
(2005) 06 JH CK 0028

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3089 of 2004

Balmiki Prasad Verma

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 27-06-2005

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43

Citation : (2005) 4 JCR 361

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : S.K. Sharma, for the Appellant; H.K. Singh, SC I, for the Respondent

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—The petitioner in this writ application has prayed for quashing the order No. 118, dated 22.5.2005 contained in Annexure 8 whereby decision has been taken to realize Rs. 3,97,773 from the petitioner who is a retired Junior Engineer of the Road Construction Department. The said decision has been taken in a proceeding initiated against the petitioner under the provisions of Rule 43 (b) of the Bihar Pension Rules. The short facts of the case is as follows :

2. The petitioner was appointed as a Civil Overseer in the year 1981. He was made a permanent Junior Engineer in the year 1985. The petitioner was transferred to Swarnrekha Road Construction Division, Ghatshila as junior Engineer where he had joined on 11.12.1987. The Division of Swarnrekha Road Command Area, Road Construction Department, Ghatshila was reconstituted and transferred to Road Division, Lohardaga. The petitioner then was transferred to Lohardaga wherefrom he retired on 31.01.2002 on attaining the age of superannuation. On reconstitution of Swarnrekha Road Command Area, Ghatshila, the Executive Engineer, Lohardaga by his letter No. 66, dated 16.6.2001 directed the petitioner to hand over charge of records, materials etc. to the Executive Engineer, Swarnrekha Command Area, Road Division,

Jamshedpur. The petitioner, thereafter, prepared the charge report of Ghatsila Hulung Road and submitted the same to Sunil Kumar, Junior Engineer on 21.8.2001 and requested him to take over the charge. The Executive Engineer, Jamshedpur one Bijay Kumar Mishra was also requested for the same, but because of the non-cooperation of said Sunil Kumar and Bijay Kumar Mishra, the petitioner could not hand over the charge. According to the petitioner, he had made several requests in that regard to the concerned authorities but to no effect. The petitioner, thereafter, retired and after retirement he had to prefer a writ application being W.P. (S) No. 2825 of 2002 seeking an order of this Court to direct the respondents to arrange for taking over of complete charge of Ghatshila Hulung Road from the petitioner as he has already retired from service. The petitioner had also prayed for a direction for payment of amount of gratuity which was withheld on the ground of holding the charge of Ghatshila Hulung Road by the petitioner. An interim order, dated 13.7.2002 was passed in the said writ petition whereby the Secretary, Road Construction Department was directed to ensure handing over and taking over of the charge as prayed for by the petitioner. Ultimately, after the said order, the charge was handed over on 5.8.2002. The respondents, thereafter, filed a counter affidavit mentioning therein that during the handing over of charge, shortage of materials worth Rs. 3,97,643/- was found. The said writ petition was disposed of with an observation that a proceeding under Rule 43 (b) of the Bihar Pension Rules may be initiated for the alleged shortage of materials and that the 75% of the gratuity amount be paid to the petitioner withholding 25% of the amount in contemplation of the said proceeding under Rule 43 (b). The department, thereafter, initiated a proceeding under Rule 43 (b) of the Bihar Pension Rules against the petitioner alleging that irregularities were committed by the petitioner during his posting as Junior Engineer, Swarnrekha Command Road Division, Road Construction Department, Jamshedpur and that the petitioner allegedly embezzled the articles worth Rs. 6,97,643/- which were found short when he handed over the charge of the store. The petitioner filed his reply denying the charges. Thereafter, the enquiry was conducted and on completion of the enquiry, enquiry report was submitted (Annexure 5). The enquiry officer, inter alia, found that the handing over and taking over of charge was made on the basis of conjecture without any accurate measurement and that physical verification of the articles after such a long time was not possible. It was further found that six number of home pipes were never handed over to the petitioner. It was also observed that had the handing over and taking over of charge taken place in time, such situation would not have arisen. On the basis of the said enquiry report, the impugned order has been passed whereby a decision has been taken to realize Rs. 3,97,773/- from the petitioner.

3. A counter affidavit has been filed on behalf of the respondents wherein it has been stated that despite several directions by the Superior Officers, the petitioner did not hand over the charge and only after the order was passed in W.P. (S) No. 2825 of 2002 on 06.5.2002, the petitioner handed over the charge

to the concerned authority, that too after he retired from the services and in the said process a shortage of materials worth Rs. 3,97,773/- was reported and it was due to lapses on the part of the petitioner. It has been further stated that the facts and circumstances of the case were duly considered during the departmental proceeding and the officers other than the petitioner were asked explanation and on that basis they have also been penalized. The name of the officers is mentioned as Sunil Kumar, Junior Engineer and Bijay Kumar Mishra, Junior Engineer. The memo by which they were penalized have also been enclosed as Annexure II.

4. From perusal of the enquiry report, the contention of the petitioner is corroborated. It has been found in course of the enquiry that the persons other than the petitioner were also responsible for not completing the said process of handing over and taking over of charge, the amount of loss determined has no basis and the same has been arbitrarily assessed on mere conjectures as no measurement of the articles were taken while handing over and taking over the charge of the stores, physical verification has not been made as it has been said that it was not practically possible. It has been further found that six hume pipes which were also included in assessing the loss were not given in the charge of the petitioner and actually the price of the articles ruling on the day when the charge was handed over to the petitioner, has been taken into consideration as the basis of assessment of loss. It has not been specifically found by the enquiry officer that for the alleged loss the petitioner was held guilty or that he has embezzled the said amount as has been alleged. A letter written by the then Executive Engineer, Road Construction Department, Road Division, Lohardaga to the Government, which is on record, clearly goes to show that in fact the petitioner had been making requests to the concerned person Sunil Kumar and also to the Department time and again but the charge was not taken over by said Sunil Kumar. The executive engineer in the said letters has clearly mentioned that Sunil Kumar by letter dated 17.9.2001 had demanded Rs. 25,000/- for expenses for making necessary arrangement for taking over the charge and for keeping the process in abeyance till the said fund is released. The respondents have not made categorical statement denying the said letter, on record. No specific stand has been made in the counter affidavit except the bald repetition of the statement that the petitioner was at fault. The alleged fault of the petitioner, however, could not be substantiated by any material or any evidence on record.

5. In the facts and circumstances noticed hereinabove, this Court has no option but to quash the impugned order as contained in Annexure 8. This writ application is, accordingly, allowed. The office order No. 118, dated 22.5.2004 contained in Annexure-8 is quashed. If there is no other impediment, the retiral benefits of the petitioner which have not been paid so far, shall be paid within a period of two months from the date of receipt/production of this order, failing which the petitioner shall be entitled to get a compensatory interest at the rate of 10% on all the benefits over and above the statutory interests payable for the

delayed payments.

However, there shall be no order as to costs.