

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00174/15
With
MA/050/00162/2019

Date of Order: 04.04.2019

C O R A M
HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Ashok Kumar Mallick, Son of Late H.N. Mallick, resident of Gola Road, PS-Rupaspur, District- Patna.

.... Applicant.

By Advocate: - Mr. Bajrangi Lal

-Versus-

1. The Union of India, through the Secretary, Ministry of Personnel and Public Grievances and Pensions, Department of Personnel and Training, North Block, New Delhi.
2. The Chief Secretary, Old Secretariat, Patna, Bihar.
3. The Principal Secretary, Department of General Administration, Govt. of Bihar, Old Secretariat, Patna, Bihar.
4. The Additional Secretary, Department of General Administration, Govt. of Bihar, Patna.
5. The Principal Secretary, Department of Labour Resources, Govt. of Bihar, Vikas Bhawan, Patna, Bihar.
6. Shri Subhash Sharma, the then Principal Secretary, Department of Labour Resources, Govt. of Bihar, Vikas Bhawan, Patna, Bihar.

.... Respondents.

By Advocate: - Mrs. P.R. Laxmi for UOI.
Mr. S.N. Madhuvan for State of Bihar

O R D E R
[ORAL]

Per Dinesh Sharma, A.M:- The case of the applicant is that a departmental enquiry proceeding has been initiated against the applicant by order dated 20.02.2015 and it is being continued against him despite

recommendation of the Administrative Department (Department of Labour Resources) for dropping further action. The applicant has already retired from service. He had given reply to the show cause notice issued against him. However, without considering his reply and without going through the comments of the Department of labour, the General Administration Department has passed the impugned order which is bad in law and therefore it should be quashed and set aside.

2. The applicant had filed an MA/050/00165/2015 which was later modified vide MA/050/00342/2015 wherein the applicant has further requested for quashing and setting aside the Memo of Charges as well as article of imputation as contained in Annexure/8 (ii) dated 04.12.2013 issued by the Department of General Administration, Government of Bihar. He has also submitted in this MA that according to his information, the Disciplinary Authority have finally concluded the proceedings and gave recommendation to the State Government exonerating the applicant from all the charges, but no final orders are issued. Due to the aforesaid departmental proceeding still remaining pending full gratuity of the petitioner is withheld and the applicant is facing mental agony.

3. The respondents no. 2,3 and 4 have filed the written statement denying the claim of the applicant. They have alleged that when the applicant was posted as Director, Employment and Training in the Department of Labour Resources, the disciplinary proceedings against him were initiated on charges of dereliction of duty, misuse of power and major irregularities in the examination of ITI. The applicant was asked to submit

his written statement of defence. After examining his written statement, it was decided to initiate departmental proceeding under Rule-8 of All India Services (Discipline and Appeal) Rules, 1965. Subsequently, the Commissioner Departmental Enquiry was appointed as conducting officer. Regarding the averments made in MA/050/00342/2015, it is stated that the report of the Inquiry officer is being examined by the Department and no final decision had yet been taken by the Disciplinary Authority.

4. Another written statement was filed on behalf of respondent no. 5, Principal Secretary, Labour Department where it was alleged that the OA is premature. This answering respondent disowned any responsibility for the action taken by the GAD under the departmental proceeding.

5. Another MA (162/2019) was filed by the applicant to bring on record subsequent development in this matter. It is alleged that the General Administration has issued another show cause notice to the applicant vide letter No. 4132 dated 17.03.2016 and the applicant has, immediately upon receipt of the second show cause submitted a detailed reply dated 02.05.2016. It has come to the knowledge of the applicant that the CS, Government of Bihar has ultimately recommended to the UPSC for imposition of certain punishment but at this juncture also the applicant has not been provided any opportunity of hearing on the point of sentence. The applicant has further prayed for quashing of the second show cause notice contained in Memo No. 4132 dated 17.03.2016 by which, on the pretext of vague and unspecific point of discrimination explanation has been sought from the applicant. The applicant has also requested for calling up the

record and quashing the recommendation of the State Government whereby certain punishment has been recommended against the applicant.

6. We have gone through the records and heard the learned counsels of both the parties. It is undisputed that though the applicant has been requesting for quashing the departmental action against him he has responded to the show cause notices issued in this regard, participated in the enquiry and a final decision in this matter is yet to be taken. The charges against him are, prima facie, serious. Though the enquiry report has found the charges not proved the Disciplinary Authority did not agree with the enquiry report and issued a second show cause notice under the Rules by their communication dated 17.03.2016. The applicant has responded to this communication and a final decision is still pending. In the light of these facts, any intervention by this Tribunal at this stage will be definitely premature. The applicant has already retired and his retiral dues have not been fully released because of pendency of this disciplinary action. Any further delay in concluding the proceedings and finalising action would amount to punishing him without trial. Hence, without going into the merits of the subject matter of disciplinary action, a direction is issued to the respondents to take a final decision and convey it to the applicant within three months from the date of receipt of this order, failing which they shall release all the retiral benefits of the applicants within two months thereafter. The OA as well as MAs are disposed of accordingly.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member