

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5904 of 2007

Shakil Ahmad s/o Late Phool Hasan, resident of village-Bauram, Via-Biraul,
P.S. Jamalpur, District-Darbhanga.

... .. Petitioner.

Versus

1. The State of Bihar through its Chief Secretary, Bihar, Patna.
2. The Secretary-cum-Commissioner, Relief and Rehabilitation Department,
Bihar, Patna.
3. The Collector-cum-District Officer, Darbhanga.
4. The Sub-Divisional Officer, Biroul Sub-Division, Darbhanga.
5. The Block Development Officer, Kiratpur Block, Darbhanga.
6. The District Certificate Officer, Darbhanga.
7. The District Supply Officer, Darbhanga-cum-Departmental Proceeding
Conducting Officer, Darbhanga.

... .. Respondents.

Appearance :

For the Petitioner	:	Mr. Rajendra Narain, Senior Advocate. Mr. Kaushalesh Choudhary, Advocate. Ms. Anju Kumari, Advocate.
For the State	:	Ms. Annapurna Sinha, Advocate. Mr. AAG-9.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

ORAL JUDGMENT

Date : 22-11-2024

The petitioner while holding the post of Nazir was subjected to disciplinary proceeding on 31.03.2003 relating to certain alleged misappropriation of Government fund. After conclusion of the departmental inquiry, dismissal penalty was imposed on him on 13.02.2007 vide Memo No.239 dated 13.02.2007 issued by the Collector, Darbhanga (Anneuxure-34 to the writ petition). Petitioner is stated to have deposited the alleged misappropriated amount. Be that as it may, on 13.09.2024, the following order was passed:

“District Magistrate, Darbhanga is hereby directed to peruse the complete departmental proceedings records of the present case. He is

352

hereby directed to file personal affidavit as to whether charge-memo is accompanied by statement of imputation, list of documents and list of witnesses. If the aforementioned materials are available on records along with the charge-memo which has been communicated to the petitioner in that event the inquiry officer has examined who are all the witnesses who have deposed against the petitioner. These must be reflected in the affidavit to be filed.

2. Re-list this matter on 04.10.2024."

2. Disciplinary authority has filed his personal affidavit.

In paragraph-12, it is stated as under:

"That in obedience to and in compliance of the order of the Hon'ble Court vide order dated 13-09-2024 passed in C.W.J.C. No.5904 of 2007, the respondent humbly submits that in view of the aforesaid facts and statements it is here by clarified:-

Observation/direction given
by the Hon'ble Court.

Compliance report.

I. District Magistrate, I. In compliance of the order of Darbhanga is hereby directed the Hon'ble Court the District to peruse the complete Magistrate, Darbhanga has departmental proceedings constituted an enquiry records of the present case.

committee by which the whole departmental proceeding has been critically examined and accordingly, the enquiry committee has submitted its report vide memo no.361 dated

351

30-09-2024.

II. Whether charge-memo II. The concerned record and is accompanied by statement submitted enquiry report of imputation, list of contains the facts that praptra-documents and list of K has been constituted vide witnesses?

memo no.635 dated 31-03-2003 based on the report submitted by the B.D.O, Kiratpur, Darbhanga vide memo no.13(MU) dated 26-09-2002 and others. Not any list of witnesses has been attached with the prapatra-K.

III. Whether the charge-memo III. In departmental has been communicated to the proceeding, charge-memo has petitioner?

been provided to the petitioner upon which the petitioner has submitted his clarification on 06-06-2003 in connection to the issued letter vide memo no.685 dated 02-06-2003.

IV. Whether any witness IV. In departmental Proceeding have deposed against the not any witness have been petitioner?

examined as to the imposed charge is based on the documentary evidence.

and in the same, it is further respectfully submitted that the order of the Hon'ble Court has been sincerely complied and it is humbly submitted



1350.

that any omission or commission which may have caused any inconvenience to this Hon'ble Court, if any found, is neither deliberate nor intentional and for the same, the respondent tenders unconditional and unqualified apology before this Hon'ble Court."

3. Reading of the aforesaid personal affidavit, it is crystal clear that disciplinary authority has violated the relevant statutory Rules insofar as not furnishing the list of documents and list of witnesses. Therefore, the concerned disciplinary authority has committed error in not adhering to the relevant statutory Provisions in not providing list of documents and list of witnesses. Resultantly, entire proceeding is vitiated from the date of issuance of charge-memo.

4. Having regard to the length of time, it is not a case for remand to the disciplinary authority. However, having regard to the alleged allegation relating to certain alleged misappropriation stated to have been committed by the petitioner and it seems temporary misappropriation, since petitioner is stated to have deposited at later stage, therefore, matter requires to be remanded to the concerned disciplinary authority. The disciplinary authority is hereby directed to initiate and complete the disciplinary proceedings within a

349

period of six months from today. Petitioner is hereby directed to co-operate in inquiry proceedings, failing which disciplinary authority shall pass ex-parte proceedings. If the disciplinary authority fails to complete the disciplinary proceedings within a period of six months in that event the disciplinary proceedings stands terminated in view of old matter. The petitioner is entitled to all consequential service and monetary benefits and the same shall be calculated and disbursed. In the event of completion of departmental inquiry and competent authority passing any penalty under the Bihar Pension Rules in that event rest of the service and monetary benefits shall be extended to the petitioner reserving liberty to the petitioner to assail the proposed penalty order, if any.

5. Accordingly, the impugned order of imposing dismissal penalty on the petitioner on 13.02.2007 vide Memo No.239 dated 13.02.2007 issued by the Collector, Darbhanga (Anneuxure-34 to the writ petition) are hereby set aside.

6. The present writ petition is allowed in part.

(P. B. Bajanthri, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.11.2024.
Transmission Date	NA