

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24179 of 2018

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Umesh Kumar Sinha, Son of Late Akhileshwar Prasad Sinha, Resident of Moh-16, Pharmaceutical Colony, Bhootnath Road, P.S. Agam Kuan, Town and District-Patna.

... .. Petitioner

Versus

The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Old Secretariat Bailey Patna.

... .. Respondent

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Appearance :

For the Petitioner/s : Mr.Akhilesh Dutta Verma, Advocate
For the Respondent/s : Mr.Upendra Pratap Singh, A.C. to S.C.-4

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

9 18-02-2021 This writ application has been preferred initially challenging the order of the suspension of the petitioner with effect from 28.03.2014 vide letter no. 4225 dated 23.08.2017. A direction has been sought for revoking the suspension of the petitioner. The petitioner further prayed for a direction to pay all the arrears to the petitioner with consequential benefits from the date of his earlier termination with effect from 28.03.2014.

Briefly stating, this is the second round of litigation brought by the petitioner. He was posted as Block Supply Officer, Dumraon, Buxar. His service was terminated vide Memo No. 2175 dated 28.03.2014 after conducting a disciplinary proceeding. The said order of termination was assailed before this Court in CWJC No. 1970 of 2016. A learned coordinate Bench of this Court, upon consideration of the writ



application found that the presenting officer on behalf of the department had failed in his duty to support the charge set up against the petitioner by leading evidence in this regard. The relevant part of the findings, observations and directions of the learned coordinate Bench in CWJC No. 1970 of 2016 are being reproduced hereunder:-

“Reverting to the case in hand, conformingly even though a Presenting Officer was appointed vide Annexure 16 for the proceeding but he has failed in his duty to support the charge set up against the petitioner by leading evidence in this regard. In other words, the Enquiry Officer's opinion is a mechanical endorsement of the charge memo. Even though legal position is well settled that strict rule of evidence would not apply in a departmental proceeding but then there has to be some evidence led to support the charge and there cannot be a mechanical endorsement of the charge on mere seriousness of allegations

In the uncontested position discussed above and where the finding of the Enquiry Officer and that of the disciplinary authority as well as appellate authority are mechanical endorsement of the allegations, the decision making process is clearly defective.

In result, the Enquiry Officer's report dated 20.3.2008, impugned at Annexure 2, together with the order of the disciplinary authority dated 28.3.2014, impugned at Annexure 10, and the order of the appellate authority dated 18.8.2015, impugned at Annexure 12, cannot be upheld and are accordingly quashed and set aside. The matter is remitted back



with the liberty to the authorities, if so advised, to proceed in the matter afresh from the stage of enquiry and pass appropriate orders in accordance with law.

The writ petition is accordingly allowed.

Let the records of the disciplinary proceeding be returned accordingly.”

After the said order was passed by the learned coordinate Bench, the department appointed the Deputy Director, Food, Munger Division, Munger as Enquiry Officer. An order contained in Memo No. 4226 dated 23.08.2017 (Annexure ‘5’ to the writ application) would show that the District Supply Officer, Buxar was appointed as presenting officer, the Enquiry Officer was supposed to serve the copy of Parpatra ‘Ka’ together with all the evidences and to conclude the enquiry within a period of three months. During this period, the petitioner was placed under suspension once again with effect from 28.03.2014. The order of suspension of the petitioner is contained in Memo No. 4225 dated 23.08.2017.

This order was assailed by the petitioner by filing this writ application while he was still in service. During pendency of the writ application the petitioner superannuated from service with effect from 31.07.2019.

This writ application was taken up for consideration by this Court on 03.09.2020. A grievance was raised on that day that the respondents have not paid full subsistence allowance to the



petitioner in accordance with the Rules and even after his retirement he has not been paid the admitted post retiral dues in the name of the pendency of the proceeding. In fact the disciplinary proceeding was converted upon retirement of the petitioner in a proceeding under Rule 43(B) of the Bihar Pension Rules, 1950 (hereinafter referred to as the 'Bihar Pension Rules').

On 03.09.2020, a counter affidavit was there on the record but the same was filed prior to the date of retirement of the petitioner. This Court was given to understand that the disciplinary proceeding is on the verge of conclusion and in the changed circumstance a fresh additional counter affidavit shall be filed.

As this Court was expecting the additional counter affidavit, the disciplinary authority passed the final order as contained in Memo No. 3671 dated 14.09.2020 by which 100% of the pension and gratuity of the petitioner has been forfeited and this order has been passed in terms of Rule 43(B) of the Bihar Pension Rules. Since the punishment order was passed during pendency of the writ application, the petitioner filed an interlocutory application being I.A. No. 01 of 2020 to amend the writ application. The petitioner sought for quashing of the order passed by the disciplinary authority on the ground that the said order has been passed without following the statutory Rules '17' and '18' of the Bihar Government Servants (Classification,



Control and Appeal) Rules, 2005 (hereinafter referred to as the 'Bihar Service Rules').

Learned counsel pointed out that in the name of passing a fresh order the disciplinary authority has only done a formality ignoring the earlier order of the learned coordinate Bench of this Court. It is his submission that as per the direction of the learned coordinate Bench, the matter was remitted with liberty to the authorities to proceed in the matter afresh from the stage of enquiry and pass appropriate orders in accordance with law.

Learned counsel submits that from the impugned order of the disciplinary authority itself it would appear that there was no enquiry at all and what has been done is a mere paper transaction. No evidence was produced before the Enquiry Officer to even prima-facie show that this petitioner had demanded bribe.

Learned counsel then submits that on perusal of the impugned order itself it would appear that in the name of the material on the record, the Enquiry Officer has seen only the application of the complainant, report of the raiding squad and a paper cutting. On that basis alone the Enquiry Officer has assumed upon himself that the charge of demanding bribe and accepting bribe is proved.

Since learned counsel for the petitioner has prima-facie shown to this Court that the impugned order suffers from violation



of the statutory rules and the disciplinary authority has committed a jurisdictional error by passing a perverse kind of order without any material on the record, this Court did not allow the objection raised on behalf of the State on the ground of the principle of alternative remedy. This Court allowed the amendment application as the respondents were given an opportunity to file an additional counter affidavit. Accordingly, the respondents have filed their counter affidavit.

This Court called for the official file through learned counsel for the State. Mr. Upendra Pratap Singh, learned A.C. to S.C. 4 has assisted this Court with the records and after perusing the records, learned counsel has accepted the facts appearing from the records to the extent that before the Inquiry Officer, no evidence as regards the demand of bribe was there. Learned counsel does not deny that the second show cause notice issued to the petitioner was verbatimly same and one which was earlier issued and what had been observed by the learned coordinate Bench of this Court earlier has not been followed in its terms and spirit.

To this Court, it is quite clear that the impugned order as contained in Annexure-13 to Interlocutory Application No. 1 of 2020 suffers from various infirmities.

In this case the disciplinary proceeding has been



concluded after remand made by this Court in the earlier writ proceeding. There was a categorical direction to the authorities to proceed with the matter afresh from the stage of inquiry. In the name of enquiry only an empty formality has been done and this would be evident from perusal of the impugned order passed by the disciplinary authority. This is nothing but a repetition of the earlier order. The fact remains that before the Inquiry Officer no evidence has been brought on the point of demand of bribe and it is not being disputed by the learned counsel for the State.

In the circumstance, this Court is of the considered opinion that the impugned order passed by the disciplinary authority as contained in Annexure -13 to I.A. No. 1 of 2020 cannot be allowed to sustain. The order suffers from non-observance of the mandatory provisions such as Rule 17 and 18 of the Bihar Service Rules and further the findings recorded by the disciplinary authority is not based on any cogent evidence. The impugned order is, thus, hereby set aside.

The matter is remitted to the disciplinary authority once again for taking an appropriate view of the matter in the light of the discussions made hereinabove.

If so advised, it will be open for the disciplinary authority to proceed afresh from the stage of enquiry, conclude the same within a period of three months and pass an appropriate



order in accordance with law within a period of four months from the date of receipt/production of a copy of this order.

If the disciplinary authority proceeds to consider the matter afresh, he must abide by the time-frame fixed by this Court. In the meantime, the petitioner shall be allowed provisional pension as was being made available to him earlier prior to Annexure -13 to I.A. No. 01 of 2020. If the disciplinary proceeding is not concluded within the aforesaid period of four months, the petitioner would be at liberty to approach this court for a suitable order.

It is expected that the petitioner shall cooperate in early conclusion of the disciplinary proceeding.

The application stands disposed of accordingly.

The records of the disciplinary proceeding has been returned to learned counsel for the State.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

