
(1999) 06 PAT CK 0045
In the Patna High Court
Case No : C.W.J.C. No. 4273 of 1990

Srivastava Ramanand Prasad	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 25-06-1999

Acts Referred:

Bihar Service Code, 1952 — Rule 97, 97(2)

Citation : (1999) 2 BLJR 1524

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.N. Jha, J.—The petitioner seeks direction to pay him salary for the period from 10.4.1976 to 22.6.1983 during which period he was under suspension in connection with a departmental proceeding.

2. By order of the Collector, West Champaran (Bettiah) dated 30.3.1976 communicated by the Establishment Dy. Collector, vide his memo No. 253 dated 6.4.1976, the petitioner was placed under suspension on charges relating to unauthorised absence, dereliction of duty, poor loan recovery etc. Later a formal memo of charge was framed and served on him on 15.4.1976. The petitioner filed the show cause and participated in the proceeding. Finally by order dated 30.7.1987, the Collector agreeing with the report of the Enquiry Officer, awarded the punishment of stoppage of 3 annual increments with cumulative effect. He also directed that petitioner shall not be paid salary except the subsistence allowance for the suspension period. The order of the Collector was communicated to the petitioner by the Establishment Dy. Collector vide memo No. 1107 dated 18.8.1987. The petitioner preferred appeal before the Commissioner, Tirhut Division, Muzaffarpur, which went in vain. The appeal having been dismissed on 5.6.1989, the petitioner has come to this Court.

3. Mr. S.P. Srivastava, learned Counsel for the petitioner submitted that the

respondents adopted a peculiar procedure in the disciplinary proceeding by appointing 3 successive Enquiry Officer, one after the other. He pointed out that while the previous two Enquiry Officers had recommended punishment of Censure and stoppage of two increments, the third Enquiry Officer recommended stoppage of 5 annual increments. I do not find any substance or relevant in the argument. As indicated at the outset, in the present case the petitioner seeks direction for payment of salary, the order of punishment is not under challenge. The question as to whether he is entitled to salary for the suspension period has to be determined in accordance with the provisions of Rule 97 of the Bihar Service Code, that rule lays down in clear terms that only in cases where the delinquent is reinstated in service after being fully exonerated of the charges, or where the suspension is found to be unjustified, he is entitled to be paid full salary; in other cases meaning thereby, cases not covered by Sub-rule (2) of Rule 97, the competent authority has discretion to decide the proportion of pay and allowance to be paid.

4. It is an admitted position as indicated above, that the petitioner was found guilty of the charges not only by the Enquiry Officer but also by the disciplinary authority. In fact, all the three Enquiry Officers came to similar conclusion, except in the matter of the quantum of penalty. Not having been exonerated of the charges, it is obvious that it was open to the disciplinary authority, in the present case, the District Collector, to decide the proportion of pay to be paid to the petitioner. The Collector in his discretion has directed that nothing except the subsistence allowance already paid during the suspension period, shall be payable. I find no error in the order.

5. This writ petition, accordingly is dismissed but without any order as to costs.