

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11617 of 2016

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1. Ambika Rajak Son of Late Munni Rajak, Resident of village - Brindaban, P.S. Sarmera, District - Nalanda

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna
2. The Director Panchayati Raj Department, Bihar, Patna
3. The Divisional Commissioner, Patna Division, Patna
4. The District Magistrate, Nalanda
5. The Additional Collector (Department Enquiries) Nalanda
6. The Senior Deputy Collector, Biharsharif, Nalanda
7. The Block Development officer, Sarmera, District - Nalanda

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Harshvardhan Shivsundram, Adv.
Mr. Anil Kumar Singh, Adv.
For the Respondent/s : Mr. Pushkar Narain Shahi, AAG 10

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-12-2017

Heard Mr. Harshvardhan Shivsundram, learned counsel for the petitioner and Mr. Manish Kumar, A.C. to AAG 6 for the State.

The petitioner is aggrieved by the order dated 26.04.2016 passed by the Divisional Commissioner, Patna in Service Appeal No. 492 of 2014 whereby while dismissing the appeal of the petitioner he has confirmed the order of punishment passed by the District Magistrate, Nalanda bearing Memo No.1658 dated 30.10.2013 whereunder the petitioner has been reverted to the lowest stage of pay scale in which he has been appointed which is in the nature of major penalty. Copies of the order of penalty passed by the District Magistrate, Nalanda and the appellate authority are impugned at



Annexures-9 and 10 respectively to the writ petition.

Facts of the case briefly stated is that the petitioner while holding the post of a Village Extension Worker was charged with acts of indiscipline, unauthorized absence etc. by the Block Development Officer, Sarmera, who communicated the same to the District Magistrate, Nalanda on 13.01.2010 vide letter at Annexure-1 and which resulted in the suspension of the petitioner vide order bearing Memo No.122 dated 22.01.2010 of the Additional Collector- cum-Senior Incharge Officer, District Establishment Branch, Nalanda at Annexure-2. The suspension order, however, was withdrawn within two months vide order bearing Memo No.383 dated 12.03.2010 at Annexure-3.

It is about a year thereafter that the petitioner was served with the charge memo in Form (क) at Annexure- 4 for acts of carelessness, indiscipline as charge no. 1 and for indiscipline as well as for financial irregularities as charge no.2. A copy of the charge memo is at Annexure-4. The petitioner responded to the charges by denying the same on grounds that the charges were not supported with evidence vide Annexure-5. The Enquiry report is at Annexure-6 upholding the charge. The petitioner was served with the second show cause vide Annexure-7 to which he replied vide Annexure-8 but has been visited with the order of penalty vide Annexure-9 as affirmed by the appellate



authority at Annexure-10 and feeling aggrieved the petitioner is before this court.

I have heard Mr. Harshvardhan Shivsundram learned counsel for the petitioner and Mr. Manish Kumar for the State and I have perused the records.

Though the charges at Annexure-4 do pin point towards the careless as well as alleged indisciplined conduct of the petitioner, which is accompanied with allegations of financial irregularities but a plain reading of the imputations accompanying the article of charge would confirm that the allegations are bald, sweeping and resting on no evidence. Though the petitioner is charged with carelessness while he was discharging duty of a Panchayat Secretary but the details thereof are missing. It also refers to certain irregularities allegedly committed, by not sending the details of crop cutting while holding charge of Statistical Supervisor but again the allegation does not accompany any details.

Another infirmity in the charges is that it refers to drawing of a memo dated 6.8.2010. Meaning thereby, a charge framed earlier, has been reiterated as a charge. This is not permissible in law. If any charge earlier framed, was not acted upon by the disciplinary authority, it cannot be a part of a subsequent proceeding.

Charge no.2 is very serious as it talks about indisciplined



conduct of the petitioner and also comments on his acts of financial irregularities but while the charge of indiscipline is not based on evidence, in so far as the allegation of financial irregularity is concerned, the petitioner has denied the same in his reply by making it specific that the charge complained of, in fact, was attributable to the Mukhiya. The stand taken by the petitioner stands confirmed by the Presenting Officer in his reply which is noted in the enquiry report at paragraph 13 which is the finding of the Enquiry Officer. The Presenting Officer has supported the petitioner in informing that the deduction of 100 rupees from the relief distributed, was done by the Mukhiya of the Gram Panchayat and since at the relevant time, the petitioner happened to be the Panchayat Secretary that he has also been roped in the criminal case, but the specific charge is against the Mukhiya. Despite the circumstances reflecting from the enquiry report supporting the petitioner on his denial to charges of financial irregularity and though the other charge was based on no evidence yet he was served with the second show cause vide Annexure-7 and faces reversion at the minimum of the pay scale.

No doubt the charges are serious but in absence of any evidence to support the seriousness on the alleged indisciplined conduct of the petitioner coupled with the fact that the charge of financial irregularity has been wrongly imputed on the petitioner without verification of the



records, I am of the opinion that the petitioner has been made victim of this circumstances.

For the reasons discussed, the order of punishment impugned at Annexures-9 and 10 cannot be upheld and are accordingly quashed and set aside. The pay scale of the writ petitioner is restored to its original status and let the arrears as found admissible to him be calculated for the period of reversion and be paid to him within a period of 3 months from the date of receipt/ production of a copy of this order.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.01.2018
Transmission Date	NA

