

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1203 of 2024
In
Civil Writ Jurisdiction Case No.4300 of 2017

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1. The State of Bihar
 2. The Principal Secretary, Planning and Development Department Govt. of Bihar, Patna.
 3. The Joint Secretary, Department of Planning and Development, Govt. of Bihar, Patna.
 4. Bihar Public Service Commission, Patna, through its Secretary.
 5. The Chairman, Bihar Public Service Commission, Patna

... .. Appellant/s

Versus

Pankaj Kumar Gupta son of Late Surajdeo Narayan Gupta Resident of Fatech Tola, Turkoli, P.S.- Turk Turkolia, District- East Champaran.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vivek Prasad, GP-7 Ms. Roona, Advocate
For the Respondent/s	:	Mr. Upendra Kumar Chaubey, Advocate Mr. Siya Ram Shahi, Advocate

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 07-04-2025

1. Heard learned counsel for the parties.

Re: I. A. no. 1 of 2024

2. The instant application has been filed on behalf of
the appellants/State of Bihar praying for condoning the delay of



84 days in filing of the present appeal.

3. Having heard learned counsel for the parties and having perused the contents of the petition, the Court is satisfied that the appellants have made out a case for condonation of delay.

4. The delay of 84 days in filing of the instant appeal is condoned.

5. I. A. no. 1 of 2024 stands allowed.

Re: L.P.A. no. 1203 of 2024

6. The instant appeal has been preferred against the judgment and order dated 1.8.2024 passed in CWJC no. 4300 of 2017 whereby the learned Single Judge was pleased to quash the order of dismissal dated 17.2.2017 of the writ petitioner/respondent, directed that the respondent be reinstated in service from the date he was dismissed and he be paid all consequential benefits. Further direction was given to pay to the respondent his retiral benefits within a period of three months.

7. The relevant facts in brief are that the respondent who joined Government Service in the year 1990 as a Credit Planner-cum-Rural Development Expert in the Planning and Welfare Department, Government of Bihar, was proceeded against departmentally in the year 2009. He was served with



Form 'Ka' containing five charges. On conclusion of the departmental enquiry, of the five charges, Charge nos. 1 and 3 were not proved, Charge no.2 was proved partially and Charge nos. 4 and 5 were proved. A copy of the charge memo was sent to the Bihar Public Service Commission ('B.P.S.C.' in short) which did not give its consent finding the proposed punishment of dismissal to be disproportionate.

8. As per the case of the respondent, the Minister accepted the opinion of the B.P.S.C. and the State Government withdrew the proposal, however with the change in Government, the appellants once again obtained the opinion of the new Minister and came out with an order on 17.2.2017 dismissing the respondent from service. The respondent was working as an Assistant Director in the Regional Planning Office under Purnea Division, Purnea at the time of his dismissal.

9. It was the case of the appellants/State of Bihar that on the opinion of the Minister concerned having been taken afresh on 25.1.2017, the same was placed before the Cabinet. Charge no.2 having been partially proved as also Charge nos. 4 and 5 having been found to be proved, the case of the respondent was placed before the Cabinet and the Council of



Ministers took a decision to impose the punishment of dismissal on the respondent, on which the competent authority came out with the order dated 17.2.2017.

10. The order of dismissal dated 17.2.2017 was challenged by the respondent by filing CWJC no.4300 of 2017 and the same having been allowed with all consequential benefits that the appeal has been preferred by the appellants/State of Bihar.

11. It was submitted by learned counsel appearing for the appellants that the respondent was proceeded against departmentally under the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (herein after referred to as the 'CCA Rules'). He was served with a charge-sheet containing five charges to which he filed his reply and in the enquiry conducted, Charge no.2 having been found to be partially proved as also Charge nos.4 and 5 having been found to be proved, the respondent was given a copy of the enquiry report. It is submitted that the proposed punishment of dismissal from service was put up for approval by the Cabinet, however the same was withdrawn on 30.9.2014. Subsequently, having obtained the opinion of the Minister on 25.1.2017, the noting of the Minister was put up before the Cabinet and having obtained



its approval, the State of Bihar came out with the order of dismissal. It was submitted that opportunity was given to the respondent at every stage, there was no violation of any of the provisions of the CCA Rules and in a properly conducted departmental proceeding, the order of punishment has been passed in accordance with law. It is submitted that the learned Single Judge erred in allowing the appeal.

12. In response, it was submitted by learned counsel appearing for the respondent that though the respondent was served with charge-sheet containing five charges, no documents were enclosed with the charge-sheet. Further, in course of enquiry neither any witness was examined nor any document exhibited nor proved in support the charges. In the departmental proceeding, no proper opportunity was given to the respondent as the enquiry was concluded in one day ie on 3.5.2010 and the enquiry report forwarded on 6.12.2010. Even Charge nos. 2, 4 and 5 not having been proved against the respondent, the authority concerned committed an error in passing the order of dismissal, which subsequently was rightly set aside by the learned Single Judge. There is no merit in the instant appeal and the same be dismissed.

13. Heard Mr. Vivek Prasad, learned Government



Pleader no.7 assisted by Ms. Roona, learned counsel for the appellants and Mr. Siya Ram Shahi assisted by Mr. Upendra Kumar Chaubey, learned counsels for the respondent.

14. The respondent was proceeded against departmentally in the year 2009 and was served with a charge-sheet in Form 'Ka' which contained five charges. Charge nos. 2, 4 and 5 were found to be proved.

15. Charge no.2 was to the effect that inspite of the respondent being in jail custody from 29.11.2001 to 1.12.2001 in connection with Turkaulia P.S. Case no. 249/2001, he did not informed the Department about his incarceration and drew his salary for the said period. The defence of the respondent was that he was taken into custody by the police while he was on leave. Subsequently, he was acquitted in the criminal trial. The Enquiry Officer was of the opinion that for this charge the Principal Clerk and the Accountant were mainly responsible, however the respondent could also be held partially responsible.

16. Charge no.4 was to the effect that after being relieved on 13.8.2007, the respondent had issued LPC for the purpose of taking salary from 21.4.2007 to 23.4.2007, when he was on unauthorised absence. The response of the respondent was that LPC had not been prepared by him. He further



explained his absence on the two dates which was on account of the illness of his wife. It transpires that the Enquiry Officer was of the opinion that the matter required to be examined by an expert which was not done, however the charge was said to have been proved.

17. Charge no.5 was with respect to the respondent illegally withdrawing salary for the period from 22.8.2007 to 10.9.2007 to the tune of Rs.11,914/- and Rs.62,249/-. The defence of the respondent was that the Collector had authorised/sanctioned for payment of salary for the period in question and had it not been so, the Dealing Clerk, the Accounts Clerk and the Head Assistant in the Collectorate as also the Treasury Officer would not have passed the same. None of the other officials were proceeded against, however the charge was found to be proved in the enquiry.

18. It is contended by learned counsel for the appellants that the learned Single Judge erred in holding that once the proposed punishment of dismissal was disapproved in the Cabinet meeting on 30.9.2014, it was uncalled for for the State Government to seek fresh approval of the order of dismissal of the Cabinet vide noting dated 25.1.2017. The Court finds substance in the submission. It is for the reason that the



proposal to impose the order of dismissal dated 30.9.2014 was not disapproved in the Cabinet meeting but was withdrawn. However, from the materials on record, as noted herein above, it is not in dispute that the entire enquiry was conducted on a single day ie on 3.5.2010, which cannot be said to have been conducted in accordance with law giving adequate opportunity to the respondent.

19. It is also not in dispute that in the departmental enquiry conducted, neither a single document was enclosed with the charge-sheet nor any document was marked exhibited or proved in course of departmental enquiry. It is also not in dispute that not a single witness was examined in support of the charges against the respondent in course of enquiry. The charges not having been proved by evidence, either oral or documentary, the same was clearly in teeth of the law laid down by the Hon'ble Supreme Court in the case of **Roop Singh Negi vs. Punjab National Bank & Ors.; (2009) 2 SCC 570.**

20. Relying on the aforesaid as also other judgments, in the facts and circumstances of the case, the learned Single Judge rightly allowed the writ application, set aside the order of dismissal with all consequential benefits and directed for payment of arrears of salary from the date of his dismissal as



also post retiral dues within three months.

21. The Court finds no illegality in the order
impugned and no merit in the instant appeal.

22. The appeal is dismissed.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

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CAV DATE	
Uploading Date	10.04.2025
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