
(1998) 12 PAT CK 0020
In the Patna High Court
Case No : C.W.J.C. No. 1658 of 1998

Faiyaz Ahmad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-12-1998

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43

Citation : (1999) 1 PLJR 289

Hon'ble Judges : S.N. Mishra, J

Bench : Single Bench

Advocate : R.N. Mukhopadhyay, for the Appellant; D. Chaubey, for Accountant General and S.C. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Mishra, J.—After having heard the learned Counsel for the parties, this writ application is being disposed of at the admission stage itself. In this writ application, prayer of the Petitioner is for quashing the order dated 29th December, 1997, passed by Respondent Deputy Secretary, Water Resources Department, Govt. of Bihar, whereby 50% of the pension amount is sought to be forfeited for a period of one year only. Further prayer of the Petitioner is for a direction to pay the pensionary benefits, legally payable to the Petitioner, who retired from the services on 28th February, 1997, as Assistant Engineer from the Water Resources Department.

2. Case of the Petitioner, in short, is that he was initially appointed as Junior Engineer in the Water Resources Department and thereafter he was posted at different places. The Petitioner was subsequently promoted on 5.2.79 to the post of Assistant Engineer and, was accordingly, posted in Bagmati Division, Dheghar, Sitamarhi. While he was working in Bagmati Division as Assistant" Engineer a show cause notice was issued to him in the year 1992 for alleged irregularities and, accordingly, departmental proceeding was initiated, wherein the Petitioner was found guilty of the charges. While the Petitioner was posted as Assistant

Engineer, North Koyal Division No. 2, Aurangabad, he was served with chargesheet on 11.8.94 relating to the irregularities admitted by him in the year 1992-93. In the subsequent another chargesheet the allegation made against the Petitioner was that he has shown wrong consumption of 1700 sq. ft. bolder and, thereby caused huge monetary loss to the government, copy of the second chargesheet is made Annexure-7 to this writ application. The aforesaid chargesheet was issued on the basis of the report submitted by the Flying Squad. Pursuant to the chargesheet served upon the Petitioner he filed his show cause, copy of the show cause is made Annexure-9 to this writ application. Meanwhile, the Petitioner retired on 28.2.97, as stated above, and accordingly, a proceeding in terms of Rule 43(b) of the Bihar Pension Rules was initiated with respect to the charges of 1991-92. The Respondent authority has passed the impugned order in purported exercise of power under Rule 43(b) of the Bihar Pension Rules.

3. In this case, a counter affidavit has been filed on behalf of the State Respondents wherein, inter alia, it is stated that the Petitioner has been found guilty of the gross misconduct. It is further stated that the vigilance case is still pending against the Petitioner. It is further stated that the Engineers posted at Bagmati Project have drawn more than five crores of rupees by fake billing and measurement books. Ultimately, enquiry was made at the Government level including the Audit party and it was found that certain measurement books were not available and, accordingly, the Petitioner was asked to show cause and on receipt of his show cause matter was examined at the Govt. level, the charges levelled against the Petitioner were fully established and, accordingly, 50% of pension was ordered to be withheld for a period of one year. It is alleged that before passing the impugned order the Petitioner was asked to show cause in terms of Rule 43(b) of the Bihar Pension Rules as to why a sum of Rs. 5100/- be not recovered from the amount of his gratuity on excess payment of 1700 sq.ft. bolders worth of Rs. 20,400/-. It is stated that the chargesheet was served and the proceeding was initiated when the Petitioner was in service pursuant to the assurance given on the floor of the Legislative Assembly to the effect that excess amount of withdrawal by the Engineers will be enquired into and, accordingly, the matter was enquired into and the departmental proceeding was initiated on the basis of the report of the Flying Squad and, ultimately, the Petitioner was found guilty of the charges. Sum and substance of the allegation is that the Petitioner without approval from the higher authority spent more than the allotted amount and, thereby, caused huge monetary loss to the Government. From the facts, stated above, it is apparent that while the Petitioner was in service, the chargesheet of the alleged misconduct has been served on him and a departmental proceeding was initiated wherein he was found guilty of the said misconduct. The Respondent authority is fully competent either to forfeit portion and/or whole of the pensionary amount to the extent of loss caused to the Government. In this case, as stated above, the charge have been fully established and, as such, the Respondent authority has rightly passed the

impugned order withholding 50% of the pension amount and, that too, for one year only. I do not find any illegality in the order passed by the Respondent authority.

4. In the result, this writ application is dismissed.