

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 10814 of 2014

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Kanhaiya Lal Prasad Singh son of Late Bigan Prasad resident of Village- Supauli,
P.S- Pachrukhi, District- Siwan.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Chief Secretary, Bihar, Patna.
3. The Principal Secretary, Revenue and Land Reforms Department, Bihar, Patna.
4. The Commissioner, Saran Division, Chhapra.
5. The District Magistrate- cum- Collector, Siwan.
6. The Deputy Collector, Land Reforms, Siwan Sadar, District- Siwan
7. The Circle Officer, Barharia, District- Siwan
8. The Circle Officer, Goriya Kothi, District- Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr Rajendra Prasad, Sr Advocate with
Mr Binay Krishna, Advocate

For the State : Mr Anil Kumar Singh, GP XXVI

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 18-01-2018

Heard counsel for the petitioner and the respondent-
State.

At the very outset, the order dated 16.04.2014 passed by the appellant authority (Commissioner, Saran Division) in Service Appeal No 373 of 2013 on the appeal preferred by the petitioner is bad. From perusal of the same, it appears that the appellate authority has not considered the appeal preferred by the petitioner. Relying upon general stand of the State Government in respect of persons, who have been charged of offences and implicated in vigilance case,



petitioner's appeal has not been considered by assigning the reason that criminal case is pending and the criminal trial has not been concluded by the concerned Court. Such a decision with respect to the petitioner's appeal cannot be sustained, more so when the department, during pendency of the same criminal trial, has concluded the petitioner's guilt by the order of punishment dated 19.11.2013 passed by the District Magistrate in the proceedings conducted against the petitioner. The petitioner, who has preferred the appeal under the Bihar Government Servants (Classification, Control & Appeal) Rules (for brevity, *Bihar CCA Rules*), is entitled to consideration of the same in accordance with the procedure prescribed in Part VII thereof more specifically in accordance with the procedure laid down under Rule 27 of Bihar CCA Rules. Relevant extract of Rule 27 is as follows:

“27. Consideration of appeal.- (1)
in the case of an appeal against an order of suspension, the appellate authority shall consider whether in view of the provisions of rule 9 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke or modify the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in rule 14, the appellate authority shall consider-

(a) whether the procedure laid down in these Rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of



India or in the failure of justice:

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty imposed is adequate, inadequate or severe; and pass orders-

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed the penalty; or to any other authority with such direction as it may deem fit in the circumstances of the case;”

The same has evidently not been done. There is no consideration of the petitioner's appeal and the order dated 16.04.2014 passed on the Service Appeal is in gross violation of the Bihar CCA Rules, specifically Rule 27 thereof.

In view of the aforesaid, this Court, for the present, would direct the appellate authority that is Commissioner, Saran Division, Chapra to consider the appeal of the petitioner (Annexure 17 of the writ petition) on its merit by a reasoned speaking order after following the procedure prescribed under the Bihar CCA Rules. Counsel for the petitioner submits that the petitioner will appear before the appellate authority within 15 days.

The Appellate Authority would be obliged to consider the petitioner's appeal on merit and take a final decision in the matter



in accordance with law by a reasoned and speaking order dealing with the issues raised by the petitioner in his appeal within a period of three months thereafter.

With the aforesaid direction, the writ petition is allowed.

The order dated 16.04.2014 passed in Service Appeal No 373 of 2013 is quashed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.01.2018
Transmission Date	NA

