

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18576 of 2012

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Kripa Nandan Prasad Ambastha, Son Of Late Kameshwar Prasad Verma
Resident Of At And P.O. - Agwanpur Via - Barh R.S. , P.S. - Barh, District –
Patna.

... .. Petitioner

Versus

1. The State Of Bihar, through Principal Secretary, Transport Department,
Government of Bihar, Patna.
2. The Principal Secretary-Cum-Appellate Authority, Transport Department,
Government Of Bihar, Vishesh
3. The State Transport Commissioner, Bihar, Visheshwaraiya Bhawan, Patna
4. The Joint Transport Commissioner-Cum-Secretary, Regional Transport
Authority-Cum-Enquiry Officer, O
5. The District Transport Officer, District Transport Office, Purnea

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Akashdeep, Advocate
Mr. Shyameshwar Kumar Singh, Advocate
Ms. Kanchan Kumari, Advocate
For the Respondent/s : Mr. Dhurjati Kumar Prasad, G.P.14

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

ORAL JUDGMENT

Date : 20-07-2024

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

*“1. That this is an application praying
for issuance of an appropriate Writ/Order or
Direction, in the nature of a Writ of Certiorari or any*



other appropriate writ/order or direction, for quashing the Order as contained in Memo No. 206 dated 17.01.2012 (Annexure-3), awarding the punishment of withholding of 2 increments with cumulative effect and payment of only subsistence allowance during the period of suspension as also the order of the Appellate Authority as contained in Memo No. 2999 dated 26.7.2012 (Annexure-4), rejecting the statutory appeal of Petitioner; The Petitioner further prays for a consequential writ of Mandamus or any other appropriate writ/ order or direction, commanding the Respondents to pay all the consequential benefits such as arrears of salary, increment etc, in accordance with law.”

2. Petitioner while working as a Head Clerk in transport department, he was alleged to have been transferred from one place to another place. In that process, petitioner was required to handover the charge of the post held by him to one Sanju Kumar. Transfer order was issued on 28.05.2008. The petitioner submitted that charge was handed over on two dates, namely, 02.06.2008 and 18.06.2008. On the other hand, official



respondents are of the view that petitioner has failed to handover the charge within reasonable period of time. In this regard, there was a protracted correspondence for more than one year. Thereafter, he was placed under suspension on 01.12.2009 and it was revoked on 15.12.2010. Charge memo was issued on 18.12.2009 for which petitioner had submitted reply denying the alleged charge on 22.01.2010.

3. The disciplinary authority was not satisfied with the explanation of the petitioner to the charge memo and proceeded to appoint inquiring and presenting officer. The inquiring officer, in its report, held that charges levelled against the petitioner were not proved. The same was disagreed by the disciplinary authority and proceeded to issue show-cause notice on 01.12.2011 for which petitioner had submitted reply on 25.12.2011. Based on these material information, disciplinary authority proceeded to impose the penalty of withholding of two increments with cumulative effect and suspension period from 01.12.2009 to 14.12.2010 has been restricted to only subsistence allowance. Feeling aggrieved and dissatisfied with the punishment order dated 17.01.2012, petitioner preferred appeal before the Appellate Authority on 24.04.2012 and it was rejected on 26.07.2012. Hence, the present writ petition.



4. Learned counsel for the petitioner submitted that there are serious defects in charge memo and it is not in compliance to the relevant provisions of law. It is further submitted that the factual aspects of the matter has been analyzed by the Inquiring Officer and found that charges levelled against the petitioner was not proved. The disciplinary authority disagreed with the Inquiring Officer's report and proceeded to impose penalty. It is submitted that order of the disciplinary authority is not based on any evidence to the extent that there was a belated handing over the charge of the post to one Sri Sanju Kumar on account of petitioner's transfer on 28.05.2008 in the year 2009 or 2010.

5. There is a total non-application of mind on behalf of the disciplinary authority insofar as imposition of penalty. Similarly, Appellate Authority has not apprised factual aspect of the matter. It is also submitted that Sanju Kumar to whom the petitioner has handed over charge, who is a prime witness for the purpose of proving the alleged charge of not handing over the charge to Sanju Kumar within a reasonable period of time and he has not been cited as witness and examined and permitted to cross-examine him in the departmental inquiry. Even the disciplinary authority while disagreeing with the Inquiring



Officer's report, he should have remanded the matter to the Inquiring Officer from the defective stage. Such proceedings have not been undertaken by the disciplinary authority.

6. *Per contra*, learned counsel for the Respondents-State resisted the aforementioned contentions and submitted that there is no infirmity in the impugned penalty order. No doubt, the disciplinary authority has disagreed with the Inquiring Officer's report, however, disciplinary authority is empowered to disagreeing with the Inquiring Officer's report and proceeded to pass order of punishment while issuing notice and other formalities have been completed, hence no interference is called for.

7. Heard the learned counsels for the respective parties.

8. Undisputed facts are that petitioner was transferred from one place of another place on 28.05.2008. He was required to handover the charge to one Sanju Kumar, who was incumbent to their particular post within a reasonable period of time. The petitioner submitted that he had handed over the charge on two dates namely 02.06.2008 and 18.06.2008. Handing over of the charge is disputed by the official respondent, to that effect they have not produced any material to show that petitioner



had handed over the complete charge belatedly after more than one year, which is one of the allegation/charge. To that effect, they have not produced any material before the Inquiring Authority or before this Court so as to examine the alleged allegation. That apart, the prime witness would be Sanju Kumar to whom the petitioner had handed over the charge. There were no complaints on behalf of Sanju Kumar and so also assuming that he was a complainant insofar as not handing over the charge to him by the petitioner, in that event, he would have been prime witness for the purpose of domestic inquiry and same has not been cited on behalf of the disciplinary authority in the departmental inquiry so as to enable the petitioner to cross-examine him. These are the lacunas, which are forthcoming from the records. Thus the petitioner has made out a case.

9. Accordingly, order dated 17.01.2012 (Annexure-3) and order of the Appellate Authority dated 26.7.2012 (Annexure-4) stands set aside.

10. The concerned respondent is hereby directed to restore the withheld increments and proceed to re-fix the pay of the petitioner. Difference of pay shall be granted up to the date of his retirement, thereafter, proceed to re-fix his pension in the light of restoration of withheld increments. The above exercise shall be



completed within a period of six months from the date of receipt of this order. In the penalty order, the suspension period has been treated as suspension only, in other words, petitioner has been extended only subsistence allowance. The concerned authority is hereby directed to pay the remaining amount as if the petitioner was drawing regular salary during the suspension period.

11. At this stage, learned counsel for the State seeking liberty. The alleged allegation relates to the year 2008-2009, we are in the year 2024. That apart, there are no allegations relating to misappropriation of government fund so as to warrant the matter to be remanded. Accordingly, the request of the State counsel stands rejected.

12. The Writ petition is allowed.

(P. B. Bajanthri, J)

Manish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.07.2024
Transmission Date	NA

