

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17486 of 2012

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Jai Shankar Pathak, Son of Late Kailash Pathak Resident Of A/217, Peoples Cooperative Colony, Kankarbagh, Patna 20, P.S. And P.O. Kankarbagh, District Patna.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, The General Administration Department, New Secretariat, Patna
3. The Under Secretary, The General Administration Department, New Secretariat, Patna
4. The District Magistrate, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan, Sr. Advocate
		Mr. Viveka Nand Singh, Advocate
For the Respondent/s	:	Mr. Kinkar Kumar, SC -IX
		Mr. Suresh Kumar, AC to GP-1

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 19-07-2024

In the instant petition, the petitioner has prayed for the following reliefs:

“I. For issuance of writ of certiorari for quashing the decision dated 01.03.2011 (Annexure-2) and for quashing the entire departmental proceeding initiated against the petitioner for excess expenditure of Rs. 82,000/- alleged to have been made without any technical and administrative sanction, for getting the work of R L E G P Scheme through another agent instead



of Sri Rameshwar Sharma Panchayat Sewak and for not taking any action for recovering the advance given for the period 15.02.1988 to 12.05.1988 while the petitioner was posted in Dhanarua Block of Patna District as Block Development Officer in the year 1988.

II. For any other consequential relief/reliefs for which the petitioner is entitle by this Hon'ble Court in the facts and circumstances of the present case."

2. Brief facts of the case are that petitioner, while holding the post of Block Development Officer, Dhanarua Block, Patna, he had alleged to have caused financial loss to the tune of Rs. 82820/- during the period from 15.02.1988 to 12.05.1988. In this regard, for the first time, show-cause notice was issued seeking petitioner's explanation in the year 1999. Petitioner had submitted reply on 28.06.1999. Thereafter, there was inaction on the part of disciplinary authority either accepting the explanation or rejecting and proceeded to initiate departmental inquiry while framing charge memo under Bihar C.C.A Rules, 2005. It is to be noted that charges were framed after lapse of about 12 years, charge memo was issued on



01.03.2011, which is the subject matter of the present litigation. Even to this day, the charge memo dated 01.03.2011 has not attained finality despite the fact that petitioner was due for promotion to the post of Additional Secretary before his retirement on 31.01.2013.

3. Learned counsel for the petitioner submitted that petitioner has been harassed from the year 1999 till his retirement on 31.01.2013. Merely showing certain alleged incident or misdeed stated to have been committed by the petitioner in the year 1988. There is a total inaction on the part of the official respondent in not initiating inquiry and conclude the same within a reasonable period of time in respect of alleged allegation during the period from 15.02.1988 to 12.05.1988. The petitioner has been denied service benefits like promotion and consequential monetary benefits due to highly belated action of the Respondent. Consequently all the departmental proceedings were liable to be set aside on the sole ground of inordinate delay in initiation of inquiry and its conclusion.

4. *Per contra*, learned counsel for the respondent resisted the aforementioned contention and submitted that due to interim order of stay of further proceeding in a departmental inquiry vide order dated 22.10.2013 disciplinary authority hands



were tied, therefore, they could not complete departmental inquiry. There were financial irregularities alleged to have committed by the petitioner, therefore, delay in initiation & its conclusion would not be hurdle.

5. Heard the learned counsels for the respective parties.

6. Petitioner while working as Block Development Officer, Dhanarua Block, he is alleged to have committed financial irregularities to the tune of Rs. 82820/-. On this issue, show-cause notice was issued in the year 1999 after about 11 years. On receipt of petitioner's reply on 28.06.1999. The disciplinary authority remained silent, thereafter, once again disciplinary authority opened his eyes while framing charges on 01.03.2011. Petitioner has approached this Court in the year 2012 and obtained interim order in respect of further proceeding in a disciplinary inquiry on 15.10.2013. Prima facie delay in initiation of inquiry is attributable to Respondents.

7. Learned counsel for the petitioner submitted that the official respondent have abused their position and also violated statutory provisions like Bihar C.C.A Rules, 2005. It is also submitted that belated inquiry cannot be initiated after more than decade. It is also submitted that charge memo was issued



on 01.03.2011 only on account of the fact that petitioner was about to be promoted to the post of Additional Secretary. Before his retirement departmental inquiry has not completed. He has retired on 31.01.2013, whereas orders of this Court insofar as staying the departmental proceedings was on 22.10.2013. They had sufficient time to conclude the departmental inquiry and the same has not been concluded at the earliest point of time.

8. On the other hand, learned counsel for the respondent stated that there are no infirmities insofar as framing of charge on 01.03.2011 and so also in not concluding the departmental inquiry before his retirement on 31.01.2013. There was no object of the official respondent in denying the promotion to the post of Additional Secretary to the petitioner in the guise of pending departmental inquiry. The petitioner's contention that there is an inordinate delay in initiation of charge memo on 01.03.2011 in respect of alleged misdeed during the period from 15.02.1988 to 12.05.1988. This issue may not be a hurdle.

9. On the ground of delay in initiation of departmental inquiry and its conclusion, petitioner has made out case.

10. Time and again Hon'ble Supreme Court held



that belated initiation of inquiry is arbitrary like in the case of *State of M.P. vs. Bani Singh*, reported in *1990 Suppl. SCC 738*, *State of A.P. vs. N. Radha Krishnan* reported in *(1998) 4 SCC 154*, *P.V. Mahadevan vs. M.D. T.N. Housing Board* reported in *(2005) 6 SCC 636*, *M.V. Bijalani vs. U.O.I* reported in *(2006) 5 SCC 88* and *State of Punjab & Ors vs. Chaman Lal Goyal* reported in *(1995) 2 SCC 570*.

11. Accordingly, the impugned order dated 01.03.2011 (Annexure-2) and order dated 11.04.2013 (Annexure-4) stands set aside, pending departmental proceedings are also set aside.

12. The concerned respondent is hereby directed to examine the grievance of the petitioner as to whether petitioner was entitled to be promoted to the post of Additional Secretary, if he is otherwise eligible. If he is eligible, he shall be promoted from the date of his immediate junior was promoted to the post of Additional Secretary and extend pay scale attached post of Additional Secretary and re-fix his pay and pension and disburse the arrears of pay and pension. If petitioner is not eligible to be promoted, in that event, a detailed speaking order be passed and communicated to him. The above exercise shall be completed within a period of four months from the date of



receipt of this order.

13. Writ petition is allowed.

(P. B. Bajanthri, J)

Manish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.07.2024
Transmission Date	NA

