

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17672 of 2014

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Devendra Kumar Savita S/o Late Dr. N.K. Thakur House No. 54, Bhawani Niwas,
Gandhi Path, Nehru Nagar, Patna - 800013

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna
3. The Member Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna
4. The Additional Secretary, General Administration Department, Government of Bihar, Patna
5. The Commissioner, Saran Division, Saran at Chapra
6. The District Magistrate, Saran at Chapra

.... Respondents

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Appearance :

For the Petitioner	: Mr. Subodh Kumar Jha, Advocate. Mr. Pranav Kumar Jha, Advocate. Mr. Sarveshwar Tiwary, Advocate.
For the Respondents	: Mr. Arvind Kumar, AC to GA 9.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 06-10-2017

Heard both sides.

2. The petitioner seeks quashing of Resolution dated 04.08.2014 as contained in Memo No. 10769 issued under the signature of Additional Secretary General Administration Department, Government of Bihar, Patna by which a departmental proceeding has been initiated against the petitioner for the occurrence taking place in the year 2007-08 (Annexure-1). During the pendency of this writ petition the petitioner by filing I.A. No. 5127 of 2016 seeks for quashing of the Resolution bearing Memo No. 7642 Patna dated 30.05.2016 (Annexure-6) by which the petitioner has been inflicted with the punishment of stoppage of two increments with cumulative effect.



3. Learned counsel for the petitioner first submits that the Collector recommends for initiation of proceeding vide Letter No. 156 dated 16.04.2008 (Annexure-2), but the disciplinary authority sat over the matter and initiated the departmental proceeding vide order 04.08.2014 as contained in Memo No. 10769. Learned counsel for the petitioner submits that in the case of Satish Prasad vs. State of Bihar and Ors. (CWJC No. 11851 of 2012), the Single Bench of this Court quashed the initiation of the departmental proceeding after 18 years of the occurrence. It is further submitted that the Hon'ble Single Judge has placed reliance on the judgment passed on 03.05.2012 in C.W.J.C. No. 18188 of 2011 (Triveni Prasad Sinha vs. The State of Bihar and Ors.) in which reliance was placed on a judgment of the Apex Court in the case of *State of Madhya Pradesh vs. Bani Singh* reported in *1990 Suppl. SCC 738* and in the case of *P.V. Mahadevan Vs. Md. T. N. Housing Board* reported in *2005 (6) SCC 636*.

4. Learned counsel for the petitioner secondly submits that the petitioner appeared in the departmental proceeding and asked for certain documents and also prayed for stay of departmental proceeding, in view of the fact that the petitioner moved before the High Court against the order of initiation of departmental proceeding after lapse of many years, but the enquiry officer continued the departmental proceeding. It is further submitted that the enquiry officer did not hold the enquiry in accordance with the procedure laid down under Rule 17 of the Bihar Government Servants (Classification, Control & Appeal)



Rules, 2005 (hereinafter referred to for the sake of brevity as the 'CCA Rules'). It is further submitted that Rule 17 of the CCA Rules, specifically provides that the enquiry officer shall serve on the delinquent the Memo of Charge along with the documents and the evidence on which the department proposes to prove the charge and, asked the delinquent to give show cause. It further provides that if the government servant did not appear in the departmental proceeding, the enquiry officer shall direct the presenting officer to present the case of the department and produce the evidence documentary and oral, but the presenting officer did not appear. The enquiry officer, himself, acted as presenting officer and after perusal of the records, submitted the enquiry report whereas, no document was brought on record in accordance with law, nor any person was examined as a witness in order to prove the charge against the petitioner and, on such enquiry report, the disciplinary authority without considering the show cause of the petitioner inflicted major punishment by stopping two increments of the petitioner with cumulative effect and therefore the order is bad.

5. On the other hand, the State has filed counter affidavit, but did not give any reply with regard to these facts that the enquiry officer conducted the enquiry as per the provisions as contained in Rule 17 of the CCA Rules 2005. Learned counsel for the State submits that there is no inordinate delay in initiation of departmental proceeding.

6. Having considered the submissions of the parties, so far as the first submission of learned counsel for the petitioner is concerned



I do not find any force, as the Collector simply recommended for departmental proceeding against the petitioner on 16.04.2008, enumerating different illegalities and irregularities in discharging of his official duty. No show cause was ever asked from the petitioner. In the case of Satish Prasad, the recommendation was made in the year 1994 for initiation of the proceeding with regard to incident took place in the year 1983-84. The show cause was asked and Satish Prasad filed show cause in the year 1994, itself, but the disciplinary authority did not take any action. Thereafter, departmental proceeding was initiated in the year 2012, i.e. after 18 years and on the aforesaid facts, it was held that the departmental proceeding after 18 years from the date of submission of show cause is bad. I find in the present case that no such delay is caused in initiation of the departmental proceeding.

7. So far as second contention of the learned counsel for the petitioner is concerned, on consideration of submission of both the parties and perusal of records, I find that the enquiry officer submitted his enquiry report vide Annexure-A to the counter affidavit without following the procedure under Rule 17 of the CCA Rules, 2005. From perusal of the enquiry report, it appears on the face of it that the enquiry officer did not allow the presenting officer to examine any witness or produce any documents. Even the presenting officer did not appear on any date before the enquiry officer. Rule 17 of the CCA Rules, 2005 provides that if the proceedee, government servant does not appear, the enquiry officer shall fix the departmental enquiry ex-parte and ask the



presenting officer to produce oral and documentary evidence in order to prove the charge against the proceedee, but from the enquiry report, itself, it appears that the enquiry officer has not, in fact, followed any procedure prescribed under Rule 17 of the CCA Rules, 2005 and submitted the enquiry report on his own, after perusal of the documents attached with the Form 'K' i.e. memo of charge. Therefore, I find that on such enquiry report, infliction of punishment is not sustainable in the eye of law as there is no enquiry report in view of Sub Rule 23 of Rule 17 of the CCA Rules, 2005.

8. Thus, Resolution dated 04.08.2014 as contained in Memo No. 10769 (Annexure-1) and Resolution bearing Memo No. 7642 Patna dated 30.05.2016 (Annexure-6) are set aside and the writ petition is, accordingly, allowed. 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	23.10.2017
Transmission Date	NA

