

(2002) 05 PAT CK 0110

Patna High Court

Case No: C.W.J.C. No. 5094/99

Biswanath Mitra

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision: May 14, 2002

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R.N. Prasad, J.

The Petitioner was Executive Engineer. He retired from the service with effect from 31.12.1998. While he was in service a departmental proceeding was initiated. After submission of enquiry report punishment was inflicted vide order contained in letter dated 27.8.1997, Annexure-11. The punishment was censure. During the suspension except subsistence allowance nothing shall be paid. However, said period shall be treated as continuity in service and for the period 8.3.1994 to 19.8.1994 no pay shall be given on the basis of principle "no work no pay" and rest of the period i.e. 20.8.1994 to 30.11.1994 shall be adjusted in the leave of the Petitioner. The Petitioner preferred appeal against the said order and the appeal was dismissed vide order, Annexure-15.

2. Learned Counsel for the Petitioner pointed out that no opportunity was given to the Petitioner before inflicting punishment i.e. Petitioner shall not be entitled to any thing except subsistence allowance during the period of suspension and as such the orders impugned are bad in law. In support of his submission learned Counsel relied upon a decision in the case of Ram Asray Prasad Singh v. Bihar State Electricity Board 2000 (3) P.L.J.R. 41. Learned Counsel for the Respondent, however, tried to support the order, Annexure-11.

3. However, on consideration this much is obvious that no show-cause notice was issued to the Petitioner with respect to the punishment that the Petitioner shall not be entitled to anything except subsistence allowance during the period of

suspension. In the case of *Manzoor Ahmed Mazumdar v. State of Meghalaya*, (1997) 11 SCC 374. the Apex Court has held as follows:

In view of the decision in *M. Gopalkrishna Naidu* it must be held that even though there is no express requirement in Fundamental Rule 54(3) for giving an opportunity to the employee before passing an order, giving of such an opportunity is implicit in the exercise of the power which has been conferred by the said provision. It was, therefore, necessary for the competent authority to afford an opportunity to the Appellant before passing the order regarding pay and allowances payable to the Appellant in respect of the period of suspension (sic absence). Since this was not done in the present case, the order dated 12.8.1982 cannot be upheld and has to be set aside. For the same reason the impugned judgment of the High Court has also to be set aside. It will be open to the Respondents to pass a fresh order in accordance with law after affording an opportunity to the Appellant.

4. In the said decision provision of Rule 54 of the Assam Fundamental Rules was considered which is identical to Rule 97 of Bihar Service Code and as such the ratio decided by the Supreme Court is applicable in the facts and circumstances of the case, the said decision was considered by a Bench of this Court in the case of *Ram Asray Prasad Singh* (supra) and it was held that opportunity has to be given to the employee for passing an order under rule 97 of Bihar Service Code. In the instant case admittedly no opportunity has been given. Thus the order, Annexure-11, passed by the authority under Rules 97 cannot be held to be legal. Accordingly, the order, Annexures-11 and 15 are set aside and the writ petition is allowed. However, it will be open to the disciplinary authority to pass fresh order in terms of rule 97 of Bihar Service Code after giving an opportunity to the Petitioner to show-cause in accordance with law.