

Central Administrative Tribunal
Patna Bench, Patna.
O.A./050/00583/2017

Date of Order:- 25.07. 2019

C O R A M

Hon'bleShri J. V. Bhairava, Member [J]
Hon'bleShri Dinesh Sharma, Member [A]

Jitendra Kumar Singh, son of late Sita Ram Singh, Cane Commissioner, Cane Industry Department, Government of Bihar, VikashBhawan, New Secretariat, P.S. Sachiwalaya, District – Patna [Bihar].

....Applicant

By Advocate :ShriM.P.Dixit

Vs.

1. Union of India, through the Secretary, Department of Personnel and Training, Government of India, New Delhi – 110001.
2. The State of Bihar through the Chief Secretary, Government of Bihar, Patna [Bihar] – 800001.
3. The Principal Secretary, General Administration department, Government of Bihar, Patna [Bihar] – 800001.
4. The District Magistrate, Vaishali at Hajipur, District – Hajipur [Bihar], 844101.

..... Respondents.

By Advocate :Smt. P.R. Laxmi

Shri S.N. Madhuvan, Id. Counsel for State

O R D E R (ORAL)

Per J.V. Bairavia, M [J] :- The applicant has filed the present OA seeking the following reliefs : -

"8[1] That your Lordships may graciously be pleased to quash and set aside the Memo No.6/A-52/2016 S.P. 12275, Patna-15/ dated 21.09.2017 along with prapatra-'K' issued by Respondent No.3 as contained in Annexure-A/1 being without authority, contrary to the Rule 7 of the Rule 1969 and on the ground of inordinate delay in view of the various judicial

pronouncements of the Hon'ble Supreme Court of India reported in 1990 Supp SCC Pg. 738 [State of M.P. vs. Bani Singh], 2006 [2] PLJR SC Pg. 168 [P.V. Mahadevan vs. M.D. Tamil Nadu Housing Board], 1998 [4] SCC Pg. 154 [State of U.P. vs. N. Radhkrishan], 2006 [3] SLR SC Pg. 105 [M.V. Bijlani vs. Union of India] and 2008 [1] SLJ SC Pg. 85 [The Union of India vs. SangramKeshriNayak].

8[2] That your Lordships may graciously be pleased to command/direct the Respondents grant all consequential benefits in favour of the applicant at par with his 2006 Batch-mate of Indian Administrative Service Officers without any further delay.

8[3] That the Respondents be further directed to grant all consequential benefits in favour of the applicant for which he is legally entitled too.

8[4] Any other relief or reliefs including the cost of proceeding may be allowed in favour of the applicant."

2. The brief facts of the applicant's case is that he was initially appointed as Deputy Collector in the year 1985 through Bihar Public Service Commission, who was subsequently inducted in the cadre of Indian Administrative Service, vide notification dated 14.01.2016 against 2006 batch, which was not implemented by the Govt. of Bihar. Being aggrieved by the action of the Bihar Govt., the applicant filed an OA NO.196/2016, which was allowed on 10.03.2016 [Annexure-A/2]. When the respondents, State of Bihar did not comply the order passed in the aforesaid OA, the applicant filed CCPA No. 25 of 2016. Thereafter, the respondents complied with the order passed by this Tribunal in the aforesaid OA.

3. When the applicant was in Bihar Administrative Service, he was served with a charge memorandum dated 15.01.2014 along with "Prapatra-'Ka'" for the allegation of past periods against which he filed a writ petition vide CWJC No. 3194 of 2014 before the Hon'ble High Court of Patna, which was allowed on 18.12.2015 [Annexure-A/3] and the charge memo dated 15.01.2014 was quashed on the ground of delay. Against the aforesaid order dated 18.12.2015, the respondents, State of Bihar filed LPA No.435 of 2016 on 11.02.2016 and due to pendency of the LPA the applicant was denied his induction in Administrative Service but the said plea was not accepted by the Tribunal while allowing the OA No.196/2016.

4. The applicant further submitted that in the meantime, the other batch-mates of 2006 batch of Indian Administrative Service cadre, have been promoted to the next higher grade of Additional Secretary.

5. The applicant filed a representation dated 06.04.2017 [Annexure-A/4] requesting the authorities concerned for regularization of his leave for the period 01.12.2011 to 11.04.2013. In this regard, the applicant contended that the authorities concerned could have cancelled/rejected his leave application in case the administration was not satisfied, meaning thereby, they cannot keep the leave application of 2011 pending till 2017.

6. The respondents State of Bihar issued a memo dated 21.09.2017 along with "Prapatra-'KA'" whereby a decision has been taken to initiate a departmental proceeding against the applicant for the allegation "absent from duty

without sanctioned leave” pertaining to the period 2009 to 2011, and further he failed to submit his reply to the show cause notice dated 26.03.2012 issued by the respondent No.4, which is not only bad in law, arbitrary, unjust, baseless, punitive, ill motivated and unconstitutional in view of Rule 7 of All India Service [Discipline and Appeal] Rules, 1969.

7. The applicant, in ends of justice, has preferred an MA/050/00246/2019 on 30.05.2019 seeking hearing of OA 583/2017 in the first week of June, 2019, which is allowed and the OA was finally heard on 25.07.2019.

8. The counsel for the applicant vehemently submitted that the impugned charge memorandum is issued without competency under the rules and the said charge memo, is not tenable on the ground of inordinate delay for issuance of the same in the light of various judicial pronouncements as referred hereinabove.

9. The respondent no.3, the Principal Secretary, General Administration Department, Govt. of Bihar, contested the case by way of filing their written statement. According to him, the applicant currently IAS [2006] was inducted into Indian Administrative Service, vide Department of Personnel and Training, Govt. of India notification dated 04.05.2016 and subsequently allotted batch of 2006. Before induction into IAS, he was posted as District Land Acquisition Officer, Vaishali [Hajipur], vide notification no.420 dated 30.06.2009 of Revenue and Land Reforms Department in Bihar Administrative Service Cadre. The District Magistrate, Vaishali vide letter dated 29.02.2012 reported to General

Administration Department , Bihar, Patna that ShriJitendra Kumar Singh, District Land Acquisition Officer, Vaishali was on continuous leave from 21.11.2011 and due to his absence urgent land acquisition works were hampered. The District Magistrate, Vaishali has recommended for withdrawal of his service.

In this context, the Revenue and Land Reforms Department, Bihar returned the services of Sri Jitendra Kumar Singh, the applicant in this department. Thereafter, the State Govt. has decided to transfer the applicant as Director, DRDA, Araria and Revenue and Land Reforms Department, Bihar had been requested to send article of charges along with evidences with regard to his unauthorized absence and hindrance caused to land acquisition works due to his absence. In response thereto, the Revenue and Land Reforms Department, Bihar requested the District Magistrate, Vaishali to send requisite article of charges along with evidences to General Administration Department, Bihar.

The District Magistrate, Vaishali, vide its letter dated 21.08.2017 sent article of charges along with evidences in which it was mentioned that the applicant joined in the District on 06.07.2009 and after joining, he proceeded for Delhi for check up of his eyes without permission by sending application dated 08.08.2009 for leave from 09.08.2009 to 16.09.2009. Again he sent his application dated 16.10.2009 for extension of leave for one and a half months vide application dated 01.12.2009. Finally, he joined on 16.10.2010. The respondents submitted that he again proceeded on leave without prior approval of leave by

sending an application on 08.11.2011 [for leave for the period 09.11.2011 to 20.11.2011], application dated 21.11.2011 [for 15 days' leave], application dated 05.12.2011 [for 15 days' leave] and application dated 04.01.2012 and 20.02.2012 [for one month's leave]. The respondents submitted that due to his unauthorized leave, land acquisition works of the district was hampered and his service had to be returned to the Administrative Department.

10. The respondents submitted that as a consequence of the aforesaid unauthorized absence, memo dated 21.09.2017 has been issued whereby and whereunder Article of Charges, statement of imputation of misconduct and misbehavior as also evidence has been made available to the applicant with direction to file his defence within a fortnight, which he has already filed.

11. The respondents justify their decision to initiate departmental proceeding against the applicant under Sub Rule-[2] to impose penalty as specified in Rule 6 of IAS [D&A] Rules, 1969. The respondents have filed their additional supplementary written statement and submitted that Rule 7 of the AIS [D&A] Rules, 1969 simply explains the authority [Disciplinary Authority] in case of a member [who is liable to any penalty specified in Rule 6] serving in connection with the State Affairs, is the concerned State Govt. and in case of member serving in connection with the affairs of Govt. of India, is the Central Government. The same is also confirmed by the DOP&T vide their letter dated 15.03.2017 [Annexure-S/1].

It is further contended that though, the act or omission, which renders liable to penalty specified in Rule 6, committed by the applicant is related to his prior service, but presently, as a member of IAS, he is serving in connection with the affairs of the State of Bihar. Therefore, the charge-sheet issuing authority is obviously empowered to issue charge-sheet against him. It is contended that in view of this clarification, the grievance raised by the applicant about competency of the disciplinary authority does not stand, and therefore, also the interim relief granted by this Tribunal be vacated and accordingly, OA deserves to be dismissed.

12. The respondents further submitted that with reference to contention raised by the applicant about ground of inordinate delay and the same is not permissible as per the various judicial pronouncements as contended in para 5 [b] and [c] of the OA. In this regard, it is stated that the same is applicant's own interpretation based on his vision and wisdom. However, if the applicant has been directed to submit his reply and when he will submit his reply pursuant to memo no.12275 dated 21.09.2017, the matter would be examined and then appropriate decision will be taken in this regard.

13. The respondents submitted that the applicant was appointed in IAS, vide Department of Personnel and Training notification dated 04.05.2016 subject to the final outcome of the LPA No.435/2016 filed by the State Government against the order dated 18.12.2015 of Hon'ble High Court in CWJC No. 3194/2014.

14. The applicant has filed his rejoinder and reiterated the submissions. It is additionally submitted that the letter no.267 dated 26.03.2012 enclosed with the charge memorandum which is the basic foundation of issuing charge memorandum and the said letter has not been issued by the signatories of the said letter. The charge memorandum has been issued against the applicant on the basis of recommendation given by the then DM, Vaishali and others. However, the said letter has never been issued by the then DM, Vaishali and other officers because the said authorities have immediately crossed/cancelled their signatures. That being the reason the said recommendations has been withdrawn and not issued. Now, how the respondents relied upon the said letter which is never in force, which is required to be disclosed supported with its original letter, vide Annexure-P/1. It is further contended that the cadre controlling authority of the applicant is the Central Govt. and not the State Govt. and concurrence of cadre controlling authority before issuing charge sheet but in this case, admittedly, no approval from Central Govt. has been obtained, vide Annexure-P/2. The allegation leveled against the applicant of his absence for the period from 2009 to 2011 with proper leave application is not a serious offence. The respondents ought to have considered the leave application instead of issuance of charge memorandum.

15. Heard the parties.

16. On perusal of materials on record, it is noticed that the applicant has been served with a charge memorandum dated 21.09.2017 for the unauthorized absence as mentioned in

Article of Charges dated 21.09.2017 and considering the same as misconduct/misbehavior of the applicant, the applicant was called upon under provision of Rule 8[5] of IAS [D&A] Rules, 1969 for his explanation/reply against the proposed disciplinary enquiry. The applicant has not submitted any reply to the said charge memorandum and filed the present OA.

17. As noticed hereinabove, the first ground raised by the applicant about competency of the disciplinary authority for issuance of charge memorandum dated 21.09.2017, since the applicant has entered into IAS cadre. In this regard, the clarification submitted by the respondents based on provision of Rule 7 of the IAS Rules and undisputedly the charges leveled against the applicant under the charge sheet for the act of omission which renders him liable to penalty specified in Rule 6 is related to his prior service. It is also not in dispute that though the applicant was a member of IAS, he was serving in connection with the affairs of State of Bihar and as per the provision of Rule 7, the authority who instituted proceeding, is the State of Bihar and the same is also in conformity with the clarification issued by the DOPT in their letter dated 15th March, 2017.

18. In view of this we are of the considered opinion that the Disciplinary Authority in the present case who has issued the charge memorandum dated 21.09.2017 against the applicant is competent authority is the for initiation of disciplinary proceeding against the applicant. Therefore, the submission of the applicant about lack of competency of disciplinary authority is hereby rejected.

19. So far second ground raised by the applicant about inordinate delay in initiation of disciplinary proceeding, and on the said ground, the disciplinary proceeding is vitiated in the light of various judicial pronouncements as referred by the applicant, 1990 Supp. Paged 738, State of M.P. vs. Bani Singh and others, State of Punjab vs. V.K.Khanna and other citations as noted hereinabove [supra], is concerned, the same reply/submissions required to be submit before the disciplinary authority in response to charge memorandum dated 21.09.2017 whereby the disciplinary authority has directed the applicant to submit his reply under the provision of Rule 8[5] of IAS [D&A] Rules, 1969. Undisputedly, though statutory remedy of submission of explanation/reply to the charges leveled against the applicant delinquent has been provided to the applicant, however, the applicant has not submitted his reply/explanation to it. In this regard, it is apt to note that the respondents in their written statement has categorically stated that as and when the applicant will submit his explanation/reply to the charge memorandum dated 21.09.2017, the same will be considered in accordance with the rules.

20. Under the circumstances, we are of the considered view that the applicant ought to have avail the statutory remedy provided under Rule 8[5] of IAS [D&A] Rules, 1969. The prayer sought in this OA for quashing and setting of the charge memorandum dated 21.09.2017 is not acceptable. However, we also take note of submission of the applicant that during the pendency of this OA the applicant is retired on attaining the age of superannuation and due to pendency

of the disciplinary proceeding, his retiral dues including pensionary benefits has not been settled. Considering the aforesaid discussions, we dispose of this OA with directions to the applicant to submit his explanation/reply in pursuance of charge memorandum no.12275 dated 21.09.2017 within a period of thirty days from the date of receipt of a copy of this order. Thereafter, on receipt of explanation/reply, the disciplinary authority is directed to consider and pass appropriate order within a period of sixty days in accordance with materials on record as also law laid down by Hon'ble Apex Court on the point of delay in initiating disciplinary proceeding. No costs.

[Dinesh Sharma]M[A]

[Jayesh V. Bhairavia]M[J]

mps