

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20460 of 2018

1. The State of Bihar, through the Principal Secretary, Department of Environment and Forest, Government of Bihar, Aranya Bhawan, Riding Road, Patna.
2. The Dy. Secretary, Government of Bihar, Patna.

... .. Petitioner/s

Versus

1. Devendra Kumar Shukla S/o Late Vijay Shankar Shukla, resident of 3, Riding Road, Sheikhpura, P.S.- Airport, District- Patna.
2. The Union of India, through the Secretary, Department of Environment and Forest, Govt. of India, Lodhi Road, New Delhi.
3. The Union Public Service Commission, Dholpur House, New Delhi.
4. The Secretary, Union Public Service Commission, Dholpur, House, New Delhi.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sarvesh Kumar Singh, AAG 13
		Mr. Ravi Kumar AC to AAG 13
For the Respondent/s	:	Mr. Shyam Bihari Singh, CGC

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJIV ROY)
Date : 25-07-2022

The present writ petition has been preferred by the State of Bihar through the Principal Secretary, Department of Environment of Forest, Government of Bihar, Patna (henceforth for short 'the Department') challenging the order dated 4.1.2017 passed by the Central Administrative Tribunal, Patna Bench, Patna (henceforth for short the 'Tribunal') in O.A. No. 206 of 2016 by which 'the Tribunal' has been pleased to quash the punishment order of the applicant-respondent no.1, Devendra Kumar Shukla.



2. The matrix of facts giving rise to the present writ petition is/are as follows:-

(i) The applicant-respondent no.1 is an Indian Forest Officer of 1982 batch. During the period 1998-99, he was posted as Divisional Forest Officer, Bettiah Division-II and In-charge of Conservator of Forest, Muzaffarpur Circle;

(ii) on 4.12.1999, while exercising quasi judicial power, he renewed the licenses of 08 (eight) Saw Mills. The said renewal was made for the period 1998-99;

(iii) In the year 2007, after eight years, a complaint was preferred against him alleging illegal renewal of the licenses of the saw mills. Accordingly, an internal enquiry was conducted and report was submitted on 18.4.2007. On 13.9.2007, reply was sought from the applicant-respondent no.1 who duly responded.

3. Five years later, on 13.3.2012, the State of Bihar directed the Principal Chief Conservator of Forest, Bihar, Patna (henceforth for short as 'the PCCF') to submit a report in the matter. The said officer submitted his report on 26.11.2012 stating therein that:

(i) neither any irregularity has been committed nor there was any financial gain in issuing the licenses;



(ii) he further held that there was no ban for the issuance of license either by the Supreme Court or any other Court.

4. However, the State Government held that the applicant-respondent no.1 has violated the provisions of Bihar Saw Mills Act (henceforth for short 'the Act') and sought reply from him in 2013. The applicant-respondent no.1 submitted his reply in 2014.

5. The State of Bihar thereafter referred the matter to the Union Public Service Commission, New Delhi (henceforth for short 'the UPSC') in 2014.

6. 'The UPSC' advised imposition of punishment of one increment for a period two years without cumulative effect.

7. Accordingly, the State of Bihar issued memo no. 343 dated 3.2.2015 imposing the said punishment of one increment for a period of two years without cumulative effect.

8. Aggrieved, the applicant-respondent no.1 preferred O.A. No. 206/2016 before 'the Tribunal'.

9. The case of the applicant-respondent no.1 before 'the Tribunal' was that:

(i) during the period he was posted as Divisional Forest Officer, Bettiah Division-II with In-charge of



Conservator of Forest, Muzaffarpur Circle, on the application filed by the 8 saw mills; he had renewed their licences for a period of one year from 1998-99;

(ii) there was no order of any Court imposing ban on the renewal of the licenses;

(iii) the said order was appealable;

(iv) it was subsequently renewed by other officials also;

(v) after an inordinate delay, on the basis of fictitious complaint, internal enquiry was assigned to an Officer, Shri Murari Mishra, who was junior to him in the cadre of the applicant-respondent no.1 in the Indian Forest Service;

(vi) the said Enquiry Officer never examined the complainant and/or the applicant. He further did not adopt any procedure for the examination of any witness and or provided any documents.

(vii) even the complainant by way of affidavit stated that he never preferred any complaint against the applicant-respondent no.1;

(viii) it was only after the report submitted by the Sub-ordinate Officer (to the applicant-respondent no.1), that the State Government vide its order dated 13.9.2007 sought his



opinion on the report;

(ix) accordingly, comprehensive reply was submitted by the applicant-respondent no.1;

(x) the State Government thereafter on 13.3.2012 asked the Principal Chief Conservator of Forest of Bihar to look into the report and submit his own report thereafter;

(xi) on 26.11.2012, the Principal Chief Conservator of Forest, Bihar submitted his report stating therein that:

(a) the applicant-respondent no.1 has followed the provisions of the Act in renewing the license;

(b) there is no irregularity in the matter;

(c) there was no ban for issuance of license by any of the Court and or the Supreme Court;

(d) the procedure of the enquiry was challenged by the applicant-respondent no.1 and the complainant had submitted an affidavit which was not taken into consideration;

(e) as such, the applicant-respondent no.1 is not guilty of any charge.



(xii) however, ignoring the report of 'the PCCF', the Government referred the matter to 'the UPSC' on 20.1.2014;

(xiii) 'the UPSC' without applying its mind gave advice on 15.7.2014 of penalty of withholding of one increment for a period of two years without cumulative effect;

(xiv) accordingly, the State Government passed the order vide memo no. 343 dated 3.2.2015 imposing the aforesaid punishment of withholding of one increment for the period of two years without cumulative effect from 11.08.1998.

(xv) the same has been passed without any application of mind;

(xvi) as such, it is fit to be set aside.

10. The State of Bihar filed its written statement stating therein that:

(i) the Saw Mills were required to obtain fresh licenses after the new Saw Mills Act came into force;

(ii) since no licenses were obtained under this/rules, there was no question of their renewal;

(iii) in 2007, a complaint was received and the matter was examined whereafter the same was found to be true and as such objection of the applicant-respondent no.1 of the delay in taking up the matter is fit to be rejected;



(iv) 'the PCCF' was asked to examine the matter. He only examined and submitted its report whereafter the same was examined both at the State level as well as by 'the UPSC'.

(v) the applicant-respondent no.1 was afforded opportunity by asking his reply vide letter no. 1001 dated 12.3.2013 issued by 'the Department';

(vi) after examining the matter at various levels the punishment order has been passed;

(vii) as minor punishment has been imposed upon the applicant-respondent no.1, the order cannot be vitiated for want of departmental proceeding.

11. The O.A. of the applicant as such is fit to be rejected.

12. 'The Tribunal' took up the matter and after hearing the parties and perusing the records vide an order dated 4.1.2017 held as follows:-

(i) 8 licences were issued by the applicant-respondent no.1 in 1998-99;

(ii) the same was appealable but the State Government never preferred any appeal;

(iii) there was no allegation of mens rea or personal gain on the part of the applicant. The renewal of license was



issued in the year 1998-99 and was known to the respondent authority but the charge sheet was issued only in the year 2013;

(iv) no reason was assigned for such inordinate delay.

13. 'The Tribunal' further held that in O.A. No. 103 of 2013 (R), Circuit Bench of the Tribunal, Ranchi vide order dated 19.11.2013 had observed that in absence of respondent State of Jharkhand giving any reasonable explanation for the delay; the order has to be passed in favour of delinquent officer. The said order was approved by the Jharkhand High Court on 20.2.2015 in WP(S) No. 2464 of 2014. Thus the said O.A. was allowed by the Circuit Bench on the ground of delay and laches and was further stamped by the Jharkhand High Court.

14. 'The Tribunal' as such vide an order dated 4.1.2017 held as follows:-

"8. It may be pointed out here that against the order of the Tribunal dated 19.11.2013 passed in OA No. 103 of 2013®, the State of Jharkhand had preferred writ petition, bearing WP(S) No. 2464 of 2014, before the High Court of Jharkhand at Ranchi which was dismissed by the Hon'ble High Court vide its order dated 20.02.2015. Further, similar issue was decided by the CAT, Patna Bench in OA/050/00375/2014 vide its order dated 18.02.2016, wherein the entire



disciplinary proceedings was quashed and set-aside on the ground of inordinate delay and laches on the part of the respondents.

9. In view of the above, we quash and set-aside the punishment order dated 15.07.2014 (Annexure-1) as well as order dated 03.02.2015(Annexure-2).

10. Accordingly, the OA is disposed of with no order as to costs”.

15. Aggrieved by the said order dated 4.1.2017 in O.A. No. 206 of 2016, the State of Bihar has preferred the present writ petition.

16. Heard Sarvesh Kumar Singh, learned A.A.G. for the writ petitioners. The points submitted by him is/are as follows:

(i) there was a ban of Hon’ble Supreme Court for the renewal of the licenses;

(ii) still the applicant-respondent no.1 renewed the licenses;

(iii) accordingly, after the receipt of the complaint, an enquiry was held;

(iv) the applicant-respondent was afforded opportunity by seeking show cause and annexing enquiry report;

(v) after examining the entire facts/reports/show cause, the matter was referred to ‘the UPSC’.



(vi) 'the UPSC' after examining the matter advised punishment of stoppage of one increment for two years without cumulative effect.

(vii) accordingly, the State imposed punishment of stoppage of one increment for two years without cumulative effect vide memo no. 343 dated 3.2.2015;

(viii) 'the Tribunal' in its order dated 4.1.2017 failed to appreciate all these facts and passed order only on the ground of inordinate delay and laches;

(ix) the same as such is fit to be set aside.

17. We have heard learned counsel for the writ petitioners, (the State of Bihar) at length and perused the records. The fact remains that the matter relates to 1998-99, when licenses of 8 Saw Mills were renewed for a period of one year. Subsequently, it was renewed by the other officials. The said order of renewal passed by the applicant-respondent no.1 was appealable but the State chose to look the other way.

18. The matter was of the year 1998-99 but it was only in the year 2007 with reference to a complaint, the State took cognizance of the matter and conducted enquiry.

19. After enquiry, the Enquiry Officer found the charges to be true whereafter the applicant-respondent no.1,



submitted his reply.

20. Once again, the State took further five years to refer the matter to 'the PCCF' in the year 2012.

21. 'the PCCF' accordingly, after going through the entire facts and perusing the records submitted his report stating that neither irregularity was committed nor there was any financial gain in the issuance of licenses. 'The PCCF' further held that there was no ban in the issuance of licenses either by the Hon'ble Supreme Court or any other Court and the applicant-respondent no.1 has committed no irregularity/illegality in issuance of the licenses to the 8 Saw Mills.

22. However, there is nothing on record to show whether the State of Bihar considered the report submitted by 'the 'PCCF' or not before referring the matter to the 'UPSC' on 20.1.2014.

23. The 'UPSC' in turn gave its advice on 15.7.2014 to impose penalty of withholding of one increment for a period of two years with cumulative effect.

24. Here it is important to bring on record the Rule-15 of the Central Civil Services (Classification Control and Appeal) Rules, 1965 (hereinafter referred to as 'the Rules,



1965') which states as follows:-

“15. Action on the inquiry report-

(1) the disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.

(2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or



submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.

(3) (a) In every case where it is necessary to consult the Commission, the Disciplinary Authority shall forward or cause to be forwarded to the Commission for its advise:

(i) a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge; and

(ii) comments of Disciplinary Authority on the representation of the Government servant on the inquiry report and disagreement note, if any and all the case records of the inquiry proceedings.

(b) The Disciplinary Authority shall forward or cause to be forwarded a copy of the advice of the Commission



received under clause (a) to the Government servant, who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, on the advice of the Commission.

(4) The Disciplinary Authority shall consider the representation under sub-rule (2) and/or clause(b) of sub-rule(3), if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (5) and (6).

(5) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clause (i) to (iv) of Rule 11 should be imposed on the Government servant, it shall, notwithstanding anything contained in Rule 16, make an order imposing such penalty.

(6) If the Disciplinary Authority



having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the enquiry is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed.”

25. A bare perusal of the Rule-15(B) shows that the Disciplinary Authority is required to forward the copy and the advice of the Commission received by it to the Government servant, who shall be required to submit, if he so desires, his written representation or submission within 15 days, on the advice of the Commission.

26. In this case, the authorities, however, chose to look the other way inasmuch as, neither advice of the ‘UPSC’ was forwarded nor any comment on its sought from the Delinquent Officer.



27. Finally, vide memo no. 343 dated 3.2.2015, punishment of withholding of one increment for the period of two years without cumulative effect from 11.8.1998 was passed against the Delinquent Officer.

28. This Court repeatedly asked the counsel for the State as to:

(i) whether there was any document/order to show that there was ban on renewal of licenses by the Hon'ble apex court. However, no such document/order was forthcoming;

(ii) he was further asked whether in the issuance of the licenses, there was any financial loss to the State; to which his answer was in negative;

(iii) on further query as to whether the said order passed by the respondent no.1 was appealable to which his answer was affirmative;

(iv) his answer was again in affirmative on the point whether the subsequent officials also renewed the licenses of the said Saw Mills;

(v) further on the point of inordinate delay and laches the answer was that the complaint was received in the year 2007 whereafter the enquiry was held.



28. It is important to note that the case of the petitioners is that in renewing the licenses of the 8 saw mills, the applicant respondent no.1 committed serious lapses, still it did nothing on it over next 8 years and it was only after a complaint made by a private individual in the year 2007 that the State Government woke up and realized that the alleged irregularity has been committed.

29. This Court further finds that even after the receipt of the complaint in 2007 for the action done in 1998-99, the State took another seven years to finally refer the matter to 'the UPSC' in 2014.

30. In between, the State also sought comments from 'the PCCF' on the entire matter providing him all the facts of the case, enquiry report as also the show cause reply by the applicant-respondent no.1. 'The PCCF' in turn found no irregularity/illegality in issuance of the licenses.

31. However, the State did not assign any reason for ignoring the said comment put forward by 'the PCCF' before referring the matter to 'the UPSC' in the year 2014 which advised stoppage of one increment for two years without cumulative effect.

32. For the reasons stated above, we concur with 'the



Tribunal’ that the State authorities did not acted in time for the alleged lapses done in 1998-99 and there was inordinate delay in passing the order of punishment in the year 2015. We additionally hold that in line with the Rule-15 of ‘the Rules, 1965’, the Disciplinary Authority further failed to forward the copy of the advice of the ‘UPSC’ to the Government servant and seek his response which was mandatory before passing the punishment order.

33. This Court as such holds that the order passed by ‘the Tribunal’ dated 4.1.2017 in O.A. No. 206 of 2016 is fully justified and need no interference.

34. The writ petition fails and is accordingly dismissed.

(P. B. Bajanthri, J)

Ravi/-

(Rajiv Roy, J)

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	05.08.2022
Transmission Date	NA

