

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.716 of 2015

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Surendra Prasad Sharma Son of Late Kirti Prasad Sharma, Resident of Mohalla -
Magadh Colony Road No. 16, P.S. - Magadh Medical College, District - Gaya.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Member Board of Revenue, Bihar, Patna.
3. The Divisional Commissioner, Magadh Division, Gaya.
4. The District Magistrate, Gaya.
5. The D.C.L.R. Nimchak Bathani Khijarsarai, Gaya.
6. The Circle Officer, Town Circle/Khijarsarai Circle, Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Tripurari Nath Amastha, Advocate

For the Respondent/s : Mr. P.K. VERMA, AAG5

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 26-03-2018

Heard learned counsels for the petitioner and the
respondent State.

2. The petitioner has challenged the order dated 28.04.2012 bearing memo no 1410 of the Collector, Gaya whereby and where under the punishment of withholding of two increments without cumulative effect have been inflicted upon the petitioner.

3. Petitioners counsel submits that a charge memo “Prapatra Ka” dated 09.09.2011 was issued to the petitioner containing certain charges alleging creation of Jamabandi in respect of government lands. The said charge memo is submitted under the **Bihar Government Servants (Classification, Control & Appeal) Rules, 2005** (hereinafter referred to as (‘the Bihar CCA Rules’). The Deputy Collector Land Reforms, Nimchak Bathani, was appointed as Enquiry Officer to conduct the enquiry against the petitioner.



4. The petitioner submitted his reply denying all the charges levelled against him and prayed for exoneration from the charges levelled against him. Petitioner's counsel submitted that suddenly the order of punishment dated 28.04.2012 has been issued by the disciplinary authority withholding of two increments without cumulative effect with effect from the date of order.

5. It is submitted by the petitioner's counsel that once a proceeding has been initiated by appointing the Enquiry Officer, it is incumbent upon the authority to afford an opportunity of personal hearing to the petitioner in accordance with procedure prescribed under Rules 19(1) (b) of the Bihar CCA Rules, which has not been done in the instant case. Even copy of the enquiry report or the report submitted by the enquiry team prior to initiation of the enquiry which has been relied upon by the Collector for imposing the punishment upon the petitioner as is evident from the averments made in Para 12 of the counter affidavit, has not been served upon the petitioner.

6. No doubt the minor punishment under Sub rule (v) of Rule 14 of the Bihar CCA Rules has been inflicted upon the petitioner but once the respondent authorities had decided to initiate a proceeding to enquire into the issue in accordance with procedure prescribed under Rule 19(1) (b) of the Bihar CCA Rules, the petitioner could not have been denied of his opportunity of being heard personally and of being given opportunity to represent against the enquiry report. In the instant case the copy of the enquiry report has never been made available to the petitioner.

7. While imposing the punishment upon the petitioner, the Collector has also relied upon the findings submitted pursuant to some preliminary enquiry prior to initiation of the proceedings against the petitioner but even the copy of the same has not been



served on the petitioner. There appears total violation of Principles of Natural Justice.

8. The order of punishment imposed by the Collector dated 28.04.2012 is therefore, unsustainable in the eye of law and is hereby quashed. As a result of the quashing of the order of punishment, the subsequent order dated 10.01.2013 passed by the learned Commissioner Magadh Division as also the order dated 07.08.2013 passed by the learned Board of Revenue in Service Appeal No. 12 of 2013, are legally unsustainable.

9. The writ petition stands allowed.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	3.4.2018
Transmission Date	

