

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4937 of 2011

Vikas Kumar Sharma, Son Of Late Kunj Bihari Sinha Retired District Judge,
Resident Of Mohalla Agarwa, P.S. Town, P.O. Motihari, District East
Champaran At Present 202, Sanyal Enclave, Budhmarg, P.S. Kotwali, P.O.
G.P.O. District Patna

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Department of Personnel and Administrative Reforms, Bihar, Patna
2. The Patna High Court, Through Its Registrar General, Patna
3. The Registrar General, Patna High Court, Patna

... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 4749 of 2011

Vikas Kumar Sharma Son of Late Kunj Bihari Sinha Retired District Judge,
Resident Of Mohalla Agarwa, P.S. Town, P.O. Motihari, District East
Champaran At Present 202, Sanyal Enclave, Budhmarg, P.S. Kotwali, P.O.
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Versus

1. The State Of Bihar through Secretary, Department of Personnel and Administrative Reforms, Bihar, Patna
2. The Patna High Court, Through Its Registrar General, Patna
3. The Registrar General, Patna High Court, Patna

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 4937 of 2011)

For the Petitioner/s : Mr. Nand Kishore Singh, Advocate

For the Respondent/s : Mr. Piyush Lall, Advocate

(In Civil Writ Jurisdiction Case No. 4749 of 2011)



For the Petitioner/s : Mr. Nand Kishore Singh, Advocate
For the Respondent/s : Mr. Piyush Lall, Advocate

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJIV ROY)
Date : 01-02-2024**

Two writ petitions have been preferred by the petitioner. The first writ petition being CWJC No. 4937 of 2011 has been preferred for the grant of following reliefs:-

(i) to issue a writ in the nature of certiorari to quash the order passed on administrative side by the Standing Committee of Hon'ble Patna High Court under Rule 43b of Bihar Pension Rules 1950, whereby and where under 5% pension admissible to Petitioner has been deducted for ever and period of suspension has been directed to be treated as such', communicated under memo no. 14452 dated 25.09.10;

(ii) to issue a consequential writ in the nature of mandamus directing and commanding the respondent authorities to treat the period of suspension of the Petitioner on duty for all practical purposes and grant all its consequential benefits flowing out of the same i.e. to pay full



salary together with admissible allowances i.e. D.A. M.A. HRA, sumptuary allowance, fuel allowance, newspaper allowance, library allowance etc;

(iii) to issue further a consequential writ in the nature of mandamus directing and commanding the respondent authorities to count the period of suspension for calculating pension together with earned leave and make payment of full pension along with 4th slab of the leave encashment as well as the post retiral leave encashment for the remaining period (300-265 = 35 days) of the leave earned.

2. The second writ petition, CWJC No. 4749 of 2011 has been filed for grant of following reliefs:-

(i) to issue a writ in the nature of certiorari to quash the Hon'ble Patna High Court's notification no. 254A dated 10.07.2006 communicated vide memo no. 6643-47 dated 11th July, 2006 whereby the super-time scale of pay granted to the petitioner under Hon'ble Court's notification no. 233A dated 23rd June 2006 has



been recalled;

(ii) to issue a consequential writ in the nature of mandamus directing and commanding the respondent authorities to restore the petitioner's promotion to Super Time Scale with consequential benefits.

3. The short facts of the case leading to the writ petitions is/are as follows:-

4. On the basis of the outcome of 22nd Combined Competitive examination (15th Judicial Service) conducted by the Bihar Public Service Commission (henceforth for short 'the BPSC'), the petitioner was appointed and posted as the Judicial Magistrate at Darbhanga on 1.4.1975. In due course, he was promoted to the 'Bihar Superior Judicial Service' and posted as an Additional District & Sessions Judge, Muzaffarpur in the month of March, 1990.

5. He was confirmed in the Bihar Superior Judicial Service w.e.f. 19.10.1992 and promoted to the Selection grade Cadre on 16.12.1999 with retrospective effect from 1.2.1997. Later, the petitioner was appointed as the District and Sessions Judge in the year 2001 and then as the Member Secretary, Bihar State Law Commission. This was followed by



his posting as the Director of the Bihar Judicial Officers' Training Institute, Patna (now the Bihar Judicial Academy).

6. It is his case that Sri Bipin Bihari Varma, the then District Judge, East Champaran, Motihari and the cousin brother of one Mr Yogesh Chandra Varma, an Advocate with whom the petitioner and his family were having strained relationship conspired against him.

7. Thus, when on an allegation petition sent by one Md. Azhar to Patna High Court, the Court sought report from the District Judge, Motihari; Mr. B.B. Varma instead of examining the truthfulness of the allegations submitted biased report against him on the basis of non-existent facts.

8. Thereafter, the Standing Committee of Patna High Court in its meeting dated 06.07.2006 took a decision to put the petitioner under suspension in anticipation of a disciplinary proceeding, communicated to him vide memo no.6631-33 dated 10.07.2006. The Super time scale granted to him earlier too was recalled vide memo no. 6643-47 dated 11.07.2006. This followed the memo no. 9925 dated 25.09. 2006 serving him the memo of charges.

9. The petitioner filed C.W.J.C. No. 5500 of 2007 challenging the validity of his order of suspension as well



as drawing of disciplinary proceeding against him. Another writ petition vide C.W.J.C. No. 13586 of 2006 was filed challenging the order recalling his Super Time Scale.

10. Both the writ applications were allowed by the Patna High Court on 30.04.2008. Accordingly, his suspension order was revoked vide orders communicated under memo nos. 8133 dated 24.5.2008 and 8715 dated 29.5.2008. The petitioner was later posted as the Principal Judge, Family Court, Katihar and he took charge of his assignment on 7.8.2008.

11. Patna High Court thereafter on its administrative side challenged the order dated 30.04.2008 by preferring SLPs (Civil) no. 22890 of 2008 and 23747 of 2008. The said S.L.Ps. were taken up together on 19. 09. 2008 and the Hon'ble Apex Court while issuing notice to the petitioner stayed the aforesaid order dated 30.04.2008.

12. The petitioner appeared before the Hon'ble Apex Court for vacating the stay whereafter the matters were taken up together and vide an order dated 03.10.2008, the interim stay was made absolute and the S.L.Ps. were disposed. The order of the Hon'ble Apex Court read as follows:

“Heard learned Counsel for the parties.



The respondent herein seeks to vacate the stay passed by this Court on 19.09.2008. The Division Bench of the High Court has quashed the order of suspension pending disciplinary proceedings against the respondent.

The interim order passed by this Court on 19.09.2008 is made absolute. We dispose of the special leave petition with the direction that the High Court complete the disciplinary proceedings pending against the respondent within a period of four weeks and the respondent shall remain under suspension till then.

The SLPs are disposed of accordingly.”

13. Following the order passed by the Hon'ble Supreme Court, the petitioner was once again put under suspension. The departmental proceeding commenced on 22.12.2008 and on 19.3.2009, the Presenting Officer, after examining all the three cited witnesses and the documents rested his case and the proceeding was adjourned to 30.3.2009 for filing statement of defence in writing under sub rule 16 of Rule 17 of Bihar C.C.A Rules, 2005.

14. The petitioner, in the meantime, while continuing under suspension superannuated on 31.10.2009 whereafter the proceeding was converted under Rule 43 (b) of



Bihar Pension Rules, 1950 (henceforth for short 'the Rules')vide order/ memo no. 17602 dated 16.11.2009.

15. The evidence was closed on 11.12.2009. The petitioner filed his written statement of defence on 21.12.2009 to the charge which read as follows:-

ARTICLE OF CHARGE FRAMED AGAINST SRI VIKASH KUMAR SHARMA, DIRECTOR, JUDICIAL OFFICERS TRAINING INSTITUTE, PRESENTLY HEADQUARTERED AT PATNA CIVIL COURT UNDER SUSPENSION.

It is reported that Shri V.K. Sharma while posted as Director, Judicial Officers Training Institute, Patna. three times met the then District and Sessions Judge, Motihari, for the purpose of exerting influence on the District Magistrate, Motihari, to pass favourable orders in his favour in the matter then pending before the District magistrate and likewise pressurised the C.J.M., Motihari to wriggle out in Turkauliya P.S. Case No. 318/2005 registered U/s 147, 148, 149, 307, 302 and 120(B) I.P.C. alongwith 27 Arms Act for occurrence dated 12.12.2005 which had taken place in village Jaisinghpur Chilraon resulting in death of five persons and injury to about fifteen persons during the forcible possession of the disputed land, wherein he has been named as the main conspirator by the informant Md. Azhar in the protest petition filed on 16.12.2005 in the Court of Learned C.J.M., Motihari.

16. The defence was closed on 1.2.2010, the



arguments of both sides concluded on 19.2.2010 and finally, the enquiry report was submitted on 30.07.2010. Later, vide memo no. 12214 dated 20.08.2010, the petitioner was called upon to show cause '*why inquiry report be not accepted and action be not taken against him under Rule 43b of the Bihar Pension Rules, 1950*'.

17. The petitioner submitted his show cause dated 06.09.2010 but the same did not find favour and an order/memo no. 14452 dated 25.09.2010 was passed by the Standing Committee of the Court inflicting punishment of deduction of 5% pension. It was also ordered that the period of suspension will be treated as such.

18. The petitioner thereafter preferred Appeal against the order withholding of 5 per cent of his pension which was rejected vide memo no. 18567 dated 06.12.2010.

19. Aggrieved, the present writ petition(s).

20. Learned Counsel for the petitioner, Mr. Nand Kishore Singh submits that on the basis of vague charges, the decision aforesaid have been taken by the respondents inasmuch as neither the date and time of the meeting with the District Judge, Motihari came into picture nor the phone numbers given. Further, even the date and time when the



petitioner met with the C.J.M., Motihari was never furnished.

21. The submission is that though the matter revolves around land dispute, it remained in the physical possession of the petitioner's family and no such finding was there that the petitioner's family was not having title over it. Further, no petition was pending in the office of D.M., East Champaran and as such there was no question of influencing him through the District Judge, Motihari.

22. Learned Counsel further submitted that the complainant, Md. Azhar who made the complaint before Hon'ble the Chief Justice is/was an FIR accused in Turkauliya P.S. Case No. 319 of 2005 under sections 147, 148, 149, 307 and 302 of the Indian Penal Code and while under going treatment, he was taken into police custody and as such, he could not have preferred any complaint.

23. Learned Counsel submits that the petitioner was not named as an accused earlier, though Md. Azhar tried to implicate him as a Conspirator, he was not sent up for trial. His submission is that the High Court was prejudiced and thus on the basis of fabricated document/conspiracy by the higher authorities, punishment was inflicted upon him.

24. The first point on which the petitioner wants the



order to go, is/are that while posted as the District and Sessions Judge, Buxar, the services of the petitioner was handed over on deputation to the State Government by the Patna High Court when initially he was appointed and posted as the Member Secretary of Bihar State Law Commission in the year 2001 and thereafter, was transferred as the first Director of the newly constituted Bihar Judicial Officers Training Institute, Patna (now the Bihar Judicial Academy) vide memo no. 7136 dated 05.09.2002. As such, his services having been under the State Government on deputation, the Patna High Court had no jurisdiction to either put him under suspension and/or initiate departmental proceedings.

25. The second contention put forward by him is that the departmental proceedings initiated against him on 25.09.2006 continued and in the meantime, he retired on 31.10.2009 whereafter the same was converted into a proceeding under Rule 43(b) of “ the Rules’. The submission is that in absence of finding recorded by the Disciplinary Authority that the charges in the departmental proceedings relates to ‘grave misconduct’ or ‘causing pecuniary loss to the Government’ , the proceeding could not have moved further and as such, any order passed thereafter, stands vitiated.



26. It has further been submitted by the learned Counsel that while passing the order in question, no reason has been assigned and as such, it is a non-speaking order. The further submission is that his defence in this regard was not taken note of before the order in question was passed.

27. The last ground taken in the CWJC No. 4937 of 2011 is that the punishment order dated 25.09.2010 directs that the period of suspension of the petitioner to be treated as such. In other words, the salary for the period of suspension has been denied to him and as such, the order is fit to be set aside.

28. So far as the other case (CWJC No. 4749 of 2011) filed by the petitioner is concerned, it is the contention of the learned counsel that the Super Time Scale granted to him vide notification dated 23.06.2006 which was recalled by an order dated 10.07.2006 is bad as the same was passed without affording any opportunity to him.

29. Mr. Piyush Lall, learned Counsel appearing on behalf of the Patna High Court, on the other hand has taken this Court to the Enquiry Report submitted by the Enquiry Officer. According to him, on the complaint of Md. Azhar addressed to the Hon'ble the Chief Justice, a report was sought for from the District and Sessions Judge, Motihari. As per the report so



submitted, the petitioner thrice met him at his residence and further pressed him to help him out in the criminal case and impress upon the District Magistrate, East Champaran, Motihari to pass favourable order pertaining to 75 '*bighas*' of disputed land pending before the said authority.

30. He submits that on the basis of the said report, proceeding was initiated against him, he was also served with the charges and later list of documents and the names of the witnesses on which the Presenting Officer wanted to rely on. The further submission is that three witnesses were examined which included the complainant, Md. Azhar, the District Judge, Motihari as also the District Magistrate, East Champaran, Moithari.

31. Learned Counsel submits that the District Judge, Motihari in his examination informed that on 16.02.2006, he received letter from the Patna High Court containing complaint of the Md. Azhar and his response was sought for. He accordingly on 22.02.2016 submitted his report (marked as Exhibit-P/1). Later, the District Judge was cross examined by the petitioner and as per the report of the Enquiry Officer, though number of questions were put to discredit him, the petitioner did not ask a single question on his meeting with the



District Judge. Instead, he tried to cast aspersions on the District Judge that he has connived with the High Court Judges and Senior Advocates under conspiracy to implicate him.

32. Mr. Piyush Lall further submitted that the second witness, Md. Azhar, who was the complainant stated that as the petitioner was a Judicial Officer on higher post, he was forced to send a petition to Hon'ble the Chief Justice. According to learned Counsel, a perusal of the report of the Enquiry Officer shows that the petitioner put more than 180 questions to Md. Azhar during cross examination which clearly showed that contrary to his claim that he had nothing to do with the land, the petitioner had deep-rooted understanding of the disputed land.

33. Learned Counsel further submitted that the District Magistrate, East Champaran was the third witness to be examined and according to him, despite several orders passed in their favour, as the petitioner's family had failed to take possession of the land, his brother Lok Nath Sharma filed petition before the District Magistrate, Motihari requesting for deployment of Magistrate/Police personnel so that he can cultivate the land. Thus the presence of the petition in the office of the District Magistrate, Motihari cannot be denied by the petitioner. The District Magistrate was cross examined and also



later recalled and the original files were perused by the Enquiry Officer. Confronted with the documents, the petitioner tried to doubt the authenticity of the documents allegedly sent by his brother but the deposition of the District Magistrate, East Champaran, Motihari in proof of those documents, could not be shaken.

34. Learned Counsel submits that having been fully satisfied about the complicity of the petitioner in the aforesaid complaint, the Enquiry Officer came to the conclusion that the petitioner's family wanted to take possession of the disputed land and in the process, wanted to exert pressure on the District Magistrate. They finally tried on their own to take possession of the land which resulted in the killing of five innocent persons.

35. He submits that the Enquiry Officer came to the conclusion that the petitioner approached the then District Judge, Motihari for help in the land dispute. He thus observed that there is distinction between a family dispute in which his immediate brothers are/were involved and one in which he himself is involved. In the process, the Officer failed to keep the prestige of office he was holding.

36. Learned counsel submits that in the



aforesaid circumstance, the petitioner was found guilty of the charges and the decision was taken for deduction of 5 per cent of his pension. The same is fully justified. He further submits that the decision vide memo no. 6643-47 dated 11.07.2006 by which the Super Time Pay Scale granted to the petitioner was recalled earlier, is also justified.

37. So far as the contention put forward by the learned counsel for the petitioner that the Patna High Court was not empowered to initiate departmental proceeding against him and/or pass any order in view of the fact that he was on deputation with the State Government, it is the contention of Mr. Piyush Lall that earlier he was put under suspension on 10.07.2006 and the departmental proceeding was initiated on 25.09.2006. It was challenged in CWJC No. 5500 of 2007 wherein the petitioner had also taken the ground of lack of jurisdiction *inasmuch* as he had questioned the suspension and initiation of departmental proceedings by the Patna High Court on its administrative side.

38. The said CWJC No. 5500/2007 was allowed on 30.04.2008, the order of suspension and initiation of departmental proceedings were quashed and one of the reason assigned for quashing of the orders was/were that in case, the



Patna High Court was desirous of placing him under suspension, it would have been appropriate for it to first cancel his deputation, recall his services and then to place him under suspension and/or initiate departmental proceeding by virtue of power of control vested under Article 235 read with Article 236 (b) of the Constitution of India and not otherwise.

39. He submits that the order dated 30.04.2008 was challenged by the Patna High Court in SLP (C) 22890/2008 which was taken up on 19.09.2008 along with SLP (C) 12618 of 2008 and the Hon'ble Supreme Court was pleased to grant interim stay on 19.09.2008 which was made absolute on 03.10.2008 when the two SLPs were disposed of directing the departmental proceedings against the petitioner to be concluded within a period of four weeks and till then he was directed to remain under suspension.

40. He, as such, submits that the Hon'ble Supreme Court granting absolute stay against the petitioner and allowed the Patna High Court to take up and conclude the departmental proceeding, this stand taken by him again has to be rejected.

41. His further contention is that even on merits, the Patna High Court has complete control over its Judicial



Officers including the power to suspend, initiate departmental proceedings and/or impose punishment under the power vested under Article 235 of the Constitution of India and the power of appointing authority (Hon'ble Governor) is limited to issuance of orders of dismissal/removal/reduction in rank and that too on the recommendation of the High Court which is binding on him. He contends that the purpose of vesting of control is to maintain independence of judiciary which is the basic structure of the Constitution.

42. Thus, the Patna High Court was well within its right to suspend and initiate departmental proceeding against the petitioner irrespective of the fact that he was on deputation. While putting him on deputation to Bihar Law Commission or Bihar Officers Training Institute, the control vested with the Patna High Court under Article 235 of the Constitution of India remained with it as the petitioner even on deputation remained a member of Bihar Superior Judicial Service holding the post of District and Sessions Judge.

43. Learned counsel submits that the above constitutional provision existed even prior to the coming into force of the Constitution of India vide Rule -3 (vii) Chapter 1, Part -1 of Patna High Court Rules, 1916 which authorizes the



Standing Committee to pass orders of suspension and initiation of departmental proceedings against the officers of Superior Judicial Service. It is his contention that the petitioner while questioning the suspension and initiation of departmental proceeding against him by the Patna High Court has not pointed out any provision which authorizes the State Government either to suspend or initiate departmental proceeding against the Judicial Officers especially the Superior Judicial Service Officers who is/are on deputation with the State Government. He submits that in the aforesaid background, the contention raised by the petitioner is fit to be rejected.

44. So far as the second ground taken by the petitioner that in absence of incorporation of grave misconduct or having caused pecuniary loss to the government, the proceeding could not have been converted under Rule 43(b) of the Bihar Pension Rules, it is the contention of the learned Counsel for the Patna High Court that it has already been held by a Full bench of the Patna High Court in **Shambhu Sharan Vs. The State of Bihar & Others** reported in **2000 (1) PLJR 665** that a departmental proceeding initiated while in service can continue on retirement for which no separate order to be recorded under Rule 43(b) of the Bihar Pension Rules. As such,



on account of automatic continuance of departmental proceeding initiated while the petitioner was in service, once he retired on 31.10.2009, there was no requirement to record a finding and as the charges in departmental proceeding against the petitioner were of grave misconduct, proceeding had to continue under Rule 43(b) of the Bihar Pension Rules.

45. Regarding the contention of the petitioner that finding of grave misconduct and/or pecuniary loss to the Government having not been recorded and/or no reason assigned, the order in question need to be interfered with, Mr. Piyush Lall submits that the charges made against the petitioner having been found proved in the departmental proceeding, it clearly shows that the petitioner misused the office that he was holding and thus it was a case of grave misconduct and mere absence of the word cannot be a ground for interfering in the matter. A person holding the highest post in District Judiciary was trying to influence the local administration through the District Judge for his personal gain which forms grave misconduct, the charges were found true in a full fledged enquiry whereafter after giving due opportunity to the petitioner, an order was passed. Learned Counsel submits that it is not the case of the petitioner that he took a plea/defence that even



accepting the said charges, the same do not amount to grave misconduct so as to impose punishment under Rule 43(b) of 'the Rules'.

46. He further submits that when a Disciplinary Authority has accepted the finding of the Enquiry officer, he is not required to reappraise the evidence and the same is required only when the Disciplinary Authority differed with the report of the Enquiry Officer.

47. So far as the claim of the petitioner that he has not been paid his full salary for the suspension period, learned counsel for the Patna High Court submits that considering the allegation made against him which was found proved, he was not entitled for the full salary. It is his further submission that the suspension order of the petitioner was earlier quashed by the Patna High Court on 30.04.2008 in CWJC No. 5500/07. Accordingly, his suspension order was revoked and he was posted as the Principal Judge, Family Court, Katihar.

48. However, in the SLP (C) 23747 and SLP(C) 22890/08 filed by the Patna High Court, the Hon'ble Supreme Court on 03.10.2008 while granting absolute stay and disposing of the SLPs, gave direction to conclude the departmental



proceeding and till then the petitioner was directed to be put under suspension whereafter he was again suspended on 15.10.2008. The petitioner retired on 31.10.2009 while still under the said suspension, which suspension was from the post of Principal Judge, Family Court; not a deputation post.

49. The submission is that once the Patna High Court found the charges against him to be true and he was held guilty, punishment order was passed. As the petitioner was not exonerated of the charges, he is not entitled for full salary during the period of his suspension.

50. Again so far as the contention raised by the petitioner in CWJC No. 4749 of 2011 that the Super Time Scale granted to him could not have been recalled by the Patna High Court, Mr. Piyush Lall submits that the same was recalled on 10.07.2006 which was set aside in CWJC No. 13586 of 2006 heard along with CWJC No. 550/2007.

51. It was challenged by the Patna High Court in SLPs and as stated above, the same were allowed and the grant of interim stay on 19.09.2008 was made absolute on 03.10.2008. He submits that when the recall of Super Time Scale dated 10.06.2006 was set aside by the Hon'ble Apex Court on 03.10.2008, the same became final and as such, the petitioner



now cannot claim for grant of Super Time Scale. He submits that the Hon'ble Supreme Court having allowed both the SLPs of the Patna High Court, the prayer for quashing of the order of recall dated 10.07.2006 is contemptuous, to say the least.

52. Learned Counsel concludes his submission submitting that in the given facts and circumstances, no relief can be granted to the petitioner and the writ petitions are fit to be dismissed.

53. We have gone through the facts of the case, the materials on record as well as the submissions put forward by the respective parties.

54. The picture that emerges is/are as follows:-

(i) one Md. Azhar sent a complaint to Hon'ble the Chief Justice against the petitioner alleging that the petitioner is using the official position and is exerting pressure on the Judicial Officers to put pressure on the District Administration/Police Officers relating to a disputed land which finally resulted into the killing of five persons and lodging of Turkaulia P.S. Case No. 318 of 2005;

(ii) Patna High Court upon receipt of the complaint in turn sought report vide letter no. 200 dated 16.02.2006 from the District and Sessions Judge, Motihari;



(iii) the District Judge, Motihari thereafter sent his report vide letter no. 35 dated 22.02.2006 stating therein that the petitioner met him thrice at his official residence and also telephonically made request to help him in the land dispute case. The petitioner wanted to impress upon the District Magistrate, East Champaran, Motihari to pass a favourable order relating to the disputed land in question;

(iv) meanwhile, during the said period vide notification no. 233A dated 23.02.2006, the petitioner was granted Selection Grade Scale effective 01.09.2003;

(v) the Standing Committee thereafter in its meeting dated 06.07.2006 considered the report of the District and Sessions Judge, East Champaran, Motihari as also the minutes of the Hon'ble Inspecting Judge of Patna Judgeship relating to his involvement in Turkaulia P.S. Case No. 318/2005; a decision was taken which read as follows:-

“Upon due deliberation and consideration of the materials on record, it is resolved that Sri Vikas Kumar Sharma, Director, Judicial Officers Training Institute, be put under suspension, with immediate effect. It is further resolved to initiate a departmental proceeding against him. During the continuance of the departmental proceeding the headquarters of Sri



Sharma will be at civil Courts”.

(vi) it further vide Agenda no. 1, considered the matter relating to confirmation of proceeding of the Standing Committee dated 20.06.2006 relating to grant of Selection Grade Scale and held as follows:-

“ It is resolved that the minutes of the meeting of the Standing Committee of 20th of June, 2006, be confirmed, with a modification that the name of Sri Vikas Kumar Sharma, Serial No. 7 of Agenda No. 2 of that meeting, is recalled from the list of officers granted Super Time Scale of pay”.

(vii) the petitioner successfully challenged the decision of the Patna High Court in CWJC No. 13586 of 2006 (*against memo no.6643-47 dated 11.07.2006 relating to recall of grant of Super Time Scale*) as also CWJC No. 5500 of 2007 (*challenging the notification/memo no. 6631-33 dated 10.07.2006 and memo no. 9925 dated 25.09.2006 by which he was placed under suspension and departmental proceeding initiated against him*) respectively and the same came to be quashed by the Hon’ble Patna High Court on 30.04.2008.

55. Thereafter, on the administrative side, the Standing Committee in its meeting dated 20.05.2008 complied



the order of the Patna High Court subject to appeal which it intended to prefer. Accordingly, the suspension of the petitioner was revoked and his departmental proceeding dropped.

56. The High Court on its administrative side thereafter challenged the two orders vide SLP (C) Nos. 12618/2008 and 22890/2008 which was earlier heard on 19.09.2008 by the Hon'ble Apex Court and interim stay was granted while putting the petitioner on notice. Thereafter, on 03.10.2008 the order was made absolute and the two appeals were disposed of with a direction to the High Court to complete the disciplinary proceeding within a particular time and till then it was ordered that he shall remain under suspension.

57. Accordingly, the petitioner was again put under suspension and departmental proceeding initiated vide an order dated 15.10.2008. As during the pendency of the departmental proceeding, the petitioner retired from service on 30.10.2009, the Standing Committee on 10.11.2009 resolved to continue the departmental proceeding against him under Rule 43(b) of 'the Rules' which was notified vide memo no. 17602 dated 16.11.2009.

58. After the Departmental Proceeding concluded and the enquiry report submitted by the Enquiry Officer, the



Standing Committee on 10.08.2010 took decision incorporated in office letter no. 12214 dated 20.08.2010 issued to the petitioner in the following terms:

“ that the registry will furnish a copy of the enquiry report to the delinquent Sri Vikas Kumar Sharma to call upon him to show cause as to why the enquiry report be not accepted and to show cause why action be not taken against him under Rule 43(b) of the Bihar Pension Rules, 1950”.

59. The petitioner submitted his reply, whereafter, the Standing Committee in its meeting dated 21.09.2010 resolved as follows:-

“Having considered the enquiry proceedings and the reply to the show cause notice submitted by Sri Vikas Kumar Sharma, the then Director, B.J.O.T.I. Patna (since retired) it is resolved that in exercise of power conferred by Rule 43 (b) of the Bihar Pension Rules, 1950, 5% of the pension of Sri Vikas Sharma be withheld. The period of suspension will be treated as such”.

60. This followed the order/memo no. 14452 dated 25.09.2010 ordering punishment of withholding of five percent pension under Rule 43(b) of ‘the Rules’ as also the suspension period to be treated as such. Aggrieved, the petitioner preferred



appeal which came to be rejected vide memo no. 18567 dated 06.12.2010 that followed the writ petitions.

61. On the point of conspiracy theory, this Court rejects the submission of the learned counsel for the petitioner that the then District Judge, Motihari had connived/conspired against him and had submitted biased report which formed the basis for the initiation of departmental proceeding. The Enquiry Officer has recorded in the report that the petitioner cross-examined the District Judge, Motihari and number of questions were put to him but not once did he ask a single question regarding his visit to the official residence of the District Judge and in that backdrop, the report cannot be said to be a biased one.

62. Again so far as the claim of the petitioner that he had nothing to do with the land in question, the Enquiry Officer has recorded that around 180 questions were put to Md. Azhar by the complainant relating to the land which led him to come to the conclusion that the petitioner had complete knowledge of the disputed land. In fact, the District Magistrate, East Champaran, Motihari also during the departmental proceeding accepted that he had submitted a report to the Chief Secretary, Bihar Patna on the subject matter.



63. On the point of the lack of jurisdiction in proceeding against him as he was under deputation with the State Government and at the relevant time was serving as Director of the Bihar Officers Training Institute, learned counsel for the Patna High Court has fully explained the same *inasmuch* as :-

(i) the said contention was earlier raised in CWJC No. 5500 of 2007 and the Hon'ble High Court while allowing the petition on 30.04.2008 in paragraph-12 had taken note of this fact that the authorities were duty bound to first cancel his deputation, recall his service and only then he could have been placed under suspension and/or departmental proceeding could have been initiated by virtue of power vested under Article 235 read with Article 236(b) of the Constitution of India and not otherwise;

(ii) this was challenged by the Patna High Court on its administrative side in SLP (C) 22890 of 2008 before the Hon'ble Apex Court in which not only it succeeded, the Hon'ble Supreme Court further directed to take up the departmental proceeding and till then, the petitioner was directed to be placed under suspension. As such, the said contention having been set aside/over ruled by the Hon'ble



Apex Court, the petitioner cannot be allowed to raise the said ground.

*(iii) In the case of **State of West Bengal & Anr. vs. Nripendra Nath Bagchi** reported in AIR 1966 SC1 447 which Hon'ble Apex Court in paragraphs 13 and 14 read as follows:-*

“13. We do not accept this construction. The word ‘control’ is not defined in the Constitution at all. In Part XIV which deals with Services under the Union and the States the words "disciplinary control" or “disciplinary jurisdiction” have not at all been used. It is not to be thought that disciplinary jurisdiction of services is not contemplated. In the context the word "control" must, in our judgment, include disciplinary jurisdiction. Indeed, the word may be said to be used as a term of art because the civil services (Classification, Control and Appeal), Rules used the word "control" and the only rules which can legitimately come under the word "control" are the Disciplinary Rules. Further, as we have already shown, the history which lies behind the enactment of these articles indicates that "control was vested in the High Court to effectuate a purpose namely, the securing of the independence of the subordinate judiciary and unless it included



disciplinary control as well the very object would be frustrated. This aid to construction is admissible because to find out the meaning of a law, recourse may legitimately be had to the prior state of the law, the evil sought to be removed and the process by which the law was evolved. The word "control", as we have seen, was used for the first time in the Constitution and it is accompanied by the word "vest" which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day to day working of the court but contemplates disciplinary jurisdiction over the presiding Judge. Art. 227 gives to the High Court superintendence over these courts and enables the High Court to call for returns etc. The word "control" in Art. 235 must have a different content. It includes something in addition to mere superintendence. It is control over the conduct and discipline of the Judges. This conclusion is further strengthened by two other indications pointing clearly in the same direction. The first is that the order of the High Court is made subject to an appeal if so provided in the law regulating the conditions of service and this necessarily



indicates an order passed in disciplinary jurisdiction. Secondly, the words are that the High Court shall "deal" with the judge in accordance with his rules of service and the word "deal" also points to disciplinary and not mere administrative jurisdiction.

(14) Articles 233 and 235 make a mention of two distinct powers. The first is power of appointments of persons, their postings and promotion and the other is power of control. In the case of the District Judges, appointments of persons to be and posting and promotion are to be made by the Governor but the control over the District Judge is of the High Court. We are not impressed by the argument that the word used is "district court" because the rest of the article clearly indicates that the word "court" is used compendiously to denote not only the court proper but also the presiding Judge. The latter part of Art. 235 talks of the man who holds the office. In the case of the Judicial service subordinate to the District Judge the appointment has to be made by the Governor in accordance with the rules to be framed after consultation with the State Public Service Commission and the High Court but the power of posting, promotion and grant of leave and the control of the courts are vested in the High Court. What is



vested includes disciplinary jurisdiction. Control is useless if it is not accompanied by disciplinary powers. It is not to be expected that the High Court would run to the Government or the Governor in every case of indiscipline however small and which may not even require the punishment of dismissal or removal. These articles go to show that by vesting "control" in the High Court the independence of the subordinate judiciary was in view. This was partly achieved In the Government of India Act, 1935 but it was given effect to fully by the drafters of the present Constitution. This construction is also in accord with the Directive Principles in Art. 50 of the Constitution which reads:

50. The State shall take steps to separate the judiciary from the executive in the public services of the State."

64. We are thus convinced with the submissions put forward by the learned counsel for the High Court and reject the objection made on this point by the petitioner. We also observe that his suspension, on directions of the Hon'ble Supreme Court, was from a judicial post, i.e. Principal Judge, Family Court. Further the charge was not regarding his conduct or discharge of duties in the Judicial Training Institute. The allegation was of



using his august office of a Judicial Officer to get the assistance of the district administration; to further a purely personnel case, through the District and Sessions Judge of that District.

65. On the contention raised by the petitioner that while converting that proceedings under Rule 43(b) of ‘ the Rules’, the respondents failed to incorporate whether it is due to ‘grave misconduct’ or ‘pecuniary loss to the government’ once again learned counsel for the Patna High Court has successfully clarified that a departmental proceeding initiated while in service continued after retirement under ‘the Bihar Pension Rules’ and absence of the words ‘grave misconduct’ will not vitiate the proceedings. This Court would like to incorporate para 8 of the order of the **Full Bench in Shambhu Saran vs. The State of Bihar & Ors.** (supra) **2000(1) PLJR 665** which read as follows:-

“8. The other point to be noticed is that a distinction is made in Rule 43(b) between a case where a disciplinary enquiry is already pending at the time such superannuation and where no disciplinary enquiry is pending at the time of retirement. Certain safeguards have been provided so that there may be no undue harassment after retirement when no proceeding had been initiated before his retirement. Even though



there is no pending disciplinary proceeding at the time of such retirement, certain conditions, as contemplated by clause (i), (ii) and (iii) thereof, are imposed for safeguarding the interest of the Government Servant concerned. Certain limitations on the powers of the authority concerned to initiate a fresh proceeding after retirement, where no such proceeding was initiated before such retirement have been provided for to prevent any misuse of such power. But the question of providing such safeguard does not arise if there is already a disciplinary proceeding pending at the time of the superannuation of the Government Servant concerned. There is no question of any harassment in such a case and, accordingly, no condition has been imposed. These is a good reason for the same. Unless that power is conferred by virtue of the said provision once a retirement takes place, then the employee concerned can easily say that he was beyond the scope of any action whatsoever. In that view of the matter, this provision has been made in the rule itself and the rule itself contemplates that a disciplinary proceeding, if already initiated, can be continued even after retirement. As we have already stated that can be spelt out from the language of the provision itself,



and, in any view of the matter that can be spelt out by necessary implication. Accordingly, in our view, it is open to an authority concerned to continue with a disciplinary enquiry which was initiated before his retirement. In our pinion, once such proceeding is started, even if the person concerned retires from service, such proceeding can be continued and it is not required that there must be any Government order to that effect before it can be allowed to continue. No such condition has been laid down in rule 43 in respect of a case where such a proceeding has already been initiated as required by the three conditions in respect of initiation of a fresh proceeding after such retirement. We cannot import the requirement of such a condition which is not in the rules. This would be against the principal of cassus omissus. If we accept the contention that such an order of the Government is required before such proceeding can be continued, then we shall be introducing a condition in the rule, which the rule does not provide for, in that view of the matter, we agree with the views expressed by the latter Division Bench and we hold that the Division Bench decision in the case of Singheshwari Sahay vs. State of Bihar and others reported in 1979 BBCJ 735



has not been correctly decided.

66. Further so far as the submission regarding non-speaking order(s) is/are concerned, this court holds that when there is disagreement with the findings of the Enquiry Officer, the same has to be reasoned out but where the Disciplinary Authority is in agreement with the findings, the passing of the order(s) as such will not vitiate the proceedings.

67. This Court would further like to put on record the case of **State Bank of Bikenar, Jaipur & Ors. Vs. Prabhu Dayal Grover** reported in **(1995) 6 SCC 279** with reference to Paragraphs 13 & 14 in support of above contention which read as follows:-

“13. In view of the answer so given, it has to now seen whether under the Regulations, the authorities concerned are required to give reasons for their decision. Regulation 68(3) lays down the procedure the disciplinary authority is required to follow after it receives the proceedings of the enquiry including the report of the Inquiry Officer. On careful perusal thereof we find that only in those cases where the disciplinary authority considers it necessary to direct fresh or further enquiry or disagrees with the findings of the Inquiry Officer, it has to record the reasons for its such directions, but there is no such obligation if it



agrees with the findings of the Inquiry Officer. It can, therefore, be legitimately inferred that when express provisions have been made in the Regulations for recording reasons in only the first two of the three fact situations - and not the other - there is no implied obligation also to record the reasons in case of concurrence with the findings of the Inquiry Officer. Even if we proceed on the basis that such an obligation is implicit, still the order of the disciplinary authority cannot be held to be bad as, on perusal thereof, we find that before concurring with the findings of the Inquiry Officer it has gone through the entire proceeding and applied its mind thereto. In our considered opinion, when the disciplinary authority agrees with the findings of the Inquiry Officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to reappraise the evidence to arrive at the same findings. We are, therefore, unable to accept the contention of Mr. Dutta that the order of punishment was liable to be struck down as it was a non speaking order and did not contain any reason.

14. That brings us to the order of the appellate authority. Under Regulation 70(2), the appellate authority is required to consider whether the findings recorded against the officer concerned are justified and/or whether the penalty is excessive or inadequate and pass appropriate



orders confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any other authority with such directions as it deems fit in the circumstances of the case. This Regulation also does not obligate the appellate authority to give any reasons for its order. Assuming, that by necessary implication this Regulation also requires the appellate authority to give the reasons, still its order cannot be invalidated, as we find that it has discharged its obligation by considering the records and proceedings pertaining to the disciplinary action and the submissions made by Grover. In other words, the order clearly demonstrates that the appellate authority had applied its mind not only to the proceedings of the enquiry, but also the grounds raised by Grover in his appeal and on such application found that there was no substance in the appeal”.

68. Regarding the second writ petition vide CWJC no. 4749 of 2011 which has been preferred challenging the recall of the order dated 10.07.2006 by which Super Time Scale granted to him is concerned, in view of the fact that the petitioner was found guilty of charges and a punishment order was passed, he cannot claim grant of Super Time Scale to him. Further, as rightly pointed out by Mr. Piyush Lall, after his writ petition



(CWJC No. 13586 of 2006) was allowed by the Patna High Court, the same was challenged by the High Court on its administrative side vide SLP (C) No. 23747 of 2008 which was heard along with SLP (C) 22890/2008 and the Hon'ble Supreme Court was pleased to allow both the petitions thus putting a stamp on the said recall order. Further, for grant of said scale, an employee must have an unblemished record and in absence of that, once the charges have been proved against him and he has been punished with withholding of five percent pension, the petitioner is not entitled for Super Time Scale.

69. We must record the case cited by the High Court in the case of **Union of India & Ors. Vs. K.V. Jankiraman & Ors reported in (1991) 4 SCC 109** and paragraph-29 read as follows:-

“29. According to us, the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from



the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that



account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion. For these reasons, we are of the view that the Tribunal is not right in striking down the said portion of the second sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum. We, therefore, set aside the said findings of the Tribunal”.

70. Taking into account the overall facts coming out, this Court holds that the departmental proceeding/punishment order does not suffer from any illegality/irregularity. Further,



since the petitioner was held guilty of the charges, he is not entitled for Super Time Scale recalled earlier either.

71. However, having affirmed the decisions so taken, we are of the considered view that the order so passed for the deduction of five percent pension forever can be given a second look by the respondent no. 2.

72. We accordingly orders that the petitioner may represent before the respondent no. 2 within four weeks from today which will be considered and an appropriate order be passed at the earliest.

74. With the aforesaid observation, while the CWJC No. 4937 of 2011 stands disposed of, the CWJC No. 4749 of 2011 is dismissed

(K. Vinod Chandran, CJ)

Jagdish/Neha-

(Rajiv Roy, J)

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