

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14005 of 2013

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Anup Kumar Sharma Son Of Late Lajdhari Sharma Resident Of Village -
Kiwai Basati Gosai Tola, Police Station Lakhisarai, District - Lakhisarai

.... Petitioner

Versus

1. The State Of Bihar

2. The Divisional Commissioner, Munger

3. The Collector, Lakhisarai

.... Respondents

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Appearance :

For the Petitioner

: Mrs. Mahasweta Chatterjee, Advocate

Mr. Samir Kumar Sinha, Advocate and

Mr. Ram Nibas Prasad, Advocate

For the Respondents

: Mr. Lalan Kumar, Advocate, AC to GP 23

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL ORDER

4 11-02-2016

The petitioner seeks quashing of order contained in

Memo no.533 dated 14.7.2012, passed by the Collector, Lakhisarai (Annexure 9), by which he has been dismissed from service. He also seeks quashing of order dated 1.6.2013, passed in Service Appeal No. 58 of 2012, by which the Divisional Commissioner, Munger has dismissed his appeal and affirmed order dated 14.7.2012.

2. The petitioner was appointed as Lower Division Clerk (LDC) in the Collectorate, Munger in 1982. In the year 1997, he was transferred to Piparia block from Barahia as Nazir from where he was deputed to Social Security Cell, District Headquarters in the same capacity. He was departmentally proceeded for five charges. One of the charges was that he did not account for a sum of Rs.9 lacs at the time of handing over charge. The Enquiry officer on conclusion of enquiry submitted

his report on 30.9.2011(Annexure 5) holding him guilty of charges. He was awarded punishment of dismissal from service after providing an opportunity to make his submission against adverse findings recorded in Enquiry report.

3. The petitioner submits that there was no enquiry in the eye of law. In spite of repeated requests, he was not provided necessary documents. No witness was examined in support of the charges nor any document exhibited. The 2nd show cause served under Rule 19 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, contained in Annexure 7, was meant for imposing minor punishment.

4. Mr. Lalit Kumar, learned counsel appearing for the State submits that the proceedings were held on several dates including 8.9.2010, 22.9.2010, 10.11.2010, 9.12.2010, 6.1.2011, 28.1.2011, 15.3.2011, 27.5.2011, 24.6.2011, 5.8.2011 and 17.8.2011, apart from some other dates. The petitioner chose not to appear on those dates, save and except, sending petitions demanding documents. He next submits that the plea of the petitioner that documents were not supplied, is too without any foundation as he was provided opportunities to peruse the documents on 8.4.2011, 28.4.2011, 8.7.2011 and 22.7.2011. He next submits that by inadvertence while issuing the show cause notice, it was mentioned that the same is being issued under

Rule 19(1) of the Bihar CCA Rules, 2005, which is meant for imposing minor punishment, but the tenor of the notice would amply show that in fact 2nd show cause was with respect to imposing of major punishment.

5. In my view, the writ petition can be disposed of on the limited issue as to whether the show cause notice was in accordance with law. Though mentioning of wrong provision could be a bona fide error, but in order to ensure fairness in the proceeding the disciplinary authority should issue fresh notice in accordance with law and proceed in the matter from that stage. Once second show cause notice is issued, the petitioner would file his reply within a period of six weeks. The disciplinary authority would then proceed to decide the matter in accordance with law.

6. This Court has not expressed its view on the merits of the case.

(Samarendra Pratap Singh, J)

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