

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14944 of 2022

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Faiyaz Ahmad Son of Late- Mokhtar Ahmad Permanent Resident of Village- Mahual, P.S.- Hussainganj, District- Siwan, Presently Resident of At- Kalali Began, Ali Nagar, P.S.- Dhanbad, District- Dhanbad (Jharkhand).

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Home, Government of Bihar, Patna.
2. The Principal Secretary, Finance Department, Government of Bihar, Patna.
3. The Inspector General of Police Central Range, Patna.
4. The Director General of Police Bihar, Patna.
5. The Senior Superintendent of Police, Patna.
6. The Accountant General Bihar, Patna.
7. The District Account Officer, Patna.
8. The Deputy Secretary to the Government, Finance Department, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sarvdeo Singh, Advocate
For the State	:	Mr. Suman Kumar Jha, AC to AAG-3
For the A.G.	:	Mr. Ram Yash Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 09-05-2023

Heard Mr. Sarvdeo Singh, learned counsel appearing on behalf of the petitioner, Mr. Suman Kumar Jha, learned AC to learned AAG-3 appearing on behalf of the State and Mr. Ram Yash Singh, learned counsel for the Accountant General, Bihar.

2. Learned counsel appearing on behalf of the petitioner submitted that petitioner was given no opportunity nor he was informed before the decision taken in his case with



respect to fixation of his pay. The claim of the petitioner is that in terms of Government Notification No. 781-V(2) dated 08.02.1996, which came into effect from 01.01.1986, the pay scale of the petitioner in scale Rs. 880-1510/- was required to be replaced in pay scale 2000-3500/-. The petitioner had retired on 31.01.2015 and after his retirement, revised pay scale of the petitioner was incorrectly fixed in pay scale Rs. 1800-3300/- vide memo no. 168 of 2017 dated 24.01.2017. Petitioner is aggrieved by the said action of the District Authority.

3. It is further submitted that in want of any objection to have been sought from the petitioner before fixation of pay unilaterally the respondents have failed to abide by the principle of natural justice. In this regard learned counsel has placed his reliance on paragraph no. 28 and 29 of a recent judgment of the Apex Court in the case of ***Chairman State Bank of India and Anr. v. M.J. James*** reported in ***(2022) 2 SCC 201*** which is reproduced hereinunder:

“28. Traditional English law recognised and valued the rule against bias that no man shall be a judge in his own cause i.e. nemo debet esse judex in propria causa; and the obligation to hear the other or both sides as no person should be condemned unheard i.e. audi alteram partem. To these, new facets sometimes described as subsidiary rules have developed, including a duty to give reasons in support of the decision. Nevertheless, time and again the courts have emphasised that the rules of natural justice are flexible and their application depends on facts of each case as well as the statutory provision, if applicable, nature of right affected and the consequences. In A.K. Kraipak v. Union of India [A.K. Kraipak v. Union of India, (1969) 2 SCC 262] the



Constitution Bench, dwelling on the role of the principles of natural justice under our Constitution, observed that as every organ of the State is controlled and regulated by the rule of law, there is a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a quasi-judicial or administrative power are those which facilitate if not ensure a just and fair decision. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of law under which the enquiry is held and the constitution of the body of persons or tribunal appointed for that purpose. When a complaint is made that a principle of natural justice has been contravened, the court must decide whether the observance of that rule was necessary for a just decision in the facts of the case.”

29. *Legal position on the importance to show prejudice to get relief is also required to be stated. In State Bank of Patiala v. S.K. Sharma [State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364] a Division Bench of this Court distinguished between “adequate opportunity” and “no opportunity at all” and held that the prejudice exception operates more specifically in the latter case. This judgment also speaks of procedural and substantive provisions of law embodying the principles of natural justice which, when infringed, must lead to prejudice being caused to the litigant in order to afford him relief. The principle was expressed in the following words : (SCC p. 389, para 32)*

“32. Now, coming back to the illustration given by us in the preceding paragraph, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (iii) be in the interests of justice or would it be its negation? In our respectful opinion, it would be the latter. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counterproductive exercise.

4. He further submitted that since the initial order dated 24.01.2017 is without jurisdiction, the consequential order contained in letter no. 1003 dated 25.08.2022 is required to be set aside.



5. Learned counsel appearing on behalf of the State informs this Court that sufficient opportunity was given to the petitioner. In fact, the petitioner himself had made representation wherein, he has stated that the replacement scale of Rs. 1640-2900/- is Rs. 2000-3500/- in terms of notification no. 781 V(2). He further submitted that since there was a disciplinary proceeding against the petitioner and as a result of penalty order, the pay scale of the petitioner has been reduced in replacement pay scale of Rs. 1800-3300/-.

6. Considering the rival submission made by the parties as well as the record of the case, it appears that the order contained in letter No. 891 dated 13.08.2022, passed by the Senior Superintendent of Police, Patna, no reference has been made as to whether before the “District Order No. 168/17 dated 24.01.2017”, the petitioner was given any opportunity or any objection was sought from him before taking decision on the representation of the petitioner. A further explanation was required to be sought from the petitioner and the same having not been done in the present case, the order contained in District Order No. 168/17 dated 24.01.2017 is without jurisdiction and accordingly set aside.

7. The consequential order contained in ‘Annexure-



7’, the letter of the Deputy Director General of Police (Inspection), Bihar, Patna loses its force.

8. The respondents are directed to give notice and seek explanation from the petitioner before taking any decision to revise the replacement pay scale of the petitioner and consequential benefits arising out of the same in accordance with the Government Notification No. 781 V(2) dated 08.02.1996.

9. All the above exercise must be done within a period of two months.

10. Accordingly, the present writ petition is allowed.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	18.05.2023
Transmission Date	N/A

