

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12451 of 2014

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Mushafir Singh, Son of Late Sidan Singh, Resident of village-Bhadseni, P.S.-
Hisua, District-Nawada.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Commissioner, Patna Division, Patna.
3. The District Magistrate, Nalanda, Biharsharif.
4. The Deputy Collector, Land Reforms, Hilsa, Nalanda.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Singh, Advocate Mr. Ambrish Rahu, Advocate Mr. Brajesh Tiwary, Advocate
For the State	:	Mr. K.P. Gupta, G.P.10 Mr. Anwar Karim, AC to GP-10

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 07-01-2025

Heard learned counsel for the petitioner and learned
counsel for the State.

2. The petitioner is aggrieved with the order as
contained Memo No. 820 dated 04.04.2014 passed by the
District Magistrate-cum-Collectorate, Nalanda, whereby the
petitioner has been inflicted with the punishment of withholding
of permanent pension till his life.

3. Short facts as culled out from the materials
available on record are that, the petitioner was initially
appointed as an Amin on 20.10.1973. While he was working as
a Revenue Karamchari under Harnaut Circle, Nalanda, he was



apprehended by a trap team of the Vigilance Department on 08.03.2007 on the charge of accepting bribe of Rs.1300/-. The petitioner was taken to judicial custody and subsequently he was placed under suspension vide Letter no. 915 dated 04.04.2007. Consequently upon approval of the District Magistrate, the petitioner was served with a memo of charge as contained in Letter no. 1044 dated 30.08.2007; the Sub Divisional Officer, Bihar Sharif, was appointed as Conducting Officer whereas the Circle Officer, Harnaut as the Presenting Officer.

4. On being released from the custody, suspension of the petitioner was revoked vide Letter no. 826 dated 08.04.2008 and he was transferred from Harnaut Circle to Parwalpur Circle. In the meantime, in terms of Letter no. 1111 dated 25.05.2008 modifying the earlier order, another Conducting and Presenting Officers were appointed. The Deputy Collector Land Reforms, Hilsa, was appointed as Conducting Officer whereas the Circle Officer, Hilsa was appointed as Presenting Officer. The Conducting Officer having taken note of the fact that both the criminal and departmental proceedings are based upon same set of facts giving rise to same charges, on the show-cause explanation filed by the petitioner, recommended to keep the departmental proceeding in abeyance till the final outcome of



the investigation of the vigilance case. However, the Disciplinary Authority, on being convinced that both the criminal and departmental proceedings may be continued simultaneously in view of the Letter no. 1415 dated 07.05.2010, directed the Conducting Officer to continue with the departmental proceeding. In pursuant thereto, the Conducting Officer vide his Letter no. 1415 dated 08.12.2010, asked the petitioner to submit the status report of the vigilance case, who in turn, submitted the same. The petitioner also requested for supply of a detailed charge-sheet and other relevant necessary documents to render his effective show-cause explanation. However, the Conducting Officer on being found, *prima facie* charges proved, submitted his enquiry report before the Disciplinary Authority. In consequence of which, the District Magistrate-cum-Collector, Nalanda, vide his order contained in Memo no. 2587 dated 09.09.2011, dismissed the petitioner from his service.

5. The petitioner, on being aggrieved with the order of dismissal, preferred Service Appeal before the Divisional Commissioner, Patna Division, in Appeal No. 166 of 2011, *inter alia*, on the ground that the order has been passed without issuing any show-cause notice or providing a copy of the



enquiry report to the petitioner. The said appeal came to be disposed off on 21.02.2013 by setting aside the order of dismissal and remitting the matter to the District Magistrate to complete the proceedings as per the procedure prescribed in terms of the relevant letters/guidelines issued by the Government.

6. In the light of the order afore-noted, the petitioner was reinstated and after attaining the age of superannuation, he retired on 31.08.2013. It is also evident that after his superannuation, Pension Payment Order (PPO) dated 13.12.2013 has been issued in favour of the petitioner and the Gratuity amount as well as other post retiral benefits have been accorded to him.

7. Considering the superannuation of the petitioner, the departmental proceeding was converted under rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as 'the Rules, 1950') and finally the impugned order as contained in Memo No. 820 dated 04.04.2014 (Annexure-8) withholding entire pension permanently till life of the petitioner came to be passed with a categorical observation that had the petitioner been in service, he would have been inflicted with the punishment of dismissal; since, the petitioner has already



superannuated, thus the punishment for withholding of full pension is being inflicted.

8. While assailing the impugned order, it is contended that prior to converting the proceedings under rule 43(b) of the Rules, 1950, no sanction of the State Government has been taken, which is mandatory. Moreover, the Disciplinary Authority failed to consider the proviso (ii) to rule 43(b)(a) of the Rules, 1950, which puts an embargo on such proceedings in respect to an event which took place beyond four years from the date of the initiation of the proceeding. It is also the contention of the petitioner that the Appellate Authority in Service Appeal No. 166 of 2011, while setting aside the order of termination directed to complete the proceeding as per the proceeding prescribed by law but again the same mistake has been done and the petitioner has not been allowed necessary relevant papers/documents to enable him to file proper show-cause explanation and only on placing reliance upon the complaint filed by the complainant, which is part of the FIR, the impugned order has been passed. Unlike the earlier proceeding, the petitioner has not given the enquiry report to rebut the allegation levelled against him and thus the entire departmental proceedings vitiate on this ground alone. Admittedly, both the



departmental as well as judicial proceedings were pending at the time of superannuation, hence, rule 43(b) of the Rules, 1950 does not cover a situation which could have been invoked only after departmental and judicial proceedings are concluded. Reliance has also been placed on a judgment rendered by the Hon'ble Supreme Court in the case of **Dr. Hira Lal v. State of Bihar and Others [(2020) 4 SCC 346]** *“that the right of pension cannot be taken away by a mere executive fiat or administrative instruction. Pension and Gratuity are not mere bounties, or given out of generosity by the employer. An employee earns these benefits by virtue of his long, continuous, faithful and unblemished service.”*

9. Further reliance has also been placed on a decision of the Hon'ble Supreme Court in the case of **State of Jharkhand v. Jitendra Kumar Srivastava [(2013) 12 SCC 210]**, that in absence of specific rules, pension being property protected under Article 300-A of the Constitution, cannot be withheld.

10. *Per contra*, learned counsel for the State, countering the afore-noted submissions, vehemently contended that the allegation of accepting bribe stands proved during the departmental proceeding and the complainant, namely, Sri



Chandrashekhar Sinha, has supported the allegation. Moreover, the petitioner was apprehended by the trap team of the Vigilance Department while accepting bribe leading to institution of the Vigilance P.S. Case No. 31 of 2007 on 08.03.2007; the trial of which is pending.

11. Learned counsel for the State further contended that in compliance with the order of the Commissioner, Patna Division, the District Magistrate, Nalanda, further proceeded in the departmental proceeding and after following all the procedures, arrived at the conclusion that the act of the petitioner is found to be unbecoming of a Government Servant. However, as the petitioner superannuated during the pendency of the departmental proceeding, the same has rightly been converted under rule 43(b) of the Rules, 1950 and accordingly inflicted with the punishment of withholding of pension permanently for life time. The conduct of the petitioner comes under the definition of gross misconduct and, as such, contrary to rule 3 of the Bihar Government Servants Conduct Rules, 1976.

12. This Court has meticulously heard learned counsel for the respective parties and also perused the materials available on record.



13. Before parting with this case, it would be worth noticing that the present matter was admitted for hearing on 19.09.2017. Notwithstanding the matter pending for long, when the same could not be taken up, the petitioner filed another writ petition bearing C.W.J.C. No.15318 of 2022 for the identical relief. However, considering the consequence that the same being not maintainable, the petitioner sought permission to withdraw the writ petition with a liberty to raise all his grievance in C.W.J.C. No. 1245 of 2014. Pursuant to the liberty, the petitioner filed I.A. No. 3 of 2023 for early hearing and the prayer was accepted by this Court.

14. It is pertinent to reiterate the legal position that in a case where a Disciplinary Proceeding has already been started even if the person concerned attains the age of superannuation, the enquiry may be continued under rule 43 of the Rules, 1950 for the limited purpose of taking such action as provided under the said Rules, even after such superannuation and for that purpose no specific or express order of the Government is necessary. The aforesaid proposition has been validated by the Full Bench of this Court in the case of **Shambhu Saran v. State of Bihar [2000 (1) PLJR 665]**.

15. So far the plea of the petitioner that embargo as



provided under rule 43(b)(a)(ii) of the Rules, 1950, clearly bars initiation of any proceeding with respect to an event, which took place prior to four years before the date of initiation of a departmental proceeding, in the opinion of this Court, would not be applicable in the case in hand; as this is the case where the proceeding had already been initiated much before the date of superannuation of the petitioner and while it was pending consideration; in the meantime, the petitioner superannuated. Thus, the proceeding has rightly been converted under rule 43(b) of the Rules, 1950 and, as such, this is not a case where a fresh departmental proceeding has been instituted under rule 43(b) rather it is a case where a disciplinary proceeding has been converted under rule 43(b) of the Rules, 1950 and, as such, even if sanction of the State Government has not been obtained that would not invalidate the departmental proceeding, if it is otherwise valid.

16. This Court has gone through the impugned order; it is rather unfortunate that even when the order of the District Magistrate dated 31.09.2011 was set aside by the Commissioner, Patna Division and remitted the matter to the District Magistrate to complete the proceedings as per prescribed procedure, the same has not been done. Neither the memo of charge speaks



about the documents on the basis of which the charges are to be proved nor it contains the name of witnesses, who would be examined during the course of departmental proceeding in support of the charges.

17. This is the case where this Court finds that not even the mandatory prescriptions of Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 has been followed, nevertheless, even the enquiry report on the basis of which the disciplinary authority inflicted the punishment as also the second show-cause notice has ever been served upon the petitioner.

18. Non supply of copy of the enquiry report before imposing the order of punishment violates the fundamental principles of natural justice as laid down by the Hon'ble Supreme Court in **Managing Director, ECIL, Hyderabad v. B. Karunakar [(1993) 4 SCC 727]**. Once the adverse circumstances, such as enquiry report was not supplied to the delinquent then such fact would warrant that the Disciplinary Authority should have given an opportunity to the petitioner to submit representation against the findings recorded by the Enquiry Officer and to consider and pass an appropriate order as it may think appropriate.



19. Time without number, the Hon'ble Supreme Court in various decisions held that the departmental proceeding is a quasi judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with.

20. The Hon'ble Supreme Court in the case of **Roop Singh Negi v. Punjab National Bank and Others [(2009) 2 SCC 570]** in no uncertain terms held that the charges levelled against the delinquent officer must be found to have been proved. The Enquiry Officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. Mere production of document is not enough, the contents of documentary evidence has to be proved by examining witnesses. The Hon'ble Court made it clear that the FIR in itself is not an evidence without actual proof of facts stated therein. This Court deems it apt to encapsulate para-14 of the said judgment, which is quoted hereinbelow:

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by



the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.”

21. This Court is also conscious of the fact that on account of the criminal misconduct, including the charges of accepting bribe, leading to institution of FIR, simultaneously a departmental as well as judicial proceeding have been initiated and thus, in such circumstances, the matter acquires a different dimension.

22. The Hon’ble Supreme Court in its decision in the case of **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Another (1999) 3 SCC 679**], has crystallized that in case of simultaneous continuance of criminal proceedings, they can be continued independently, if scope of these two proceedings are different.

23. The memo of charge in the case in hand only speaks of the charge of accepting bribe, but surprisingly, neither



any document nor any witnesses have been produced to support the said charge.

24. Now, coming to the enquiry report as also the order inflicting punishment to the petitioner, it clearly demonstrate that the only charge against the petitioner was being apprehended while accepting bribe; there is no other charges alleging the act of the petitioner constituting misconduct and of unbecoming of a government servants, attracting the penal provisions of the Bihar Government Servant's Conduct Rules, 1976. The order of the punishment relies only upon the FIR registered against the petitioner, which could not have been treated as evidence unless the contents thereof is proved by examination of the witnesses.

25. The Apex Court in the case of **State of Uttar Pradesh and Others v. Saroj Kumar Sinha**, [(2010) 2 SCC 772], in clear terms held that *“an enquiry officer acting in a quasi judicial authority, not supposed to be a representative of the department/disciplinary authority. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. Even in order to prove the document the oral evidence*



is required to be examined. The enquiry proceeding is not a casual exercise and conducted with a close mind. A government servant is to be treated fairly in proceeding which may culminate in imposition of punishment, is the object of rules of natural justice.”

26. The infirmities as disclosed hereinabove including the non-supply of the enquiry report and the second show-cause notice, apart from sans any compliance of mandatory prescriptions as also the order of punishment is nothing but a mere narration of facts and does not deal with the defence put forth by the petitioner by way of his reply to the show-cause, thus being cryptic order not depicting proper application of mind, are sufficient enough to hold the impugned order illegal, bad and, as such, unsustainable in law. Accordingly, the impugned order as contained in Memo No. 820 dated 04.04.2014 (Annexure-8) is hereby, set aside.

27. On account of setting aside of the impugned order of punishment, now the position which is culled out clearly demonstrates that the date on which the petitioner superannuates i.e. 31.08.2013, he was facing a judicial proceeding arising out of Vigilance P.S. Case No. 31 of 2007. Prior to the superannuation, the Government of Bihar has come out with



amendment in the Rules, 1950 by incorporating rule 43(c) which came into force on 19.07.2012, which reads as follows:

“43(c) Where the departmental proceeding or judicial proceeding, in which the prosecution has been sanctioned against such servant, initiated during the service period of the government servant, is not concluded till the retirement of the government servant, the amount of provisional pension shall be less than the maximum admissible amount of pension but shall in no case be less than 90% (ninety percent).”

28. For the purposes of this rule, it has also been made clear that judicial proceeding shall be deemed to have instituted (i) in the case of criminal proceedings, on the date on which complaint is made, or a charge-sheet is submitted, to a criminal court; and (ii) in the case of a civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made to Civil Court.

29. Now, in the case in hand, once the order inflicting withholding of 100% pension for life time stood set aside and thus except a pending judicial proceeding, there is no departmental proceeding, thus in the opinion of this Court, the case of the petitioner ought to be considered under rule 43(c) of the Rules, 1950.



30. The respondent authorities in the afore-noted facts, are hereby directed to examine the record as to whether the date on which the petitioner superannuated; a charge-sheet is already submitted, in such circumstances, he would be entitled to get provisional pension which shall in no case be less than 90%, in terms with rule 43(c) of the Rules, 2005 which was in force at the time of superannuation of the petitioner.

31. The next question, which would now arise is as to whether the petitioner, would be entitled to back wages, especially when this Court has held the impugned order as bad, illegal and unsustainable. Suffice it to observe that in cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee, the nature of misconduct, if any found proved against the employee, the financial condition of the employer and similar other factors [**Vide: Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya and Others, (2013) 10 SCC 324**].

32. Having regard to the facts that the respondents have completely failed to justify their action in inflicting the



punishment and they have acted in gross violation of the statutory provisions and/or principles of natural justice, this Court further directs the respondents to pay the back wages to the petitioner along with consequential benefits.

33. It is also worth noticing that the aforesaid direction and observation shall not preclude the respondent authorities to take appropriate action/decision against the petitioner, basing upon the final outcome of the pending judicial proceeding, in accordance with law.

34. The exercise of extending the benefit of back wages as also the pension to the petitioner in view of the aforesaid direction(s) must be performed within a period of twelve weeks from the date of receipt/production of a copy of this order.

35. The writ petition stands allowed to the extent indicated hereinabove.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	28-11-2024
Uploading Date	08-01-2025
Transmission Date	

