

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.337 of 2015

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Tulsi Ram, son of late Singhashan Ram, Resident of Mohalla- Gudri Bazar, Chapra,
P.S.-Bhagwan Bazar, District-Saran at Chapra

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Government of Bihar, Patna
2. The Divisional Commissioner Saran at Chapra
3. The District Magistrate Saran at Chapra
4. The Sub-Divisional Officer Saran at Chapra

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Verma, Adv.

For the Respondent/s : Mr. P.N.Shahi, AAG 10

Mr. Dharendra Kumar A.C. to AAG 6

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 22-11-2016

Heard Mr. Sanjay Kumar Verma, learned counsel for the
petitioner and Mr. Dharendra Kumar, A.C. to AAG 6 for the State.

The petitioner filed this writ petition questioning the order No.
253 dated 10.9.2014 whereby the District Magistrate, Saran at Chapra
as the Disciplinary Authority, has passed order dismissing the
petitioner from service and also issued orders for recovery of amount
stated to be outstanding against the petitioner. This Court even while
taking note of the appellate remedy so available to the petitioner under
the Bihar Government Servant (Classification, Control and Appeal)
Rules, 2005 was persuaded to consider the matter taking note of the
two issues raised by Mr. Verma which stands noted in the order of
this Court passed on 27.9.2016 and which are:



“(a) The earlier disciplinary initiated vide Annexure-1 was quashed under the orders of this Court passed in CWJC No. 8209 of 2005 placed at Annexure-2 with a liberty to the respondents to proceed afresh. A charge memo was served vide Annexure-3 in reference to the charge Memo at Annexure-1 and whereunder Shri Madan Ji Pandey, the District Panchayat Raj Officer, Saran at Chapra was appointed as the Conducing Officer. By passage of time the Enquiry Officer was changed and Mr. Anil Kumar, Director, District Rural Development Agency, Saran at Chapra was made the Enquiry Officer. As the matter progressed a supplementary charge sheet was served vide Annexure-3, the Enquiry Officer was again changed and one Ajay Kumar Pandey, the District Transport Officer, Saran was appointed as Enquiry Officer vide letter no. 335 dated 12.3.2011 as mentioned in para-17 of the counter affidavit of the State. The petitioner objected to such appointment by filing a representation on 06.8.2012 before the disciplinary authority cum District Magistrate, Saran at Chapra praying for a change in the Enquiry Officer. The reason assigned is that the petitioner had instituted a criminal case against the Enquiry Officer and thus he apprehended a bias. According to the petitioner this objection went unnoticed and the Enquiry Officer submitted his report and which though was not to the satisfaction of the disciplinary authority and was remitted for fresh enquiry, a second report was submitted charging the petitioner of non-cooperation and which was correct because the petitioner could not have participated in the proceedings after having objected to the appointment of the Enquiry Officer. (b) The second aspect of the matter argued by Mr. Verma at this stage is that although the supplementary charge sheet placed at Annexure-6 referred to certain audit reports but some of the audit reports were not given. However, there is nothing on record to show whether any such demand was not made.”

Since the two issues raised by Mr. Verma on behalf of the petitioner went to the root of the matter that this Court required

learned State counsel to respond to the specific issues for if these issues remained unanswered then the matter would call for a remand.

It is pursuant to the order of this Court passed on 27.9.2016 that a supplementary counter affidavit has been filed enclosing two orders and while learned State counsel with reference to an order dated 31.8.2012 enclosed at Annexure-Q to the supplementary counter affidavit, has submitted that the objection of the petitioner as against the Enquiry Officer had already been disposed of and communicated, in so far as the issue of non-supply of the relevant audit report which was the foundation for the disciplinary proceedings, is concerned, even the said reports were handed over to the petitioner as evidenced from Annexure-R to the said counter affidavit. With reference to the documents referred to above, it is submitted by Mr. Dhirendra Kumar that whatever were the objections on the procedural aspect of the matter, stands answered by the documents present at Annexures-Q and R.

Although Mr. Sanjay Kumar Verma learned counsel for the petitioner endeavours to raise objections as regarding the communication of the order present at Annexure-Q as well as regarding the documents that were supplied through Annexure-R but in my opinion these are issues which needs to be established with supported evidence and for which the forum is otherwise and not a

writ remedy.

Considering the objection raised by learned State counsel and the appellate remedy available to the petitioner, for the present, no cause for indulgence is made out. The writ petition is disposed of and since the period of appeal has since expired during the pendency of the proceeding, it goes without saying that should the petitioner file any appeal within 30 days from today along with a petition for condonation of delay, the appellate authority shall proceed to consider and dispose of the same in accordance with law with opportunity of hearing to the petitioner and considering that the petitioner stands dismissed from service, an expeditious disposal preferably within 6 months of the filing would serve the purpose.

(Jyoti Saran, J)

Bibhash/-

AFR	
CAV DATE	
Uploading Date	1.12.16
Transmission Date	