

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1352 of 2019
In
Civil Writ Jurisdiction Case No.12945 of 2009

Pashupati Nath Thakur @ Pasupati Nath S/o - Late Chhotan Thakur, R/o-
Bakerganj, Mohanpur, P.O.- Bankipur, P.S.- Pirbahore, Dist.- Patna.

... .. Appellant/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna.
2. The D.G. - cum - I.G. of Police, Patna, Bihar.
3. The D.I.G. of Police, Shahabad Range, Dehari On-Son.
4. The S.P., Bhojpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rajkumar Rajesh, Advocate
Mr. Girish Chandra, Advocate
Mr. Jeet Kishor Mahto, Advocate

For the State : Mr. Saroj Kr. Sharma, AC to AAG 3

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 10-09-2024

Pursuant to our previous order dated 27.08.2024, *Ms. Ayushi Kumari*, Sergeant, Sub-Inspector, RSI – II, Bhojpur, Ara is present in the Court along with complete records.



2. To our query in the previous order, the officer has stated that there are no records maintained insofar as communication to the appellant of the departmental proceedings at various stages like service of charge memo and other materials till imposition of penalty, how the service was undertaken.

3. With the consent of the learned counsels for the respective parties, present appeal is taken up for final disposal.

4. The appellant is stated to have entered into service in the year 1971. He remained absent from 08.09.1998, resultantly, charge-memo was issued on 15.04.1999 followed by suspension on 30.04.1999. In the departmental proceedings, he remained *ex parte*. Inquiring Officer has concluded the inquiry and furnished report that charge relating to unauthorized absent from 08.09.1998 to 30.04.1999 was proved. The disciplinary authority proceeded to issue show cause notice on 03.12.2001. The appellant had submitted representation seeking extension of 15 days time to file reply/explanation to the second show cause notice along with the Inquiring Officer's report. Thereafter, he has not furnished his explanation. Consequently, disciplinary authority proceeded to impose the penalty of dismissal from service on 06.12.2003. Feeling aggrieved by the order of dismissal, appellant preferred appeal before the appellate authority on 14.02.2007 and he



suffered an order on 12.06.2009, resultantly, he has invoked the jurisdiction of filing writ petition under Article 226 of the Constitution *namely* CWJC No. 12945 of 2009. The learned Single Judge proceeded to affirm the order of dismissal as well as the appellate authority's order. Hence, the present L.P.A.

5. Learned counsel for the appellant submitted that the appellant has joined the service in the year 1971. He remained absent from 08.09.1998 till placing him under suspension on 30.04.1999. Charge memo was not communicated to the appellant in the manner known to the law and it is admitted fact. Thereafter, the appellant did not submitted his reply to the second show cause notice, hence, dismissal order was passed and it was affirmed by the appellate authority. It is submitted that having regard to the service rendered by the appellant from the year 1971, imposition of penalty of dismissal from service for remaining absent for about seven months from 08.09.1998 till suspension on 30.04.1999 would be too harsh. There are no defalcation of government money so as to warrant for imposition of penalty of dismissal from service, in other words, for remaining absent for about seven months, imposition of penalty of dismissal from service is disproportionate.



6. *Per contra*, learned counsel for the respondents resisted the aforementioned contentions and supported the order of the learned single Judge dated 16.08.2018 passed in CWJC No. 12945 of 2009. It is submitted that charge-memo was not communicated to the appellant in the manner known to the law. To that effect, there are no records available in the file. However, he remained *ex parte* in the departmental inquiry for remaining unauthorized absent. The Inquiring Officer has given finding that the charge of unauthorized absent has been proved, therefore, imposition of penalty of dismissal from service is in order. There is no disproportionate insofar as imposition of penalty of dismissal and it has been affirmed by the appellate authority and so also by the learned Single Judge.

7. Heard learned counsels for the respective parties.

8. Perused the records. It is admitted fact that charge-memo was not communicated to the appellant in the manner known to the law. The appellant had joined service in the year 1971. He remained absent from 08.09.1998 till suspension i.e. on 30.04.1999, for about seven months. We have perused the Inquiring Officer's report. In the Inquiring Officer's report, the cited documents in the charge memo have not been marked as exhibits, which is one of the criteria on behalf of the Presenting



Officer to produce a particular document/s and mark it as exhibit. Thereafter, author of those documents were required to be examined and cross-examined. On the other hand, Inquiring Officer has recorded the statement of one S.H.O., *Thakur Sitaram Singh*. His chief examination on behalf of the Presenting Officer is not forthcoming. It is also noticed that disciplinary authority has not taken note of aforementioned lacuna in the department inquiry as is narrated *supra*, therefore, there is non-application of mind on behalf of both the disciplinary and appellate authority.

9. The learned Single Judge has not appreciated with reference to reading of the Inquiring Officer's report and the fact that charge-memo was not communicated to the appellant in the manner known to the law. In a domestic inquiry the Inquiring Officer was required to mark the relevant exhibits through Presenting Officer. Thereafter, such exhibits are required to be examined by the author and cross-examination, if any. This procedure is not forthcoming from the Inquiring Officer's report.

10. The appellant has rendered service from the year 1971 till 06.12.2003, the date on which his services have been dispensed while imposing penalty of dismissal from service. Having regard to the length of service, imposition of penalty of dismissal from service would be too harsh read with the fact that



there are certain lacuna in holding the disciplinary inquiry *like* from the inception like charge-memo was not communicated to the appellant in the manner known to the law. Thereafter, assuming that it was an *ex parte* inquiry, it was bounden duty of the Inquiring Officer and Presenting Officer to proceed ahead with available records. Charge-memo is supported by certain documents, which has not been marked as exhibits on behalf of the Presenting Officer and so also author of such documents were required to be examined and cross-examined, if any. The above exercise was not undertaken. At this distance of time it is not appropriate to remand the matter to commence inquiry from the defective stage and complete inquiry proceedings within a stipulated time, it is not a case of misappropriation of government money, on the other hand, it is a case of absence.

11. Be that as it may, having regard to the fact that appellant remained absent for about seven months, imposition of penalty of dismissal from service would be too harsh having regard to length of service render by him, therefore, the impugned order of dismissal dated 06.12.2003, Appellate Authority order dated 12.06.2009 and learned Single Judge order dated 16.08.2018 are set aside. Matter is remanded to disciplinary authority to pass order of compulsory retirement from the date of dismissal *namely*



06.12.2003 and proceed to settle his retiral benefits as if he retired from service with effect from 06.12.2003 while taking his entire service from the date of his initial appointment and proceed to fix his pension from 07.12.2003 till date, arrears of pension and retiral benefits shall be calculated and disbursed. The above exercise shall be undertaken within a period of four months from the date of receipt of this order.

12. Accordingly, the present LPA allowed in part.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

GAURAV S./-

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

