

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1194 of 2016

In

Civil Writ Jurisdiction Case No.7386 of 2000

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Rabindra Prasad, Son of Late Chakradhar Prasad, R/o Village- Dhamdaha,
P.S. Dhamdaha , P.O. Dhamdaha, District-Purnea.

... .. Appellant.

Versus

1. The State of Bihar through the Secretary, Water Resources Department, Sinchai Bhawan, Hardings Road, Patna.
2. The Special Secretary, Department of Water Resources, Sinchai Bhawan, Harding Road, Patna.
3. The Additional Secretary, Department of water Resources, Sinchai Bhawan , Harding Road, Patna.

... .. Respondents.

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Appearance :

For the Appellant : Mr. Rajesh Kumar, Advocate.
For the State : Mr. S.S. Tiwary, AC to AAG-15.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

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

Date : 07-08-2024

Appellant has assailed the order of the learned Single Judge dated 06.08.2015 passed in C.W.J.C. No.7386 of 2000.

2. Appellant while working as Executive Engineer, Irrigation Mechanical Division, Deoghar, was placed under suspension on 20.06.1991 and it was revoked on 14.11.1997. In the meanwhile, charge-memo was issued on 10.07.1991. Appellant is stated to have filed his reply to the charge-memo and it was not satisfied by the disciplinary authority, resultantly, the inquiring officer and presenting officer were appointed.



3. Before issuance of second show cause notice along with the inquiring officer's report, appellant invoked writ jurisdiction in filing C.W.J.C. No.4910 of 1997 in questioning the belated conclusion of the departmental inquiry initiated in the year 1991 and it was not concluded even after lapse of about six years.

4. The learned Single Judge disposed of C.W.J.C. No.4910 of 1997 on 19.08.1997 with a time bound direction to the disciplinary authority for issuance of second show cause notice along with the inquiring officer's report and further directing the appellant to furnish his reply to the second show cause notice along with the inquiring officer's report. Disciplinary authority issued a show cause notice within the time stipulated by the learned Single Judge. However, appellant demanded certain 17 documents instead of filing his reply. In this regard, he has not taken any permission of this Court for the reasons that this Court has specifically directed both, the official respondent and the appellant to the extent of issuance of show cause notice and on receipt of show cause notice, appellant was required to submit his reply. In all fairness, appellant should have invoked the remedy of filing Civil Review in C.W.J.C. No.4910 of 1997 insofar as modification of direction to the



appellant is concerned and the same has not been resorted.

5. Having regard to the materials on record, the disciplinary authority proceeded to impose the following penalty:

- (i). Censure for the year 1990-91.
- (ii). No promotion for seven years from due date.
- (iii). Stoppage of three increments with cumulative effect.
- (iv). No payment except subsistence allowance during the suspension period. However, suspension period would be counted for the purpose of extending pensionary benefit.

6. Feeling aggrieved by the penalty, appellant has presented C.W.J.C. No.7386 of 2000. Learned Single Judge proceeded to dismiss the aforesaid writ petition on 06.08.2015. Hence, the present L.P.A. No.1194 of 2016.

7. Learned counsel for the appellant vehemently contended that the disciplinary authority has failed to comply the orders of this Court dated 19.08.1997 passed in C.W.J.C. No.4910 of 1997. It is also submitted that he had demanded 17 documents on receipt of second show cause notice. The same has not been provided. On these two issues, the learned Single Judge has committed error in not appraising the same and interfering with the penalty order.

8. Per contra, learned counsel for the State-respondent submitted that the orders of this Court dated 19.08.1997 passed



in C.W.J.C. No.4910 of 1997 has been complied in issuing show cause notice. Appellant has not invoked the remedy of Civil Review insofar as alteration of the direction to the appellant to the extent of providing 17 demanded documents. Therefore, whatever the orders passed by the learned Single Judge dated 19.08.1997 is binding on the respective parties. It is also submitted that the learned Single Judge has elaborately considered each and every contention of the appellant. That apart, the appellant has not made out any legal ground so as to interfere with the disciplinary proceedings read with penalty.

9. Heard the learned counsel for the respective parties.

10. Undisputed facts are that appellant was placed under suspension and it was concluded in imposition of penalty (cited supra).

11. Grievance of the appellant is that the disciplinary authority failed to comply the orders of this Court dated 19.08.1997 passed in C.W.J.C. No.4910 of 1997 to the extent in not providing 17 demanded documents to the appellant. As long as the order dated 19.08.1997 passed in C.W.J.C. No.4910 of 1997 is not modified in the form of review, the appellant has no grouse against furnishing of 17 documents along with the reply to the show cause notice. Demand of 17 documents is contrary



to the order dated 19.08.1997. Further, certain dates were interpreted by the appellant to the extent that the disciplinary authority has committed error and violated the order dated 19.08.1997 passed in C.W.J.C. No.4910 of 1997. We are of the view that there is no error committed by the disciplinary authority insofar as complying the order dated 19.08.1997 passed in C.W.J.C. No.4910 of 1997.

12. Scope of judicial review in a departmental inquiry is limited. If there is perverse evidence, legal infirmities like procedural lapses or violation of rules, in such circumstances, only writ court can entertain the disciplinary matters. In this regard, the Hon'ble Supreme Court in the case of **Union of India and others Versus P. Gunasekaran** reported in **(2015) 2 Supreme Court Cases 610** laid down the following points in Paragraphs-12 and 13, which reads as under:-

“**12.** Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first



appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no



evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based;
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience.”

The aforesaid points were reiterated by the Hon’ble Supreme Court in the case of **Union of India and Others Versus Subrata Nath {2022 LiveLaw (SC) 998}**.

13. Appellant has not pointed out any of the points (cited supra) so as to interfere under Article 226 of the Constitution of India read with Rule 10 of the Patna High Court Rules insofar as filing L.P.A.



14. The penalty order insofar as imposition of “No promotion for seven years from due date” is concerned, it is without application of mind for the reasons that the order of penalty is dated 31.10.1997 and appellant was to retire in the year 2001. Therefore, it is impracticable to implement the punishment of “No promotion for seven years from due date”. This has not been noticed by the learned Single Judge. Accordingly, imposition of penalty no.(ii)- “No promotion for 7 years from due date” stands set aside on the sole ground that it is without application of mind.

15. Accordingly, the present L.P.A. No.1194 of 2016 stands disposed while affirming the order dated 06.08.2015 passed in C.W.J.C. No.7386 of 2000 and only to the extent of quashing of penalty no.(ii) (cited supra).

16. Mr. Rajesh Kumar, learned counsel, who has appeared in the present matter abruptly left the Court premises during the course of dictation on the score that he was not satisfied with our order. Thereafter, some of the Advocates who were present in the Court stopped and suggested him to not to leave the Court till dictation is completed. Thereafter, he returned to Chair earmarked for petitioner and stayed till dictation is completed. He being one of the senior counsel



standing in the Bar, he should respect Court and he should be model to his colleague juniors. His attitude is deprecated.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

P.S./-

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