IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21218 of 2013

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Prabhu Nath Prasad Son of Late Vishundev Prasad, Resident of Village+ P.O. Chamanpura, Police Station - Baikunthpur, District - Gopalganj, Presently Residing at Flat No.203, Kailas Apartment, Road No.9, Vijay Nagar, Bailey Road, Patna

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Minor Water Resources Department, Government of Bihar, Patna
3. The Joint Secretary, Minor Water Resources Department, Government of Bihar, Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Suresh Kumar, Advocate Mr.Arbind Kumar, Advocate
For the Respondent/s	:	Mr.Gyan Prakash Ojha, G.A. 7 Mr. Uday Shankar Pandey, AC to GA 7 Ms. Sushmita Ojha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA
CAV JUDGMENT

Date : 17-02-2023

The petitioner is a retired Executive Engineer, who superannuated on 31st August 2009. He challenges the order dated 19.10.2012, whereby 5% of his pension has been withheld for five years under Rule 43(b) of the Bihar Pension Rules on the basis of a departmental proceedings initiated under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules 1930 (hereinafter to be referred as the “CCA Rules, 1930”).

2. The memorandum was issued to the petitioner on 10.08.2005 under extant CCA Rules, 1930 for

conducting inquiry.

3. Five charges were levelled against him stating that the Chief Engineer, Tube-Well Wing, Patna reported in his letter no. 538 dated 16.06.2005 regarding irregularities while construction of Tube well at Nasibchak under Barbigha block of Munger district. Five charges were formulated which are as follows:

Charge no.1 - In Loop 'A' 8 nos. and in Loop 'B' 7 nos. total being 15 nos. of outlets were found. Its quality was not as per specification. In Loop 'A' 4 nos. Alpha-Alpha Valves could not be opened. In Loop 'A', major leakage on two points and minor leakage on two points were found;

Charge no.2 - In Loop 'B; lying of sand below the P.V.C. Pipe on two points were examined. In course of enquiry, the sand was not found;

Charge no.3-for lying of P.V.C. Pipes, the depth on two points were checked. It was found that the depth of 2' 6" and 0.8" in place of 3 feet. Payment of ventilator was done but none of ventilator was found;

Charge no.4- There is no proper ventilation in D.G. Set room for Generator and leakage were found from Sluice Valve and

Charge no.5- Plaster work of Pump House was not found as per specification. Crack was developed in the operator room. The quality of flooring of the operator room was found to be bad.

4. The Enquiry Officer submitted his report exonerating the petitioner from charge nos.1 to 4, however, charge no.5 was found proved. The Secretary did not accept the enquiry report and directed another Officer to conduct *de novo* proceedings. The new Enquiry Officer submitted his report on 25.02.2009 exonerating the petitioner from all the charges. The said enquiry report was also not accepted and the Additional Departmental Enquiry Commissioner, General Administration Department (G.A.D.) conducted separate proceedings and submitted his report on 30.06.2010 and found charge no.3 partially established, while exonerating the petitioner from all the above charges, the petitioner had attained superannuation in between, whereafter the second show cause notice was served upon the petitioner with regard to charge no.3.

5. It is stated that the then Joint Secretary had recommended to exonerate the petitioner from all the charges on 26.04.2011, thereafter the Joint Secretary passed an order for a supplementary show cause on 17.11.2011 with regard to

charge nos. 2 and 5 giving points of disagreement with the enquiry report on both the charges.

6. The petitioner submitted his detailed reply pointing out that he deserves to be exonerated from all the charges.

7. The respondents issued order dated 22.05.2012 converting the proceedings under Rule 43(b) of the Bihar Pension Rules and issued a fresh show cause notice to the petitioner and thereupon passed an order holding him guilty of not checking measurement works within time.

8. It has been argued that the proceedings were initiated under CCA Rules, 1930, which stood repealed vide notification dated 12th July, 2005 and Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 came into force (hereinafter to be referred as the "CCA Rules, 2005", whereafter the charge-sheet could not have been issued under the CCA Rules, 1930.

9. Further the petitioner was exonerated from the charges by an Enquiry Officer, the fresh inquiry could not have been directed against the petitioner and the Disciplinary Authority could only give a notice of disagreement to the inquiry report. However, the enquiries were conducted one

after another and even after conducting 3rd inquiry, the Enquiry Officer only found part of charge no.3 proved against the petitioner but the Disciplinary Authority has not agreed and punished the petitioner arbitrarily and illegally.

10. Learned counsel for the petitioner has further submitted that after the petitioner retired, the inquiry proceedings could not have been conducted by converting the inquiry under Rule 43(b) of the Bihar Pension Rules. The entire proceedings conducted after 2009 up to 2012 were nonest, as there was no authority available to continue the departmental inquiry against the petitioner, after retirement. Findings of such inquiry report could not have been looked into for punishing the petitioner by invoking Rule 43(b) of the Bihar Pension Rules.

11. Further the petitioner has relied upon the judgment passed by this Court reported in **2001(3) PLJR 687 (Md. Fkhruddin Vs. The State of Bihar & Ors.) and 2001 (9) SCC 369 (Chandreshwar Prasad Sinha Vrs. The State of Bihar &Anr.).**

12. It is further submitted that as per Rule 43(b) of the Bihar Pension Rules, the departmental proceedings can only be initiated against the petitioner for an occurrence, which

took place four years prior instituting of such proceedings.

13. It is submitted that the departmental proceedings were initiated in 2005 for the alleged occurrence of 1995 and the same, therefore, could not have been continued in terms of Rule 43(b) of the Bihar Pension Rules and the order of continuance of the departmental proceedings under Section 43(b) of the Bihar Pension Rules also deserves to be quashed.

14. Learned counsel appearing for the State has supported the proceedings and submitted that the petitioner has been given fair opportunity for defending the case and the notice on the point of disagreement was also served upon the petitioner, transparency has been maintained and, therefore, the order of punishment does not warrant any interference. The petitioner was found guilty of violating Rule 30 of the Bihar PWD Code as well as Rule 223 and 248(b) of the Bihar Public Works Account Code for which he has been punished rightly by stopping 5% pension for five years.

15. Learned counsel further submits that CCA Rules, 2005 had been published on 12.07.2005 while the charge-sheet was issued on 10.08.2005, which was in contemplation prior to coming into force of CCA Rules, 2005. On account of mentioning of a wrong Rule, the proceedings

would not get initiated. It is also submitted that Rule 32 (v) of Bihar CCA Rules, 2005 has a saving clause, which can be applied to the present case.

16**.** It is admitted position that the petitioner was over all Incharge of the construction work of Nasibchak Tube Well and 95 % of the work was completed during his tenure, but there were no measurement books, which shows that undue advantage was given to the concerned Contractor and, therefore, there is violation of the Public Works Account Code and the Bihar PWD Code and hence it is prayed that no interference be made to the order.

17. I have considered the submissions.

18. This Court finds that the mentioning of a Rule in the memorandum of the charges is to indicate that the inquiry is to be conducted for major penalty or not, even otherwise mentioning of a wrong Rule in the charge-sheet would not vitiate the departmental proceeding, as the departmental proceedings are with regard to the contents of the charges and not the rule mentioned. The charges levelled were for the purpose of awarding major penalty, hence the argument of the counsel for the petitioner that the enquiry can not be conducted under CCA Rules, 2005 and memorandum issued

under the Rules of 1930 is not acceptable in law.

19. However, whether after the petitioner had retired on 31st August, 2009, the departmental enquiries could be conducted by an Enquiry Officer without converting the proceedings under Rule 43(b) of the Bihar Pension Rules is another question, which requires to be considered.

20. This Court finds that the petitioner had been exonerated from the charges by the Enquiry Officer in his enquiry report submitted on 25.02.2009. However, a fresh enquiry was directed to be conducted, by that time, the petitioner had already retired on attaining age of superannuation on 31st August, 2009. Thus, before appointing Enquiry Officer on 30th June, 2010, he was required to invoke provisions of Section 43(b) of Bihar Pension Rules,1950.

21. This Court finds that no reason have come forward for initiating such fresh enquiry. There is no provision under law to conduct a fresh enquiry and at best, if some portion of the enquiry proceedings are found to be erroneous, the Disciplinary Authority can direct the *de novo* inquiry from that stage. A person can not be subjected to face one enquiry after another, moreso, if the enquiry report has already been submitted to the Disciplinary Authority, it is required to act in

accordance with Rule 18 of the CCA Rules, 2005. It is, therefore, apposite to quote Rule 18 for the said purpose.

Rule 18 of the CCA Rules, 2005 reads as under:-

> **18. 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, may 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 17 as far as may be.
> (2) The disciplinary authority, after receipt of the enquiry report as per Rule 17 (23)(ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.
> (3) The disciplinary authority shall forward or cause to be forwarded a copy of the inquiry report, together with its own findings, if any, as provided in sub-rule (2), to the government servant who may submit, if he or she so desires, his or her written representation or submission to the disciplinary authority within fifteen days.
> (4) The disciplinary authority shall consider the representation or submission, if any, submitted by the Government Servant before proceeding further in the manner 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 clauses (i) to (v) of Rule 14 should be imposed on the Government Servant, it shall, notwithstanding anything contained in Rule 19, 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 inquiry is of the opinion that any of the penalties specified in clauses '[(vi) to (xi)] of Rule 14 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.
(7) Notwithstanding anything contained in sub-rules (5) and (6), in every case where it is necessary to consult the Commission, the Commission shall be consulted and its advice shall be taken into consideration before making any order imposing any penalty on the Government Servant."

From perusal of the above Rule, it is apparent that if the Disciplinary Authority does not agree with the procedure adopted by Enquiry Officer, he has the power to appoint new Enquiry Officer to conduct an enquiry afresh but only has the power to remit the case to the Enquiry Authority for further enquiry, but before he does so, he has to record the reasons in writings in terms of Rule 18(1) of the CCA Rules, 2005.

22. This Court is of the firm opinion that on both the stages i.e. 18(1) or 18 (2) of CCA Rules, 2005, principle of natural justice will have its application and the reasons recorded by the Disciplinary Authority ought to be made available to the delinquent along with copy of the inquiry

report and he must be given an opportunity to satisfy the Disciplinary Authority about the correctness of the inquiry report.

23. The Supreme Court in the case of **Punjab National Bank & Ors. Vrs. Kunj Behari Misra** reported in **1998 (7) SCC 84** has held as under **:-**

> "17. These observations are clearly in tune with the observations in *Bimal Kumar Pandit case* quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the enquiry officer had given an adverse finding, as per *Karunakar case* the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the enquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must

> give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority."

24. The said principles though incorporated in Rule 18(2) of the CCA Rules 2005 will also have an application at the stage of Rule 18(1).

25. This Court finds that the said exercise has not been conducted by the Disciplinary Authority and one after another three Officers were appointed as the Inquiry Officer and the proceedings were conducted without converting the same under Rule 43 (b) of the Bihar Pension Rules,1950.

26. This Court also finds that the argument raised by the counsel for the petitioner to be palatable as regards Rule 43(b) of the Bihar Pension Rules, 1950. As per Rule 43(b) of the Bihar Pension Rules, 1950 it has been provided in proviso (a) to Rule 43(b) as under : -

> "Provided that -
> (a) such departmental proceedings, if not instituted while the Government was on duty either before retirement or during re-employment;
> (I) shall not be instituted save with the sanction of the State Government;
> (ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and
> (iii) shall be conducted by such authority and at such place or places as the State

> Government may direct andin accordance with the procedure applicable to proceedings on which an order or dismissal from service may be made."

27. The event for which the charge-sheet was issued to the petitioner on 10.08.2005 is with regard to the period when the petitioner was posted from 16.08.1997 to 3.8.2000. Thus, the institution of proceedings is in August, 2005 with regard the event for the period between 1997-2000. Even if the last date when the petitioner was posted is treated as the last date of event then four years expires on 3.8.2004, while the charge-sheet was issued on 10.8.2005, which is beyond four years.

28.Hence, the proceedings could not have been converted under Rule 43(b) of the Bihar Pension Rules. It would be violative of Rule 43(b) proviso (ii) and the departmental action, therefore, taken against the petitioner is found to be bad in law.

29. In view of above findings and conclusions, the punishment passed against the petitioner dated 19.10.2012 is held to be not sustainable in law and is accordingly quashed and set aside with all consequential benefits. The petitioner will be paid the amount, which was recovered from his pension while withholding 5% of his pension for five years. The arrears shall

carry interest @ 9 % per annum. With cost.

(Sanjeev Prakash Sharma, J)

Chn/-

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