

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.244 of 2009

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Santosh Kumar Diwakar, S/o Sambhu Singh, resident of Village-Haibatpur,
P.S.-Rampur Chauram, District-Arwal.

... .. Petitioner/s

Versus

1. The Union of India through Home Ministry, New Delhi.
2. The Deputy Inspector General of Police, Central Reserve Police Force,
Patna, Bihar.
3. The Commandant, 147, Batalion, Central Reserve Police Force, Kashipur,
Silehar, Assam.
4. The Assistant Commandant, 147, Batalion, Central Reserve Police Force,
Kashipur, Silehar, Assam

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Neeraj Singh, Advocate
		Mr. Ranjan Kumar Singh, Advocate
For the Respondent/s	:	Mr. Anshay Bahadur Mallik, CGC

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 12-04-2023

In the instant petition, petitioner has prayed for the fol-
lowing reliefs:-

"(i) To quash the order dated 23.12.2007 passed by respondent no.3 the Commandant, 147, Batalion, C.R.P.F. Kashipur, Assam, exercising power under Section 11 (I) of C.R.P.F. Act, 1949 read with rule 27 (A) of C.R.P.F. Rules, 1955 by which petitioner has been dismissed from service.

(ii) For further to quash the order dated 02.04.2008 passed by respondent no. 2 of Police C.R.P.F., Patna, Bihar, who functioning as appellate authority has dismissed the appeal



preferred by petitioner and has affirmed the order passed by respondent no.3.

(iii) For any other relief or reliefs for which petitioner is found entitled in the facts and circumstances of the case.

2. On 22.02.2023, the following order was passed:-

"Mr. Sanjay Kumar, Staff Officer, Patna Range, Ashiana Digha, Patna is present in Court.

Learned counsel for the respondents is hereby directed to peruse the decision passed in L.P.A. No. 982 of 2018 on 27.02.2023 and apprise this Court on the next date of hearing.

Re-list this matter on 05.04.2023.

Personal appearance of Mr. Sanjay Kumar, Staff Officer, Patna Range stands dispensed."

3. Further, in the Letters Patent Appeal No. 982 of 2018, this Court has taken note of the fact that in the absence of provision of appointment of Presenting Officer also the concerned disciplinary authority was required to appoint the Presenting Officer to present the case before the Inquiring Authority on behalf of the Department to prove the alleged charge against the concerned employee.



4. In view of the facts and circumstances, the present writ petition stands allowed in part reserving liberty to the respondents to commence inquiry from the defective stage, namely, in appointing Presenting Officer to present the the departmental version before the Inquiring Authority and conclude the departmental inquiry within a period of six months from the date of receipt of this order. Since impugned orders dated 23.12.2007 (Annexure-4) and 02.04.2008 (Annexure-5) are being set aside on technicality. Therefore, during the intervening period from the date of dismissal till today disciplinary authority is required to decide afresh as to whether the petitioner is entitled to arrears of salary or subsistence allowance in the light of Hon'ble Apex Court decision in the case of **ECIL vs. B. Karunakaran reported reported in (1993) 4 SCC 727 and Chairman-cum-Managing Coal India Ltd. vs. Ananta Saha and Ors. reported in (2011) 5 SCC 142**. Paragraphs 46 to 50 reads as under:-

“46. In the last, the delinquent has submitted that this Court must issue directions for his reinstatement and payment of arrears of salary till date. Shri Bandopadhyay, learned Senior Counsel appearing for the appellants, has vehemently opposed the relief sought by the delinquent contending that the delinquent has to be deprived of the back wages on the principle of “no work-no pay”. The delinquent had been practising privately, i.e.



has been gainfully employed, thus, not entitled for back wages. Even if this Court comes to the conclusion that the High Court was justified in setting aside the order of punishment and a fresh enquiry is to be held now, the delinquent can simply be reinstated and put under suspension and would be entitled to subsistence allowance as per the service rules applicable in his case. The question of back wages shall be determined by the disciplinary authority in accordance with law only on the conclusion of the fresh enquiry.

47. It is a settled legal proposition that the result of the fresh enquiry in such a case relates back to the date of termination. The submissions advanced on behalf of the appellants that the result of the enquiry in such a fact situation relates back to the date of imposition of punishment, earlier stands fortified by a large number of judgments of this Court and particularly in R. Thiruvirkolam v. Presiding Officer, Punjab Dairy Development Corpn. Ltd. v. Kala Singh and Graphite India Ltd. v. Durgapur Projects Ltd.

48. In ECIL v. B. Karunakar, this Court held that where the punishment awarded by the disciplinary authority is quashed by the court/tribunal on some technical ground, the authority must be given an opportunity to conduct the enquiry afresh from the stage where it stood before the alleged vulnerability surfaced. However, for the purpose of holding fresh enquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages, etc. is determined by the disci-



plinary authority in accordance with law after the fresh enquiry is concluded.

49. The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is reinstated, it would not automatically make him entitled to back wages as entitlement to get back wages is independent of reinstatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic. (Vide U.P. SRTC v. Mitthu Singh , Akola Taluka Education Society v. Shivaji and Balasaheb Desai Sahakari S.K. Ltd. v. Kashinath Ganapati Kambale.

50. In view of the above, the relief sought by the delinquent that the appellants be directed to pay the arrears of back wages from the date of first termination order till date, cannot be entertained and is hereby rejected. In case the appellants choose to hold a fresh enquiry, they are bound to reinstate the delinquent and, in case, he is put under suspension, he shall be entitled to subsistence allowance till the conclusion of the enquiry. All other en-



titlements would be determined by the disciplinary authority as explained hereinabove after the conclusion of the enquiry. With these observations, the appeal stands disposed of. No costs.”

5. The disciplinary authority is hereby directed to take a decision as to why the petitioner shall be placed under suspension or he should be reinstated. Such decision shall be taken within a period of two months from the date of receipt of this order. Further, regulating the intervening period from the date of dismissal till passing of fresh order in a departmental inquiry in terms of judicial pronouncement is required to be regulated in accordance with law. On this issue, the disciplinary authority is hereby directed to pass a detailed order within a period of two months from the date of passing of final order in a disciplinary proceeding.

(P. B. Bajanthri, J)

Vikash/-

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

