

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.746 of 2014

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Niranjan Paswan, son of Late Khiro Paswan, resident of Village and Mohalla-Chitragupt Nagar, Pokharia Begusarai, Police Station- Begusarai Town, District-Begusarai, at present posted at Panchayat Secretatry at Bakhari within the Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Divisional Commissioner, Munger
3. The District Magistrate, Begusarai
4. The Deputy Development Commissioner, Begusarai.
5. The District Panchayat Officer, Begusarai.
6. The Block Development Officer, Balia, District- Begusarai.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Kumar Roy, Advocate
Ms. Nikki Singh, Advocate
Mr. Sumit Kumar, Advocate

For the Respondent/s : Mr. Alok Ranjan, AC to GA-6

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 27-07-2016

Heard Mr. Jitendra Kumar Roy, learned counsel appearing for the petitioner and Mr. Alok Ranjan, learned Assisting Counsel to Government Advocate No.6 for the State.

With the consent of the parties this writ petition has been heard and is being disposed of at the stage of admission itself.

The petitioner is aggrieved by the order dated 11.5.2013 of the Commissioner, Munger Division, Munger passed in Service Appeal No.52 of 2012, whereby the Commissioner while dismissing the appeal, has upheld the order passed by the District Magistrate, Begusarai as the disciplinary authority bearing Memo



No.1263 dated 16.8.2012, whereby a major penalty of stoppage of four increments with cumulative effect was imposed on the petitioner. Copies of the orders impugned are annexed at Annexures-1 and 1/A respectively to the writ petition.

Facts of the case briefly stated is that the petitioner while holding the post of Panchayat Secretary under Parmanandpur Gram Panchayat in the district of Begusarai, was served a charge memo on 10.5.2008, a copy of which is placed at Annexure- 2/A to the writ petition. The petitioner was charged on two counts relatable to disobedience of the order of the Block Development Officer and which had six sub-heads. The second charge framed was regarding submission of incorrect and misleading report in the weekly meetings. The District Magistrate, Begusarai vide order bearing Memo no.455 dated 10.5.1998 appointed an enquiry officer requiring a report within 60 days, a copy of which is placed at Annexure-2. The petitioner filed his reply to the charges vide Annexure-3 and the explanation was also endorsed to the Presenting Officer who happens to be the Block Development Officer himself. A copy of the opinion of the Presenting Officer contained in a letter dated 5.4.2010 is annexed at Annexure-4.

In view of the explanation given by the petitioner as also endorsed by the Presenting Officer himself the enquiry officer



submitted his report vide Annexure-5. The District Magistrate not being satisfied by the development changed the enquiry officer and appointed the District Panchayat Raj Officer as the Enquiry Officer to enquire into the allegations, inter alia, on grounds that the report was found wanting on certain aspects. A copy of such order dated 16.6.2011 is annexed as Annexure-6. Although prima-facie this action of the District Magistrate is itself contrary to the provisions underlying rule 18(1) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the Rules') which merely permits a further enquiry in such eventuality and even if there may be valid reasons for a change of enquiry officer but those are not present in the order of the District Magistrate rather the order is reflective of the opinion of the District Magistrate in respect of report. Consequent upon such change of enquiry officer the petitioner submitted his second reply present at Annexure-7/A and the second enquiry report present at Annexure-8 while exonerating the petitioner of the other charges, has upheld the allegation present at Charge no.1(क), 1(ड.) and 2. The District Magistrate, Begusarai vide Memo dated 24.1.2012 present at Annexure-9 issued second show cause, duly replied by the petitioner present at Annexure-10 and by the impugned order dated 16.8.2012 present at Annexure-1 the petitioner has been visited



with the major penalty of stoppage of four increments with cumulative effect and which order of the disciplinary authority has been upheld by the Divisional Commissioner, Munger vide order dated 11.5.2013 impugned at Annexure-1/A. The petitioner being aggrieved is before this Court.

I have heard learned counsel for the parties and I have perused the records and having heard learned counsel for the parties I am of the opinion that the writ petition is fit to be allowed for more than one count, namely:

- (a) The grounds mentioned in the order dated 16.6.2011 of the District Magistrate, Begusarai impugned at Annexure-6 to change the enquiry officer because the enquiry report submitted by the Enquiry Officer was found wanting, is no ground for change of an enquiry officer;
- (b) Even if, according to the District Magistrate, the enquiry report submitted by the enquiry officer was found wanting on certain aspects he could have directed for further enquiry in terms of the provisions underlying rule 18(1) of 'the Rules' but he cannot order for a re-enquiry;
- (c) In the first round enquiry the show cause to the charges filed by the petitioner to the charges was also endorsed by the presenting officer as manifest from Annexures 4 and



which was accepted by the Enquiry Officer vide Annexure-5 and even in the second round the situation does not have any major change except that the second enquiry officer, i.e. the District Panchayat Raj Officer has chosen to uphold charge no.1(क), 1(ड.) and 2 of which charge nos.1(क) and 2 are inter related and relate to appointment of Panchayat Shiksha Mitra. The Enquiry Officer while upholding charge no.1 (क) and 2 held that the petitioner had prepared proposal for such appointment but he did not act on the same rather the appointment orders were issued by his successor Panchayat Secretary. Since the petitioner had merely prepared the proposal yet for a fault committed by the successor in office of the Panchayat Secretary and even when the petitioner did not act on his proposal rather had withheld the same upon receiving guidelines of the superior as also noted in the opinion of the presenting officer present at Annexure 4, yet the Enquiry Officer has upheld the charge. Reasons assigned are perverse inasmuch as for a fault whatsoever, committed by the successor in office, the petitioner has been held guilty.



In so far as charge no. 1(३.) is concerned all that it imputes is that the petitioner did not prepare report for the weekly meeting held in November, 2007. Such charge even if be an irregularity, certainly would not constitute a misconduct warranting a punishment of major character. Not every irregularity is to be construed a misconduct until such time that it held to be an act of deliberate disobedience or has serious repercussions, administrative or fiscal.

- (d) The illegality is perpetuated in the order of the District Magistrate who does not assign any reason nor has given a conclusive opinion whether the act complained of against the petitioner would constitute a misconduct rather in a mechanical manner and on consideration of the enquiry report, he has proceeded to pass the punishment order which order suffers from complete non-application of mind and is without any reason;
- (e) The appellate order is even worse in disposing the appeal on mechanical endorsement of the order of the Disciplinary Authority.

The records confirm that the proceedings has been conducted at the dictates and pleasure of the District Magistrate,

Begusarai which is de hors ‘the Rules’. Even on merits, while the conclusion on charge 1(क) and 2 which relate to appointment of Panchayat Shiksha Mitra, is perverse in view of the explanation given by the petitioner and the report of the presenting officer, the charge present at item no.1 (ख.), in my opinion may be a case of a lapse but would not constitute a misconduct warranting a punishment.

In result the orders impugned at Annexure-1 and 1/A cannot be upheld and are accordingly set aside.

The writ petition is allowed. The consequences would follow.

Let the records so produced by Mr. Ranjan, learned Assisting Counsel to Government Advocate No.6 be returned to him.

(Jyoti Saran, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.08.2016
Transmission Date	NA