IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1227 of 2017

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Raghunath Prasad Gupta, Son of Late Bankey Bihari Lal, Resident of At + Post - Roshana Bazar, P.S. Pranpur, District - Katihar

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue, Government of Bihar, Patna
2. The Divisional Commissioner, Purnea
3. The Collector Cum District Magistrate, Katihar
4. The Additional Collector, Katihar
5. The Circle Officer, Pranpur Block, Katihar

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Shashi Bhushan Kumar, Advocate Mrs. Arti Kumari, Advocate
For the Respondent/s	:	Mr. Sajid Salim Khan, SC-25 Ms. Prakritita Sharma, AC to SC-25

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 29-11-2019

Heard the parties.

2. Before I notice the relief, which the petitioner is seeking, it would be apt to take note of certain fundamental facts which have given rise to the orders, which are impugned in this case.

3. The petitioner, at the relevant point of time, was working as Revenue Clerk in Barari Anchal in the district of Katihar. A departmental proceeding was initiated against him on 13.03.2012 with the issuance of a charge sheet levelling following three charges :-

> *"(i) The petitioner had not deposited in the Anchal Nazarat, a sum of Rs. 16,496=00, which he had collected as rent, which constituted a case of misappropriation.*
> *(ii) By virtue of an order dated 04.01.2010, the petitioner was transferred to Pranpur Circle from Barari Circle. He disobeyed the order of transfer and did not join.*
> *(iii) The petitioner was arrested on 24.02.2010 by the Vigilance Investigation Bureau."*

4. For the benefit of clarity, the charges framed against the petitioner are being quoted hereinbelow :-

> "1. वितीय वर्ष 09–10 में लगान वसुली मद में मो0 16,496.00 (सोलह हजार चार सौ छियानवे रूपये) एवं अंचल नाजारत में समय पर जमा नहीं करना स्थाई गवन का मामला बनता है।
> 2. जिला स्थापना उप समाहर्ता कटिहार के ज्ञापांक 06/स्था0 दिनांक 4.1.10 के आलोक में श्री रघुनाथ प्र0 गुप्ता राजस्व कर्मचारी को बरारी अंचल प्राणपुर अंचल स्थानान्तरण किया गया था। लेकिन श्री गुप्ता रा0 कर्मचारी द्वारा इस आदेश का अनुपालन नहीं किया गया। आंचलिक पदाधिकारी के के आदेश की अभिहेलना का आरोप बनता है।
> 3. दिनांक 24.2.10 को श्री रघुनाथ प्र0 गुप्ता द्वारा कर्म0 को निगरानी विभाग के द्वारा ट्रेप कर लिया गया था।"

5. All developments subsequent to initiation of departmental proceeding with the issuance of the said charge-sheet need not be recorded in the present order, considering the question, which has arisen in the present case for consideration. Suffice it to say that the Inquiry Officer found the charges no. 1 and 2 proved. In respect of charge no. 3, the Inquiry Officer opined that since it

related to a matter, which was pending in Court, it would not be appropriate to record his opinion. The disciplinary authority, after consideration of the said report of the Inquiry Officer, imposed upon the petitioner punishment of withholding of three increments with non-cumulative effect, by an order dated 05.08.2013. The petitioner did not prefer any appeal against the said order.

6. Subsequently, the District Magistrate, Katihar, through his letter dated 17.02.2014, addressed to the Commissioner, Purnea Division, Purnea, made a request for reconsideration of matter on the point of punishment, considering the seriousness of charge against the petitioner of having been arrested by the Vigilance Investigation Unit while accepting bribe. On 19.02.2014, a notice was issued by the office of the Divisional Commissioner, Purnea for the petitioner to submit his explanation on the question of reconsideration of the punishment, which was imposed on him by order dated 05.08.2013. It appears that the petitioner appeared before the Divisional Commissioner. It does not appear, however, that any show cause reply was submitted by him before the Divisional Commissioner in the light of notice dated 19.02.2014. On 25.02.2014, the Divisional Commissioner passed an order remanding the matter back to the District Magistrate, Katihar with a direction to him to ensure that the pre-trap and post-trap

memoranda prepared by the Vigilance Investigation Bureau were brought on record as evidence in the departmental proceeding and, to proceed thereafter by passing an order in accordance with law. It is significant to note that the Divisional Commissioner did not set aside the earlier order of punishment, which was imposed on the petitioner by order dated 05.08.2013 and simply remanded the matter back to the disciplinary authority with a direction to proceed, as noted above.

7. It must be recorded here that Rule 28 of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules'), which govern the disciplinary action against the Government servants of the State of Bihar, confers upon the Government, Head of the Department, the appellate authority or any other authority specified in this behalf by the Government, a power to revise any order made under the Rules, either on his own motion or otherwise, after calling for the records of any inquiry, in case, no appeal has been preferred or if appeal has been preferred, the same has not been allowed and, either :-

> (i) confirm, modify or set aside the order, or
> (ii) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed, or
> (iii) remit the case to the authority, making the order or to any other authority, directing

> such authority, to make such further inquiry as he may consider proper in the facts and circumstances of the case.

8. It is manifest on reading of Rule 28 of the Rules and the aforementioned order of the Divisional Commissioner that he exercised his power under Clause (c) of sub-rule (1) of Rule 28 of the Rules by remitting the case to the disciplinary authority, which had passed the order imposing punishment. It is evident from Rule 28 of the Rules that the power of revision can be exercised by the authorities, as referred to therein, within six months of the date of the order proposed to be revised. This is an undisputed fact that a proposal to revise the order of earlier punishment was made after six months of the date of the earlier order. The Divisional Commissioner, indisputably, exercised his power by remitting the matter back to the disciplinary authority after period of six months, as prescribed under Rule 28.

9. First *proviso* to Rule 28 mandates a reasonable opportunity of making a representation before the order is sought to be revised. As has been noted above, the notice was issued on 19.02.2014 requiring the petitioner to submit his explanation/ defence by 25.02.2014. On 25.02.2014, the Divisional Commissioner, being the appellate authority, exercised his power under Rule 28 of the Rules. A question would arise as to whether

period of six days allowed by the appellate authority to the petitioner to submit his explanation can be said to be reasonable opportunity of making a representation under the first *proviso* to sub-rule (1) of Rule 28 of the Rules.

10. It must be noted here itself that the District Magistrate had recommended for reconsideration on the point of the quantum of punishment because of the seriousness of the charge No.3 against the petitioner of having been arrested by the Vigilance Investigation Unit while accepting bribe (charge no. 3). The order of the Divisional Commissioner dated 25.02.2014 also takes note of the said aspect of the charge i.e. charge no. 3. A fresh departmental inquiry was thereafter initiated against the petitioner. The Inquiry Officer submitted his report on 05.06.2014, which has been brought on record by way of Annexure-A to the counter affidavit filed on behalf of the State of Bihar. This time also, the Inquiry Officer did not find charge no. 3 proved, in the absence of any cogent evidence. However, according to him, the charges no. 1 and 2 stood proved against the petitioner as the conduct of the petitioner of not depositing the amount of Rs. 16,496=00 in Anchal Nazarat collected by him by way of land revenue amounted to temporary misappropriation of Government money. Based on this report of the Inquiry Officer, the disciplinary authority i.e. the

District Magistrate, Katihar has passed an order dated 25.06.2014, imposing punishment of dismissal from service. The petitioner's Service Appeal No. 14 of 2014 has been dismissed by an order dated 29.03.2016, passed by the Divisional Commissioner.

11. These are the two orders dated 25.06.2014 and 29.03.2016, which are under challenge in the present writ application under Article 226 of the Constitution of India. The petitioner has also put to challenge the order dated 25.02.2014, passed by the Divisional Commissioner, Purnea in Service Appeal No. 05 of 2014 (though there was no appeal preferred) whereby, on the recommendation made by the District Magistrate, in purported exercise of power under Rule 28 of the Rules, the Divisional Commissioner had remitted the matter back to the District Magistrate.

12. Mr. Y.V. Giri, learned Senior Counsel appearing on behalf of the petitioner has submitted that power of revision under Rule 28 of the Rules by an appellate authority or any other authority specified thereunder can be exercised within a period of six months as prescribed in the Rules and any action taken after an order passed in a departmental proceeding attained finality, would be beyond jurisdiction, if it is done beyond the prescribed period of limitation. He has further submitted that charge no. 3 is totally

vague, which only alleges that the petitioner was arrested by the Vigilance Investigation Bureau. There was absolutely no material at any stage before the Inquiry Officer, the disciplinary authority or even the appellate authority which could have been the basis to record a finding that the petitioner was caught red-handed by the Vigilance Investigation Team while accepting bribe. Arrest of a Government servant is itself not a misconduct, he has contended. He has further submitted that, in any view of the matter, since charge no. 3, which was the main concern for the disciplinary authority to recommend reconsideration of punishment, could not be established even in the subsequent inquiry and, therefore, action of the disciplinary authority of imposing extreme punishment of dismissal from service is wholly arbitrary and illegal.

13. Mr. Sajid Salim Khan, learned SC-25 appearing on behalf of the State of Bihar, on the other hand, has submitted that for the reasons best known to the disciplinary authority an abnormally lenient view was earlier taken in the matter of imposition of punishment on the petitioner, overlooking the gravity of the charge against the petitioner. He has contended that despite the fact that the petitioner had subsequently deposited the said amount of Rs. 16,496=00 in the Nazarat of the Anchal, withholding of the said amount, which he had collected as land revenue, itself

was a serious misconduct and imposition of minor punishment of the nature of withholding of increment with non-cumulative effect could not be said to be commensurate with the gravity of the charge. He has submitted that once it was subsequently noticed, the disciplinary authority rightly recommended to the appellate authority to exercise power under Rule 28 of the Rules. He has argued that the petitioner was given reasonable opportunity of representation, as contemplated under the first proviso to sub-rule (1) of Rule 28 and the power, which the Commissioner exercised by remitting the matter back to the disciplinary authority, is covered by Clause (c) of sub-rule (1) of Rule 28. He has lastly submitted that once the petitioner participated in the departmental inquiry conducted after the order of remand dated 25.02.2014 made by the Divisional Commissioner, he cannot now question the very departmental inquiry and the consequent decisions of the disciplinary authority and the appellate authority.

14. The legality of the action impugned, in my view, will have to be examined firstly, in the light of the statutory provision under the Rules which confers upon the authorities mentioned under Section 28 thereof a jurisdiction to call for the records of any inquiry and revise any order made under the said Rules. Rule 28(1) of the Rules reads thus :

28. ***Revision**.-(1) Notwithstanding anything contained in these Rules,-*

(i) the Government, or

(ii) the head of a department directly under the Government, in the case of a Government servant serving in a department or office, under the control of such head of a department, or

(ii) the appellate authority, or

(iv) any other authority specified in this behalf by the Government by a general or special order, and within such time as may be prescribed in such general or special order,

may at any time within six months of the date of the order proposed to be revised, either on his or its own motion or otherwise call for the records of any inquiry and revise any order made under these Rules or under the Rules repealed by the Rule 32 (from which an appeal is allowed but from which no appeal has been preferred or from which no appeal is allowed), after consultation with the Commission where such consultation is necessary, and may-

(a) confirm, modify or set aside the order, or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed, or

(c) remit the case to the authority, making the order or to any other authority, directing such authority, to make such further inquiry as he may consider proper in the circumstances of the case, or

(d) pass such other orders as it may deem fit:"

15. It is ample clear from the language of sub-rule (1) of

Rule 28 that power to call for the records and revise an order made under the Rules is subject to the condition that it is exercised within the period prescribed *i.e.* within six months of the date of the order proposed to be revised. The Rule does not authorise the competent authority to extend the said period of six months. Power of revision is statutory in nature and can be exercised only if such power is conferred and has to be exercised only in the manner prescribed under the statute an not otherwise. As has already been noted hereinabove, the order of punishment was passed on 05.08.2013 which was sought to be revised. The disciplinary authority himself had written to the appellate authority with a request to revise the order in exercise of power under Section 28 of the Rules, after passage of the said period of six months. It is rather curious to note that chain of events gained such a momentum with the recommendation of the District Magistrate on 17.02.2014 that within eight days of his recommendation, the appellate authority exercised his power of revision by passing his final order dated 25.02.2014 and, in the meanwhile, he gave the petitioner an opportunity, which, according to the respondents, was reasonable for making representation. In my view, however, the power, which the appellate authority exercised while revising the order of the disciplinary authority, was not there with him, on the date when the recommendation was made by the District Magistrate on 17.02.2014 by virtue of the expression ‘at any time within six months of the date of the order proposed to be revised’ under sub-rule (1) of Rule 28 of the Rules, let alone, the date when he passed the order on 25.02.2014.

16. It must be noted, on close scrutiny of sub-rule (1) of Rule 28 that the limitation of time within six months from the date of the order proposed to be revised is not for passing of final order in exercise of such power. It confers upon the competent authority a jurisdiction to call for the records within six months of the date of the order. Once he calls for the records of any inquiry within six months, his final order, passed in exercise of the said power, cannot be held to be bad on the ground of limitation of time, if passed beyond six months.

17. Since this is an admitted fact that the competent authority did not initiate the action for revising the order within six months of the date of the order dated 05.08.2013, the power exercised by him contrary to the statutory provision cannot be upheld. In my considered view, the entire exercise undertaken by the respondents to revise the order passed in the departmental inquiry is unauthorised, wholly without jurisdiction against the sanction of law.

18. I would have, with these observations, disposed of the present writ application without going into the other points raised on behalf of the parties. However, I have considered it apt, in the facts and circumstances of the case, to deal briefly certain other aspects which have been canvassed, touching the manner in which the subsequent inquiry was held which finally culminated into imposition of punishment of dismissal from service. The only reason why the disciplinary authority had considered it proper to request the appellate authority to exercise his revisional power under Section 28(1) was the petitioner's involvement in a trap case which was framed against him as charge no. 3. It is noteworthy that the petitioner was charged of having been arrested by the Vigilance Investigation Bureau. The fact that the petitioner was arrested by the Vigilance Investigation Bureau is not at all in dispute. The criminal case lodged by the Bureau is still pending. It is not mentioned in the charge memo that he was caught by the Bureau while accepting bribe. It may, however, be presumed that he was caught by the Bureau for the said reason. There is no opinion recorded in either of the inquiries that the petitioner was caught red-handed while accepting bribe. As a matter of fact, there was no material before the Inquiry Officer to record his finding, in this regard.

19. So far as the allegation against the petitioner of having temporarily embezzled a sum of Rs. 16496=00 is concerned, the disciplinary authority, considering his subsequent had thought it proper to impose the punishment by order dated 05.08.2013. There is nothing to show that charge no. 1 weighed the mind of the revisional authority to exercise his power under Rule 28(1) of the Rules. I would reiterate here that arrest of a Government servant in a trap case or in a criminal case itself cannot be a misconduct. His act, for which he is arrested in a criminal case, may/ would constitute a misconduct for the purpose of any disciplinary action. If on an allegation of taking bribe a Government servant is arrested in a trap and a disciplinary action is to be taken against him on this charge, the department will have to establish in the disciplinary proceeding, though, on preponderance of probability of his conduct of taking bribe.

20. In my view, therefore, the impugned orders dated 25.02.2014, passed by the Divisional Commissioner, Purnea in Service Appeal No. 05 of 2014, order dated 25.06.2014, passed by the District Magistrate, Katihar and the order dated 29.03.2016, passed by the Divisional Commissioner in Service Appeal No. 14 of 2014 require interference by this Court being wholly without jurisdiction, illegal and unsustainable.

21. Consequences of the order shall follow. It has been stated at the Bar that the petitioner has already attained the age of superannuation and, therefore, there is no question of his reinstatement. Since I have held the impugned orders to be without jurisdiction, the authorities shall proceed, while deciding the petitioner's entitlements, as if there were no such orders ever passed.

22. It is, however, clarified that the respondents shall be at liberty to take appropriate decision under the Pension Rules, depending on the outcome of the criminal case pending against the petitioner, in accordance with law.

23. This application is accordingly allowed, with the direction and observations noted above.

24. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06 .01.2020
Transmission Date	NA