

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1454 of 2020

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Jitendra Kumar Singh, S/o late Sitaram Singh, Resident of Ramnagar Postal Park Road No. 4, P.S.- Jakkanpur, District- Patna, Bihar, Then Cane Commissioner, Industry Department, Government of Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
4. The District Magistrate, Vaishali at Hajipur.- Respondents-1st set.
5. The Union of India Through Secretary, Department of Personnel and Training, Govt. of India, New Delhi.- Respondent-2nd set.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sudha Chandra, Adv.
For the Respondent/s : Mr. Sheo Shankar Prasad (Sc8), Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 13-10-2020

The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.

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

Petitioner has prayed for following reliefs:-

“(i) To issue an appropriate writ, order or direction for quashing the order dated 25.07.2019, passed by the Division Bench



of Central Administrative Tribunal, Patna, Bench, Patna in O.A. No. 50/583 of 2017, whereby and whereunder the application filed by the petitioner for quashing the Memo No. 6/A-52/2016 SP 12275 Patna-15 dated 21.09.2017 alongwith charge memo issued by respondent no. 3 against the petitioner was disposed off with a direction to the petitioner to submit his explanation to the disciplinary authority who will pass the order in accordance with the materials on record and the law laid down by the Apex Court on the point of delay in initiating disciplinary proceeding.

(ii) To issue further an appropriate writ, order or direction for quashing Memo No. 6/A-52/2016 SP 12275 Patna-15 Dated 21.09.2017 alongwith Charge Memo issued by respondent no. 3 against the petitioner as the same is without any authority, contrary to Rule-7 of Rule 1969 as also on the ground of inordinate delay and also is against the spirit of the order passed by the Hon'ble Supreme Court on 14.08.2018 in Civil Appeal No. 8254 of 2018.

(iii) To issue further appropriate writ, order or direction commanding the respondents to grant all the consequential benefits forthwith to the petitioner at par with 2006 batch mates of Indian Administrative



Service Officers including promotions and other service benefits alongwith arrears.

(iv) To issue further appropriate writ order or direction commanding the respondent 1st set to accord all consequential benefits to the petitioner which has not been given because of pendency of above noted frivolous proceeding.

(v) This Court may adjudicate and hold that in view of the series of pronouncement of the Hon'ble Supreme Court and the law laid down on the point, the issuance of charge memo after an inordinate delay of about 6 years is completely illegal and not sustainable in the eye of law.

(vi) This Court may adjudicate and hold that the respondents first set have not authority to issue a charge Memo on 21.09.2017 upon the petitioner who at the relevant time admittedly was in the cadre of I.A.S., for a proceeding being conducted against the Rule 7 of All India Service (Discipline & Appeal) Rules, 1969 that too without obtaining any sanction from the Central Government.

(vii) This Court may adjudicate and hold that initiation of proceeding after such a long period of 6 years is completely illegal and arbitrary when during intervening period the petitioner was promoted in the



cadre of Indian Administrative Service after examining/verifying all his ACR and integrity reports etc.

(viii) This Court may further adjudicate and hold that the order passed by the Central Administrative Tribunal Patna Bench is illegal and not sustainable in the eye of law because the petitioner being the I.A.S. cannot be subjected to any proceeding by the State Authorities without prior sanction of the Central Government and secondly, after retirement, the disciplinary authority has no jurisdiction to obtain any explanation from the petitioner as the Departmental proceeding pending against the petitioner is not converted under Section 43B of the Pension Rules.

(ix) To award any other relief or reliefs for which the petitioner is found entitled in the fact and circumstance of the case.”

Briefly, stated, the facts of the case is that petitioner was initially appointed in Bihar Administrative Service as Deputy Collector in the year 1985, his services were placed by General Administration Department to department of Revenue and Land Reforms and he was posted as District Land Acquisition Officer, Vaishali (Hajipur) vide notification no. 420 dated 30.06.2009 issued by department of Revenue and Land



Reforms. The District Magistrate, Vaishali vide letter dated 29.02.2012 reported to General Administration Department, Bihar that petitioner remained on continuous leave and due to his absence, urgent land acquisition works were hampered. The District Magistrate, Vaishali recommended for withdrawal of his service and in pursuance thereof department of Revenue and Land Reforms returned the services of petitioner to the General Administration Department.

Department of Revenue and Land Reforms was asked by General Administration Department to send article of Charges alongwith evidences with respect to his unauthorized absence and hindrance caused to land acquisition work due to his continued absence and as follow up action department of Revenue and Land Reforms asked the District Magistrate, Vaishali to sent requisite article of charges alongwith evidences to General Administration Department, Bihar.

Petitioner was inducted into Indian Administrative Service vide department of Personnel and Training, Government of India, notification dated 04.05.2016 and subsequently, allotted batch of 2006.

Petitioner was not granted his due promotion in the rank of Additional Secretary and Special Secretary on the



ground that there is a break in the service of the petitioner as his service for certain period was not regularized.

Petitioner made representation before the Principal Secretary, General Administration Department, Patna on 06.04.2017 for regularizing of his leave for the period from 2009 to 2011 but instead of regularizing his services departmental proceeding was initiated against him by serving memo of charge dated 21.09.2017.

The District Magistrate, Vaishali vide its letter dated 21.08.2017 send article of charges alongwith evidences in which it was stated that petitioner joined in the district on 06.07.2009 and without taking any permission proceeded for Delhi for check up of his eyes by sending application dated 08.08.2009 for leave from 09.08.2009 to 16.09.2009. Again he sent his application dated 16.10.2009 for extension of leave for one and half months vide application dated 01.12.2009 and finally joined on 16.10.2010. He again proceeded on leave without approval of leave by sending an application on 08.11.2011, 21.11.2011, 05.12.2011, 04.01.2012 and 20.02.2012 and remained unauthorizedly absent for considerable period during time of his posting as District Land Acquisition Officer, Vaishali.

Before the Tribunal two issues were raised by the



petitioner and petitioner relied upon two judgments of the Apex Court in the case of State of Madhya Pradesh Vs. Bani Singh and Anr. Since reported in 1990(Supp)SCC 738 and in the case of P.V. Mahadevan Vs. Md. T.N. Housing Board since reported in (2005) 6 SCC 636.

Firstly, that disciplinary authority is not competent to initiate disciplinary proceeding against him as cadre controlling authority of petitioner is the Central Government and without its permission no departmental proceeding can be initiated against him and secondly, there is delay of six years in initiation of departmental proceeding which has been answered by the CAT, Patna Bench in para 16, 17, 18, 19, and 20 which reads as follows:-

“16. On perusal of materials on record, it is noticed that the applicant has been served with a charge memorandum dated 21.09.2017 for the unauthorized absence as mentioned in Article Charges dated 21.09.2017 and considering the same as misconduct/misbehaviour of the applicant, the applicant was called upon under provision of Rule 8(5) of IAS (D&A) Rules, 1969 for his explanation/reply against the proposed



disciplinary enquiry. The applicant has not submitted any reply to the said charge memorandum and filed the present OA.

17. As noticed hereinabove, the first ground raised by the applicant about competency of the disciplinary authority for issuance of charge memorandum dated 21.09.2017, since the applicant has entered into IAS cadre. In this regard, the clarification submitted by the respondents based on provision of Rule 7 of the IAS Rules and undisputedly the charges levelled against the applicant under the charge sheet for the act of omission which renders him liable to penalty specified in Rule 6 is related to his prior service. It is also not in dispute that through the applicant was a member of IAS, he was serving in connection with the affairs of State of Bihar and as per the provision of Rule 7, the authority who instituted proceeding, is the State of Bihar and the same is also in conformity with the clarification issued by the DOPT in their letter dated 15th March, 2017.

18. In view of this we are of the considered opinion that the



disciplinary authority in the present case who has issued the charge memorandum dated 21.09.2017 against the applicant is competent authority is the for initiation of disciplinary proceeding against the applicant. Therefore, the submission of the applicant about lack of competency of disciplinary authority is hereby rejected.

19. So far second ground raised by the applicant about inordinate delay in initiation of disciplinary proceeding, and on the said ground the disciplinary proceeding is vitiated in the light of various judicial pronouncement as referred by the applicant, 1990 Supp. Paged 738, State of M.P. Vs. Bani Singh and others, State of Punjab Vs. V.K. Khanna and other citations as noted hereinabove (supra), is concerned, the same reply/submissions required to be submit before the disciplinary authority in response to charge memorandum dated 21.09.2017 whereby the disciplinary authority has directed the applicant to submit his reply under the provision of Rule 8(5) of IAS (D&A) Rules, 1969.



Undisputedly, though statutory remedy of submission of explanation/reply to the charges levelled against the applicant delinquent has been provided to the applicant, however, the applicant has not submitted his reply/explanation to it. In this regard, it is apt to note that the respondents in their written statement has categorically stated that as and when the applicant will submit his explanation/reply to the charge memorandum dated 21.09.2017, the same will be considered in accordance with rules.

20. Under the circumstances, we are of the considered view that the applicant ought to have avail the statutory remedy provided under Rule 8(5) of IAS (D&A) Rules, 1969. The prayer sought in this OA for quashing and setting of the charge memorandum dated 21.09.2017 is not acceptable. However, we also take note of submission of the applicant that during the pendency of this OA the applicant is retired on attaining the age of superannuation and due to pendency of the disciplinary proceeding, his



retiral dues including pensionary benefits has not been settled. Considering the aforesaid discussions, we dispose of this OA with directions to the applicant to submit his explanation/reply in pursuance of charge memorandum no. 12275 dated 21.09.2017 within a period of thirty days from the date of receipt of a copy of this order. Thereafter, on receipt of explanation/reply, the disciplinary authority is directed to consider and pass appropriate order within a period of sixty days in accordance with materials on record as also laid down by Hon'ble Apex Court on the point of delay in initiating disciplinary proceeding. No costs."

Charges seems to be grave in nature. Charge sheet could be quashed on the ground of delay, if delay causes any prejudice to delinquent, which requires to be pleaded and proved in a departmental proceeding. The Apex Court in the case of Additional Superintendent of Police Vs. T. Natarajan since reported in (1999) SCC (LS) 646, has held as follows:-

"In regard to the allegation that the initiation of the disciplinary proceedings was belated, we may state that it is settled law that mere delay in



initiating proceedings would not vitiate the enquiry unless the delay results in prejudice to the delinquent officer. In this case, such a stage as to examine that aspect has not arisen.”

Petitioner appears to be in habit of flouting service norms and discipline. Earlier also twice he was proceeded for various acts of omission and commission, however, both proceedings were quashed on ground of delay and for technical reasons and not on merit. Every time he cannot be allowed to go Scott free.

Learned Tribunal did not interfere with the disciplinary proceeding for the reason that petitioner was asked to submit his defence/reply/explanation with respect to charges framed against him for consideration by the disciplinary authority and after consideration of his reply it was open for the disciplinary authority to accept his reply/explanation and drop the proceedings or to continue with the proceedings.

Learned Tribunal by impugned order directed petitioner to submit his reply/explanation within 30 days and disciplinary authority was directed to consider and pass appropriate order within a period of 60 days including consequences of delay in initiating departmental proceeding but



instead of filing his reply/explanation before the disciplinary authority, petitioner filed present writ petition for setting aside the order of Tribunal.

This Court does not find any error or infirmity in the order passed by Central Administrative Tribunal, Patna, requiring any interference in its writ jurisdiction, accordingly, present writ petition is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.11.2020
Transmission Date	NA

