

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3005 of 2021

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Ghanshyam Jha, S/o Late Dr. Kapileshwar Jha, R/o 20/N Professor Colony,
East of Kendriya Vidyalaya, P.S. Patrakar Nagar, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna.
2. The Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna.
3. The Additional Secretary, Department of Mines and Geology, Government of Bihar, Patna.
4. The Special Secretary, Department of Mines and Geology, Government of Bihar, Patna.
5. The Director, Department of Mines and Geology, Government of Bihar, Patna.
6. The Under Secretary, Department of Mines and Geology, Government of Bihar, Patna.
7. The District Magistrate, Sheikhpura.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Mayuri
For the Respondent/s : Mr.Lalit Kishore (Ag)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 02-02-2023

The present writ application has been filed for the following reliefs:-

“(i) for issuance of a direction, order or writ, including a writ in the nature of certiorary to quash the Memo Number 2665 dated 15.09.2020 passed by the Revisional authority without citing any reason for the same in contravention of the order of this Hon’ble Court.



(ii) for issuance of a writ in the nature of mandamus refraining the Respondents from taking any action in the Departmental Proceeding based on an Enquiry Report which has already exonerated the petitioner of all the charges.

(iii) for issuance of a writ in the nature of mandamus directing the Respondents to refrain from making this order operational during the pendency of this application and to restore the petitioner to the pay scale he would otherwise be entitled to in law.

(iv) for issuance of any other relief/reliefs which it may deem to be fit and proper with the facts and circumstances of the present case.”

In the instant case Annexure-26 order dated 15.09.2020 is under challenge which was passed pursuant to the order passed by the Hon’ble High Court in CWJC No. 8735 of 2018 with direction:-

“Since the petitioner has been subjected to a punishment which order has been subjected to revision, it would have been only proper on the part of the revisional authority to have at least indicated that the reasons given by the disciplinary authority are acceptable and are not required to be interfered with. Merely rejecting the revision of the petitioner does not give any idea to this Court whether the reasoning given by the disciplinary authority has been reviewed. It was all the more necessary for the



reviewing authority to have assessed the reasons assigned by the disciplinary authority because as a matter of self-restraint, the court would not like to substitute its own opinion with the opinion of the disciplinary authority.” In compliance of the direction of this Hon’ble court the revisional authority after considering the entire facts and taking into account the serious allegation against the petitioner passed a reasoned order which is under challenge.

The brief facts giving rise to the instant application is that while petitioner was appointed as Assistant Geologist in the Department of Mines and Geology in the year 1999 and was posted as District Mining Officer at Sheikhpura at the relevant time, the District Magistrate, Sheikhpura had reported vide letter no. 1696 dated 09.09.2007 several charges against the petitioner, which included inter alia indiscipline, insubordination, unauthorized absence, dereliction of duty, indulgence in corrupt practices and causing heavy loss to the government revenue. The District Magistrate, Sheikhpura recommended for initiation of departmental proceeding against the petitioner. The petitioner was asked show cause vide letter no. 60 dated 21.09.2007 and after finding his reply unsatisfactory, he was put under suspension vide letter no. 2342 dated 12.10.2007. Thereafter, following the due process of law, a departmental proceeding was initiated vide Memo No. 230 dated 30.01.2008 under Bihar



Government Servant (Classification, Control and Appeal) Rules, 2005 as contained in Annexure-14 to this writ petition. Petitioner has a chequered history. He was asked show cause in the year 2007 for his alleged misconduct of not obeying the order of senior officer, using abusive language in correspondence apart from loss of revenue to government by his negligence and reckless behaviour. It was alleged that while he was posted as District Mining Officer, Sheikhpura, he did not properly discharge his duty of collecting revenue or stopping incidence of illegal mining. It was found that amongst a total of 62 mining leases, revenue was deposited only for 20 leases which shows the gross negligence of duty by the petitioner. Thereafter, enquiry officer submitted his report dated 08.06.2009 as contained in Annexure-16 to this writ petition where the charges levelled against the petitioner were grave and based on concrete documentary evidence. In light of deliberation on the enquiry report and the opinion received, a fresh departmental proceeding was initiated vide letter no. 1865 dated 23.09.2010 as contained in Annexure-17 to this writ petition which was challenged by the petitioner in CWJC No. 17426 of 2010 which was disposed of by the Hon'ble Court vide order dated 03.10.2012 whereby the matter was sent back



to the Enquiry Officer for further inquiry within a period of one month. After the aforesaid order dated 03.10.2012, the petitioner was issued show-cause notice vide letter no. 1268 dated 21.03.2014. The petitioner instead of obeying the order passed by the Hon'ble Court, willfully absented himself from the enquiry and the IO was forced to conduct the enquiry ex-parte and petitioner did not cooperate and the opinion of BPSC was solicited upon proposal to terminate his services. The BPSC communicated vide letter no. 1174 dated 20.08.2014 its disagreement with the quantum of punishment of dismissal, mentioning it to be disproportionate to the charges levelled against the petitioner. The said decision too became the subject matter of MJC No. 6254 of 2013 and MJC No. 137 of 2014 which were heard and disposed of by a common order dated 22.01.2014 by the Hon'ble Court. The whole matter shall stand relegated to the stage of order dated 03.10.2012 passed in CWJC No. 17426 of 2010. Pursuant to the said order, the petitioner was served with second show cause notice bearing Memo No. 1268 dated 21.03.2014 explaining the point of disagreement with the enquiry report so submitted vide letter no. 211 dated 08.06.2009 as contained in Annexure-16 of this writ petition. The petitioner had submitted his explanation and upon



consideration of all the facts and his explanation, BPSC was consulted for opinion on proposed punishment of dismissal from service. However, BPSC disagreed, but the disciplinary authority disagreed with the opinion of the BPSC and passed the order of dismissal against the charged officer which was communicated vide letter no. 4224 dated 25.11.2014 as contained in Annexure-20 to this writ petition. The punishment of dismissal from service, so awarded vide order dated 25.11.2014, had been subject of challenge in CWJC No. 22534 of 2014 which was disposed of by Hon'ble Court vide order dated 16.03.2017 whereby the punishment was set aside and the matter was remitted back to the disciplinary authority to pass a fresh order, if so advised, in consideration of the opinion of the Departmental Minister which had not been interfered with or overruled by any superior authority, the opinion of BPSC and the opinion of the Enquiry Officer and explanation given by petitioner. He next submits that the order passed in CWJC No. 22534 of 2014 dated 16.03.2017 as contained in Annexure-21 of the writ petition led to fresh show-cause as contained in Annexure-22 of the writ petition which was furnished by petitioner as contained in Annexure-23 to this writ petition. After consideration of all the factual aspects and the direction of



the Hon'ble Court, a final decision was taken and communicated vide letter no. 7533 dated 14.12.2017 as contained in Annexure-24 of the writ petition by the disciplinary authority. The disciplinary authority vide its order dated 14.12.2017 passed an order for (a) stoppage of promotion for five years, (b) stoppage of three increments with cumulative effect. The petitioner challenged the aforesaid punishment order dated 14.12.2017 also before the learned Revisional Authority which was upheld by the Revisional authority vide order dated 12.03.2018 and lastly, petitioner proceeded to challenge both the orders in CWJC No. 8735 of 2018 on the grounds that the charges against him were reported 'not proved' by the earlier enquiry officer vide his report dated 08.06.2009, the report was accepted by the departmental Minister and the advice of the BPSC was not considered. The Hon'ble Court on 08.07.2019 passed final order setting aside the said orders and remitted the matter back to the Revisional authority to pass afresh order after assessing the correctness of reasons assigned by disciplinary authority. Thereafter, the Revisional authority discussed the detailed facts of the case and after taking into consideration the entire materials available on record reconsidered the matter as per the direction of Hon'ble Court and passed a reasoned order



communicated through letter no. 2665 dated 15.09.2020 which is the subject matter of challenge under this writ petition.

It is submitted on behalf of petitioner that no reason has been assigned for imposing the punishment. None of the grievances taken by the petitioner in his review petition has been dealt with and no evidence has been cited by the reviewing authority while imposing the order of punishment.

On the other hand counsel for State submits that after considering the entire facts and circumstances and allegation against this petitioner Revisional authority awarded the revised punishment of withholding two increments with cumulative effect and to stop all promotion for four years while the petitioner was appointed as Assistant Geologist in the Department of Mines and Geology in the year 1999 and was posted as District Mining Officer at Sheikhpura.

On perusal of record, it appears that this petitioner has got long history of litigation and after several rounds of litigation, lastly, vide Annexure-25 after quashing the order of punishment, direction was issued to the Revisional authority to consider the case in light of the direction contained therein. From perusal of Annexure-26 it appears that the Revisional authority elaborately considered the entire facts available on



record and after a detailed discussion, passed the order of punishment.

It is settled law that if the order of punishment is supported on any finding as to substantial misconduct for which punishment can lawfully be imposed, it is not for the court to consider as to whether that ground alone would have weighed the authority in punishing the public servant. It is the disciplinary authority that on an appeal the appellate authority being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are vested with a discretion to impose appropriate punishment keeping in view the magnitude, gravity and misconduct. The High Court while exercising the power of judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty.

On analysis of overall facts and circumstances and materials available on record, I find that the Revisional authority elaborately considered the entire facts of the case in light of the direction of this Hon'ble Court and by a detailed and speaking order and passed the order of punishment. I find no error being committed by Revisional authority in arriving at the conclusion an order of punishment and hence, does not call for any



interference by this Court.

Accordingly this writ petition stands dismissed.

(Prabhat Kumar Singh, J)

vinita/-

AFR/NAFR	
CAV DATE	
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