

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 16699 of 2007

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Pramod Kumar Sharma S/o Late Nemdhari Singh, Resident of Village - Anjunar, P.O. - Chandreep via - Pakaribarama Dhamaul District - Nawada at present posted as Anusewak at Karai Block District - Nalanda.

..... Petitioner

Versus

1. The State of Bihar
2. The Commissioner, Patna Division, Patna.
3. The District Magistrate, Nalanda at Biharsharif.
4. The Deputy Development Commissioner, Nalanda at Biharsharif.
5. The Deputy Collector (Nazarat), Nalanda Collectorate, Nalanda at Biharsharif.
6. The Sub-Divisional Officer, Hilsa Sub-Division, Hilsa (Nalanda)
7. The Block Development Officer, Block - Karai, District - Nalanda at Biharsharif.

..... Respondents

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Appearance :

For the Petitioner : Mr. Arun Kumar, Advocate

For the State : Mr. Kamlesh Kishore, AC to GP-2

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 21-04-2015

Heard Sri Arun Kumar, learned counsel for the petitioner and Sri Kamlesh Kishore, learned A.C. to Govt. Pleader - 2.

The petitioner, a Class-IV employee, has approached this Court invoking its writ jurisdiction under Article 226 of the Constitution of India, initially with a prayer to quash an order contained in Memo No. 96 dated 02-07-1999 issued from the office of the District Magistrate, Nalanda at Biharsharif/respondent no. 3, whereby

the petitioner was imposed following punishments in a departmental enquiry i.e.

1. withholding of one increment with cumulative effect,
2. recording of warning in the A.C.R., &
3. the petitioner will not be entitled to get any pay, save & except subsistence allowance during the period of suspension.

However, since during the pendency of the writ petition, the appeal preferred by the petitioner was partly allowed by the Divisional Commissioner, Patna in Service Appeal No. 117 of 1999, the petitioner filed an interlocutory application, vide I.A. No. 2968 of 2013 assailing the order of the appellate authority. The said interlocutory application, as per order dated 26-06-2013, was directed to be treated as part of the writ petition. The appellate authority modified the order of punishment in respect of punishment no. 1 and instead of withholding of increment for one year with cumulative effect, it was modified as non-cumulative effect. However, other punishments were directed to remain as it is.

Short fact of the case is that by order dated 24-06-1998, the petitioner, who was



functioning as Night Guard, was put under-suspension on certain allegations and subsequently, memo of charge was issued appointing a conducting officer namely Sri Bishwa Mohan Singh, Executive Magistrate, Hilsa. It is the case of the petitioner that after receipt of the memo of charge, the petitioner filed detailed reply, however; the conducting officer, without affording proper opportunity to cross-examine the witness, submitted its report and thereafter, the disciplinary authority, without providing enquiry report and also without asking to file him second show cause, had passed the impugned order of punishment i.e. contained in **Annexure '4'** to the writ petition.

It was submitted by learned counsel for the petitioner that though he had filed appeal against the order of the disciplinary authority, but since no decision was taken earlier, the petitioner approached this Court by filing the present writ petition. However, during the pendency of the writ petition, the appellate authority had passed order, which has also been challenged in the present writ petition by way of

filing interlocutory application.

Learned counsel for the petitioner has assailed the order of punishment on three counts. It was firstly argued that in absence of supply of enquiry report, whole proceeding had vitiated. In support of his submission on the point of non-supply of enquiry report, he has placed heavy reliance on **AIR 1991 SUPREME COURT 471 (Union of India & Ors. -Vs.- Mohd. Ramzan Khan)**. He has also relied on a Division Bench judgment of this Court reported in **2006 (4) PLJR 514 (Dinesh Prasad Vs. State of Bihar & Ors.)** and **1988 P.L.J.R. 82 (D.B.) (Mahabir Prasad Vs. State of Bihar)**. He submits that in a case of non-supply of enquiry report, order of disciplinary authority is liable to be set aside. While assailing the impugned order, he has further argued that though in the departmental proceeding, the disciplinary authority had appointed a conducting officer, but in the departmental proceeding, no presenting officer or assisting officers were appointed by the disciplinary authority. He submits that in such situation, it will be deemed that the conducting officer has acted as a 'prosecutor'



also. On this very point, he has placed reliance on **2008 (2) P.L.J.R. 581 (Narayan Prasad Sah Vs. The Union of India & Ors)**. The third ground for assailing the order of the punishment, particularly; order in respect of forfeiture of salary during the suspension period, he has firstly referred to Rule 97(3) of the Bihar Service Code and submits that before imposing punishment of forfeiture of salary during the suspension period, no proper notice was issued by the disciplinary authority and as such, this punishment i.e. punishment of forfeiture of salary was in contravention of the statutory provision as well as law settled by this Court. On this very point, he has placed reliance on **Dinesh Prasad's case (supra)** as well as **Mahabir Prasad's case (supra)**. On aforesaid grounds, it has been prayed for quashing of both orders i.e. order passed by the disciplinary authority as well as order of the appellate authority.

Learned State counsel has opposed the prayer of the petitioner.

In this case, a counter affidavit has also been filed by the State. However, in the



counter affidavit, there is no denial on the point of non-supply of enquiry report. In paragraph - 14 of the writ petition, there is specific averment that the punishment order was passed without serving copy of the enquiry report. This statement has not been specifically denied by the respondent/State in its counter affidavit nor there is any denial on the point of appointing presenting officer as well as issuance of notice in view of Rule 97(3) of the Bihar Service Code.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. So far as non-supply of enquiry report is concerned, time without number, it has been held that in such situation, the departmental proceeding vitiates and order of punishment is liable to be set aside. Right from the case of **Ramzan Khan (supra)** repeatedly it has been reiterated that non-supply of enquiry report vitiates the departmental proceeding. In the present case, since there is no denial regarding non-supply of enquiry report, there is no option but to set aside the order of the disciplinary authority as well as the order of the appellate

authority. Similarly, in respect of forfeiture of the salary during the suspension period in paragraph - 9 of **Dinesh Prasad's case (supra)**, the Division Bench of this Court has already held that in such situation the order is required to be set aside. At this juncture, it would be appropriate to quote paragraph - 9 of the judgment of this Court in **Dinesh Prasad's case (supra)**, which is quoted here-in-below:-

"9. Apart from these questions, so far the main question for which this matter has been referred, is concerned, it appears that for imposing the punishment no. (iii) that the petitioner shall not get anything for the period of suspension save and except the subsistence allowance, the disciplinary authority was required to give separate show cause notice to the delinquent in terms of Rule 97(3) of the Code. This part of the order, therefore, is not permissible in absence of any such notice to the delinquent employee."

Similarly, in a departmental proceeding, it is mandatorily required that there must be a presenting officer otherwise it will be deemed that the conducting officer had acted as a Prosecutor as well as as Judge of his own cause, which is not permissible in the eye of law. This proposition is fortified with the judgment of this Court reported in **2008 (2) P.L.J.R. 581 (Narayan**

Prasad Sah Vs. The Union of India & Ors).

In view of the facts & circumstances as well as non-denial by the respondent in respect of (i) non-supply of enquiry report, (ii) non-supply of any notice in view of Rule 97(3) of the Bihar Service Code as well as (iii) non-appointment of the presenting officer, there is no reason to allow either of the orders to continue.

Accordingly, both the orders i.e. order contained in **Annexure '4'** i.e. Memo No. 96 dated 2-7-1999 as well as order contained in **Annexure '5'** i.e. order dated 27-09-2011 passed in Service Appeal No. 117 of 1999 by the Divisional Commissioner, Patna are, hereby, set aside.

The writ petition stands allowed with a direction to grant all the consequential benefits to the petitioner, preferably; within a period of three months from the date of receipt/production of a copy of this order.

(Rakesh Kumar, J.)

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