

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7511 of 2022

Chakleshwar Kharwar, Son of Late Bala Kharwar Resident of Plot No.- B-47, Kusum Vihar, Near Shiv Mandir, Kolakusma, Koylanagar, P.S.- Saraidhela, District- Dhanbad (Jharkhand), presently posted as Assistant Engineer, Bihar Police Building Construction Corporation Limited, Kautilya Nagar, P.S.- Hawai Adda, District- Patna, Pin Code- 800014.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Joint Secretary, Water Resources Department, Government of Bihar, Patna-cum-Enquiry Officer-cum-Enquiry Officer.
4. The Additional Secretary, Water Resources Department, Bihar, Patna.
5. The Deputy Secretary, Water Resources Department, Bihar, Patna.
6. The Engineer-in-Chief Water Resources Department (Headquarter), Government of Bihar, Patna-cum-Enquiry Officer.
7. The Assistant Engineer, office of the Engineer-in-Chief (Headquarter) Water Resources Department, Patna-cum-Presenting Officer.
8. The Secretary, Bihar Public Service Commission, Bailey Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Siya Ram Sahi, Advocate Mr.Indu Bhushan, Advocate
For the Respondent/s	:	Mr.Anjani Kumar (AAG4)
For the BPSC	:	Mr.Sanjay Pandey, Advocate Mr.Nishant Kr. Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 08-10-2024

The Petitioner, Chakleshwar Kharwar, was posted as an Assistant Engineer in the Irrigation Subdivision, Murliganj under the Water Resources Department, Bihar. Allegations arose regarding his supervision of a construction project at R.D. 28.00 of Sukliasan Distributory, wherein



irregularities were reported in the quality and alignment of the construction work. The Flying Squad of the department, followed by a six-member committee, conducted an investigation into the project, which found significant defects in the structure. The Petitioner was placed under suspension on 09.07.2018. The department initiated a formal enquiry under Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, which culminated in the imposition of a penalty for withholding four increments of pay.

2. Aggrieved by the proceedings and penalty, the Petitioner filed the present writ petition.

3. The Petitioner seeks quashing of Memo No. 826, dated 12.08.2021, issued by the Deputy Secretary, Water Resources Department, Government of Bihar, imposing a penalty of withholding four increments of pay with cumulative effect. The Petitioner also challenges Memo No. 649, dated 24.03.2022, rejecting his review petition. The Petitioner seeks quashing of Memo No. 648, dated 24.03.2022, which ordered that no salary be paid for the suspension period except subsistence allowance. The Petitioner prays for directions to pay full salary for the



suspension period, along with all consequential benefits.

4. The Petitioner was suspended from his position on 09.07.2018, as per Memo No. 1472. Shortly after, on 20.07.2018, he received a memo of charges (Prapatra-K) under Letter No. 1558, requiring him to respond. The Petitioner submitted his explanation on 08.10.2018 and later provided a supplementary explanation on 28.08.2019. Despite explanations given by the Petitioner, no response regarding the acceptance or rejection thereof was communicated. On 11.09.2019, the Water Resources Department decided to initiate a departmental proceeding against him, appointing an Inquiry Officer and a Presenting Officer. The Inquiry Officer directed the Petitioner to appear on 30.09.2019, where the Petitioner submitted his written statement of defense. A follow-up hearing took place on 14.10.2019, during which the Petitioner reiterated his defense.

5. That on 06.01.2020, a second show cause notice was issued, along with the inquiry report, dated 11.11.2019, which found the charges levelled against the Petitioner to be proven. The Petitioner responded to this notice on 08.01.2020 and given a supplementary reply on 05.02.2020. On 12.08.2021, a penalty was imposed, withholding four



increments of pay with cumulative effect. The Petitioner filed a review petition on 22.09.2021, followed by a supplementary review on 06.10.2021, both of which were rejected by Memo No. 649 on 24.03.2022. After suspension, the Petitioner was asked to show cause why no salary should be paid, except for the subsistence allowance. Despite his explanation submitted on 24.09.2021, a decision was taken on 24.03.2022 that nothing beyond subsistence allowance would be payable for the suspension period.

6.The Respondents state that the Petitioner, while serving as the Supervising Officer for construction work at R.D. 28.00 failed to ensure that the project adhered to the sanctioned design and estimate. A committee inspection revealed significant defects in the structure, rendering it unusable. This failure allegedly resulted in a financial loss of Rs. 13,43,042/- to the government exchequer. In response to these findings, the department launched formal proceedings under Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, citing negligence on the Petitioner's part. The Petitioner's defense was reviewed during the enquiry process, but the enquiry report concluded that the charges were substantiated.



7. Following the inquiry, the disciplinary authority imposed a penalty on the Petitioner, withholding four increments of his pay with cumulative effect. Additionally, the Petitioner's request for salary during his suspension, which began on 09.07.2018, was denied. The department decided that his suspension period would only be regularized for pension purposes, and no further salary would be granted, except for the subsistence allowance paid during the suspension.

8. The Learned Counsel for the Petitioner argues that the departmental enquiry was conducted in violation of the principles of natural justice. No witnesses were examined, and he was denied the opportunity to cross-examine anyone. The enquiry report relied solely on documentary evidence and the Petitioner was not given a fair chance to rebut the findings. Petitioner also contends that the penalty of withholding four increments of pay is disproportionate, especially considering the procedural irregularities during the enquiry. The enquiry, which lasted over three years, far exceeded the one-year limit prescribed by the General Administration Department's circular, contributing to the unfairness of the process.



9. In order to substantiate his argument, Ld. Advocate for the Petitioner relies on a decision of this Court in Kumar Upendra Singh Parimar v. B. S. Co-opt. Land Dev. Bank Ltd., reported in 1999 SCC OnLine Pat 1075. Paragraph Nos. 12 and 19 of the said judgment is relevant and is quoted below: -

“12. In the instant case, the Petitioner denied the charges and filed its written statement. He has demanded inspection of documents for his effective defence in the enquiry. There is no requirement that he has to demand an oral enquiry in writing. In any event that requirement has no significance in this case where the Respondents themselves have ordered an enquiry by appointing an enquiry officer. After appointing an enquiry officer the authorities cannot proceed on the basis no oral enquiry need be held. This stand is contrary to the mandate of Rule-55 of the rules and also its clarification by administrative circulars extracted above.

19. Therefore, in the facts of this case, this Court is constrained to hold that by not producing any evidence in support of its case, the Respondent authorities have failed to prove the charges against the delinquent employee. Where charges have not been proved the enquiry report loses all its importance and the punishment imposed on the Petitioner cannot be sustained. When a person is thrown out of employment, it must be on the basis of a procedure which is reasonable, just and fair. (See D.K. Jadav v. J.M.A. Industries Ltd., reported in (1993) 3 SCC 259 : 1994 (2) PLJR



(SC) 55.”

10. The Learned Counsel for the Petitioner also states that the denial of his full salary during the prolonged suspension period is unjustified, particularly as the suspension lasted for an extended period without proper cause. This, combined with the procedural delays and mishandling of the enquiry, further aggravated his situation, resulting in financial and professional hardship. The Petitioner asserts that these factors demonstrate significant flaws in the disciplinary proceedings, warranting a reconsideration of the penalty and his salary entitlement.

11. The Learned Counsel for the Respondents contends that the departmental enquiry was conducted fairly in accordance with Rule 17 of the Bihar Government Servants (CCA) Rules, 2005. They assert that the Petitioner was given ample opportunity to defend himself during the proceedings. The Respondents further contends that the Petitioner’s mismanagement of the project led to financial loss to the government, which were proven through concrete evidence. Accordingly, they contend that the penalty of withholding four increments was proportionate to the gravity of the misconduct. Additionally, the Respondents assert that the denial of the Petitioner’s full salary during the suspension period was



lawful, in line with the applicable rules, limiting his entitlement to the subsistence allowance only.

12. In the *State of U.P. & Ors. v. Saroj Kumar Sinha*, reported in (2010) 2 SCC 772, it is held by the Hon'ble Supreme Court that by virtue of Article 311(2) of the Constitution of India, the departmental enquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in a punishment being imposed on the employee. In the present case, it is evident that the enquiry was conducted without calling any witnesses or allowing the Petitioner to challenge the evidence against him. This omission is a clear violation of the principles of natural justice.

13. The penalty imposed on the Petitioner appears to be excessive and disproportionate, especially considering the fact that the enquiry process extended over three years, in violation of the General Administration Department's circular requiring such proceedings to be concluded within one year. The delay itself casts doubt on the fairness of the process and warrants a reconsideration of the penalty imposed.



14. The denial of full salary for the suspension period is unjustified, seeing the prolonged nature of suspension without valid cause. The Petitioner was kept under suspension for an excessive period and no adequate explanation has been provided for denying him his full salary during this time.

15. The Ld. Advocate for the Petitioner also refers to another decision of this Court in the case of *Amarendra Prasad v. Bihar State Financial Corporation, through its Managing Director & Ors.*, reported in *2019 (2) PLJR 524*. In the said judgment, a Co-ordinate Bench of this Court considered the issue as to whether back wages are to be granted to a delinquent employee after setting aside the order of dismissal. The Co-ordinate Bench found the answer to the said issue in *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya*, reported in *(2013) 10 SCC 324*, Paragraph Nos. 38 to 38.7, whereof, are reproduced hereinbelow: -

“38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.



38.2. *The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.*

38.3. *Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.*

38.4. *The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but*



holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays.



Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works (P) Ltd. v. Employees [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] .

38.7. The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal [(2007) 2 SCC 433 : (2007) 1 SCC (L&S) 651] that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] , [Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, (1980) 4 SCC 443 : 1981 SCC (L&S) 16] referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.”



16. Having heard the Ld. Advocates for the parties and considering the facts and circumstances of the case, the Court finds that the Petitioner was denied fair opportunity to defend himself in the departmental enquiry and the penalty imposed was disproportionate to the charges proven.

17. Accordingly, the writ petition is allowed and the order, dated 12th of August, 2021, withholding four increments with cumulative effect as well as the order of review, dated 24th of March, 2022 are quashed and set aside.

18. The case is remanded back to the Respondents / disciplinary authority to pass appropriate order with regard to punishment, considering the observation of this Court made hereinabove.

19. With the above order, the instant writ petition stands disposed of.

(Bibek Chaudhuri, J)

skm/-

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