

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7380 of 2020

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Savita Verma Wife of Late Manoj Kumar Resident of Village-Jitanpur, P.S.
Muffassil, District-Begusarai, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The Divisional Commissioner, Munger Division, Munger, Bihar.
3. The District Magistrate, Begusarai, Bihar.
4. The Deputy Development Commissioner-Cum-Departmental Enquiry Officer, Begusarai.
5. The Circle Officer, Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Prashant Kumar
For the Respondent/s : Ms.Divya Verma (AC to AAG 3)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT
Date : 12-03-2021

The facts, which are not in dispute and are relevant for adjudication of this matter, are as under:-

The petitioner is the widow of one Manoj Kumar, who, at the relevant point of time was posted as *Rajasva Karmachari*, Begusarai Sadar Circle in the District of Begusarai. He was apprehended by a vigilance team on the charge of corruption on 27.11.2008 leading to registration of Vigilance Case No. 101 of 2018. He was placed under suspension. A departmental proceeding was initiated against him vide Departmental Enquiry Case No. 02/2009 under the Bihar Government Servants



(Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the CCA Rules') vide memo no. 652 dated 25.07.2009. An Enquiring Authority and a Presenting Officer were appointed for the said departmental proceeding. The Enquiring Authority submitted his report dated 26.11.2009, which has been brought on record by way of Annexure-6 to the writ application. There were four charges framed against the deceased husband of the petitioner. In respect of the charges no. 1, 2 and 4, the Enquiry Authority recorded his specific finding that the same could not be said to have been proved. In respect of charge no. 3, the Enquiring Authority opined that the conduct of the government servant could be described 'clerical error' for which he could be issued a note of caution to be careful in future.

2. The District Magistrate, who was the disciplinary authority, however, decided to cause a fresh departmental enquiry (2nd departmental enquiry) in respect of the same set of charges vide memo no. 1141 of 13.11.2009, this time appointing the Deputy Collector Land Reforms as the Enquiring Authority and Circle Officer as the Presenting Officer. Subsequently, the Sub-Divisional Officer was appointed by the Enquiring Authority. The Enquiring Authority submitted his report dated 04.04.2010 doubting the manner, in which, the pre-trap and post-trap



memorandum were prepared by the vigilance team and opined that there appeared to be an old animosity existing between the charged government servant and two witnesses of the post-trap memorandum, who could not be treated to be independent witnesses. He further recorded that since the matter was *sub judice* and the facts required judicial scrutiny, no conclusive finding could be recorded by him. He also opined that it would be better if disciplinary action was taken against the petitioner's husband after conclusion of the criminal case. Four years after the enquiry report was submitted, the petitioner's deceased husband was again put under suspension by an order dated 23.01.2014 passed by the District Magistrate, Begusarai and in respect of the same allegation leading to petitioner's arrest in the criminal case, another departmental enquiry no. 34 of 2014 (3rd departmental enquiry) was initiated with the issuance of fresh charge memo dated 24.01.2014. The petitioner's deceased husband was asked to submit his written statement of defence, which he had submitted. This time, the Addl. Collector-cum-the Enquiring Authority submitted his report holding that the charge against the petitioner's husband of having been arrested while accepting bribe, stood proved.



3. Without, however, passing any order on the report of the Enquiring Authority dated 29.01.2014, the District Magistrate, Begusarai passed another order dated 11.02.2014 appointing the Deputy Development Commissioner, Begusarai as the Enquiring Authority (4th departmental enquiry) and Circle Officer as the Presenting Officer. The District Development Commissioner held the petitioner's husband guilty of the charge of having attempted to accept bribe leading to his arrest by the vigilance team. Petitioner's husband was supplied a copy of the enquiry report with a direction to him to submit his response within three days, as it was proposed to impose one of the major punishments under Rule 14 of the CCA Rules. By an order dated 26.05.2014, the District Magistrate, Begusarai passed his order on the report of the Enquiring Authority whereby punishment of dismissal from service was imposed on the petitioner's husband.

4. The petitioner's husband thereafter preferred appeal before the Divisional Commissioner, Munger against the order of dismissal dated 26.05.2014 which gave rise to Service Appeal No. 15 of 2014, which was rejected by an order dated 10.12.2014. The petitioner's husband, thereafter, approached this Court assailing the order of the Appellate Authority dated



10.12.2014 by filing a writ petition, which gave rise to C.W.J.C. No. 5410 of 2014.

During the pendency of the writ application, the petitioner's husband died on 11.07.2015 and since the cause of action still survived, he was substituted by the present petitioner, his widow.

5. By an order dated 09.04.2018, the writ application was allowed and the impugned order of the Appellate Authority dated 10.04.2014 was set aside on the ground of the same being non-speaking and, therefore, violative of principles of natural justice. The matter was remanded back by this Court to the Appellate Authority with a direction to pass an order afresh on the appeal preferred by the petitioner's deceased husband. After the matter having been remanded back by this Court, the Divisional Commissioner, Munger-cum-Appellate Authority considered the entire chain of events in relation to the departmental proceeding consequent upon the arrest of the petitioner's husband in the vigilance case, set aside the order of dismissal passed by the disciplinary authority dated 26.05.2014 and remanded the matter back to the disciplinary by his order dated 24.08.2018. While allowing the appeal, thus, and remanding the matter back to the disciplinary authority, the Appellate Authority directed the



disciplinary authority to carry out a logical and legal scrutiny of the circumstances relating to appointment of four successive Enquiring Authorities. He also directed the disciplinary authority to pass an order afresh after examining the evidence of the then Deputy Collector Land Reforms, Circle Officer, Circle Inspector, Begusarai, the concerned Anchal Amin and two independent witnesses namely Mukesh Kumar Singh and Rajnish Singh which are concrete evidences for final decision.

6. There is clear finding of the Appellate Authority that the evidence of two independent witnesses of the criminal case namely Mukesh Kumar Singh and Rajnish Singh were not available during the departmental enquiry.

7. In the aforesaid background, the petitioner, who is widow of the government servant has filed present writ application under Article 226 of the Constitution of India seeking following reliefs:-

“(i) For issuance of appropriate writ, order or direction in the nature of Certiorari thereby quashing and setting aside the Memo No. 1754 dated 11.11.2019 and Memo No. 780 dated 02.03.2020 whereby the District Magistrate, Begusarai was placed notice the witnesses for their deposition afresh pursuant to the order dated 24.08.2018 in Service Appeal No. 03/2018 passed by the Divisional Commissioner, Munger whereby the order dated 26.05.2014 in Memo No. 591 was set aside and the entire matter



related to the departmental proceeding against the deceased husband of the petitioner was remanded back to the District Magistrate, Begusarai inter alia for scrutiny and review of the depositions of Mukesh Kumar Singh and Rajnish Singh for arriving at a logical and legal conclusion.

(ii) For issuance of an appropriate writ, order or direction in the nature of Certiorari thereby quashing and setting aside the entire departmental proceedings initiated pursuant to the Vigilance Case No. 101/2008 dated 27.11.2008 against the Petitioner's husband namely Late Manoj Kumar in the interest of equity and doing complete justice."

8. Mr. Prashant Kumar, learned counsel appearing on behalf of the petitioner has submitted that the entire action of the respondents right from his arrest in a stage managed criminal case and subsequent departmental proceeding are wholly arbitrary, illegal, unreasonable and, therefore, this Court's interference exercising power of judicial review is needed. He has submitted that the Rules do not permit a fresh departmental enquiry, once an enquiry is concluded by an enquiring authority. In total breach of the statutory provisions, the disciplinary authority kept on appointing new enquiring authorities without passing specific order on the report of the Enquiring Authorities, which were favourable to the petitioner. He has also submitted that now, the Appellate Authority, by the impugned order has set aside the order of



dismissal passed by the disciplinary authority after noticing gross defects in the departmental enquiry, report of the departmental enquiry and the order of the disciplinary authority, which are palpable. He has submitted that since the petitioner's husband is no more, the departmental proceeding consequent upon setting aside of the dismissal order by the Appellate Authority stands abated. He has relied on a Division Bench decision of this Court dated 23.02.2018 passed in LPA No. 247 of 2015 (*The State of Bihar and Others v. Shanti Kumari and Others*) and a coordinate Bench decision (rendered by me) dated 01.12.2020 passed in C.W.J.C. No. 8052 of 2020 (*Bibha Devi v. The State of Bihar and Others*).

9. Ms. Divya Verma, learned AC to AAG 3 on the other hand has submitted that there is no legality in the impugned order of the Appellate Authority considering serious nature of charge against the petitioner's husband of having attempted to accept bribe in connection with discharge of his official duties. She has submitted that in any view of the matter, the disciplinary proceeding cannot be said to have abated consequent upon death of the petitioner's husband because the Appellate Authority by the impugned order had remanded the matter back to the disciplinary authority merely for passing an order afresh on the materials already available on record. She has argued that since the matter is for passing of final



order by the disciplinary authority, the decisions of this Court in case of *Shanti Kumar* (supra) (Division Bench) and Bibha Devi (supra) do not support the petitioner's contentions rather the said decision permit the disciplinary authority to pass an order afresh.

10. This is to be noted that a counter affidavit has been filed on the behalf of the State of Bihar and while recording the admitted facts of the case, averments made in the counter affidavit have been kept in mind.

11. In order to answer rival submissions made on the behalf of the parties, it would be appropriate to notice the findings recorded in the order passed by the Appellate Authority. The Appellate Authority has clearly recorded in his order dated 24.08.2018 that no attempt was taken to record evidence of the then Deputy Collector Land Reforms, Begusarai, Circle Officer, Begusarai, Circle Inspector, Begusari and Anchal Amin in respect of the occurrence dated 26.11.2008 and the explanation of the deceased government servant was simply rejected. He has also noticed in his order, absence of evidence of two independent witnesses namely Mukesh Kumar Singh and Rajnish Singh. It is evident thus that in the opinion of the Appellate Authority, certain witnesses, whose examination was crucial for the departmental enquiry was essential to establish the charge against the petitioner's



husband were not examined during the departmental enquiry. In the absence of such evidence, in the opinion of the Appellate Authority, charge against the petitioner's husband could not be said to have been proved.

12. In the Court's opinion, the witnesses cannot be examined during the departmental enquiry now in the absence of the delinquent government servant, who is no more as availability of opportunity to cross-examine the witnesses has extinguished. Because of this situation, the departmental proceeding in the Court's opinion will abate. It has been clearly held by the Division Bench in case of ***Shanti Kumari*** (supra) as under:-

“The legal position as it stands is, that if a matter requires a remand to the Disciplinary Authority for proceeding afresh in the matter but the delinquent has deceased in the meanwhile, the disciplinary proceeding would abate as a whole. But if there is no procedural default by the Disciplinary Authority; the delinquent has been given opportunity to examine the evidence, both oral and documentary; and the order of penalty is to be tested on its merits by the Appellate Authority, then the death of the delinquent would not lead to abatement because the disciplinary proceeding has attained finality. The essential requirement in either situation is, that the records should be available.”



13. In the present case, the disciplinary proceeding cannot be said to have attained finality and, therefore, the death of the delinquent would lead to abatement of the entire departmental proceeding.

14. Though the petitioner has sought for quashing of the order of the Appellate Authority dated 24.08.2018, in the facts and circumstances which have been noted above, the same does not require any interference by this Court. However, this application still deserves to succeed on the ground that the entire disciplinary proceeding has abated, consequent upon the death of the delinquent government servant. This court exercising power of judicial review under Article 226 of the Constitution of India can mold the relief sought in a proceeding in appropriate cases in the interest of justice.

15. In the view of the discussions noted above, the departmental proceeding against the deceased delinquent government servant is declared to have abated upon remand by the Appellate Authority in the light of the findings recorded, in the order of remand, as mentioned above. The order of dismissal has already been set aside by the Appellate Authority. Accordingly, consequences shall follow. The petitioner's husband will be treated to have not been ever dismissed from service and



accordingly the petitioner is held to be entitled to all consequential benefits in terms of arrears of salary and death-cum-retiral dues.

16. The respondents are accordingly directed to ensure payment of salary and other dues to the petitioner/heirs of the deceased employee in accordance with law within a period of six month from the date of receipt/production of a copy of this order. It is reiterated that in view of the discussion noted above, the claim of the petitioner shall be determined on the basis, as if, her deceased husband was always in service.

17. This application is allowed with the aforesaid observation and direction.

18. Interlocutory application, if any, stands disposed of.

19. There shall be no orders as to costs.

(Chakradhari Sharan Singh, J)

AKASH/-

AFR/NAFR	NAFR
CAV DATE	N/A
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Transmission Date	N/A

