

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7317 of 2016

Deo Chandra Jha

... .. Petitioner/s

Versus

The State of Bihar and Ors.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajni Kant Jha, Advocate

Mr. Prisu Snehil, Advocate

For the Respondent/s : Mr. Sarvesh Kumar, Advocate (GP-24)

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 06-05-2025

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

2. Learned Counsel for the petitioner submits that the present writ petition has been filed for quashing of order dated 15.05.2014 passed in Service Appeal No. 11 of 2012 by the Commissioner-cum-Appellate Authority, Darbhanga, as well as order dated 15.12.2011 contained in Memo No. 72 whereby and whereunder the Collector Madhubani has been pleased to pass an order of punishment against the petitioner that nothing except subsistence allowance would be given to the petitioner for the period during which the petitioner remained suspended.

3. Learned Counsel for the petitioner submits that the order dated 05.12.2011 passed by the Appellate Authority has already set-aside, in which violation of CCA Rules 2005 has been made. Counsel for petitioner submits that the Appellate Authority has



categorically indicated that there is gross violation of Rule 11(5) of the CCA Rules 2005 in passing the order of punishment dated 05.12.2011 as the said order does not contain the order of punishment and it categorically indicates the effect of punishment and it is due to this reason, the Appellate Court has set-aside the entire order and remanded back the matter to the Disciplinary Authority to pass order afresh. He submits that the said Disciplinary Authority has passed order on the basis of charge which has been issued not in accordance with any supportive witnesses or on the basis of any documentary witnesses. He further submits that remanding back the matter to pass order afresh shall be a futile exercise particularly when there is no material on record on the basis of which the disciplinary authority is in a position to pass the final order of punishment in accordance with law imposing punishment as laid down under Rule 14 of the CCA Rules, 2005. In support of his argument, Counsel relied on two judgments: The First Judgment of which he is relying is the case of **Dinesh Prasad vs. State of Bihar** reported in **2006(4) PLJR 514** and submits that in the said case there is gross violation of Rule 97(3) of the Bihar Service Code has been made and since no opportunity was given to the petitioner in terms of Rule 97(3) of the Code. Non-observance of provision of 97(3) of the Bihar



Service Code amounts to the violation of principles of natural justice and, therefore, such type of order could not be sustainable and be set-aside. The another case on which counsel for the petitioner has relied is the case of **Vijay Singh vs. State of U.P.** reported in **(2012) 5 SCC 242**, the relevant paragraphs reads as follows:-

“11. Admittedly, the punishment imposed upon the appellant is not provided for under Rule 4 of the 1991 Rules. Integrity of a person can be withheld for sufficient reasons at the time of filling up the annual confidential report. However, if the statutory rules so prescribe, it can also be withheld as punishment. The order passed by the disciplinary authority withholding the integrity certificate as a punishment for delinquency is without jurisdiction, a not being provided under the 1991 Rules, since the same could not be termed as punishment under the Rules. The Rules do not empower the



disciplinary authority to impose "any other" major or minor punishment. It is a settled proposition of law that punishment not prescribed under the Rules as a result of disciplinary proceedings cannot be awarded.

15. Imposing the punishment for a proved delinquency is regulated and controlled by the statutory rules. Therefore, while performing the quasi-judicial functions, the authority is not permitted to ignore the statutory rules under which punishment is to be imposed. The disciplinary authority is bound to give strict adherence to the said rules. Thus, the order of punishment being outside the purview of the statutory rules is a nullity and cannot be enforced against the appellant."

4. The second proposition is that the punishment not prescribed under the Rule as a result the disciplinary proceeding



cannot be awarded and, therefore, imposing the punishment for a proved delinquency is regulated and controlled by the statutory rule. Therefore, the order of punishment being outside the purview of the statutory rule is a nullity and cannot be enforced against the appellant. Learned Counsel submits that violation of the provisions of CCA Rule and also violation of Rule 97(3) of the Bihar Service Code vitiates the entire proceedings and in no case the proceeding against the petitioner, who has already retired 14 years back in the year 2011 itself is sustainable in the eye of law, particularly, when he is not getting his pensionary benefits till date after such a long litigation.

5. Learned Counsel for the State, on the other hand, submits that in the counter affidavit it is very much clear that the order of disciplinary authority dated 15.12.2011 has been challenged before the appellate forum in service appeal No.11 of 2012 in which the final order has been passed by the Appellate Authority on 15.05.2014, which is annexed as Annexure-1 to the present writ petition. He submits that the petitioner is a clever litigant on the one hand, the order has been passed in his favour in Appeal and matter was remanded back in the year 2014, the petitioner is not interested to pass order in appeal and, therefore, with a view to stop the proceeding, he has challenged the order passed by the



Appellate Court before this Hon'ble Court in the year 2016 by way of the present writ petition and due to the pendency of the writ petition, the disciplinary authority has restrained himself from passing any order in compliance of the Appellate Authority.

6. Learned Counsel for the State further submits that it is due to the petitioner, who challenged the appellate order, the disciplinary authority could not comply the order passed by the appellate forum and, therefore, he submits that the petitioner is playing hot and cold simultaneously and, therefore, this writ petition be dismissed and direction be given to the disciplinary authority to pass order afresh in accordance with law as directed by the appellate Court.

7. In this case a unique situation has developed due to long pendency as the appellate order has been passed in 15.05.2014 directing the disciplinary authority to pass order afresh. In the year 2016, the petitioner has filed the present writ petition challenging the order passed by the Appellate Court. From the contention made by the petitioner, it transpires to this Court, that the petitioner is fully agree on the reasoning given by the Appellate forum but he has filed the writ petition seeking a direction that passing order by Disciplinary Authority in the light of the direction made by the Appellate Authority shall not solve any purpose and



justice shall not be made with the petitioner, due to the reason that there are already series of procedural mistakes made under the disciplinary proceedings which cannot be rectified even if matter has been remanded back. He submits that remanding back this matter shall be a futile exercise and shall continue further litigation, petitioner is now old aged person and shall suffer a lot since he has retired in the year 2011 and it is 2025. For the last 14 years, he is in search of justice and due to pendency of the litigation, he could not get any relief.

8. From perusal of the charge memo, it transpires to this Court that charge memo is defective. It also transpires to this Court that appellate forum has been violated the provisions of law and Rule 11(5) of the CCA Rules, 2005, has been violated and it is due to this reason, the appellate forum has rightly directed that matter has been remanded back. Now with a view to take any decision by checking the appellate order, this Court has to look into the jurisdiction of the Appellate Court that whether Appellate Court is competent enough to remand back the matter or not and order of the Appellate Court shall be applicable in part and discarded in part or shall be applicable in *toto*.

8. In this background, the Appellate forum at the time of passing the final order, has categorically indicates the



procedural wrongs done by the disciplinary authority and it is well within his power to remand back the matter. Only due to pendency of the present writ petition, this matter could not be decided as indicated by the disciplinary authority.

9. In this view of the matter, this Court is not interfering in the Appellate Court’s order and disposed off the present writ petition with a direction that the disciplinary authority shall pass final order in the light of the Appellate Court’s order within 60 days from the date of production of a copy of this order before the Disciplinary Authority. In case, the Disciplinary Authority fails to pass order within 60 days from the date of production of this order before him, then it shall be assumed that the Disciplinary Authority has no point to pass an order and in that case, petitioner shall be entitled for all benefits for which he is entitled for.

10. With the aforesaid directions, the present writ petition stands disposed off.

(Dr. Anshuman, J)

Sudhanshu/-

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

