

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1218 of 2012

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Dinanath Rajak S/o Late Banarshi Lal, R/o Mohalla- Bakerganj, P.S.-
Pirbahore, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Home Secretary, Government of Bihar, Patna.
3. The Special Secretary Home Police Department, Government of Bihar,
Patna.
4. The Director General of Police, Bihar, Patna.
5. The Accountant General Bihar, Patna, Birchand Patel Marg, Patna.

... .. Respondents

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Appearance:

For the Petitioner	:	Mrs. Shweta Anand, Advocate Mr. Ajit Anand, Advocate
For the Respondents	:	Mr. Tej Bahadur Singh, AAG-7

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 04-03-2024

Heard Mrs. Shweta Anand, the learned counsel for
the petitioner and the learned AAG-7 for the State.

2. The present writ petition has been filed for the
following reliefs:

(a) For setting aside the Memo-2/M2-7017/06 Home Police-8601/Patna, dated 25.11.2011 (Annexure-13), issued by the Special Secretary, Home Police Department, Government of Bihar, Patna (Respondent No. 3), whereby and whereunder the punishment has been given to the retired petitioner, the then Dy. S.P. (Head Quarter), Distt. Palamu for deducting 20% retiral amount from his pension under provision of Bihar Pension Rule 43(b).



(b) For directing the respondent authorities to not take any action regarding impugned Annexure-13 to this application and further be pleased to stay the same during pendency of this case.

(c) for granting any other relief/reliefs as the petitioner is entitled for in the eye of law.

3. Learned counsel for the petitioner submits that the petitioner was initially appointed as Sub-Inspector of Police in the year 1968 and was promoted as Inspector of Police in the year 1979 and thereafter he was promoted as Dy. SP in the year 1985 and was posted as Dy. SP, CID, Patna. Thereafter, he was transferred to Darbhanga District and thereafter posted as SDPO, Garhwa. He further submits that petitioner was transferred from Garhwa to Palamu District in the year 1997 and posted as Dy. SP and from where he retired on 30.04.2007.

4. Learned counsel for the petitioner further submits that when the petitioner was posted as Dy. SP in the Palamu District Headquarter, an occurrence had taken place on 18.07.1998 under Panki Police Station, which was under jurisdiction area of petitioner and the Panki PS Case No. 35 of 1998 was registered by the informant, i.e., Inspector of Police against the Assistant Commandant and some *Jawans* of D/26 Batallion, CRPF under Section 304 of the Indian Penal Code



and from perusal of the FIR, it appears that the petitioner was not named in the FIR and the FIR was registered against Assistant Commandant and some *Jawans* of CRPF, vide which the accused Paras Nath Singh @ Paro Singh @ Chandra Shekhar Singh was brutally assaulted during enquiry and he had died during his treatment in Panki Hospital.

5. Learned counsel for the petitioner next submits that the wife of the deceased namely, Smt. Ahulash Devi had filed CWJC No. 2437 of 1998 (R). The Hon'ble Court after hearing the parties had directed the Central Bureau of Investigation (Hereinafter referred to as "CBI") to make an investigation and to institute a criminal prosecution against Police Officers, who were involved in causing death of the husband of the petitioner.

6. Learned counsel for the petitioner next submits that in compliance of the order dated 11.11.1999, passed in CWJC No. 2437 of 1998 (R), the CBI, New Delhi registered an FIR as Crime No. RC1(C)/2001/SCB-II/-DLI, dated 07.03.2001, against the Assistant Commandant and some *Jawans* of CRPF and others.

7. Learned counsel for the petitioner submits that from perusal of the FIR, which was lodged by the CBI, suggests that the petitioner was not named in the FIR and after



investigation, the CBI submitted supplementary chargesheet on 07.12.2005 against the petitioner as suspected accused under Section 304, 330 and 331 read with Section 34 of the Indian Penal Code. He further submits that after filing of the chargesheet, the petitioner had surrendered before the Court on 12.06.2006 and subsequently he was suspended vide Departmental Order No. 7974 dated 25.07.2006, w.e.f., 12.06.2006.

8. Petitioner has received a Memo No. 329 dated 05.02.2008 on 09.02.2008 enclosing the Memo No. 9977 dated 23.10.2007, whereby the suspension of the petitioner was revoked w.e.f., 30.04.2007 and Department has taken a decision to start a Departmental proceeding against the petitioner under the provision of 43(b) of the Bihar Pension Rules and on the same day, i.e., on 09.02.2008, the petitioner also received Memo No. 328 dated 05.02.2008, enclosing with the Memo No. 2/M2-7017/2006 dated 24.10.2007 along with chargesheet. whereby the petitioner was asked to submit his show-cause within a period of seven days.

9. Learned counsel for the petitioner submits that after receiving the aforesaid show-case notice, the petitioner submitted an application dated 17.02.2008, requesting therein to



extend fifteen days time for submitting reply to the show-cause notice and the same was accepted when the petitioner has submitted show-cause on 14.03.2008 and on 02.07.2008, the petitioner received Memo No. 944/NGO, Patna dated 01.07.2008, whereby the Department has taken a decision to start Departmental proceeding against the petitioner and a Departmental enquiry panel was constituted for which the Conducting Officer was appointed and the petitioner was directed to appear before the authority within ten days. Thereafter, he has received a Memo No. 38/Special Branch, Patna dated 14.07.2008, whereby the petitioner was asked by the disciplinary authority to submit his explanation to the charges levelled against him till 05.08.2008 before the Conducting Officer. The petitioner submitted his explanation dated 20.08.2008 to the charges levelled against him.

10. Learned counsel for the petitioner submits that after about three years of submission of his explanation regarding the charges levelled against him, a Memo No. 234/NGO dated 08.04.2011 was served upon the petitioner annexed with letter No. 2/M2-7017/2006 dated 17.03.2011, whereby the final order dated 29.11.2011, passed by the competent authority and petitioner was asked to submit reply to second show-cause



within fifteen days.

11. Learned counsel for the petitioner submits that pursuant to the aforesaid second show-cause notice against the proposed punishment, the petitioner submitted his second show-cause reply on 25.04.2011, Memo No. 8601 dated 25.11.2011, issued by respondent no. 3 was served upon the petitioner on 30.11.2011, whereby and whereunder the punishment had been given to the petitioner by deducting 20% of retiral amount from his pension under provision 43(b) of Bihar Pension Rules.

12. Learned counsel for the petitioner submits that in view of the aforesaid, it appears that the Departmental proceeding has been initiated against the petitioner after four years of his retirement for the occurrence which had taken place on 10.07.1998, which is against the provision under Rule 43(b) of Bihar Pension Rules and the punishment is disproportionate to the charges while the Departmental proceeding is not concludes and the same set of criminal proceeding is pending before the competent Court of law and no witnesses have been examined in the Departmental proceeding.

13. Learned counsel for the petitioner further submits that due to non-conclusion of the Departmental proceeding, the State respondent has appointed a next Conducting Officer, i.e.,



Additional Director General of Police (Training, Bihar), but neither notice nor opportunity of hearing has been given to the petitioner.

14. Learned counsel for the petitioner has relied upon the judgment reported in **2004(2) PLJR 200** in the case of Ram Chandra Prasad v. **State of Bihar** and paragraph nos. 3 and 4 of the said judgment are read as follows:

(3.) On consideration of the submissions made by the counsel for the parties and the materials available on record, this much is obvious that the petitioner retired from service on 31.07.1999. A proceeding under Rule 43(b) of the Rules was initiated against him with effect from 02.11.1999 with respect to the incident/misconduct which took place in the years 1987-88 to 1989-90, i.e., the incident took place much before four years from the date of initiation of the proceeding. Rule 43(b) of the Bihar Pension Rules reads as:

“43(b). The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:

Provided that:

(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.”

(4.) It is evident from the aforesaid provisions that power under Rule 43(b) of the Rules can be exercised in connection with the alleged misconduct of a retired government servant if it is shown that in a departmental proceeding or a judicial proceeding the concerned government servant has been found guilty of grave misconduct and also the proceeding must be with respect to the misconduct which took place not more than four years before the initiation of the proceeding. In the instant case the proceeding was initiated on 02.11.1999 with respect to an incident/misconduct alleged to have been committed in the year 1987-88 to 1989-90, i.e., the incident which took place about ten years ago from the date of initiation of the proceeding after retirement of the petitioner, although, Rule 43(b) of the Rules does not conform to such proceeding. In the case of State of Bihar & Ors. Vs. Mohd. Idris Ansari, 1995(2) PLJR 51 (SC) and also in the case of Shyamsunder Prasad Vs. The State of Bihar and Ors., 2002(4) PLJR 80 (SC), it has been held by the Apex Court that no proceeding under Rule 43(b) of the Bihar Pension Rules can be initiated with respect to the



incident/misconduct which took place more than four years from the date of initiation of the proceeding against a retired employee.

and she has also relied upon the judgment reported in **1995(2) PLJR (SC) 51**, reported in the case of **State of Bihar v. Md. Idris Ansari** and paragraph no. 10 of the said judgment is read as follows:

(10.) So far as the second type of cases is concerned the proof of grave misconduct on the part of the concerned Government servant during his service tenure will have to be culled out by the revisional authority from the departmental proceedings or judicial proceedings which might have taken place during his service tenure or from departmental proceedings which may be initiated even after his retirement in such type of cases. But such departmental proceedings will have to comply with the requirements of Rule 43(b). Consequently a retired Government servant can be found guilty of grave misconduct during his service career pursuant to the departmental proceedings conducted against him even after his retirement, but such proceedings could be initiated in connection with only much misconduct which might have taken place within 4 years of the initiation of such departmental proceedings against him. In the present case, the respondent retired on 31.1.1993 and the show cause notice was issued on the ground of grave misconduct on 27.9.1993 and not on the ground that service record of the pensioner was not thoroughly satisfactory. It was issued by the State Government as sanctioning authority. It had, therefore, to be read with Rule 43(b). Such notice therefore, could cover any misconduct if committed within 4 years prior to



27.9.1993 meaning thereby it should have been committed during the period from 26.9.1989 up to 31.1.1993 when respondent retired. Only in case of such a misconduct, departmental proceedings could have been initiated against the respondent under Rule 43(b). In such proceedings, if he was found guilty of misconduct he could have been properly proceeded against under Rule 139(a) and (b). On the facts of the present case it must be held, agreeing with the High Court that the notice dated 27.9.1993 invoking powers under Rule 139(a) and (b) was issued wholly on the ground of alleged past misconduct and was not based on the ground that service record of the respondent was not thoroughly satisfactory. So far as that ground was concerned, on a conjoint reading of Rule 43(b) and Rule 139 (a) there is no escape from the conclusion that as the alleged misconduct was committed by the respondent prior to 4 years from the date on which show cause notice dated 27.9.1993 was issued, the appellant authority had no power to invoke Rule 139 (a) and (b) against the respondent on the ground of proved misconduct. Consequently, it had to be held that proceedings under Rule 139 were wholly incompetent. The High Court was equally justified in quashing the final order dated 13.12.1993 as there is no proof of such a misconduct. No question of remanding the proceedings under Rule 139 (a) and (b) would survive as the alleged grave misconduct could not be established in any departmental proceedings after expiry of four years from 1986-87 as such proceedings would be clearly barred by Rule 43(b) proviso (a) (ii). Consequently the show cause notice dated 27.9.1993 will have to be treated as still born and ineffective from its inception. Such a notice cannot be resorted to for supporting any fresh proceedings by way of remand. For all these reasons no case is made for our interference in this



*appeal. In the result appeal fails and is dismissed.
There is no order as to costs.*

15. Learned counsel for the petitioner submits that in the present context, the Rule 43(b) of the Bihar Pension Rules is not acted out on the petitioner. He further submits that bare plain reading of the 43(b), which is read as follows:

“The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to government if the pensioner is found in Departmental or Judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement.”

16. Learned counsel for the petitioner submits that in the present case, there is no pecuniary loss caused to Government and petitioner is not found guilty of grave misconduct and the provision does not empower the State to invoke the said power while the judicial proceeding was pending before the competent Court of law and an event which took place not more than four years before institution of such proceeding, and in the present case, the proceeding was initiated on 27.06.2008, for the event which took place on 18.07.1998,



about 10 years ago. The Hon'ble Supreme Court in case of ***State of Bihar v. Md Idris Ansari (Supra)*** clearly held that action of the State is not under the provision of Rule 43(b) of Bihar Pension Rules.

17. Learned counsel for the State submits that the petitioner was posted as Deputy Superintendent of Police (Head Quarter), Palamu and occurrence of custodian torture and death of one Paras Nath Singh @ Paro Singh @ Chandra Shekhar Singh had taken place on 18.07.1998 under Panki Police Station, Palamu. The wife of Paras Nath Singh @ Paro Singh @ Chandra Shekhar Singh has filed a CWJC No. 2437 of 1998 for a thorough enquiry by CBI against those police officers who were involved in the incident causing death of the husband of the petitioner in police custody on 18.07.1998. The Hon'ble Patna High Court at Ranchi Bench vide order dated 11.11.1999 entrusted the investigation of the said custodial death to the CBI. After investigation the CBI submitted the chargesheet against the petitioner and he was taken into judicial custody and subsequently released on bail on 20.07.2006.

18. Learned counsel for the State submits that when the petitioner was in judicial custody, the home (Police) department, Bihar, Patna put the petitioner under suspension w.e.f.,



12.06.2006 and his quarter was fixed at Police Head Quarter, Bihar, Patna and the petitioner has joined on 27.07.2006 and the petitioner retired from his post on 30.04.2007. The department vide Memo No. 9977 dated 23.10.2007 decided to revoke the suspension of the petitioner from the effect of the date 30.04.2007 (date of retirement of the petitioner) and decided to convert the departmental proceeding under Rule 43(b) of the Bihar Pension Rules, 1950. The memorandum was issued vide Memo No. 10069 dated 24.10.2007, whereby the petitioner has been asked to submit his defence statement for the charges levelled against him.

19. Learned counsel for the State submits that after scrutinizing the written defence statement of the petitioner, the Police Head Quarter vide Memo No. 766 dated 10.04.2008 recommended for initiation of departmental proceeding against the petitioner. The conducting officer vide Memo No. 89 dated 12.12.2008 sent his opinion that since a criminal case is pending against the petitioner, hence, it is not judicious to give any opinion before the judgment of the Court and he also suggests that it would be better to take a decision in the departmental proceeding is taken against the petitioner after final judgment of the Court in the criminal case which is pending against the



petitioner.

20. The material which was found in the departmental proceeding has been duly considered by the State Government and after much consideration the State Government had decided to deduct 20% amount from the pension of the petitioner as punishment, then a second show-cause notice was issued to the petitioner along with the opinion of the conducting officer vide Memo No. 2031 dated 17.03.2011. The petitioner submitted his reply to the second show-cause notice filed against him and after consideration of all the aspects, the State Government had decided to keep the proposed punishment unchanged as awarded to the petitioner and there is no infirmity in the impugned order and the impugned order has been passed after due process of law and following the principles of natural justice and due opportunity has been given to the petitioner.

21. Having regard to the submission made by the parties, it is evident from the aforesaid provisions that power under Rule 43(b) of the Bihar Pension Rules can be exercised in connection with the alleged misconduct of the retired Government servant, if it is shown that in a departmental proceeding or a judicial proceeding, the concerned Government servant has been found guilty of grave misconduct and also the



proceeding must be with respect to the misconduct, which took place not more than four years before the initiation of the proceeding and bare perusal of the impugned order it appears that the proceeding was initiated on 27.06.2008 with respect to an incident alleged to have been committed in the year 1998, it appears that the incident which took place about ten years ago on the date of the initiation of the proceeding, after retirement of the petitioner. In the case of the *State of Bihar v. Md. Idris Ansari*, reported in *1995(2) PLJR (SC) 51 (Supra)*, it has been held by the Apex Court that no proceeding under Rule 43(b) of the Bihar Pension Rules can be initiated with respect to the incident of misconduct which took place more than four years from the date of initiation of the proceeding against the retired employee.

22. Thus, on consideration of the relevant rules, the decisions of the Apex Court as well as the High Court discussed above, the impugned order Memo-2/M2-7017/06 Home Police-8601/Patna dated 25.11.2011 (Annexure-13) cannot held to be legal and is hereby set aside.

23. Accordingly, this writ petition stands allowed and the petitioner is entitled to all the consequential benefits and the respondent authority is directed to pay the same within eight



weeks from the date/production of the copy of this order.

(Rajesh Kumar Verma, J)

Shahnawaz/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.06.2024
Transmission Date	NA

