

**(1997) 04 PAT CK 0006**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 6375 of 1990

Bindeshwari Prasad Shrivastava

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 10-04-1997

**Acts Referred:**

Constitution of India, 1950 — Article 136, 21

**Citation :** (1997) 1 PLJR 928

**Hon'ble Judges :** A.K. Ganguly, J

**Bench :** Single Bench

**Advocate :** Deo Gobind Prasad, Sheodhan Prasad Singh and Jai Prakash Lal, for the Appellant; N.K. Sinha and R.K. Sinha, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

A.K. Ganguly, J.—The facts of this case show a distressing state of affairs. The writ Petitioner was subjected to a disciplinary proceeding on the basis of a chargesheet issued against him by the Finance Department of the State Government dated 30.3.1978 (Annexure-13). Thereafter followed a disciplinary proceeding and in the said disciplinary proceeding the Enquiry Officer submitted a report finding the Petitioner guilty of the charges. The said report is dated 3.12.1979 (Annexure-22). The Petitioner thereafter filed a detailed show cause after receipt of the enquiry report. Thereafter on 25.7.1981 (Annexure-25) the order of dismissal was passed against the Petitioner. Against the said order of dismissal the Petitioner preferred on appeal.

2. It is not in dispute that the Petitioner has a statutory right of preferring an appeal. Thereafter the Petitioner filed a writ petition before this Court which was numbered as C.W.J.C. No. 3618 of 1982 but the said writ petition was withdrawn as would appear from the order of the Division Bench of this Court dated 13.9.1982 on the ground that the Petitioner has a statutory remedy before the Tribunal constituted under Ordinance 192 of 1982. The Petitioner's attempt to get the dismissal order quashed before the Tribunal failed as the majority

members of the Tribunal held that there is nothing to interfere with the order of dismissal. The Petitioner had in the meantime, however, filed a departmental appeal and the said departmental appeal was filed before initiating the proceeding before the Tribunal. After dismissal of the Petitioner's case by the Bihar Administrative Tribunal, Anr. writ petition was filed by the Petitioner being C.W.J.C. No. 493 of 1984 before this Court challenging the order of the Tribunal and also challenging the non-disposal of the appeal of the Petitioner by the appellate authority. The said C.W.J.C. No. 493 of 1984 came up for final hearing before a learned Single Judge of this Court and the learned Single Judge by an order dated 30.11.1987 was pleased to hold that before the Court no appellate order was produced. The learned Judge also held that no appellate order was served upon the Petitioner. In paragraph 9 of the said judgment, the learned Judge recorded "except stating that the Petitioner's appeal was dismissed, the State has given no further material." The learned Judge also held, and I think quite rightly, that the Petitioner's right to file statutory appeal was a matter of right for him and the Petitioner is entitled to have his appeal disposed of in accordance with law and the rules of natural justice require that the appellate authority, in such case, should pass an order with reasons stating why the contentions of the Appellant are not accepted. The learned Judge also held that in deciding the appeal, the authorities are discharging quasi judicial functions. This Court is in respectful agreement with the aforesaid observations in the said judgment.

3. Learned Counsel for the State has, however, said that in this case the appellate authority, while hearing the appeal of the Petitioner is not supposed to act in a quasi judicial capacity but is to act in an administrative capacity and in support of his said contention, learned Counsel has referred to a decision of the Supreme Court in the case of *Dev Singh and Ors. v. Registrar, Punjab and Haryana High Court and Ors.* reported in (1987) 3 SCC page 169. In the said decision in the case of *Dev Singh (supra)*, the learned Judges of the Supreme Court came to the conclusion that in deciding an appeal under Rule X of the relevant rules, the High Court exercises only a supervisory administrative control and does not act as a Tribunal disposing of an appeal involving a lis between two rival parties nor is it arriving at a judicial decision. It is further said that in such a case it does not resolve any dispute" or controversy between two adversaries. Therefore, in such context, Supreme Court held that, against an order passed by a High Court in appeal, SLP under Article 136 of the Constitution will not be maintainable. The said observation will appear from paragraph 14 of the said judgment. The rule in the context of which the said observation has been made has been set out in paragraph 9 of the said judgment. Paragraph 9 shows the categories of penalties which can be imposed. Paragraph 10 shows that against any such penalties, an appeal can be preferred before the District Judge under Rule X(1) in Chapter 18-A. Said Rule X(3) further gives a right to appeal to the High Court and while construing the said rule, the learned Judges of the Supreme Court have also considered Rule X(4) which prohibits the persons from attending

personally the High Court at the time of hearing of the appeal unless summoned to do so and the said Rule X(4) says that order on petition shall be communicated to the Appellant through the District Judge concerned. In considering those provisions in the aforesaid context, the Hon'ble Judges of the Supreme Court came to the conclusion that rules showing manner of disposal of appeal by the High Court would make it abundantly clear that the appeal is not strictly a judicial proceeding involving a lis between the two adversaries and the decision thereon is not a judicial decision. In paragraph 16 of the said judgment it has been further stated that a close study of the rules makes it clear that the High Court exercises only a supervisory administrative control and does not act as a Tribunal disposing of an appeal involving a lis between two rival parties and arriving at a judicial decision. In paragraph 26 of the said judgment in Dev Singh (supra), the learned Judges of the Supreme Court after considering various case laws on the subject came to the conclusion that when Judges in exercise of their administrative functions decide cases, it cannot be said that the decision arrived is either judicial or quasi-judicial. In that context the learned Judges of the Supreme Court came to the conclusion that against such a decision which has been passed by the Judges in their administrative capacity, an appeal under Article 136 of the Constitution does not lie.

4. But the position is not the same in the context of departmental appeal filed by the dismissed employee. Reference in this context may be made to the decision of the Supreme Court in the case of Ram Chander v. Union of India and Ors. reported in (1986) 3 SCC page 103. From the ratio of the said judgment in Ram Chander (supra) it is clear when dismissed employee files an appeal under the relevant rules relating to the disciplinary proceedings, such an appeal cannot be disposed of by the appellate authority merely in an administrative capacity. It is obvious that while deciding such appeal, the authorities decide a "lis" between the parties inasmuch as the authorities are deciding the question whether the order of dismissal of the Petitioner has been correctly passed or not.

5. Dismissal from service brings about serious consequences to an employee. It has been repeatedly held by the Apex Court that the procedure which brings about the dismissal must be fair, reasonable and just inasmuch as it touches the livelihood of the persons concerned which has been accepted to be a part of the right under Article 21 of the Constitution. So while dealing with Part III rights of a citizen, the appellate authority who has to decide whether his right has been infringed or not cannot, in my considered view, act in an administrative capacity. An authority deciding such question must act in a quasi judicial manner as has been held quite clearly by the Apex Court in Ram Chander (supra). In Bachhitar Singh v. State of Punjab reported in AIR 1963 SC page 395, the Constitution Bench of the Apex Court affirmatively held "it is thus wholly erroneous to characterise the taking of action against a person found guilty of any charge at a departmental enquiry as an administrative order". The Apex Court held that a departmental proceeding against a Government Servant is judicial in nature.

6. In that view of the matter, this Court is of the opinion that the appellate authority in this case must act in a quasi judicial capacity while deciding an appeal. Apart from that by a judgment of this Court dated 30.11.1987 passed in C.W.J.C. No. 493 of 1984 this matter is concluded between the parties where the learned Judge has held that the appellate authority must act in a quasi judicial capacity and the said judgment has attained finality. Therefore, there is no escape from the position that the appellate authority must act in a quasi judicial capacity.

7. Surprisingly in 1987 the learned Judge deciding the matter came to the conclusion that no appellate order was produced before His Lordship and what was produced before His Lordship was merely a statement that the Petitioner's appeal was dismissed and that is the reason why the learned Judge directed the State Respondents to decide the Petitioner's appeal in accordance with law. The relevant observation made by His Lordship in the said judgment is quoted below:

I am of the view that the Petitioner is entitled, as a matter of right, to get his appeal disposed of in accordance with law, and since the State has failed to satisfy that the Petitioner's appeal had been disposed of in accordance with law, I am inclined to direct, the Respondent-State to decide the Petitioner's appeal in accordance with law, which implies that the case of the Appellant shall now be again taken up by the State Government from the stage that he has been dismissed from service and that his appeal is pending disposal.

7-A. Even though the said directions were given in 1987, till 1997 the position has not improved. Learned Counsel for the Petitioner drew my attention to a communication dated 23.8.1989 which is at Annexure-31 to the writ petition, to show that he has not yet been furnished with a copy of the order of appeal. He has merely been served with an order communicating that the Chief Minister, who is incidently the Finance Minister has dismissed his appeal but the order dismissing the appeal has not yet been served upon him.

8. It appears that in this proceeding the Respondents State have used a counter affidavit but in the counter affidavit also the actual order dismissing the appeal has not been annexed. As such this Court gave learned Counsel for the Respondents two opportunities to produce the records of the disposal of the appeal and the appellate order but even then despite two opportunities the same has not been produced before this Court. This Court is, therefore, reluctantly compelled to come to the conclusion that despite previous orders of this Court dated 30.11.1987, the appellate authority has not disposed of the Petitioner's appeal in accordance with law inasmuch as there is nothing on the record to show that there is an appellate order passed by the appellate authority disposing of the Petitioner's appeal. The only thing which has been shown to this Court was the communication of such disposal of appeal and not the order itself. Learned Counsel for the Respondents also after going through the records could not improve the situation.

9. This is a very shocking state of affairs where the appeal filed by a dismissed employee has not been disposed of in accordance with law for more than ten years despite the order passed by a Bench of this Court for its disposal In accordance with law. This Court is, therefore, convinced that the Petitioner is harassed at the hands of the Respondents inasmuch as the Respondents have, despite the order of this Court, not decided his appeal in accordance with law for atleast more than 10 years.

10. This Court is not aware nor the Court is interested to go into the question whether the Petitioner is an honest officer or the charge against him has been proved but one thing is clear that rule of law must be followed even against an employee against whom the charges have been proved. Such employee also has a right to have his appeal disposed of in accordance with law. Such a right is guaranteed under the Constitution. Therefore, this Court will not allow the breach of the said right and the duty of the Court is to uphold the said right.

11. As this constitutional guarantee has been denied to the Petitioner, this Court quashes the order of dismissal of the Petitioner and the purported communication of the dismissal of the Petitioner's appeal which are annexures 25 and 31 of this writ petition. This Court also strongly deprecates the action of the appellate authority who is incidently the Chief Minister and the Finance Minister of the State. This Court is, therefore, compelled to observe that the appellate authority has acted in a wholly recless and irresponsible manner in this matter and as such this Court is awarding a cost of Rs. 10,000/- (Rupees ten thousand only) to be paid to the Petitioner within a period of fortnight from the date of service of this copy by the Respondent No. 1.

12. The Petitioner must be reinstated in service forthwith. The continuity of the services of the Petitioner must be given and he must be given all the consequential benefits but the Petitioner's arrear of salary will not be paid beyond 50 per cent since he did no: work for the period in question.

13. This writ petition is accordingly allowed.