

In The Court of Commissioner, Saran Division, Chapra  
Service Appeal No. 81/2011

Chandrika Ojha

Vrs.

D.M. Saran & Ors.

ORDER

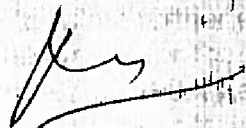
14.3.14

The instant appeal petition has been filed pursuant to the direction given by the Hon'ble High Court while disposing of a writ petition bearing CWJC No. 13572/2008 on 21.06.2011.

The brief facts of the case are that the appellant Chandrika Ojha s/o Late Ramlal Ojha, R/o Village- Panchmahla, P.O. - Sahajipur, Dist- Saran at the relevant time was posted as clerk /Nazir in the Reviliganj block office of the Saran District. The further case is that a defalcation of Rs. 70, 000 was come to light and on inquiry the appellant was found to be involved in the said defalcation for which he was placed under suspension w.e.f 6.1.1984 and also a Criminal case vide Revelganj P.S Case No. 02/84 was lodged against him. Thereafter, a departmental proceeding against the appellant was ordered vide memo No. 1221 dated 23.07.2006 issued by D.M., Saran and the said proceeding was subsequently stayed by the D.M., Saran in view of the pendency of the Criminal proceeding against the appellant. Later on the appellant was acquitted in the Criminal case and then his suspension order was vacated by D.M. in the year 1994. In the meantime the appellant retired from service on 30.11.1997 and accordingly he got his post retiral benefits and his pension was also fixed and he started to get his pension. However, vide memo No. 30 dated 18.01.2005, issued by D.M. Saran, a fresh proceeding under Rule 43 (b) of Bihar pension Rule was initiated against the appellant and on the basis of the findings of the inquiry officer in the said departmental proceeding, the D.M., Saran acting as disciplinary authority passed the punishment order bearing No. 246 as contained in memo No. 1295 dated 08.09.2005, whereunder the appellant's pension was reduced by 25% with a further direction that the petitioner would get only subsistence allowance for the entire period of suspension running between 6.07.1984 - 07.06.1994. Feeling aggrieved by the aforesaid punishment order, the petitioner, instead of challenging the said punishment order before the designated appellate authority; the Divisional Commissioner, Saran, approached the Hon'ble High Court by preferring a writ case vide CWJC No. 13572 of 2008 and pursuant to the direction given in the said writ the petitioner has filed this appeal before this Court.

Heard the parties

The learned Counsel appearing on behalf of the appellant submitted at the very outset that this case was posted earlier also for final order but the final order could not be passed although he had submitted the detailed written statement. The learned counsel, therefore, stated that he would tender a very short argument. The learned counsel



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while pleading the case argued that although the petitioner was discharged from the charges levelled against him, by the Criminal Court and then what was the reason for again initiating a departmental proceeding under rule 43(b) of Bihar pension Rules for an offence which was occurred some 21 years ago and thereafter major punishment like reduction in pension by 25 % and entitlement of only subsistence allowance for suspension period was ordered. He further submitted that Rule 43(b) of Bihar pension Rules provides that no proceeding can be initiated for an occurrence which happened more than 4 years back. He also argued that the petitioner was ordered punishment for the offence for which he has already been acquitted by the Criminal Court. The learned Counsel lastly said that it is obvious that the impugned D.M. has been passed in arbitrary manner and with mala fide intention, the same may be set aside. The learned counsel also cited and relied upon the judgements/decisions of Hon'ble High Court and Apex court in order to substantiate his averments.

The learned Govt. pleader appearing on behalf of the respondent instead of advancing oral submission agreed to submit a detailed written statements in the case. The learned G.P. stated that the petitioner was charged of defalcating Govt. money to the tune of Rs. 70,000 and for which an FIR was lodged, and suspension order was passed against the petitioner. Although, the petitioner was re-instated in service from 08.06.1994 and allowed to retire in the year 1997, but later on a fresh Deptt. Proceeding under Rule 43(b) of Bihar pension Rule was held and it was on the finding of the said Deptt. Proceeding the punishment was imposed. So it is wrong to say that the petitioner was not informed of the Deptt. Proceeding as he actually participated in the said inquiry as he filed his show cause on 16.06.2005 with a request to drop the proceeding. The learned G.P. further stated that the D.M. is empowered to pass such order as impugned here under Rule 97 (2) of the Bihar Service Code as such the order of learned D.M. is just, proper, legal and valid in view of the grave charges against the petitioner, so this appeal fit to be dismissed.

Considering the facts and circumstances of the case, material available on records and on going through the detailed written statements filed by the learned counsels for the parties, it is seen that this case is an example of a long legal battle in which on one side the petitioner tried every available means to cover up the charges of defalcating the Govt. money while working as nazir, who is supposed to safeguard the money and has to follow the rules framed under various statute, administrative instructions and guidelines while handling the cash. On going through the inquiry reports, it is found that the petitioner was held solely responsible for the defalcation of money. Although he was acquitted by the Criminal court, but it does not mean that he was freed from the charges levelled against him for his dereliction of duty as



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a Govt. servant. Now it is well settled that both Criminal proceeding and Deptt. Proceeding can run simultaneously and the result of one will not effect the final outcome of other. In that view of the matter, the punishment order passed against the petitioner after a duly conducted Deptt. Proceeding can not be termed arbitrary and illegal. The other important point raised by the petitioner that he has been punished for an offence which was occurred 21 years ago and for which no proceeding can be initiated under Rule 43(b) of Bihar pension Rule as it has been forbidden for initiating any such proceeding for an event which took place more than four years back. But it appears from the impugned order contained in memo No. 1295 dated 08.09.2005, of D.M. Saran, that the second inquiry or proceeding is not a fresh proceeding as alleged by the petitioner's counsel but actually it was reopening of the earlier proceeding against the petitioner which was kept in abeyance for some reason and the same was reordered as per the provisions of Rule 43(b) of Bihar pension Rules. Thus, I find that the impugned order of D.M. Saran, is reasoned and proper and having no scope of interference. On the other hand the learned counsel for the petitioner also failed to prove any illegality in the said impugned order worth while to be considered in the appeal. The factual matrix of the case itself speaks everything.

For the aforesaid reasons and discussion made above, I uphold the impugned order of D.M., Saran and accordingly this appeal is dismissed.

Dictated & Corrected by me.

Commissioner,  
Saran Division, Chapra

14/3/14

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Saran Division, Chapra