

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7960 of 2014

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1. Ram Nath Upadhyay Son of Late Bachu Upadhyay resident of village- Karaundi, P.O.- Saraon via Natwar, P.S. Natwar, District- Rohtas; at present residing at Mohalla- Anand Nagar, Ward no. 5, West to Mahabir Mandir, Bikramganj, P.O. + P.S.- Bikramganj, District- Rohtas

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna
2. The District Magistrate, Rohtas at Sasaram
3. The Additional Collector, Departmental Enquiry, Rohtas at Sasaram
4. The Circle officer, Kochas, District- Rohtas
5. The Circle officer, Sanjhauli, District Rohtas
6. The Accountant General, Bihar

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Bibhakar Tiwary, Advocate.
For the Respondents : Mr. Indradeo Prasad, SC 27.
For the AG : Mr. Prabhat Ranjan, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 24-08-2017

Heard both sides.

2. The petitioner filed this writ petition against the order dated 28.03.2014 as contained in Memo No. 12 (Annexure-15) by the District Magistrate, Rohtas, Sasaram by which the District Magistrate, Rohtas, Sasaram withheld the entire pension and gratuity of the petitioner.

3. Learned counsel for the petitioner assailed the order



on the ground that no departmental proceeding was held in accordance with law. The Additional Collector, Rohtas, Sasaram was appointed enquiry officer and the Circle Officer, Rohtas, Sasaram the presenting officer. In pursuance of the show cause notice given to the petitioner, the petitioner filed his reply before the enquiry officer. It is further submitted that during the course of enquiry, the presenting officer did not produce any oral or documentary evidence in order to prove the articles of charge and the enquiry officer did not allow the petitioner to examine any witness or produce any documents.

Learned counsel for the petitioner further submits that on 05.05.2009, some officials of the vigilance department apprehended the petitioner from the office of the Circle Officer, Kochas. The Circle Officer, Kochas wrote a letter to the District Magistrate, Rohtas, Sasaram on 05.05.2009 disclosing the facts that without any rhyme or reason some officers of the vigilance department forcibly took away Ram Nath Upadhyaya, Revenue Clerk from the office after assaulting and dragging. The Collector, Rohtas, Sasaram also sent letter to the I.G., Vigilance Department vide Letter No. 262 dated 23.05.2009 (Annexure-5). The Collector, Rohtas, Sasaram disclosed that Mahendra Singh is alleged to have made complaint before the vigilance department that Ram Nath Upadhyaya demanded bribe for mutation but no petition of Mahendra Singh for mutation was



pending. It is further submitted that from perusal of the supplementary charge, it would appear that Mahendra Singh filed petition for mutation on 19.11.2009, but the petitioner was apprehended by the vigilance department on 05.05.2009, itself. Admittedly, there was no petition of Mahendra Singh for his mutation with regard to any piece of land pending before the petitioner on the date of his arrest by vigilance.

It is further submitted that besides this the departmental proceeding was initiated on 31.12.2013 whereas the petitioner retired on 30.04.2013. The date of occurrence is 05.05.2009, and the departmental proceeding was initiated after four years from the date of knowledge and after retirement of the petitioner. Besides this, in fact, no departmental enquiry was held. The petitioner has made specific averment with regard to the facts that no evidence was adduced during departmental enquiry on behalf of presenting officer in paragraph-29 of the writ petition. The petitioner also stated that no copy of the enquiry report was given to the petitioner enabling him to give show cause and this fact has also not been controverted by the respondents.

4. Learned counsel for the respondents submits that in paragraphs 13 and 14 of the counter affidavit the State gave reply to the statement made in paragraph 19 to 29 of the writ petition but on perusal of paragraph 13 and 14 of the counter affidavit, it appears that



the respondent did not controvert the statements of the petitioner with regard to non-examination of any witness during course of enquiry and non-service of enquiry report to the petitioner at the time of asking show cause. Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, (hereinafter referred to as the 'CCA Rules 2005') clearly details procedure for holding the departmental enquiry and upon submission of the enquiry report, the disciplinary authority is empowered to act under Rule 18 of the CCA Rules 2005.

5. From perusal of the order and the statements made by the petitioner, I find that, in fact, no enquiry was held in accordance with law. The presenting officer did not produce any oral and documentary evidence but the enquiry officer submitted the report. Even thereafter the disciplinary authority did not serve the enquiry report on the petitioner so that the petitioner may file his show cause. Therefore, I find that the order as contained in Annexure-15 is absolutely illegal and cannot be sustained. Thus, the order dated 28.03.2014 as contained in Memo No. 12 is set aside and accordingly the writ petition is allowed.

6. The matter is remitted to the disciplinary authority to hold departmental enquiry afresh in accordance with law and the procedure as laid down in the Bihar Government Servants



(Classification, Control & Appeal) Rules, 2005 and also give finding about the initiation of the proceeding after four years from the date of retirement of the petitioner. Since the petitioner has already retired, the departmental enquiry must be concluded within a period of four months from the date of receipt/production of a copy of this order.

(Prabhat Kumar Jha, J)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.09.2017
Transmission Date	NA

