IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.936 of 2018
In
Civil Writ Jurisdiction Case No.8876 of 2011

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1. The State of Bihar
2. The Secretary, Road Construction Department, Govt. of Bihar, Patna.
3. The Joint Secretary, Road Construction Department, Govt. of Bihar, Patna.
4. The Deputy Secretary Vigilance, Road Construction, Department, Govt. of Bihar, Patna.
5. The Deputy Secretary, Road Construction department, Govt. of Bihar, Patna.

... ... Appellants

Versus

Shriddhar Prasad, S/o Sri Ram Vilas Sah, Resident of Mohalla-Satpura Colony, P.S. - Kazi Mohammadpur, District-Muzaffarpur.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr.Ravi Bhardwaj, A.C. to GA-13
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 25-09-2020

Heard Mr. Ravi Bhardwaj, learned AC to GA 13.

I.A. No. 5118 of 2018

The above mentioned Interlocutory Application has been filed with a prayer for condonation of delay of 281 days in filing the present appeal.

Considering the grounds taken in the limitation petition suggesting sufficient reason for not filing the appeal in time by the appellant, the delay of 281 days in filing the present appeal

is condoned.

Accordingly, I.A. No.5118 of 2018 stands disposed of.

I.A. No. 5119 of 2018

The above mentioned Interlocutory application has been filed for stay of the impugned judgment dated 30.8.2017 passed in CWJC No. 8876 of 2011.

L.P.A. No. 936 of 2018

The present Letters Patent Appeal has been preferred against the impugned judgment dated 30.8.2017 passed in CWJC No. 8876 of 2011, whereby the learned Single Judge has set aside the Notification bearing No. 1300 dated 3.2.2011, whereby the respondent was imposed with punishment of permanent reduction of his pension to the extent of 50% and apart from that, he was not allowed to get anything except the subsistence allowance for the period of suspension.

The factual matrix of the case is that the delinquent officer-respondent was an Executive Engineer posted on deputation in the Muzaffarpur Regional Development Authority (hereinafter referred to as 'the Authority') from 1.2.2005 to 31.6.2005 and from 12.12.2005 to 21.12.2006. The then District Magistrate, Muzaffarpur vide letter no. 51 dated 29.3.2003,

intimated to the Principal Secretary, Urban Development Department, Government of Bihar with regard to certain irregularities being committed in the Authority in 366 rural development schemes and 377 urban development schemes. The then Principal Secretary, Urban Development, vide letter no. 606 dated 6.7.2006 ordered for setting up an enquiry. Consequently, out of 743 development schemes, 48 schemes were randomly selected for enquiry and during enquiry, it was found that gross irregularity has been committed in such schemes. Moreover, the work was to be conducted by the approval of the Vice Chairman of the Authority but it was done without such approval and as a result, huge loss was caused to the public exchequer. The schemes also related to the period 2000-2006, during which period the respondent was posted in the Authority. Consequently, a departmental proceeding was initiated in 2008 against the respondent after framing of altogether nine charges.

The enquiry was constituted under Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules. The enquiry officer submitted the report (Annexure 4 to the writ application) on 18.6.2007 holding that none of the nine charges leveled against the respondent are proved and

exonerated him of all the charges. However, the disciplinary authority, disagreeing with the findings of the enquiry officer, recorded his own finding of guilt dated 29.1.2010, as contained in Annexure 6 to the writ application and thereafter, a second show-cause notice was issued to the respondent as to why he should not be punished and thereafter, considering the explanation of the respondent dated 16.2.2010, as contained in Annexure 7 to the writ application, the punishment order dated 3.2.2011 as contained in Annexure 1 to the writ application, reducing the pension of the respondent to the extent of 50% permanently and not allowing him to be entitled to anything except the subsistence allowance during the period of suspension, was passed.

The said order was challenged in the writ application. The learned Single Judge quashed the order of punishment on the ground that no notice on disagreement of the findings of the enquiry officer, was given to the respondent before holding him guilty by the disciplinary authority. Hence, the present Letters Patent Appeal.

Learned counsel for the appellant submits that it is admitted position that the enquiry officer did not find the charges proved and exonerated the respondent of all the charges.

However, the disciplinary authority, without supplying the respondent the points of disagreement while disagreeing with the finding of the enquiry officer, recorded the order of punishment, hence, learned counsel for the appellant confines his prayer to the extent that the appeal be allowed to the extent that the disciplinary authority may be permitted to proceed from the stage of supplying the points of disagreement and enquiry report to the respondent.

Having heard learned counsel for the appellant, from the materials on record, it appears that the learned Single Judge has interfered with the order of punishment on the sole and celebrity principle of service jurisprudence, according to which, whenever enquiry report records exoneration of the delinquent employee on the ground of the charges levelled, not being proved and the disciplinary authority differs with the conclusion of the enquiry officer, then in that case it is incumbent upon the disciplinary authority to record the points and reason on which he differs with the opinion of the enquiry officer and the disciplinary authority is further under mandatory obligation to issue notice and call for a reply from the delinquent employee on the issue of proposed difference from the enquiry report. The safeguard has been introduced with a solemn purpose to bestow

upon the delinquent one more opportunity to convince the disciplinary authority with the correctness of the finding in the enquiry report and to explain the queries which may reasonably arise in the mind of the disciplinary authority in course of evaluation of the enquiry report.

The requirement of issuance of notice to the delinquent employee on the point of difference is mandatory procedure, which has been held by a three Judge bench in the case of Punjab National Bank & Ors. Vs. Kunj Behari Misra, reported in (1998) 7 Supreme Court Cases 84. Paragraph 19 of the judgment reads as follows:

> "19 The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the

officer."

The above quoted view taken in the case of Kunj Behari Misra (supra) has consistently been approved and followed in the cases of Yoginath D. Bagde Vs. State of Maharashtra, reported in (1999) 7 Supreme Court Cases 739, SBI Vs. K.P. Narayanan Kutty, reported in (2003) 2 Supreme Court Cases 449 and in the case of Canara Bank Vs. Debasis Das, reported in(2003) 4 Supreme Court Cases 557. In the case of Canara Bank (supra), it has been held that denial of opportunity of hearing on differing with the enquiry report is *per se* violative of the principles of natural justice. In the case of S.P. Malhotra Vs. Punjab National Bank & Ors., reported in (2013) 7 Supreme Court Cases 251, the view taken in Kunj Behari Misra (supra) has been endorsed. Paragraph 13 of the judgment reads as follows:

> "13. In ECIL, only the first issue was involved and in the facts of this case, only second issue was involved. The second issue was examined and decided by a three-Judge Bench of this Court in Kunj Behari Misra (supra), wherein the judgment of ECIL (supra) has not only been referred to, but extensively quoted, and it has clearly been stipulated that wherein the second issue is involved, the order of punishment would stand vitiated in case the reasons so recorded by the Disciplinary Authority for dis-agreement with the Enquiry Officer had not been supplied to the delinquent and his explanation had not been sought. While deciding the said case, the court relied upon the earlier judgment of

> this court in Institute of Chartered Accountants of India v. L.K. Ratna, AIR 1987 SC 71."

However, in such circumstances, it is a settled proposition of law, specifically under service jurisprudence, that whenever any order or decision of the employee or the disciplinary authority is set aside on technical ground or on the ground of violation of principle of natural justice, it is always open upon the disciplinary authority to proceed afresh, if they so desire, from the stage from which the illegality was committed and take the proceeding to the logical conclusion.

In the case of B. Karunakar (supra), the issue was that after 42nd amendment in the Constitution when the enquiry officer was other than the disciplinary authority, the delinquent employee was entitled to a copy of the enquiry report before the disciplinary authority takes a decision on the question of guilt of the delinquent employee, when it was held that the delinquent employee is entitled for a copy of the report in order to persuade the disciplinary authority with regard to guilt of innocence of such employee on the basis of the said report. Paragraph 29 of the judgment reads as follows:

> "29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions

> with regard to the guilt or innocence of the employee with regard to the charges levelled against them. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

In the present case, the proceeding was initiated in 2009 and the punishment was passed on 3.2.2011, by the time the respondent retired. Hence, after nine years of retirement of the respondent, we are not inclined to allow the disciplinary authority to proceed afresh as has been held in the case of Kunj Behari Misra (supra) where the Apex Court, in the interest of justice, did not remand the matter to the disciplinary authority for proceeding from the stage of disagreement by the disciplinary authority from the report of the enquiry officer since in the said case the delinquent superannuated about 14 years prior to the passing of the judgment. Paragraph 21 of the judgment reads as follows:

> "21.Both the respondents superannuated on 31st December, 1983. During the pendency of these appeals Misra died on 6th January, 1995 and his legal representatives were brought on record. More than 14 years have elapsed since the delinquent officers had superannuated. It will, therefore, not be in the interest of justice that at this stage the cases should be remanded to the disciplinary authority for the start of another innings. We, therefore, do not issue any such directions and while

dismissing these appeals we affirm the decisions of the High Court which had set aside the orders imposing penalty and had directed the appellants to release the retirement benefits to the respondents. There will, however, be no order as to costs."

In view of the discussions made above, we are not inclined to interfere with the judgment impugned.

Accordingly, the appeal is dismissed.

I.A. No. 5119 of 2018 filed for stay of the impugned order also stands dismissed.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

Ashwini/-Anil/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.