

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.738 of 2019

=====

Fredrick Julius David, Son of Late Julius David, retired Deputy Superintendent, Central Jail, Buxar, Resident of Mohalla- S.B.I. Colony, Kurji Balupar, P.S.- Digha, District- Patna

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Department of Home, Government of Bihar, Patna
2. Principal Secretary-cum-Appellate Authority, Home Department (Prison), Government of Bihar, Patna
3. Inspector General (Prison), Prison and Reform Services, Bihar, Patna
4. Joint Secretary-cum-Director (Prison), Bihar, Patna
5. Special Officer, Prison and Reform Services, Bihar, Patna
6. District Magistrate, Siwan
7. Jail Superintendent, Siwan
8. Jail Superintendent-cum-Inquiry Officer, Sahid Khudi Ram Bose Central Jail, Muzaffarpur
9. Jail Superintendent, Central Jail, Buxar

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 6207 of 2019

=====

Fredrick Julius David, Son of Late Julius David retired Deputy Superintendent, Central Jail, Buxar, resident of Mohalla-S.B.I. Colony, Kurji Balupar, P.S. Digha, District-Patna

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Home, Government of Bihar, Patna
2. Principal Secretary-cum-Appellate Authority Home Department (Prison), Government of Bihar, Patna
3. Inspector General (Prison) Prison and Reform Services, Bihar, Patna
4. Joint Secretary-cum-Director (Prison) Bihar, Patna
5. Special Officer Prison and Reform Services, Bihar, Patna
6. District Magistrate Siwan
7. Jail Superintendent Siwan
8. Jail Superintendent-cum-Inquiry Officer Sahid Jubba Sahani Central Jail, Bhagalpur
9. Jail Superintendent Central Jail, Buxar



... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 738 of 2019)

For the Petitioner/s : Mr. Jitendra Prasad Singh, Adv.
Mrs. Priya Sinha, Adv.
Mr. Rajeev Kumar, Adv.
Mr. Abhishek, Adv.

For the State : Mr. Sumant Kumar Singh, (AC to GA-2)

(In Civil Writ Jurisdiction Case No. 6207 of 2019)

For the Petitioner/s : Mr. Jitendra Prasad Singh, Adv.
Mrs. Priya Sinha, Adv.
Mr. Rajeev Kumar, Adv.
Mr. Abhishek, Adv.

For the State : Mr. Sumant Kumar Singh, (AC to GA-2)

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 22-11-2023

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

2. In first writ petition CWJC No. 738 of 2019, the petitioner has challenged the order dated 15.06.2018 issued vide Memo No. 4112 dated 18.06.2018 annexed as Annexure-4 series by which order of punishment for deduction of 10% pension for the period of two years and the appellate order dated 29.09.2018 issued vide Memo No. 7061 dated 03.10.2018 annexed as Annexure-6 have been challenged, whereas in second writ petition CWJC No. 6207 of 2019, the petitioner has challenged the order dated 15.06.2018 issued vide Memo No. 4113 dated 18.06.2018 annexed as Annexure-7 by which order of punishment for deduction of 10% pension of the petitioner for



one year and appellate order dated 27.10.2018 issued vide Memo No. 7791 dated 31.10.2018 annexed as Annexure-9 series have been challenged.

3. Learned counsel for the petitioner submits that in both the writ petitions, petitioner is same. Counsel also submits that the petitioner was posted as the Deputy Superintendent in Siwan Jail when he was put under suspension vide Memo No. 3617 dated 15.06.2016 in order to initiate the departmental proceeding for certain alleged irregularities. Counsel further submits that vide Memo No. 1847 dated 26.03.2016 as well as vide Memo No. 3689 dated 21.06.2016 two different departmental proceeding was initiated against the petitioner and the copy of the said charge memo (prapatra-ka) has been annexed as Annexure -1 in the first writ and annexed as Annexure-2 in the second writ.

4. Learned counsel for the petitioner submits that the petitioner was working at that very relevant period of time in the Bihar Prison which has been guided by the law of Bihar Prison Manual, 2012 whose section 2 (XIX) categorically states that, Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as “Bihar CCA Rules, 2005”) shall apply on the persons associated with the



establishment and management of prisons as such the rules namely Bihar CCA Rules, 2005 is applicable for the petitioner.

5. Learned counsel for the petitioner submits that the charge memo has been issued in gross violation of Rule 17(3)(ii)(b) of the Bihar CCA Rules, 2005 due to the reason that list of witnesses by whom the article of charges are proposed to be sustained has not been mentioned nor provided to the petitioner at any stage of the departmental proceeding instead of the fact that he has specifically demanded the list of witnesses from the inquiry officer and in this regard he has made the specific pleading in paragraph 15 and 17 of the first case and paragraph 9 of the second case. Counsel further submits that finding of the inquiry officer is without any witness and also without consideration of his points according to him under Rule 828 of the Bihar Prison Manual, 2012 the duty has been casted upon the kakshpal to make entry in the register of all the visitors and the petitioner has to verify the same. Counsel also submits that the District Magistrate has conducted a preliminary inquiry and submitted a report to the IG Prison vide his letter No. 452 dated 18.05.2016 annexed at Page 25 and 26 of the second writ in which it has been held that the Superintendent of Jail is responsible for such irregularities and it was recommended the



departmental proceeding against the Superintendent.

6. Learned counsel for the petitioner submits that during the disciplinary proceeding, specific documents and list of witnesses have been demanded which was never been provided to the petitioner and inquiry officer has held the petitioner guilty on those charges, and subsequently, second show cause was issued. Counsel also submits that he has also filed the second show cause, but from the disciplinary authority none of the points as discussed by the petitioner in his second show cause in both the cases have been considered and finally the appellate authority has rejected the appeal. Counsel further submits that the punishment for deduction of 10% pension for specified period has been passed and said order has been made in gross violation of Rule 139 of the Bihar Pension Rule in which it has been mentioned that under Rule 139(3) that prior to passing order, revising the order of pension a reasonable opportunity has to be granted, but here in the present case, no such opportunity has been granted. As such, counsel for the petitioner submits that in both the cases there are gross violation of Rule 17 of the Bihar CCA Rules, 2005 as well as Rule 139 of the Bihar Pension Rule.

7. Learned counsel for the State submits that in the



charge memo, the document was categorically been indicated and the charge memo has followed by the enquiry proceeding in which opportunity was granted to the petitioner upon filing its reply before the inquiry officer where he has participated and separate orders have been passed for both the charges, support findings of the inquiry officer has come in which he was found guilty, separate second show causes have been issued for both the proceedings, separate orders from disciplinary authority have been passed upon challenge separately in appeal, both the orders have been approved.

8. Upon the specific query from the Court that whether in the charge memo, name of list of witnesses have been provided as well as on this point that whether in the departmental proceeding any witnesses have been examined, counsel for State responds that he has attached the order dated 09.09.2017 of the disciplinary authority in which it has been acknowledged that delinquent has no need of other documents, evidence/witnesses and as such taking this plea that list of witnesses has not been provided is not sustainable and the writ petitions are fit to be dismissed.

9. Upon going through the documents attached in the writ petition, the pleadings made and the law placed before



this Court, this Court is of the view that basis of initiation of the departmental proceeding is the issuance of charge memo in the light of section 17(3) of the Bihar CCA Rules, 2005 which states as follows:-

“Where it is proposed to hold an inquiry against a government servant under this rule, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government Servant;

(b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained.”

10. It transpires to this Court that providing the list of witnesses for the purpose of proving the imputations of charge is one of the essential ingredients which are apparently lacking in the present writ petitions which is apparently clear from the charge memos annexed as Annexure-1 in the first case and annexed as Annexure-2 in the second case and further in the



light of the specific pleadings made in the paragraph 15 and 17 of the first writ petition and paragraph 9 of the second writ petition and particularly in the case of initial inquiry report which is part of Annexure-2 of the first writ petition where in the inquiry report it has come that the Superintendent is responsible for this and recommendation was also made to take action against the Superintendent, but the petitioner and other junior employees were made scapegoat in the present case.

11. In this view of the matter the charge memo itself is defective in both the proceedings and this Court is of the opinion that entire departmental proceeding should be ended and also one relevant case i.e. ***Uday Sharma Vs. The State of Bihar and Others passed in Letters Patent Appeal No. 1473 of 2019 in Civil Writ Jurisdiction Case No. 17311 of 2019 dated 10.02.2023***, the Hon'ble Division Bench of this Court has created serious doubt that the State Government and the disciplinary authority are two different personalities in law and as such, in first writ petition CWJC No. 738 of 2019, the orders dated 15.06.2018 issued vide Memo No. 4112 dated 18.06.2018 annexed as Annexure-4 series and the appellate order dated 29.09.2018 issued vide Memo No. 7061 dated 03.10.2018 annexed as Annexure-6; in second writ petition CWJC No. 6207



of 2019, the orders dated 15.06.2018 issued vide Memo No. 4113 dated 18.06.2018 annexed as Annexure-7 and appellate order dated 27.10.2018 issued vide Memo No. 7791 dated 31.10.2018 annexed as Annexure-9 series are here by set aside and the State is directed to make full pension to the petitioner from the date on which he is entitled within six months from the date of production of the order.

12. With the above observations and directions, this writ petition is hereby stands allowed.

(Dr. Anshuman, J.)

Divyansh/-

AFR/NAFR	
CAV DATE	
Uploading Date	29.11.2023
Transmission Date	

