

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1347 of 2018
In
Civil Writ Jurisdiction Case No.14330 of 2010

Mahendra Prasad Singh Son of Late Harihar Prasad, Resident of Village-
Puranignj, P.S.- Kasim Bazar, District- Munger.

... .. Appellant/s

Versus

1. The State Of Bihar and Ors
2. The Engineer-in-Chief cum Additional Commissioner, Road Construction Department, Government of Biha
3. The Chief Engineer, Transport South Bihar Road Construcion Department, East Bihar Circle, Bhagalpur
4. The Executive Engineer, Road Construction Department, Jamui, District- Jamui.
5. The Executive Engineer, Road Construction Department, Jamui, District- Jamui.
6. The Executive Engineer, Road Construction Department, Lakhisarai, District- Lakhisarai.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. P.N. Shahi, Sr. Advocate
Mr. Arun Kumar Pandey, Advocate
Mr. Amresh Kumar, Advocate
For the Respondent/s : Mr.S.D. Yadav- AAG-9

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 09-01-2023

In the instant L.P.A., appellant has assailed the order of the learned Single Judge dated 16.08.2018 passed in C.W.J.C. No. 14330 of 2010.

2. The appellant while working as a Junior Engineer was subjected to disciplinary proceeding in framing Article of



charges on 28.05.2006, the appellant had submitted his explanation by denying the alleged charges. The disciplinary authority was not satisfied with the appellant's explanation and proceeded to appoint Inquiring and Presenting Officer. The Inquiring Officer submitted report on 06.02.2007, in which he has held that charges levelled against the appellant were proved. Based on the Inquiring Officer's report, disciplinary authority issued second show cause notice along with the Inquiring Officer's report on 08.03.2007. The appellant had submitted his explanation on the Inquiring Officer's report and second show cause notice on 08.04.2007. He has attained the age of superannuation and retired from service on 30.09.2007. Having regard to the fact that he has attained the age of superannuation and retired from service, pending departmental inquiry was converted under Rule 43(b) of Bihar Pension Rules on 25.03.2008 and proceeded to issue show cause notice on 11.03.2010 to the extent of deduction of pension and withholding of gratuity amount. The appellant had submitted his reply on 09.04.2010, thereafter concerned authority proceeded to impose the penalty on 02.07.2010. Feeling aggrieved and dissatisfied with the penalty order dated 02.07.2010, the appellant had submitted representation/memorial on 16.04.2010



and it was rejected on 10.08.2010, hence the C.W.J.C. No. 14330 of 2010 was filed.

3. The learned Single Judge has rejected the appellant's C.W.J.C., hence the present L.P.A.

4. Learned counsel for the appellant submitted that incompetent authority has passed the penalty order, namely, Chief Engineer. The aforesaid contention has been taken note on the previous date read with the records that the State Government has taken decision to impose the penalty of deduction of pension and withholding of gratuity, in other words, Chief Engineer has only communicated the decision of the State Government, therefore, the aforesaid contention is not tenable.

5. Learned counsel for the appellant submitted that only one document has been cited along with the charge memo and there is no list of witnesses. In other words, the alleged charge has not been proved, known to the manner in law. In other words, there is non-compliance to various Sub-rules of Rule 17 of Bihar CCA Rules, 2005.

6. Per contra, learned counsel for the respondent resisted the aforesaid contentions and submitted that there is compliance to the provisions of CCA Rules. It is submitted that only one document which suffice to prove the charge the same



was presented by the Presenting Officer before the Inquiring Authority and Inquiring Authority has held that the charge levelled against the appellant was proved, therefore, there is no infirmity in the penalty order dated 10.08.2010 and also in the order of the learned Single Judge dated 16.08.2018.

7. Heard learned counsels for the respective parties.

8. Core question for consideration in the present appeal is whether departmental inquiry was held against the appellant was in accordance with Rule 17 and other ancillary provisions of the CCA Rules or not? Undisputed facts are that along with the charge memo only one document has been cited and no list of witnesses was provided. That apart the Presenting Officer presented the sole document in support of alleged charge. Such a procedure is contrary to various Sub-rules of Rule 17, the Disciplinary Authority/Inquiring Authority has failed to follow Sub-rules of Rule 17 and various provisions of CCA Rules 2005. Apex Court in the case of ***Roop Singh Negi vs. Punjab National Bank and Ors.***, reported in **(2009) 2 SCC 570**, held that in an inquiry if the Presenting Officer is relying on any document in support of the charge in such an event author of the document is required to be examined and cross-examined. On this issue, the appellant has made out a *prima facie* case so as to



interfere with the penalty order dated 10.08.2010 and order of the learned Single Judge dated 16.08.2018 passed in CWJC No. 14330 of 2010, accordingly, they are set aside.

9. Having regard to the alleged allegations is relating to misappropriation of sum of Rs. 93,00,000/- (ninety three lacs) to the State Exchequer and it is the case for remand in the light of Apex Court decision in the case of *Managing Director, ECIL V. B Karunakar*, reported in (1993) 4 SCC 727, read with *Chairman-cum-Managing Director, Coal India Limited & Ors. V. Ananta Saha and Others*, reported in (2011) 5 SCC 142, paragraphs 46 to 50, it is read as under:-

“46. In the last, the delinquent has submitted that this Court must issue directions for his reinstatement and payment of arrears of salary till date. Shri Bandopadhyay, learned Senior Counsel appearing for the appellants, has vehemently opposed the relief sought by the delinquent contending that the delinquent has to be deprived of the back wages on the principle of “no work-no pay”. The delinquent had been practising privately i.e. has been gainfully employed, thus, not entitled for back wages. Even if this Court comes to the conclusion that the High Court was justified in setting aside the order of punishment and a fresh enquiry is to be held now, the delinquent can simply be reinstated and put under



suspension and would be entitled to subsistence allowance as per the service rules applicable in his case. The question of back wages shall be determined by the disciplinary authority in accordance with law only on the conclusion of the fresh enquiry.

47. It is a settled legal proposition that the result of the fresh enquiry in such a case relates back to the date of termination. The submissions advanced on behalf of the appellants that the result of the enquiry in such a fact situation relates back to the date of imposition of punishment, earlier stands fortified by a large number of judgments of this Court and particularly in R. Thiruvirkolam v. Presiding Officer [(1997) 1 SCC 9 : 1997 SCC (L&S) 65 : AIR 1997 SC633], Punjab Dairy Development Corpn. Ltd. v. Kala Singh [(1997) 6 SCC 159 : 1997 SCC (L&S) 1434 : AIR 1997 SC 2661] and Graphite India Ltd. vs. Durgapur Projects Ltd. [(1999) 7 SCC 645].

48. In ECIL v. B. Karunakar [(1993) 4 SCC727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704 : AIR 1994 SC 1074] and Union of India v. Y.S. Sadhu [(2008) 12 SCC 30 : (2009) 1 SCC (L&S) 126: AIR2009 SC 161], this Court held that where the punishment awarded by the disciplinary authority is quashed by the court/tribunal on some technical ground, the authority must be given an opportunity to conduct the enquiry afresh from the stage



where it stood before the alleged vulnerability surfaced. However, for the purpose of holding fresh enquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages, etc. is determined by the disciplinary authority in accordance with law after the fresh enquiry is concluded.

49. The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is reinstated, it would not automatically make him entitled to back wages as entitlement to get back wages is independent of reinstatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic. (Vide U.P. SRTC v. Mitthu Singh [(2006)7 SCC 180 : 2006 SCC (L&S) 1590 : AIR 2006 SC3018], Akola Taluka Education Society v. Shivaji [(2007) 9 SCC 564 : (2007) 2 SCC (L&S) 679] and Balasaheb Desai Sahakari S.K. Ltd. v.



Kashinath Ganapati Kambale [(2009) 2 SCC 288 : (2009) 1 SCC(L&S) 372].

50. In view of the above, the relief sought by the delinquent that the appellants be directed to pay the arrears of back wages from the date of first termination order till date, cannot be entertained and is hereby rejected. In case the appellants choose to hold a fresh enquiry, they are bound to reinstate the delinquent and, in case, he is put under suspension, he shall be entitled to subsistence allowance till the conclusion of the enquiry. All other entitlements would be determined by the disciplinary authority as explained hereinabove after the conclusion of the enquiry. With these observations, the appeal stands disposed of. No costs.”

10. In the light of the aforesaid judicial pronouncement, departmental inquiry is remanded to the disciplinary authority to commence the inquiry afresh and complete within a period of four months from the date of receipt of this order. The appellant is hereby directed to co-operate in the inquiry. The withheld pension amount and gratuity amount would be decided by the disciplinary authority/State Government only after outcome of the final order to be passed in a departmental inquiry, which has been remanded in the present order. If the final order is passed on a particular date and



from that date within a period of four weeks the disciplinary authority/State Government is hereby directed to regulate the pension and other pensionary benefits which were due to the appellant in that regard speaking order shall be passed and communicate to the appellant, if the appellant is entitled to any monetary benefits, the same shall be calculated and disbursed within a period of two months from the date of passing of final order in the departmental inquiry.

11. The L.P.A. stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Ashish/-
balmukund/-

AFR/NAFR	
CAV DATE	NA
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