

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 18625 of 2013

=====

Nripendra Kumar Son Of Sri Upendra Prasad Resident Of Village - Meyar,
P.S. - Noorsarai, District - Nalanda, At Present Working As Lower Division
Clerk Under Nalanda Collectariate, Nalanda

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner, Patna Division, Patna
3. The Collector, Nalanda At Biharsharif
4. The Additional Collector, Special Program, Nalanda At Biharsharif
5. The Deputy Collector, Establishment, Nalanda At Biharsharif
6. The Sub-Divisional Officer, Rajgir, Nalanda

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Umesh Kumar Verma, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha, Govt. AC to GA-7
	:	Mr. Sangha Mitra Ghosh, AC to GA-7.

=====

**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

2 19-01-2023 Petitioner by way of this writ petition assailed the order dated 21.05.2011 of the Collector, Nalanda whereby he has been punished withholding of one grade increment without cumulative effect and further it has been directed that he shall not be entitled to any other payment apart from subsistence allowance during the suspension period.

The petitioner also assailed the appellate order passed on 18.04.2013 whereby the aforesaid order dated 21.05.2011 has been upheld by the Commissioner, Patna Division, Patna.

Learned counsel for the petitioner has submitted that



earlier the enquiry was conducted without following principles of natural justice and this Court in Writ Petition, preferred by petitioner assailing the earlier punishment order, passed an order on 26.07.2010 in CWJC No. 18363 of 2009 (Nripendra Kumar vrs. The State of Bihar and Others), wherein following directions were issued :-

“The order of punishment dated 5.11.2009 is therefore not sustainable. It is accordingly set aside. The matter is remanded to the enquiry officer to proceed afresh from the stage of the framing of charges and conclude the departmental proceedings in accordance with law in the manner discussed above.

The writ application stands allowed.”

After the matter was remanded to the Enquiry Officer, the petitioner submitted his defence before the Enquiry Officer and whereafter the Enquiry Officer submitted his report.

Learned counsel for the petitioner has taken this Court to the enquiry report to point out that the petitioner has been exonerated of charge nos.1, 2, 3, 4 and 5, however, the Enquiry Officer has held charge nos.6 and 7 as proved and charge no.8 as filed against him. Learned counsel submits that the petitioner has submitted his objections to the enquiry report and pointed out that the said charges have wrongly been proved by the Enquiry Officer, however, the Disciplinary Authority aggrieved



with the findings of the Enquiry Officer and held guilty of the charges and proceeded to punish him with the aforesaid punishment. Learned counsel submits that the Appellate Authority also failed to take notice of the documents which he has filed in support of his defence in relation to the aforesaid charges and hence wrongly upheld the order of the Disciplinary Authority. Learned counsel submits that a lenient view ought to have taken with regard to so called alleged action of the petitioner since he was a new incumbent in the office and was not aware of the day-to-day functioning and for such mistakes, there was no occasion to have punished the petitioner.

Learned counsel further submits that the petitioner, who had been placed under suspension, has ultimately been punished with a minor penalty of stopping of one grade increment without cumulative effect and therefore there was no occasion to withhold the salary apart from the subsistence allowance of the petitioner during the suspension period.

Per contra, learned counsel appearing for the State has supported the order passed by the Disciplinary Authority as well as the Appellate Authority and submitted that the petitioner was given due opportunity of hearing and there has been no violation of the provisions relating to conduct of the enquiry under Rule-



17 of the C.C. Rules and the Disciplinary Authority has applied its mind independent of the enquiry officer and reached to the same conclusions. Keeping in view thereto, the punishment awarded to the petitioner does not warrant any interference. Learned counsel submits that the Appellate Authority has also independently examined the appeal preferred by the petitioner and the same also does not warrant any interference. So far as the question relating to the forfeiture of salary apart from subsistence allowance during suspension period is concerned, learned counsel submits that the order has been passed by the Disciplinary Authority, which does not warrant any interference.

I have considered submissions and this Court finds that after the remand, the Enquiry Officer, the Disciplinary Authority as well as the Appellate Authority have followed the provisions of the Rule, 2005. The enquiry has been conducted wherein separate charges were examined independently and on the basis of evidence which has come on record, the petitioner was found to be exonerated of certain charges while has been found guilty of committing some of the charges. On the basis of the enquiry report, the Disciplinary Authority has agreed with the findings of the Enquiry Officer and having held the petitioner guilty of charge nos. 6 and 7 and partly guilty of



charge no.8 proceeded to punish the petitioner awarding him minor penalty. The Appellant Authority has also considered the aspect regarding the petitioner being a new incumbent in office and has also noticed that the final penalty has been awarded to the petitioner mainly because of this reason.

With regard to forfeiture of salary during the suspension period apart from the subsistence allowance is concerned, provision under C.C.A. Rule 2005 is independent of the departmental enquiry proceeding initiated under Rule 17 or under rule 19 of the Rules. It would be apposite to quote Rule 11 of the C.C.A. Rule, 2005, which reads as under : -

“11. Treatment of service on reinstatement and admissibility of pay and allowances after suspension.-(1) When a government servant under suspension is reinstated or would have been so reinstated but for his superannuation while under suspension, the disciplinary authority shall consider and make specific order regarding the following-

(a) the pay and allowances to be paid to the government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be, and (b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in Rule-10 of these Rules, where a Government Servant under suspension has died before the disciplinary or court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as on duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended. While making such payment adjustment shall be made in respect of subsistence allowance and other allowances already paid and the adjustment of Government dues or loans.

(3) Where the disciplinary authority is of the opinion that the suspension was wholly unjustified, the Government Servant shall, subject to the provisions of sub- rule (8) of this Rule, be paid such full pay and allowances to which he would have been entitled, had



he not been suspended. While making such payment adjustment shall be made in respect of subsistence allowance and other allowances already paid:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government Servant had been delayed due to reasons directly for which the Government Servant is liable, it may, give the Government Servant an opportunity to make his or her representation and consider the representation, if any, submitted by him or her. After that it may direct, for reasons to be recorded in writing, that the Government Servant shall be paid for the period of such delay only such proportion of such pay and allowances as may be determined by it.

(4) In cases falling under sub-rule (3) of this Rule, the period of suspense shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3) of this Rule the Government Servant shall subject to the provisions of sub-rules (8) and (9), be paid such proportion of the full pay and allowances to which he would have been entitled had he not been suspended, as the disciplinary authority may determine. Such determination by the disciplinary authority shall be done after giving notice to the Government Servant of the quantum proposed and after considering the representation if any, submitted by him in that connection within sixty days from the date on which notice aforesaid is served on the Government Servant.

(6) Where suspension is revoked pending finalization of the disciplinary proceeding or proceedings in a court, any order passed under sub-rule (1) of this Rule before the conclusion of the proceedings against the Government Servant shall be reviewed on its own motion, after the conclusion of the proceedings by the disciplinary authority and an order shall be made by him in accordance with the provisions contained in sub-rule (3) or sub-rule (5), as the case may be.

(7) In a case falling under sub-rule (5) of this Rule the period of suspension shall not be treated as a period spent on duty, unless the disciplinary author specifically directs that it shall be the period spent for any specified purposes.

(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) of this Rule shall be subject to all other conditions under which such allowances admissible.

(9) The proportion of the full pay and allowances determined under the proviso to sub-rule (3) or under sub-rule (5) of this Rule shall neither be equal to full pay and allowances nor shall it be less than the subsistence allowance."

From perusal of above, it is apparent that an



independent application of mind is necessary, after having awarded the punishment, to see whether the salary is to be forfeited or the complete salary is to be paid for the period spent during suspension to a delinquent employee. As per Sub Clause 3 if the disciplinary authority is of the opinion that the suspension was wholly unjustified the government servant would be entitled to the full pay and allowances apart from less the subsistence allowance already paid, however, if the disciplinary authority reaches to a conclusion otherwise than he will pass a separate order. This Court finds that in the present case the Disciplinary Authority has proceeded to pass an order in mechanical manner while passing the order of punishment itself. He has not independently exercised his mind on the said aspect nor he has given the petitioner an opportunity of hearing on this said aspect.

In the circumstances, this Court deems it appropriate to set aside the said part of the order passed by disciplinary authority for forfeiture of the salary for the suspension period apart from the subsistence allowance and remands the matter back to the disciplinary authority to take an independent action in terms of Rule 11 of the CCA Rule, 2005 after giving an opportunity of hearing and also considering the fact that the



punishment awarded is of a minor nature.

The decision in this regard shall be taken within a period of two months from the date of submission of the certified copy of this order.

The writ petition is accordingly disposed of.

(Sanjeev Prakash Sharma, J)

Brajesh Kumar/-
Item no.29

U			
---	--	--	--

