has been inflicted punishment for the charges not mentioned in the charge-sheet on the issue of administrative failure and second when the petitioner has superannuated from the service there cannot be substantive punishment against the petitioner, but the show-cause, which was issued prescribing the substantive



punishment, as explained herein-above, but finally the punishment of stoppage of 10% pension has been awarded, which was not the proposed punishment mentioned in the second show-cause. When the proposed punishment was censure for the year 1997-98 and stoppage of two increments with non-cumulative effect, the authority cannot impose the punishment of reduction of 10% pension, which has not been mentioned in the second show-cause.

8. It has further been submitted that if the authority was so sanguine about the charges on which the petitioner has been punished, in such circumstance, that charge of administrative failure should have been mentioned in the charge-sheet, it should not be based on inference derived from the factual narration made in the charge-sheet. A vague charge-sheet cannot be a subject matter of departmental proceeding but law is very much clear that the charges must be specific and clear, so that the Government servant can understand that he has been proceeded on particular charges, but the charge of administrative failure has not been mentioned in the second show-cause. It has further been submitted that the proposed punishment was substantive in nature, which could not have been inflicted after superannuation, but the punishment is quite



different, which has been mentioned in the second show-cause. So the disciplinary authority while passing the order should have taken cognizance of the fact that no show-cause with respect to punishment awarded to the petitioner was ever communicated to the petitioner.

9. On the first issue, learned counsel for the petitioner has placed reliance on the decision rendered in the case of *Union of India & Others vs. J. Ahmed (AIR 1979 SC 1022)*, wherein the Hon'ble Supreme Court has held that failure to achieve highest level of efficiency will not constitute a misconduct unless consequences directly attributable to negligence is irreparable or resultant damage would be so heavy that the degree of culpability would be very high.

10. This Court is not going to deal this issue, but only deciding the issue on the premise that second show-cause which has been served showing inflictment of proposed punishment of censure for 1997-98, stoppage of two increment with cumulative effect but in actuality the punishment of reduction of 10% pension has been awarded.

11. Learned counsel for the State submits that the Inquiry has been done properly and at every stage the petitioner was given a chance to participate in the proceeding and was also



given chance to give reply to the show-cause and only thereafter the order of punishment.

12. Having considered the rival conventions of the parties, it is well known principle of law that a person cannot be punished de hors to the charges framed by the State/employer as well as apart from the charges those have been mentioned in the charge-sheet. In the present case, glaring fact is that the proposed punishment is for censure and stoppage of two increment, but in actuality the punishment of reduction of 10% pension has been passed, which cannot be allowed to sustain.

13. In such view of the matter, the order dated 10.07.2008 (Annexure-19) and order dated 05.03.2009 (Annexure-20) are quashed. The matter is remanded back to the disciplinary authority to act in accordance with law.

14. With the aforesaid observations and directions, this writ petition is allowed.

(Shivaji Pandey, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A
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