

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4376 of 2020

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Rajani Kant Chaudhary, Son of Vikrama Prasad, Shivanil Apartment, Flat No. 208, Kasturba Path S.B.I. Anandpuri branch, North S. K. Puri, P.S.- S.K. Puri, Boring Road Patna Boring Road Patna, Patliputra Patna Bihar 800013.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Under Secretary, Rural Work Department, Government of Bihar, Patna.
4. The Engineer in Chief, Rural Works Department, Government of Bihar, Patna.
5. The Chief Engineer, Rural Works Department, Government of Bihar, Patna.
6. Deputy Secretary, Rural Works Department, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sarveshwar Tiwary, Advocate
For the Respondent/s : Mr. Dharendra Kumar, AC to AAG-6

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 10-02-2025

Heard Mr. Sarveshwar Tiwary, learned Advocate
for the petitioner and Mr. Dharendra Kumar, learned Advocate
for the State.

2. The petitioner is aggrieved with the notification,
as contained in Memo No. 2353 dated 19.08.2019, issued by the
respondent no.3, whereby the petitioner has been inflicted with
the punishment of 10% monthly deduction from his pension till
five years. The review application preferred against the order of
the disciplinary authority also came to be rejected by the
notification as contained in Memo No. 382 dated 21.01.2020,
which also put to challenge by filing an Interlocutory



Application, bearing I.A. No. 1 of 2024.

3. The short facts, which led to filing of the present writ petition are that while the petitioner was posted as Assistant Engineer, Road Division No.1, Muzaffarpur for the period 15.01.1996 to 31.01.1996 on account of some irregularities the petitioner was put to departmental proceeding by serving a Memo of Charge (Prapatra 'K'), containing six charges, under the Memo No. 5855 dated 28.05.2012. On receipt of memo of charge, the petitioner appeared and filed his detailed reply, the copy of which is already placed on record. The conducting officer enquired the matter in detail and submitted his enquiry report on 23.03.2015 exonerating the petitioner from charge nos. 1, 2, 3 and 4. So far as charge nos. 5 and 6 are concerned, the enquiry officer made a recommendation that since no pecuniary loss has been caused to the Department, therefore, the charges, as alleged, can be condoned. On receipt of the enquiry report, the copy of which is marked as Annexure-5 to the writ petition, the disciplinary authority by differing with the enquiry report has issued second show-cause notice with the tentative finding of the difference of opinion. The petitioner, in response to the second show-cause notice, submitted his application reiterating the earlier version of the defence statement. Finally, the



impugned order directing for deduction of 10% of pension for five years came to be passed, the copy of which is marked as Annexure-7 to the writ petition.

4. Learned Advocate for the petitioner while assailing the impugned order of punishment has contended that apart from the fact that the charges were with respect to an event, which took place prior to sixteen years of the issuance of the Memo of charge and in the, meantime, after cadre distribution, the services of the petitioner was transferred from Road Construction Department to Rural Works Department, Government of Bihar, Patna; but disciplinary authority failed to obtain any consent from the Rural Works Department before initiation of departmental proceeding. It is further contended that admittedly the petitioner has been posted for 2 ½ months as an Assistant Engineer under the Road Division No.1, Muzaffarpur and in the said period, no pecuniary loss was caused to the department. The enquiry officer after a full fledged enquiry submitted the enquiry report and exonerated the petitioner with respect to charge nos. 1, 2 3, and 4. So far the charge nos. 5 and 6 are concerned, after having found that there is no pecuniary loss caused to the department, he recommended that the charge nos. 5 and 6 levelled against the petitioner may



be condoned.

5. Referring to the second show-cause notice, learned Advocate for the petitioner further contended that there is no specific tentative reason for disagreement with the finding of the enquiry officer and the disciplinary authority, only opined that effort should be taken by the petitioner for keeping the record up-to-date. Only on such so called tentative reason, he differed with the finding of the enquiry officer, which is wholly cryptic and based upon no evidence. Moreover, the disciplinary authority also did not accept the recommendation of the enquiry officer in relation to charge nos. 5 and 6 by expressing observation that the petitioner should remain vigilant from the record, which appears deficiency in his work and, therefore, the finding of the enquiry officer with respect to charge nos. 5 and 6 and the exoneration of the petitioner was also not found acceptable.

6. Coming to the impugned order, learned Advocate for the petitioner further contended that during the pendency of the departmental proceeding, the petitioner superannuated on 30.04.2018 and thus the disciplinary proceeding converted under Rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as 'the Rules, 1950') and surprisingly the petitioner



has been inflicted with the punishment under Section 43(a) of the Rules, 1950, which is at all not applicable in the present case. It is the contention of the petitioner that neither the charges of misconduct has been found proved nor any pecuniary loss has been caused to the department and, as such, the very initiation of the departmental proceeding under Rule 43(b) of the Rules, 1950 is not maintainable. It is also contended that the reviewing authority has also erred in not considering the contention of the petitioner and the same is nothing but reiteration of the impugned order of punishment.

7. Dispelling the aforementioned contention, learned Advocate for the State submitted that there is no procedural error in the departmental proceeding, inasmuch, as the petitioner has been accorded all the opportunity to defend and place his case. The finding of the enquiry officer has not been accepted by the disciplinary authority and the disciplinary authority in tune with the prescription of Rule 18(2) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the Rules, 2005'); has issued second show-cause notice by differing with the finding of the enquiry officer and finally on being found the defence statement/ explanation of the petitioner not satisfactory, has inflicted the



punishment of deduction of 10% of pension for five years. The review petition filed by the petitioner also came to be rejected.

8. Before parting with this case, it would be pertinent to state here that since the petitioner has been inflicted with punishment under Rule 43(a) of Rules, 1950, the same is to be quoted hereinbelow:

“43. (a) Future good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this rule, shall be final and conclusive.”

9. Bare perusal of Rule 43(a) of Rules, 1950 it is explicit that it talks about that the future good conduct is *sine qua non* for grant of pension and if the pensioner is convicted of serious crime or be guilty of grave misconduct, in such, circumstances by taking the help of Rule 43(a) of Rules, 1950, punishment can be imposed. This issue has elaborately dealt with by the learned Division Bench of this Court, in **Nityanand Kumar Singh Vs. State of Bihar & Ors.**, reported in **2016(2) PLJR 315**. It would be worth benefiting to encapsulate the



relevant paragraph of the said decision.

“6. Before coming to the proviso which consists of three clauses (a), (b) and (c) along with an explanation provided after clause (c), it is obvious from a comparison of Rule 43 (a) with Rule 43 (b) that the former relates to future good conduct of a pensioner and the same may be invoked if he is convicted of serious crime or is held guilty of grave misconduct. The serious crime or grave misconduct under this provision, i.e. Rule 43(a) is not related to his conduct during service and/or service rendered on re-employment. It is a conduct expected of a pensioner in future after he is granted a pension. Thus, there is clear distinction between the aim and object of Rule 43(a) and that of Rule 43(b). Both the provisions operate in different areas having different connotations. The decision under Rule 43(a) is not on account of any departmental proceeding or judicial proceeding instituted when the Government servant was in service or instituted later in respect of an event which related to his service rendered before retirement or on re-employment. On the other hand, the purpose of Rule 43 (b) is clearly to enable the State government to continue or initiate a departmental or judicial proceeding in respect of omissions or commissions by a Government servant done while he was in



service. Such provision in the rules governing pension vests the State Government with necessary powers to maintain action against a retired Government employee for his conduct while in service but subject to some restrictions mentioned in the proviso. The purpose of proviso is to safeguard pensioners or superannuated employees from loss of pension on account of belated disciplinary proceedings or judicial proceedings. On the other hand, the future good conduct mentioned in Rule 43 (a) is good conduct expected of every Government servant even after superannuation. Such future conduct is not related to his service period at all.”

Emphasis supplied

10. From the aforementioned legal position, it is axiomatic that Rule 43(a) of Rules, 1950 does not attract with respect to an event, which took place in the service period of a Government servant rendered before his retirement, leading to institution of departmental or judicial proceeding.

11. This Court also finds that the disciplinary authority while differing with the finding of the enquiry officer has not assigned any tentative reason for disagreement and only formality has been done on his part by expressing a comment therein that since the petitioner has been posted there even for 2 ½ months, he should take initiatives to keep the record up-to-



date, that cannot be treated as a difference of opinion, nonetheless, it was not even the charge. Further, there is no discussion and deliberation to the explanation submitted by the petitioner. Similar mistake has also been committed by the reviewing authority.

12. In view of the settled legal position and the discussions made hereinabove, the impugned order, as contained in Memo No. 2353 dated 19.08.2019 as well as notification as contained in Memo No. 382 dated 21.01.2020 are hereby set aside.

13. On account of setting aside the impugned orders, the respondent authorities are hereby directed to restore all the financial benefits preferably within a period of 12 weeks from the date of receipt/production of a copy of this order.

14. The writ petition stands allowed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.02.2025
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