

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.715 of 2019

In
Civil Writ Jurisdiction Case No.6578 of 2019

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Mahesh Kumar Choudhary, Son of Shri Ram Balak Chaudhary, resident of
Village Raghunandanpur, P.S. Bhagwanpur, District- Begusarai.

... .. Appellant/s

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs,
Government of India, New Delhi.
2. The Secretary, Ministry of Home Affairs, Government of India, New Delhi.
3. The Inspector General cum Revisional Authority, Central Reserve Police
Force, Bihar Sector, Ashiana Digha Road, Patna.
4. The Deputy Inspector General Cum Appellate Authority, Central Reserve
Police Force, Ashiana Digha Road.
5. The Commandant, 22nd Battalion, Central Reserve Police Force, Bazar
Samiti Hazaribagh, Jharkhand.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Sarva Deo Singh, Advocate
For the Respondent/s	:	Dr. Krishna Nandan Singh, Sr. Advocate, ASGI assisted by Ms. Renuka Sharma, CGC Mr. Devansh Shankar Singh, AC to ASG Mr. Shivaditya Dhari Singh, JC to ASG

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA

ORAL JUDGMENT

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

Date : 13-12-2023

In the present LPA the appellant has assailed the order of
the learned Single Judge dated 23.04.2019 passed in CWJC No.
6578 of 2019. It is necessary to reproduce relief sought in the
CWJC No. 6578 of 2019 which reads as under:



“That by this writ petition, the petitioner craves indulgence of this honourable court for issuance of writ of certiorari for quashing the (i) order dated 26/3/2015 issued under the signature of Commandant, 22nd battalion, Central Reserve Police Force, Bazar Samiti, Hazaribagh, Jharkhand whereby and where under the petitioner has been awarded the penalty of removal from service, (ii) order dated 20/6/2015 issued under the signature of the respondent number 4 whereby the Appeal filed by the petitioner has been rejected without application of mind and without passing a speaking and reasoned order (iii) order dated 10/9/2015 issued by the respondent number 3 which is again passed without application of mind and appreciation of materials on record (iv) order dated 23-4-2018 passed by the respondent no. 3 rejecting the representation and (v) for issuance of writ of Mandamus for directing and commanding the respondent authorities for reinstating the petitioner in the service with all consequential benefits and further for (vi) issuance of any others writ/writs direction /directions / order / orders as may deem fit in the facts and circumstances of the case stated hereinafter.”

2. Before filing CWJC No. 6578 of 2019, identical relief was sought in CWJC No. 17537 of 2015 and it was disposed of on 07.03.2018. Extract of the order is reproduced hereunder:

“At the very outset, learned counsel for the petitioner has made a prayer that he may be given liberty to persuade the authorities to reconsider the



punishment as the same is disproportionate to the charge.

In view of the limited nature of prayer made by the learned counsel for the petitioner, the writ petition is disposed of with liberty to the petitioner to approach respondent No. 3 with his claim/representation so as to persuade him to reconsider the quantum of punishment. If such representation/claim is filed within two weeks, the authorities would be obliged to consider and dispose of the same in accordance with law within eight weeks.

This Court, however, is not expressing any opinion on the merits of the claim made by the petitioner.

It is made clear that since the limited prayer has been made by the petitioner, it is for the authority to exercise his discretion in the matter. The order passed by the authority hereafter shall finally conclude the issue.”

3. Having regard to the fact that appellant had suffered an order insofar as challenge to the order of removal from service and appellate authority's order, once again identical relief has been sought. This Court has, in CWJC No. 17537 of 2015, permitted the appellant to agitate insofar as quantum of penalty. Faced with aforementioned judicial order once again questioning the removal order amounts to *res judicata*. The appellant had a remedy of filing civil review in CWJC No. 17537 of 2015 or he had a remedy of



filing LPA against order passed in CWJC No. 17537 of 2015. On the other hand, he proceeded to file fresh writ petition bearing CWJC No. 6578 of 2019 in which he has sought relief reiterating whatever the relief sought in the first litigation and additional prayer has been sought which has been quoted *supra*.

4. Learned Single Judge while deciding CWJC No. 6578 of 2019 on 23.04.2019 examined the quantum issue read with the order dated 07.03.2018 passed in CWJC No. 17537 of 2015 and refused to interfere with the impugned order and it was dismissed in this backdrop and the present LPA is required to be examined only in respect of quantum of penalty read with the order of the learned Single Judge.

5. Today, learned counsel for the appellant submitted that no Presenting Officer was appointed which has resulted in vitiation of entire departmental proceedings till passing of an order by the appellate authority. Such ground is not available to the appellant in LPA stage. He further submitted that it is a legal ground and new plea can be raised at any point of time. The aforementioned principle is not attracted in the present case for the reasons that insofar as removal from service and appellate authority's order are concerned it was already examined on judicial side in CWJC No. 17537 of 2015. Thereafter, scope is



limited to the extent of quantum of penalty. To decide the quantum of penalty one cannot examine any defect in the initiation of inquiry like in not appointing the Presenting Officer to present the case on behalf of the department.

6. *Per contra*, learned counsel for the respondents resisted new plea taken by the appellant at this belated stage. He has also submitted that in identical matter in LPA No. 552 of 2018 arising out of CWJC No. 10481 of 2012, it was decided against one *Ramesh Kumar* in which also he has raised legal issues. The same was examined in paragraph 7 and the order of this Court was affirmed by the Apex Court in **Special Leave to Appeal (C) No (s) 25111/2019** decided on 25.10.2019.

7. Heard learned counsels for the respective parties.

8. Core issue involved in the present *lis* is whether new plea raised by the appellant to the extent that Presenting Officer was not appointed in a departmental inquiry could be examined in the present case or not? Undisputed facts are that appellant was subjected to disciplinary proceedings and it was concluded in imposition of penalty of removal from service and it was subject matter of appeal in which also the appellant suffered an order. In the result, he had filed CWJC No. 17537 of 2015 and it was disposed of on 07.03.2018 only to the extent that concerned



authority was required to examine the quantum of penalty. In other words, there is no interference on merit.

9. Be that as it may, the appellant had a remedy of filing civil review petition against the order dated 07.03.2018 passed in CWJC No. 17537 of 2015 or to file LPA. On the other hand, he has filed fresh CWJC No. 6578 of 2019 in which he has sought for quashing of the removal order as well as the appellate authority's order and consequential order of rejecting quantum of penalty.

10. At this stage, learned counsel for the appellant interfered and in a high pitch of voice stated that he has not been heard in the matter. Therefore, he has to be heard further. Accordingly, we proceed to hear him and whatever the submissions to be made by him.

11. Learned counsel for the appellant submitted that as per Charge No. 1, Medical Officer was a relevant witness who has not been examined, Charge No. 2 one *Md. Sharif Khan* had been threatened by the petitioner that he is going to kill him. In this regard there is no corroborative evidence insofar as the alleged second charge is concerned. It is further submitted that the third charge is relating to extraneous material to the extent that appellant was punished on an earlier occasion on 12.08.2014. The same cannot be taken into consideration.



12. Learned counsel for the appellant submitted that impugned order dated 23.04.2018 is not a speaking order. The same was not considered by the learned Single Judge. In support of this contention, he has relied on Co-ordinate Bench decision reported in ***Niranjan Kumar Dutta vs. State of Bihar*** reported in **2019 2 PLJR 983**, Paragraph No. 10 which reads as under:

“10. We are also conscious of the provisions of law being the Civil Services (Classification, Control and Appeal) Rules, 1930 wherein it has been envisaged that while passing an order under this Rule, it is of paramount importance that the authority passing the order himself should give a conscious consideration to the representation filed by the employee after due application of mind as any punishment which should follow would be marring future prospects of the employee. A mechanical approach based on conjectures and surmises should be avoided and all considerations of the representation should be on an objective basis. This reasoning finds support in the case of Md. Mahmudul Hasan v. The State of Bihar reported in 1997 (2) PLJR, 953.”

13. In support of new plea can be raised at any given point of time, he has cited Apex Court decision in the case of ***National Textile Corpn. Ltd vs. Nareshkumar Badrikumar Jagad*** reported in **(2011) 12 SCC 695**, Paragraph No. 19 reads as under:

“19. There is no quarrel to the settled legal proposition that a new plea cannot be taken in



respect of any factual controversy whatsoever; however, a new ground raising a pure legal issue for which no inquiry/proof is required can be permitted to be raised by the court at any stage of the proceedings. [See Sanghvi Reconditioners (P) Ltd. v. Union of India [(2010) 2 SCC 733 : AIR 2010 SC 1089] and Greater Mohali Area Development Authority v. Manju Jain [(2010) 9 SCC 157 : (2010) 3 SCC (Civ) 639 : AIR 2010 SC 3817].”

14. The appellant's hands are tied insofar as arguing main matter like charge Nos. 1 to 3 since he had already surrendered his right before the learned Single Judge in CWJC No. 17537 of 2015 decided on 07.03.2018 cited *supra*. The cited Co-ordinate Bench decision does not assist the appellant for the reasons that in a departmental inquiry, scope of judicial review is limited to the extent of violation of any procedure of law as held by the Apex Court in the case of ***Union of India vs. Dalbir Singh*** reported in **(2021) 11 SCC 321**. Therefore, Co-ordinate Bench decision cited on behalf of the appellant is not assisting the appellant.

15. The appellant in CWJC No. 6578 of 2019 should have restricted to the challenge to order dated 23.04.2018 in the light of order dated 07.03.2018 passed in CWJC No. 17537 of 2015. On the other hand, in CWJC No. 6578 of 2019 he has sought for relief as if for the first time he was invoking the writ



jurisdiction with reference to assailing penalty of removal and its affirmation by the appellate authority. He has also not produced copy of the order of CWJC No. 17537 of 2015 dated 07.03.2018 in CWJC No. 6578 of 2019. Faced with these material defects and the fact that this Court in LPA, these issues cannot be agitated like non-appointment of Presenting Officer, non-examination of medical officer, no corroborative evidence insofar as charge No. 2 and extraneous material insofar as charge No. 3 is concerned. It is not that behind the back of the appellant charge No. 3 has been taken into consideration. In other words, appellant has been provided an opportunity to defend the charge No. 3, even though it is penalty related to order dated 12.08.2014. Therefore, there is no infirmity and so also at this juncture, the LPA Bench cannot examine in view of the fact that appellant has already surrendered his right insofar as challenge to the penalty order and its affirmation by the appellant authority.

16. The issue new plea cannot be raised at any given point of time and it is to be applied at a particular stage. We are in the stage of quantum of penalty. For quantum of penalty, this Court cannot examine the issue of non-appointment of Presenting Officer and non-examination of witnesses and other things on merit. In other words, at initial stage, the appellant had an opportunity of



raising new plea with reference to legal issue that Presenting Officer was not appointed. He has also not resorted to in filing civil review petition against the order dated 07.03.2018 passed in CWJC No. 17537 of 2015 if the real intention of the appellant is to raise in respect of non-appointment of Presenting Officer. Having regard to these facts and circumstances, appellant has not made out a case so as to interfere with the order dated 23.04.2019 passed in CWJC No. 6578 of 2019.

17. Accordingly, present appeal stands dismissed.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
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