IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9533 of 2023

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Radhey Krishna Singh Son of Late Lal Bihari Singh, Resident of Village-Dhawapar, P.S.- Parasbigha, District- Jehanabad.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Excise and Prohibition Department, Bihar, Patna.
2. The Secretary, Excise and Prohibition Department, Bihar, Patna.
3. The Commissioner, Excise and Prohibition Department, Bihar, Patna.
4. The Joint Commissioner, Excise and Prohibition, Bihar, Patna-cum-Enquiry Officer.
5. The Deputy Commissioner, Excise and Prohibition, Bihar, Patna.
6. The Secretary to the Commissioner, Excise and Prohibition Department, Bihar, Patna.
7. The Superintendent of Excise and Prohibition, Madhepura.
8. The Superintendent of Excise and Prohibition, Banka.
9. The Section Officer, 8B, Excise and Prohibition, Bihar, Patna-cum-Enquiry Officer.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Indu Bhushan, Advocate Ms. Swati Parwar, Advocate
For the Respondent/s	:	Mr. Kumar Manish (SC-5) Mr. Kumar Pankaj, AC to SC-5

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL ORDER

3 11-07-2024 The petitioner is a retired Sub Inspector of Excise. Indisputably he retired from service on superannuation on 31.01.2017. It is also not disputed that when he was in service, a departmental inquiry was conducted against him on the following memo of charge, duly signed by the Superintendent of Excise-cum-Secretary on 24.10.2007 :-

"The Superintendent of Excise-cum-Secretary, Bihar,

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Patna received an information in writing from the Vigilance Investigation Bureau vide Letter No. SR 074 of 2007, dated 12.06.2007 that in connection with Vigilance P.S. Case No. 74 of 2007, dated 8th June, 2007 under Section 7/13(2) read with Section 13(i)(d) of the Prevention of Corruption Act, that the delinquent employee, i.e., the petitioner, was caught red handed on 07.06.2007 while accepting bribe from one Kundan Kumar Shah, amounting to Rs. 5,000/-. He was trapped by the members of the vigilance trap while taking illegal gratification. The act on the part of the delinquent employee was illegal and against the provisions of Bihar Government Servant Conduct Rules, 1976."

2. Suffice it to note that on the basis of the memorandum of charge, as recorded above, the petitioner was directed to submit his reply. He, accordingly, submitted his reply but it was not accepted by the authority. The respondent-authority proposed to initiate disciplinary proceeding against the petitioner. The petitioner took part in the inquiry proceeding. However, without examining any witness he was found guilty in the inquiry. Report was placed before the disciplinary authority, who passed an order of dismissal from service against the petitioner. The said order, being affirmed by the appellate authority, the petitioner challenged the said order by filing

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CWJC No. 10704 of 2015. A Co-ordinate Bench of this Court, while disposing of the said appeal, vide judgment dated 16.12.2021, made the following observations:

> *"(6) The State counsel could not appreciate this Court in producing necessary materials to show that show-cause notice was communicated to the petitioner prior to 21.03.2014 and prior to 15 days from the date of inference that the petitioner has not been given ample opportunity to submit his explanation to the show-cause notice dated 06.01.2014 read with 17.02.2014, hence the petitioner has made out a case. According, the impugned order of dismissal dated 20.03.2014 stands set aside. The matter is remanded to the disciplinary authority.*
>
> *(7) The petitioner is hereby directed to furnish his detailed explanation to both the notices (06.01.2014 and 17.02.2014) within a period of two months from today. On receipt of petitioner's explanation, the disciplinary proceeding in according to pass afresh order in the disciplinary proceeding in according with the Bihar Government Servants*

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(Classification, Control & Appeal) Rules, 2005.

3. After the matter being remanded to the disciplinary authority, the authority held that the petitioner had retired from service with effect from 31.01.2017. Therefore, by order of Additional Chief Secretary, Bihar, Patna it was held:-

"Therefore, after due consideration of the judgment passed by the Hon'ble High Court, Patna a departmental proceeding against the petitioner shall be continued under Rule 43(b) of the Bihar Pension Rules, 1950."

4. In paragraph 3 of the said order, it is clearly observed by the Additional Chief Secretary that the order of dismissal, bearing No. 1204, dated 20.03.2014, issued against the petitioner, the delinquent and the order of appeal dated 14.11.2014, were held to be inoperative. Subsequently, on the basis of the charge, which was framed on 24.10.2007, the departmental inquiry had proceeded with against the petitioner under the relevant provision of the Bihar Pension Rules.

5. It is submitted by the learned Advocate for the petitioner that when the order of dismissal passed in the departmental proceeding, initiated under the provision of Bihar Government Servant (Classification Control and Appeal) Rules, 2005 was dismissed, on the basis of the self same charge, a

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departmental proceeding under Rule 43(b) of the Bihar Pension Rules cannot be initiated.

6. Secondly, it is submitted by the learned Advocate for the petitioner that during departmental inquiry, the Presenting Officers on behalf of the prosecution failed to produce any witness in support of the memorandum of charge issued against him. The petitioner was held guilty on the basis of the vigilance trap memo which cannot be treated as a piece of evidence without being proved by the maker of the trap. During inquiry, no witness was examined. The petitioner did not get any opportunity to cross-examine them in support of his defense. However, he filed second show cause elaborately stating his defense but the same was not considered and the disciplinary authority passed an order of deducting 10% of the pension amount as well as from the date of the order of his dismissal to the date of his retirement, he would not be entitled to get any financial benefit.

7. The learned Advocate for the petitioner has raised a question as to whether the second part of the order could be passed by the departmental authority because of the fact that the order of dismissal was set aside by this Court in CWJC No. 10704 of 2015.

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8. It is also submitted by the learned Advocate for the petitioner that the departmental proceeding under Section 43(b) of the Bihar Pension Rules is also not maintainable against him, in view of the proviso of Rule 43(b) of the Bihar Pension Rules, which laid down :-

> "(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;
>
> (i) shall not be instituted save with the sanction of the State Government;
>
> (ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and
>
> (iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;"

9. Learned Advocate for the respondents, on the other hand, submits that the departmental proceeding under Section 43(b) of the Bihar Pension Rules is not the continuation of the previous departmental proceeding conducted under the CCA

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Rules of 2005. It was not brought before the notice of the Court on the date of delivery of the judgment in CWJC No.10704 of 2015 on 16.12.2021 that the petitioner had already retired in the year 2017. Therefore, the Hon'ble Court remanded back the departmental proceeding for reconsideration after giving opportunity to the petitioner for hearing. Had it been brought to the notice of the Hon'ble Court, the said order might not have been passed.

10. However, the department found that the delinquent employee had retired from service and, therefore, in pursuance to the direction of this Court, the departmental proceeding was converted to a proceeding under Rule 43(b) of Bihar Pension Rules, 1950. The petitioner was given full opportunity of hearing. He filed reply to the second show cause and on the basis of his reply and the materials on record, the punishment order was passed. There is, therefore, no reason for judicial review of the said order.

11. It is also submitted by the learned Advocate for the respondents that Rule 139 of the Bihar Pension Rules stipulates as follows:-

> "139. (a) The full pension admissible under the rules is not to be given as a matter of course, or unless the service rendered has been really approved.

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(b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper.

(c) The State Government reserve to themselves the powers of revising an order relating to pension passed by subordinate authorities under their control, if they are satisfied that the service of the pensioner was not thoroughly satisfactory or that there was proof of grave misconduct on his part while in service. No such power shall however be exercises without giving the pensioner concerned a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension, nor any such power shall be exercised after the expiry of three years from the date of the order sanctioning the pension was first passed."

12. Having heard the learned counsels for the parties and on perusal of the materials on record, it is not in dispute that evidence against the petitioner, which the Inquiry Officer, Disciplinary Authority and the Appellate Authority relied on, is the communication made by Vigilance Investigation Bureau regarding constitution of a trap to nab the petitioner while allegedly taking bribe from one Kundan Kumar Singh. In the memorandum of charge, the disciplinary authority cited number of witnesses but none of the witnesses were examined during the disciplinary proceeding by the Inquiry Officer.

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13. It is needless to say that a letter sent by Vigilance Investigation Bureau to the higher authority of the Excise Department cannot by itself construed as an evidence until and unless it is proved by the maker of the said letter. It is needless to say that departmental proceeding is a quasi judicial proceeding. In ***Roop Singh Negi Vs. Punjab National Bank and others*** reported in ***(2009) 2 SCC 570***, it is held by the Hon’ble Supreme Court that in a departmental proceeding the authority performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The Inquiry Officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. After the departmental proceeding was remanded back by virtue of the order of this Court in CWJC No. 10704 of 2015, the Inquiry Officer failed to discharge his duty as a quasi judicial authority. In ***Roop Singh Negi*** *(supra),* punishment was inflicted in departmental proceeding on the basis of a confessional statement of a police officer. The Hon’ble Supreme Court held that the confessional statement is not admissible in evidence. ***Roop Singh Negi*** (supra) relies upon the decision of the ***Union of India Vs. H.C. Goel, Moni Shankar Vs. Union of India, M.V. Bijlani Vs. Union of India and Jasbir Singh Vs.***

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Punjab & Sind Bank.

14. In ***Kuldeep Singh v. Commissioner of Police & Ors.*** reported in ***(1999) 2 SCC 10,*** it was held by the Hon'ble Supreme Court that where there is absolutely no evidence in support of the charge framed against the petitioner, the entire finding recorded by the Inquiry Officer is vitiated by reason of the fact that they are not supported by any evidence on record and such decision is wholly perverse.

15. Similar view was taken by this Court, relying on the above mentioned decisions in ***Vijendra Prasad V. The State of Bihar & Ors.*** reported in ***2019 (4) PLJR 1046*** and ***Arun Kumar v. State of Bihar & Ors.*** reported in ***2019 (3) BLJ 221***.

16. It is rightly pointed out by the learned Advocate for the petitioner that the petitioner was entitled to know as to why second show cause was not accepted by the Disciplinary Authority. In ***Vijdendra Prasad*** (supra), this Court relied on the decision of the Hon'ble Supreme Court in ***Punjab National Bank Vs. Kunj Behari Misra*** reported in ***(1998) 7 SCC 84*** and held that when disciplinary authority did not supply the petitioner note of disagreement with the record of the Inquiry Officer and issued a letter to the petitioner asking him explanation after rejecting the enquiry report, such action on the

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part of the disciplinary authority is unseasoned and non-speaking. A departmental proceeding is vitiated in entirety on such ground.

17. In the instant case, this Court in CWJC No. 10704 of 2015 quashed and set aside, the order of dismissal of the petitioner while remanding back the case for fresh decision. Therefore, during the proceeding under Section 43(b) of the Bihar Pension Rules, 1950, there was no order of dismissal against the petitioner subsisting and when there is no order of dismissal, there cannot be any punishment to the effect that the petitioner would not be entitled to get any financial benefit from the date of dismissal till the date of his superannuation. The said order is absolutely illegal, unjust, unfair and unsustainable.

18. Since, the petitioner did not mention in the previous writ petition that he had retired from service in the year 2017 on the date of delivery of judgment, I am of the view that the petitioner cannot take the benefit of Rule 43(b)(ii) of the Bihar Pension Rules, 1950. However, when it is found that the order of deduction of 10% of the pension was passed under Rule 139 of the Bihar Pension Rules, 1950, in view of the fact that the petitioner was arrested by the Vigilance Investigation Bureau while taking illegal gratification and such allegation

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being not proved by satisfactory evidence in the second departmental proceeding, the respondent authority cannot pass the order of deduction of pension at the rate of 10% of the petitioner.

19. For the reasons stated above, this Court finds that the impugned orders of punishment passed by the Disciplinary Authority, dated 29.07.2022 and affirmed by the Appellate Authority, dated 12.09.2022, are liable to be set aside and quashed.

20. The respondents are directed to release the entire pensionary benefits and other consequential reliefs to the petitioner as admissible under the law.

21. Accordingly, the instant writ petition is thus, disposed of.

Anupurna/
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(Bibek Chaudhuri, J)

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