

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.321 of 2020

In

Civil Writ Jurisdiction Case No.12192 of 2005

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Shashi Kumar Singh S/o - Late Shiv Kumar Singh Resident of Village - Kiran
Palace, Hanuman Tekari, P.S. and District- Deoghar (Jharkhand).

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Registrar General, Patna High Court, Patna.
3. The District and Session Judge, Madhubani.
4. The Judge-in- Charge, Nazarat and Administration, Civil Court, Jhanjharpur,
Madhubani.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Nawal Kishor Singh, Advocate Mr. Onkar Kumar, Advocate
For the State	:	Mr. Sanghamitra Ghosh, Advocate
For the Respondent	:	Mr. Satyabir Bharti, Advocate
(Patna High Court)	:	Mr. Abhishek Anand, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

7 08-05-2023 In the instant LPA, appellant has assailed the order
of the learned Single Judge dated 21.08.2020 passed in CWJC
No. 12192 of 2005.

2. Brief facts of the case are that the appellant was
subjected to disciplinary proceedings in framing article of
charges on 23.06.2001. The allegations are that he remained
unauthorizedly absent while disobeying the order of transfer.
Further allegation in the alleged charge is that he had



overwritten the attendance register as if he was present and further charges are relating to unauthorized absence for few days. The appellant had submitted his reply denying the alleged charges on 17.07.2001. Disciplinary authority being dissatisfied with the petitioner's explanation proceeded to hold enquiry while appointing Inquiring Officer. Inquiring Officer submitted his report on 04.01.2002 holding that the charges levelled against the appellant were proved. Disciplinary Authority on receipt of Inquiring Officer's report proceeded to issue show-cause notice on 22.03.2002 while enclosing Inquiring Officer's report. The appellant had submitted his reply on the Inquiring Officer's report read with the show-cause notice dated 22.03.2002 on 19.04.2002. The Disciplinary Authority proceeded to impose the penalty of dismissal from service on 03.06.2002. Feeling aggrieved and dissatisfied with the penalty order of dismissal from service, a representation was submitted by the appellant on 29.06.2002 before the Registrar General, Patna High Court, Patna which was consigned. Thereafter, the appellant preferred CWJC No. 12192 of 2005 which was dismissed on 21.08.2020. Hence, the present LPA.

3. Learned counsel for the appellant submitted that



the Judge Incharge, Nazarat and Administration, Jhanjharpur has submitted the report in respect of allegations stated in the charge memo to the concerned District Judge. The concerned District Judge proceeded to initiate disciplinary proceedings while appointing the same Officer who was complainant in the present case as Enquiring Officer. Therefore, Enquiring Officer was biased, since he had submitted report relating to appellant remaining on unauthorized absence, overwriting of attendance register etc. The same has not been appreciated by the learned Single Judge. It is further submitted that the Inquiring Officer, Judge Incharge, Nazarat and Administration, Jhanjharpur who should have been cited as a witness on two counts, namely, that he had submitted report to the District Judge and further for oral permission alleged to have been given by him to the appellant to mark the attendance for back dates. In the event of disputing that oral permission was not granted by the Judge concerned who has been appointed as an Inquiring Officer, he should have been cited as witness for the purpose of proving that whether the oral permission was granted to the appellant to mark attendance for the back dates or not? It is also submitted that none of the witnesses has been cited in support of the alleged



four charges. These are all legal *lacunae* which are required to be examined by any judicial forum. Therefore, the learned Single Judge has committed error in not appreciating the aforementioned legal issues.

4. *Per-contra*, Learned counsel for the respondent resisted the aforesaid contentions and submitted that the appellant remained ex-parte in the enquiry, the same has been recorded by the learned Single Judge at Para-5 of the impugned order. That apart, it is submitted that the appellant has admitted the alleged allegations relating to marking attendance for back dates with the oral permission of the Judge Incharge, Nazarat and Administration, Jhunjharpur. Therefore, the allegation is relating to tampering of attendance and it has been proved, therefore, there is no infirmity in the order of the learned Single Judge.

5. Heard learned counsel for the respective parties.

6. Undisputed facts of the case are that the appellant while working as a Clerk, was subjected to disciplinary proceedings on 23.06.2001, which was concluded in imposition of penalty of dismissal from service on 03.06.2002 against which appellant submitted a representation before the Registrar General, Patna High Court, Patna on 29.06.2002



which was consigned. Thereafter, appellant preferred CWJC No. 12192 of 2005, which was rejected by the learned Single on 21.08.2020.

7. The appellant submitted that the learned Single Judge has committed error in not appreciating the fact that complainant was appointed as an Inquiring Officer. The complainant should have been cited as witness in order to prove the report submitted to the District Judge and also on the point that whether he had given oral permission to the appellant to mark the attendance for back dates. Further, none of the witnesses has been cited, examined or cross-examined in support of all the four charges. Insofar as alleged serious charge relating to marking of attendance for the back dates with the oral permission of Judge Incharge, Nazarat and Administration, Jhanjharpur who has been appointed as an Inquiring Officer is a serious *lacuna*. It is a case for remand to the Disciplinary Authority to commence the enquiry from the defective stage. However, at this distance of time, it is not appropriate to remand the matter for holding enquiry from the defective stage in the light of Apex Court decision in the case of ***Managing Director, ECIL V. B. Karunakar [(1993) 4 SCC 727]*** read with ***Chairman-cum-Managing Director,***



Coal India Limited & Ors. V. Ananta Saha & Ors. [(2011) 5 SCC 142] for the reasons that alleged charge relates back to the year 2000, inquiry commenced in the year 2001, it concluded in imposition of penalty on 03.06.2002, writ petition was filed in the year 2005 and it was decided in the year 2020 read with the present LPA. Further, we have noticed that appellant was appointed in the year 1976 and rendered about 22 years of service. Further alleged charges are not related to any financial irregularities on the other hand it is in respect of unauthorized absence and marking of attendance for back dates in order to regularize unauthorized absence.

8. If the appellant was in service, he would have attained the age of superannuation and retired from service in the month of January 2018. Taking note of all these dates and events, impugned penalty order of dismissal dated 23.06.2002 and order of the learned Single Judge dated 21.08.2020 passed in CWJC No. 12192 of 2005 stand set aside.

9. Disciplinary authority is hereby directed to proceed to impose penalty other than dismissal/removal, preferably imposition of penalty of compulsory retirement w.e.f. 03.06.2002 so as to give *quietus* to the litigation. Such



action shall be taken by the Disciplinary Authority within a period of three months from the date of receipt of this order.

10. With the above observation, LPA stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Himanshu/-
Ashish/-

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