

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5502 of 2014

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1. Ram Vilash Rajak, Son Of Late Ramdeo Rajak, Resident Of Village- Abgil,
P.O.- Paharpur, P.S.- Medani Choki, District- Lakhisarai

.... Petitioner/s

Versus

1. The State Of Bihar, Through The Principal Secretary, Panchayati Raj
Department Of Bihar, Patna
2. The Joint Director Cum-Joint Secretary, Panchayati Raj Department Of Bihar,
Patna
3. The Divisional Commissioner, Munger Division, Munger
4. The Collector Cum District Magistrate, Munger At Munger
5. The District Panchayati Raj Officer, Munger At Munger
6. The Sub-Divisional Officer, Sadar, Munger At Munger
7. The Block Development Officer, Kharagpur, Munger

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Ashok Kumar Choudhary, Advocate.
Mr. Uday Pratap Singh, Advocate.
Mr. Raj Kumar Choudhary, Advocate.
For the Respondents : Mr. Gyan Shankar, AC to GP 2.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 08-09-2017

Heard both sides.

2. The petitioner filed this writ petition for quashing the order dated 04.05.2013 passed by the Divisional Commissioner, Munger in Service Appeal Case No. 35 of 2012 (Annexure-12) whereby the Commissioner affirmed the order dated 18.02.2012 contained in Memo No. 88 passed by the Collector-cum-District Magistrate, Munger (Annexure-10) by which the petitioner has been reverted to his initial basic pay.

3. The brief fact is that while the petitioner was posted as



Panchayat Sachiv in Baak Panchayat, the petitioner was suspended on 19.03.2007 and the departmental proceeding was initiated on the charges that the petitioner made appointment of Panchayat Teachers violating the rules of reservation and the person who got lower marks was also appointed on the post of Panchayat Teachers.

4. The petitioner submitted his reply to the charges levelled against him on 29.05.2007 stating that he was the Secretary of the Gram Panchayat and he did not play any role in appointment of teachers in Gram Panchayat, Baak. During course of enquiry the petitioner appeared before the enquiry officer on 14.07.2007. The enquiry officer submitted his report on 15.09.2007. The disciplinary authority sat over the matter for about five years and asked show cause from the petitioner only on 06.12.2011. The petitioner filed his second show cause which is annexed as Annexure-K to the counter affidavit. The petitioner was reverted to the initial pay scale. The petitioner preferred appeal and the Commissioner, Munger vide order dated 04.05.2013 (Annexure-12) dismissed the appeal of the petitioner without taking into consideration the grounds of the petitioner.

5. Shri Ashok Kumar Choudhary, learned counsel for the petitioner has assailed the order of the Collector, Munger as well as the Commissioner, Munger and submitted that no enquiry as



envisaged under sub-rule 14 of Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the 'CCA Rules 2005') was held. Of course, the enquiry officer asked the petitioner to appear on 14.07.2007 but, no date was fixed for adducing evidence. Sub-rule 14 says that the enquiry officer after serving all the documents with the articles of charge and getting the reply of the proceedee shall fix the date for enquiry and on the date fixed the enquiry officer shall ask the presenting officer to adduce oral as well as documentary evidence. The proceedee shall be allowed to cross examine the witnesses. Thereafter, the enquiry officer shall allow the proceedee/government servant to examine and produce his witness in defence of his case but, no proceeding as envisaged under sub-rule 14 of Rule 17 of the CCA Rules 2005 was held and the enquiry officer after perusing the documents submitted his report. The petitioner in his show cause Annexure-K has specifically stated in paragraph 3 and 5 that no enquiry was held nor any date was fixed to adduce evidence. No document was served upon the petitioner on which the presenting officer proposes to prove the charge but, the District Magistrate, Munger without looking into the show cause of the petitioner, inflicted major punishment placing the petitioner at the bottom of scale. The appellate authority also summarily dismissed the appeal and the order does not show that the



appellate authority considered the grounds taken by the petitioner and appraised the order of punishment by independent mind. Therefore, both the orders are bad and not sustainable.

6. On the contrary, learned counsel for the State submitted that the petitioner also appeared on 14.09.2007 and stated that he submitted his reply with his evidence and prayed for exemption from the charges. This fact has also been stated in paragraph-12 of the writ petition. The petitioner has not been able to show any prejudice caused to him. Therefore, the order does not require any interference as there is no procedural illegality.

7. Having heard the submissions and on perusal of records, I find that the only question arises as to whether the departmental proceeding was held in accordance with Rule 17 of the CCA Rules 2005. In order to appreciate the submissions of the parties, I firstly reproduce sub-rule 14 of Rule 17 of the CCA Rules, 2005:

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government Servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses, as it thinks fit."

From perusal of the provisions as contained in sub-rule



14 of the Rule 17 of the CCA Rules, 2005, it would appear that after following the formalities in sub-rule 1 to sub-rule 13 of Rule 17 of the CCA Rules, 2005, the enquiry officer is duty bound to fix the date of enquiry and asked the presenting officer and the proceedee to appear. The enquiry officer shall direct the presenting officer to produce the evidence oral and documentary by which the articles of charge are proposed to be proved. After examination of the witnesses on behalf of the presenting officer, the proceedee gets his turn to put forth his defence and produce evidence in support thereof. It appears that during course of enquiry and thereafter it shall be deemed that no evidence was brought on record. On perusal of mere show cause of the delinquent and the papers attached with the articles of charge, the enquiry officer submitted the report and therefore the enquiry report shall be deemed to be based on no evidence. When the petitioner was called upon to give his second show cause, the petitioner has very categorically stated in paragraph 3 and 5 of his show cause (Annexure-K) that the enquiry officer did not draw any order sheet nor examined any witness. The presenting officer did not produce any evidence nor any document was marked as exhibits. The petitioner further states that there is absolutely no evidence to show that the charges are proved against the petitioner. The petitioner further states that no memo of evidence was prepared nor the statement of any



witness was recorded. The petitioner, besides the facts, also stated that according to the rules for appointment of Panchayat Teachers the petitioner is not the appointing authority and he did not violate any provision or Rule of Appointment of Panchayat Teachers but the disciplinary authority vide order as contained in Annexure-10 inflicted the punishment reverting the petitioner to the lowest level of the pay scale of the cadre and the appellate authority also dismissed the appeal without assigning any reasons.

8. The learned counsel for the State has tried his best to persuade that enquiry does not suffer from any procedural illegality and irregularity. The appellate authority is also not bound to give reasons while disposing of the appeal if the appellate authority agrees with the finding of the disciplinary authority.

9. I do not find any force in the submissions of learned counsel for the State that the appellate authority is not bound to give reasons, if the appellate authority concurred with the view of the disciplinary authority, simply on the ground that the appellate authority also exercises a quasi judicial function and the order itself should have reflected that the appellate authority with independent mind has considered the grounds taken by the petitioner. Since the order of punishment and the appellate order are based on such enquiry report wherein the enquiry authority did not hold enquiry in



accordance with the provisions prescribed under Rule 17 of the CCA Rules, 2005 and, in fact, the enquiry report is based on no evidence, I find that both the orders of the disciplinary authority as well as the appellate authority are not sustainable.

10. Thus, the writ petition is allowed and the order dated 04.05.2013 passed in Service Appeal Case No. 35 of 2012 (Annexure-12) and the order dated 18.02.2012 contained in Memo No. 88 (Annexure-10) are set aside. The matter is remitted to the disciplinary authority to proceed further in accordance with law.

(Prabhat Kumar Jha, J)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.09.2017
Transmission Date	NA

