

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 315 of 2016

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Devendra Kumar Savita Son of Late N.K.Thakur Resident of Mohalla - Nehru
Nagar, Quarter No. 54, Police Station - Patliputra, District - Patna.

.... Petitioner

Versus

1. The State of Bihar through Chief Secretary, Bihar, Patna.
2. The Principal Secretary Cum Departmental Enquiry Commissioner, Mines and Minerals, Govt. of Bihar, Patna.
3. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
4. The Additional Secretary, General Administration Department, Govt. of Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Kumar Manavendra, Adv.
Mr. Bindhyachal Singh, Adv.

For the Respondent/s : Mr. Ajay Kumar Rastogi, AAGX

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 31-01-2017

Heard Mr. Kumar Manavendra, who appears with Mr.
Bindhyachal Singh, learned counsel for the petitioner and Mr. Ajay
Kumar Rastogi, learned AAG-10, for the State.

With the consent of the parties the writ petition has been
heard with a view to finally disposal at the stage of admission.

The writ petition was filed questioning the enquiry report
dated 28.5.2015 submitted by the Additional Departmental Enquiry
Commissioner in Departmental Enquiry No. 47/2014, a copy of which
is placed at Annexure 7 to the writ petition. The writ petitioner had
alongside questioned the second show cause notice dated 16.6.2015,
impugned at Annexure 8. It is while the writ petition is pending



consideration that the order of penalty has been passed on 31.12.2015 and whereby the petitioner has been reverted from the post of Deputy Secretary at Pay Band-3, Grade Pay- Rs.6600/- to the basic grade of Bihar Administrative Service in Pay Band-3, Grade Pay- Rs.5400/-. A copy of the order of penalty passed by the State Government in its General Administration Department is impugned at Annexure 11 to the interlocutory application bearing I.A.No. 362/2016 and the prayer made by the petitioner to question the same in the present proceeding is allowed. The petitioner, thus, is permitted to question the penalty order in the present proceeding itself.

The facts of the case briefly stated culminating in the order of penalty is, that the petitioner having succeeded in the examination to the Bihar Administrative Service, was appointed in the year 1987 against the post of Deputy Collector. He was subsequently promoted as Sub-Divisional Officer on 18.12.2008 vide order present at Annexure 2. The name of the petitioner appears at serial no.7 of the list. In between a First Information Report was instituted against the petitioner on 25.11.2008, a copy of which is enclosed at Annexure 'C' to the supplementary counter affidavit. The charge against the petitioner is of executing substandard work under different Schemes. It is not in dispute that the investigation into the police case, which was instituted as back as in the year 2008, is still going on and no



charge sheet until date has been submitted. Four years thereafter on 30.12.2012 that a DPC was held and the petitioner on being found suitable for promotion, was accordingly granted promotion to the post of Addl. Collector on 25.3.2013. It is after the promotion of the petitioner to the post of Addl. Collector that a charge sheet was served upon him which lays the foundation for the proceedings under challenge and is dated 2.4.2014. A copy of the same is impugned at Annexure 5. The charge sheet while taking note of the police case instituted against the petitioner refers to the sanction order of the District Magistrate for his prosecution on 3.3.2011 and which sanction order granted by the District Magistrate was submitted before the Law Department vide Departmental Letter No. 13141 dated 8.8.2013 and 17142 dated 1.11.2013. The Law Department granted sanction on 20.2.2013 and returned the file. The charge memo casts allegation on the Dealing Assistant Vinay Kumar and the Section Officer Shatrughan Jha of interpolating the file by removing the sanction order. No role of the petitioner is discussed until such time. In fact the only allegation made against the petitioner in the entire charge sheet is that he is beneficiary of such interpolation. The charge refers to the opinion of the Law Department dated 20.2.2013 and the relevant file, as the evidence for the allegations. The enquiry report was submitted on 28.5.2015 vide Annexure 7 which upholds the charge. The second



show cause was served on the petitioner on 16.6.2015 vide Annexure 8. The petitioner filed his reply on 13.7.2015 and surprisingly even before the petitioner would reply to the second show cause that another notification was issued by the State Government in its General Administration Department on 15.6.2015 reverting the petitioner from the post of Addl. Collector to the post of Deputy Secretary vide notification bearing Memo No. 8589 dated 15.6.2015. There is no discussion in the order as to its foundation.

Reverting back to the issue at hand, the reply of the petitioner has not satisfied the disciplinary authority and which has resulted in the order of reversion of the petitioner from the post of Deputy Secretary to the basic grade vide notification bearing Memo No. 18007 dated 31.12.2015 impugned at Annexure 11 to the interlocutory application and the petitioner feeling aggrieved is before this Court.

Learned counsel for the petitioner has questioned the order of penalty on the following grounds:

- (a) The charge is vague;
- (b) There is no evidence against the petitioner of interpolation;
- (c) Neither any charge sheet in the criminal proceeding nor charge sheet in the departmental proceeding was served



on the petitioner when the case was being considered for promotion;

(d) The enquiry report is perverse and does not take into consideration the issues raised; and

(e) There is no foundation for the penalty.

The arguments of the learned counsel for the petitioner is contested by Mr. Rastogi, learned AAG-10, and realizing the position it has been argued by Mr. Rastogi that since the petitioner has been beneficiary of interpolation, his role cannot be ruled out. Mr. Rastogi, however, has not been able to satisfy this Court as to the evidence on record which would have substantiated the role of the petitioner in the alleged interpolation and whether even the presence of the sanction order, would have precluded the petitioner from being considered for promotion.

The law on the issue is well settled and until such time that the departmental proceeding or a judicial proceeding is initiated against the petitioner by framing of a charge sheet or service of charge memo, as the case may be, a mere allegation cannot act prejudice for consideration of his case for promotion. The matter is in even a worst position in the present contest. The police case having been instituted as back as in the year 2008, has not seen the light of the day and no charge sheet has yet been submitted. Meaning thereby the matter



remains pending at the investigation stage.

In so far as the departmental proceeding is concerned, it is not in dispute that the date on which DPC was held i.e. 30.12.2012, no disciplinary proceeding was initiated against the petitioner because the charge memo was served only on 2.4.2014.

The third aspect, which Mr. Manvendra, learned counsel for the petitioner, has argued and which forms the basis of challenge is, the vagueness of the charge sheet because the entire charge sheet even if taken on its face value, does not constitute a charge capable of being upheld.

In the circumstances noted above, in my opinion, even the presence of the sanction order in absence of the charge memo being served on the petitioner on the date when the DPC met for considering the case for promotion i.e. 30.12.2012, would have made no difference to the consideration.

On the other hand, the charge memo except questioning the conduct of the petitioner on grounds of being the beneficiary of the interpolation, admittedly is directed against the two other staff, namely, Vinay Kumar and Shatrughan Jha. There is no evidence to support the petitioner's involvement either in the alleged interpolation or with the two persons named in the charge memo. Whether on vagueness of the memo of charge or on lack of evidence to support,



the charge is incapable of being upheld. The enquiry report on such a vague charge sheet and its confirmation by the disciplinary authority is again a reflection of a mechanical application in a quasi judicial exercise.

Before I would record my final opinion on the issue I would also like to place on record another absurdity and that is that even though the petitioner has already been promoted to the post of Addl. Collector but the impugned order under challenge orders his reversion from the post of Deputy Secretary to the basic grade in the Bihar Administrative Service.

For the reasons discussed, the entire proceedings culminating in the order of penalty impugned at Annexure 11 bearing Memo No. 18007 dated 31.12.2015 passed by the Addl. Secretary to the State Govt. in the General Administration Department suffers from gross infirmity and incapable of being upheld is quashed and set aside. The writ petition is allowed with all consequential benefits.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.02.2017
Transmission Date	NA

