

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.684 of 2018

In
Civil Writ Jurisdiction Case No.9459 of 2011

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The State Of Bihar, Through The Commissioner Cum Secretary

... .. Appellant/s

Versus

Mahendra Chaudhary Son of late Mohit Chaudhary, Resident of Mohalla-Brahampura Behind Sanjay Cinema Police Station-Brahampur, District Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Sanjay Prasad Ac To Aag 4
For the Respondent/s : Mr.Santosh Kumar Verma

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 17-03-2023

In the instant LPA, appellant-State has questioned the validity of order of the learned Single Judge dated 06.09.2017 passed in CWJC No. 9459 of 2011.

2. Respondent-Mahendra Chaudhary was subjected to disciplinary proceedings on the allegations that due to his negligence during the flood protection embankment had been damaged resulting in breach causing widespread of flood and damages to the public and private property at large thus creating havoc with the lives of general public at the relevant point of time and so also State has suffered huge financial loss. In the departmental enquiry he was exonerated in some of the charges



except charge number 2, 14 and 5 which were stated to have been proved. Disciplinary Authority while disagreeing with the unproved charge proceeded to issue show-cause notice and seeking explanation from him. On receipt of explanation of the respondent disciplinary authority proceeded to impose the penalty of withholding of 25% pension on permanent basis. The learned Single Judge has taken note of the order of the disciplinary authority as well as appellate authority that the points raised by the respondent against show-cause notice in disagreeing with the inquiring officer's finding that there were no analysis and finding on behalf of the disciplinary authority. The same was taken note of by the learned Single Judge who set aside the order of the disciplinary authority as well as order of the appellate authority.

3. Portion of order of the learned Single Judge reads as under:-

“This Court is contrained to hold that the manner in which the Disciplinary Authority has recorded the finding and imposed the punishment is not permissible under law. When the Inquiry Officer has exonerated the petitioner of the charges levelled, particularly the 13 charges, if the Disciplinary Authority wanted to disagree from the finding and record his own finding, it was incumbent upon the Disciplinary Authority to take note of the points of disagreement, the explanation submitted by the petitioner, evaluate the explanation in the backdrop of the finding recorded by the



Inquiry Officer, discuss the same, give reasons for disagreement and then record his independent finding. All these legal requirements are not adhered to by the Disciplinary Authority and in a one paragraph order it is only stated that the explanation of the petitioner is unsatisfactory, it cannot be accepted and rejecting the Inquiry Officer's report it is only stated that the charges are proved and the punishment imposed. This does not meet the requirement of law and as the Disciplinary Authority has recorded a finding of guilt against the petitioner without following the requirement of law in a perverse manner, showing total non-application of mind, has acted in a mechanical manner, and has recorded a finding of guilt by issuing a non-speaking order; this is enough to interfere into the matter; hold the action to be vitiated and allow this petition. Accordingly, this writ petition is allowed the order Annexure-29 dated 28.09.2005 and the appellate order dated 06.04.2011 (Annexure-33) are quashed. The writ petition stands allowed and disposed of. Petitioner shall be entitled to consequential benefit in view of the aforesaid."

4. No doubt, it is a case for remand for consideration of respondent's explanation afresh by the disciplinary authority, however, we have noticed already two decades have passed and respondent had attained age of superannuation and retired from service in the year 2003. Further, we noticed that financial loss has not been determined by the disciplinary authority while framing charges.



5. In the light of these facts and circumstances we are of the view that it is not a case for remand to the disciplinary authority to continue the disciplinary proceedings from the defective stage. Moreover, respondent has already undergone pain and suffered mentally in facing departmental enquiry and also litigation for the last two decades. Hence, the appellants have not made out a case so as to interfere with the order of learned Single Judge. Accordingly, order of the learned Single Judge is affirmed.

6. Concerned respondent is hereby directed to settle the monetary benefits of the respondent pursuant to the order of imposition of penalty and quashing of the same, including the appellate authority order, and pay the arrears of pension within a period of four months from the date of receipt of this order.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

abhishekk/-

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