

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7452 of 2014

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1. Ravi Nandan Ram Son of Late Sitaram Paswan resident of village + P.S-
Pandauly, Police Station- Shakurabad in the district of Jehanabad

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayat Raj Department,
Government of Bihar, Patna.
2. The Principal Secretary, Panchayat Raj Department, Government of Bihar, Patna.
3. The District Magistrate- Cum- Collector, Jehanabad
4. The District Development Commissioner, Jehanabad.
5. The Block Development Officer, Jehanabad
6. The Block Development Officer, Makhdumpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar

For the Respondent/s : Mr. GA9- ANIL KUMAR SINHA

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 01-08-2017

Heard Mr. Sunil Kumar, learned counsel for the
petitioner and Mr. Pawan Kumar, learned AC to GA 1.

2. The petitioner filed this writ petition for quashing the
order as contained in Memo No. 13 dated 08.01.2014 (Annexure-1)
passed by the District Magistrate, Jehanabad by which the following
punishment was inflicted against the petitioner

*(a) To recover Rs. 65,000/- with interest of 12%
from 27.04.1998,*

(b) In future no promotion will be given

*(c) During suspension period except subsistence
allowance nothing will be paid and the B.D.O., Makhdumpur will
insure to mention the order of punishment in Service Book of the
petitioner.*



3. The brief facts which are relevant for the disposal of this writ petition are that the petitioner was posted as Panchayat Sevak in Gram Panchayat, Pinjaur falling under the block of Jehanabad, district Jehanabad. Jehanabad P.S. Case No. 128 of 1998 was registered under Sections 419, 420, 467, 468, 471 and 409 of the Indian Penal Code wherein it is alleged that the petitioner impersonated many pensioners and illegally withdrew money in their names and thereby defalcated Rs. 65,000/-.

4. A departmental proceeding was initiated on 31st January, 2003 as contained in Memo No. 81(Annexure-3). On 05.12.2000, the first enquiry officer was transferred and, therefore, the enquiry was entrusted to DDC, Jehanabad. The DDC, Jehanabad vide order dated 05.01.2004 reported that for the same allegation criminal case is also pending against the petitioner and therefore, the departmental proceeding be kept pending till the disposal of the criminal case. The Collector, Jehanabad after obtaining legal opinion on the report of the enquiry officer again appointed District Raj Panchayat Officer as enquiry officer and Shri Baidnath Prasad as presenting officer. The enquiry officer submitted its report on 20.12.2007, thereupon the District Magistrate, Jehanabad inflicted punishment of recovery of Rs. 65,000/- from the petitioner on 08.01.2014.



5. Learned counsel for the petitioner assailed the order that from perusal of the report of the enquiry officer dated 20.12.2007, it would appear that no enquiry was held. The presenting officer did not produce any documentary or oral evidence. On mere allegation, the enquiry officer held the petitioner guilty of defalcating of Rs. 65,000/- from the head of Social Welfare Schemes. It is further submitted that second show cause was also asked from the petitioner on 13.02.2008. The petitioner submitted his second show cause on 22.02.2008 Annexure-A (series to the counter affidavit), stating the facts that no evidence was adduced during course of enquiry and, in fact, no enquiry was held. After six years of submission of the second show cause, the order dated 08.01.2014 as contained in Memo No. 13 (Annexure-1), was issued by which following punishments (i) recovery, (ii) stoppage of further promotion and (iii) withholding of other pay and emoluments except the subsistence allowance during the period of suspension.

It is further submitted that the petitioner retired from service on 31.12.2013. One of the punishments is that the petitioner shall not be entitled to get any future promotion, this punishment, itself, shows the non-application of mind of the disciplinary authority. Since the petitioner has already superannuated this punishment is of no consequence.



6. As per contra learned counsel for the State tried his best to persuade the Court in order to show that the enquiry was held in accordance with law and the disciplinary authority has got power to differ with the enquiry report and inflict punishment.

7. Having heard submissions of the parties, the sole question falls for consideration whether the enquiry was held in accordance with law?

8. From perusal of the enquiry report (Annexure-A series to the counter affidavit) it appears that the enquiry officer did not advert any evidence adduced by the presenting officer. The enquiry officer submitted his report only on the basis of the allegation made in the articles of charge. The second show cause was asked from the petitioner on 13.02.2008 and the petitioner also filed his reply to the second show cause on 22.02.2008 but the disciplinary authority sat over the matter for about six years and pass the order inflicting the aforesaid punishment only after retirement of the petitioner. From the enquiry report, it appears that the enquiry was not held in accordance with the procedure as laid down under Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 and the disciplinary authority has also not considered the show cause of the petitioner. The order of the disciplinary authority does not reflect that he considered the show cause of the petitioner.



9. I find that the enquiry was not held in accordance with law and without considering the show cause of the petitioner, the order of the disciplinary authority inflicting the punishment to the petitioner is not sustainable. The order as contained in Memo No. 13 dated 08.01.2014 (Annexure-1) is set aside and the matter is remitted to the disciplinary authority to proceed further in accordance with law. Accordingly, this writ petition is allowed.

10. Since the petitioner has already retired, the disciplinary authority must get the departmental enquiry concluded within four months from the date of receipt of a copy of this order.

(Prabhat Kumar Jha, J)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.08.2017
Transmission Date	NA

