

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 12192 of 2005

SHASHI KUMAR SINGH, Son of Sri Shiv Kumar Singh, Resident of Village
– Kiran Palace, Hanuman Tekary, PS & District – Deoghar (Jharkhand)

... .. Petitioner/s

Versus

1 THE STATE OF BIHAR
2 The Registrar General, Patna High Court, Patna
3 The District & Sessions Judge, Madhubani
4 The Judge-in-charge, Nazarat and Administration, Civil Courts,
Jhanjharpur, Madhubani

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Rajeev Kumar Singh
For the Respondent/s	:	Mr.Gp9

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

CAV JUDGMENT

Date : 21-08-2020

Heard learned counsel for the petitioner and the learned
counsel appearing for the respondents.

2 The petitioner has assailed the order dated
03.06.2002 bearing No 823 whereby the District & Sessions
Judge, Madhubani has dismissed the petitioner from service with
effect from 01.06.2002. The petitioner has sought a direction for



payment of arrears of salary which he alleges to be due since 01.07.2000. He has also prayed for reinstatement in service.

3 The brief factual background is that the petitioner was working as a Clerk in the Civil Courts at Deoghar. On administrative grounds, he was transferred from Deoghar Judgeship, to Madhubani District, for which he was relieved in the afternoon of 28.04.1998.

4 Vide Memo dated 15.06.2001, the Judge Incharge, Nazarat and Administration, Jhanjharpur (Madhubani Judgeship) was directed to call for a show cause from the petitioner and to conduct enquiry against him. On 23.06.2001, the petitioner was served with a Charge Memo calling upon him to submit his reply thereto. The Charge Memo contained four charges. Charge No 1 was that upon his relieving from Deoghar on 28.04.1998, the petitioner submitted his joining at the transferred place of posting in the Judgeship at Madhubani on 01.07.2000. Thus, he had not complied with the transfer order from 28.04.1998 till 01.07.2000. The other three charges, contained in the Charge Memo, allege that the petitioner has been absent without leave for the period 16.11.2000 to 07.12.2000, 16.12.2000 to 16.02.2001 and 20.02.2001 to 10.05.2001. Another and very serious allegation against the petitioner was that in respect of the period of absence,



though attendance register for the dates of absence was crossed by the Presiding Officer indicating his absence, the petitioner has marked his attendance by overwriting upon the same without any permission.

5 As if this was not enough, the petitioner chose not to appear before the Enquiry Officer and avail the opportunity granted to him in spite of several dates fixed in the enquiry to enable him to appear in the proceedings, i e, on 19.07.2001, 30.07.2001, 22.08.2001, 12.09.2001 and 03.01.2002.

6 Finding the petitioner guilty of the charges, the Enquiry Report was submitted by the Enquiry Officer and was forwarded to the petitioner along with the second show cause notice dated 22.03.2002 (Annexure 10). Since the petitioner had continuously remained absent from his office at Madhubani, the second show cause notice was sent to the petitioner at his home address, i e, at Deoghar. The second show cause notice allowed the petitioner 15 days time for making his response. The petitioner has, thereafter, sent his response to the second show cause notice by registered post which was received in the office of the District & Sessions Judge, Madhubani on 26.04.2002. Even at this stage, before the Disciplinary Authority, the petitioner has chosen not to



appear or to take any step after sending his response by registered post.

7 From bare perusal of the petitioner's response to the second show cause notice, it is apparent that the petitioner has admitted to the long absence for the periods indicated in the Charge Memo. He has also admitted that he marked his attendance by overwriting though the same was crossed by his Presiding Officer on account of his absence. The petitioner, however, has tried to explain his absence by raising a plea of suffering with asthma. Regarding marking of his attendance, after absence being recorded by the Presiding Officer by overwriting in the attendance register, he has accepted the same also, but submitted that it was done after permission of the Judge Incharge, Administration in presence of the Sheristedar as the attendance register was kept in the almirah of the Sheristedar. This stand of the petitioner, however, is unsustainable in view of the fact that the day on which he claims to have marked his attendance after due permission from the Judge Incharge, the petitioner, as per his own stand, was not present at Madhubani.

8 It is submitted by the petitioner's counsel that the proceedings were conducted in gross violation of the principles of natural justice. He submits that the earlier District & Sessions



Judge had given the petitioner a clean chit in respect of the period of absence. In support of such submission, reliance is placed on Annexure 6 which the petitioner claims to be an order issued by the earlier District & Sessions Judge, Madhubani on 20.02.2001 (prior to issuance of charge memo on 23.06.2001) at Camp Court at Jhanjharpur. Surprisingly, the said letter does not contain any memo number. The petitioner's stand is that the order dated 20.02.2001 was issued by the then District & Sessions Judge prior to his retirement after considering the petitioner's explanation dated 19.02.2001. What prompted the petitioner to submit his explanation dated 19.01.2001, however, is not on record. The petitioner has not stated any detail regarding any communication calling for an explanation from him in response to which he claims to have submitted his explanation dated 19.02.2001. Even the order dated 20.02.2001, relied upon by the petitioner (Annexure 6) to the writ petition, does not contain any detail regarding the alleged show cause notice, in response to which petitioner submitted his show cause. Submission of explanation dated 19.02.2001 suo motu and acceptance of the explanation by order dated 20.02.2001 without any issue/memo number, which he claims to have been issued by the District & Sessions Judge, therefore, is unreliable. The Enquiry Officer and the Disciplinary



Authority have rightly disbelieved the aforesaid defence of the petitioner.

9 Altogether, the petitioner has been absent without leave from 16.11.2000 to 30.11.2000, 01.11.2000 to 07.12.2000, 16.12.2000 to 22.02.2000, 23.12.2000 and 02.01.2001. He has also been absent from 20.02.2001 to 30.06.2001 and 01.07.2001 to 31.08.2001. Prior to these periods of absence without leave, the petitioner has not complied with the order, transferring him from Deoghar to Madhubani Judgeship for a very long period. Though he was relieved from Deoghar on 28.04.1998, he has not joined at the transferred place until 30.06.2000, i e, a period of more than two years. That apart, the petitioner has chosen not to appear in the proceedings in spite of various adjournments granted to facilitate his appearance before the Enquiry Officer. Even thereafter, he has never appeared before the Disciplinary Authority. Since the petitioner has himself chosen not to participate in the proceedings, there is a deemed waiver with the principles of natural justice by the petitioner. The Apex Court in the case of *Board of Director, Himachal Pradesh Transport Corporation & Another -Versus- K C Rahi, (2008) 11 Supreme Court Cases 502* has clearly held that under such circumstances where the delinquent chooses not to participate in the proceedings in spite of



opportunity granted, he is estopped from raising the plea of non-compliance of the principles of natural justice. The Apex Court has held that in such circumstances, the principles of natural justice cannot be applied as a straight jacket formula. This Court would consider it useful to reproduce paragraph 8 of the judgment :

“8. In the instant case, we have been taken through various documents and also from the representation dated 19.10.1993 filed by the respondent himself, it would clearly show that he knew that a departmental enquiry was initiated against him yet he chose not to participate in the enquiry proceedings at his own risk. In such event, plea of principle of natural justice is deemed to have been waived and he is estopped from raising the question of non-compliance with principles of natural justice. In the representation submitted by him on 19.10.1993, the subject itself reads “DEPARTMENTAL ENQUIRIES”. It is stated at the Bar that the respondent is a law graduate, therefore, he cannot take a plea of ignorance of law. Ignorance of law is no excuse much less by a person who is a law graduate himself.”

10 The order of the Disciplinary Authority dismissing the petitioner from service is an elaborate and detailed order taking into consideration the petitioner’s assertions and response to the charges sent by post. The petitioner himself, on the other hand, chose not to appear at any stage of the proceedings. Based on the material before the Disciplinary Authority, considering the petitioner’s response to Charge Memo and response to second



show cause notice sent by post, a detailed and elaborate order has been passed dismissing the petitioner from service.

11 The petitioner's counsel has also made submissions assailing the correctness of the orders passed by the Enquiry Officer and the Disciplinary Authority. He has alleged mala fide and that the entire proceeding was not in accordance with law and violative of the procedure prescribed. He has made elaborate submissions to emphasize that the enquiry report as well as the order passed by the Disciplinary Authority are factually unsustainable. The submissions of the learned counsel for the petitioner have to be viewed in the background of the parameters for consideration, established by now through various precedents.

12 This Court exercising judicial review under Article 226 of the Constitution of India, referring to the decision in the case of *Union of India & Others -Versus- P Gunasekaran, (2015) 2 Supreme Court Cases 610*, would confine judicial review to the decision making process. This Court is not inclined to look into the order of the Disciplinary Authority, as if it is sitting in appeal over the same. Paragraphs 12 and 13 of the judgment, which are relevant and squarely covers the scope of consideration of the orders passed in the disciplinary proceedings, are as follows :

“12. Despite the well-settled position, it is painfully disturbing to note that the High



Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether :

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case.

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very fact of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;



(i) the finding of fact is based on no evidence.

13. *Under Articles 226/227 of the Constitution of India, the High Court shall not:*

(I) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based;

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.”

13 This Court would only observe that from the facts available on record, it appears that the petitioner has refused to comply with the transfer order for a long period. If that was not enough, he has also marked his attendance by overwriting on the Attendance Register, which was kept in the Court complex. He has not responded to or availed the opportunity granted to him before the Enquiry Officer or the Disciplinary Authority. All this has been established in the proceedings.



14 No case is, therefore, made out for setting aside the order of punishment awarded to the petitioner.

15 Writ petition is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	AFR
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