

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7002 of 2014

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Perwez Nazir Son Of Late Azimuddin Resident Of Village - Dohar, P.O. Soltha,
Police Station - Bahadurganj, District - Kishanganj

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Cabinet Secretariat (Rajbhasha) Department, Government Of Bihar, Patna
2. The Director, Rajbhasha (Urdu Directorate), Govt. Of Bihar, Patna
3. The District Magistrate, Araria
4. The Deputy Development Commissioner, Araria
5. The Sub - Divisional Officer, Araria
6. The Block Development Officer, Sikty, District - Araria
7. The Conducting Officer, The Deputy Election Officer, Araria, Namely Shri Vijay Kumar

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Marigank Mauli, Advocate Mr. Samir Kumar, Advocate Mr. Sanket, Advocate Mr. Sanjay Kumar, Advocate Mr. Sourosh Singh, Advocate
For the State	:	Mr. Prachi Pallavi, Advocate Mr. Swapnil Kumar Singh Mr. U.S. Saran Singh, GP 19

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 16-08-2018

Heard learned counsel for the petitioner and the respondent State.

2. Counsel for the petitioner submits that the order of punishment dated 26.02.2014 bearing memo no. 79 issued by the Principle Secretary, Cabinet Secretariat Department, Government of Bihar whereby the petitioner has been awarded the punishment of dismissal under Rule 14(9) of the Bihar Government Servants (Classification Control & Appeal) Rules, 2005 (hereinafter referred to



as 'the Bihar CCA Rules 2005') is unsustainable for various procedural lapses conducted during the course of enquiry which strike at the root of fairness in the matter of conduct of proceedings against the delinquent.

3. The charge memo which has been communicated to the petitioner under letter dated 06.07.2009 (Annexure 14) alleges firstly that the petitioner has opened an account with Dehti PACS which was not in accordance with Rules. The other thing which has been alleged is that the petitioner has made deposits of Rs. 790.25 lacs in the said account of Dehti PACS. The dates on which the deposits were allegedly made by the petitioner as per the charge memo are between 15.09.2006 to 17.08.2007. The charge memo itself is self contradictory in as much as the petitioner is said to have joined in the office on 28.05.2006; and as per the charge memo itself deposits were made much earlier in the account opened with Dehti PACS on 03.02.2006. Charge memo itself belies the first charge regarding petitioner opening the Account. The account of Dehti PACS, as per charge memo has been opened on or before 03.02.2006, i.e., the date of first deposit shown in the charge memo. The petitioner has joined in the office of the BDO as per charge memo on 28.05.2006, after the account was opened.

4. The second aspect of the matter which constitutes



charge nos. 2 and 3 against the petitioner is of not giving intimation to the concerned authorities regarding the deposits being made in Dehti PACS.

5. The petitioner's counsel has strenuously urged that charge no. 1 as per charge memo is not sustainable. In view of the facts as noticed herein above, the petitioner has also raised this issue in his response filed to the charge memo before the Enquiry Officer. He has also drawn the attention of the Enquiry Officer to the various communications made from the office of the Block Development Officer starting with effect from 20.09.2006 addressed to the Deputy Development Commissioner, Araria bringing to his knowledge the fact that deposits are being made in the Dehti PACS.

6. The Presenting Officer who has presented the case on behalf of the Department has made his submissions by his letter dated 09.10.2009 addressed to the Enquiry Officer. The Presenting Officer in his submission to the Enquiry Officer seems to agree with the fact that in view of the dates mentioned in the charge memo, the allegation against the petitioner of opening the account of Dehti PACS appears to be unsustainable. He however, emphasized before the Enquiry Officer that the petitioner has not given any written objection in respect of the deposits made by him. Other than the said submission, from bare perusal of the Enquiry report, no documentary or oral



evidence has been adduced to sustain the charges against the petitioner before the Enquiry Officer.

7. Counsel for the respondent State is also unable to point out from the enquiry report that the same is based on any evidence whatsoever. That being so, it was required that the Disciplinary Authority exercising power under Rule 18 of the Bihar CCA Rules, 2005 would have applied his mind to the facts as noticed herein above. There was no evidence whatsoever on the record before the Enquiry Officer to sustain the charges. With regard to charge no. 1 the Presenting Officer who was presenting the case on behalf of the Department was himself not sure that the same was sustainable in view of the sequence of evidence as emerging from the charge memo itself. The petitioner in his response to the second show cause has specifically raised this issue before the Disciplinary Authority. The scope of power to be exercised by the Disciplinary Authority is prescribed under the Bihar CCA Rules, 2005 more specifically Rule 18 thereof. Under the said provision the procedure mandates that the Disciplinary Authority should arrive at a decision after due consideration of the facts before the Enquiry Officer and with reference to material available on record.

8. It is needless to say that while considering the response to the second show cause the Disciplinary Authority is



obliged to consider the contentions raised by the delinquent by assigning reasons. The importance of assigning reasons so as to ensure fairness and compliance of 'Principles of Natural Justice' has recently been recorded by a Division Bench of this Court in the case of **Hassan Muzahid vs. Bihar State Electricity Board** reported in **2015 (4) PLJR 435**. Counsel for the petitioner has also emphasized before this Court that on account of non-submission of any evidence whatsoever by the Presenting Officer, the case is one of no evidence and falls under the four corners of law laid down by the Hon'ble Apex Court in the case of **State of Uttar Pradesh vs. Saraoj Kumar Sinha** reported in **(2010) 2 SCC 772**.

9. The third submission made by counsel for the petitioner is that from perusal of the enquiry report it appears that the Enquiry Officer instead of adducing any evidence had made an attempt to shift the onus of proving his innocence upon the petitioner. Enquiry report itself shows that the weakness of the petitioner's defence has been made the basis of the punishment awarded to petitioner. Relying upon the decision in the case of **A Savariar v. Secretary, Tamil Nadu Public Service Commission** reported in **2013 LAB I.C. 1680**,

10. Counsel for the petitioner has submitted that such action of the enquiry officer is illegal and unsustainable.



11. Since the issues were required to be considered by the Disciplinary Authority exercising jurisdiction under Rule 18 of the Bihar CCA Rules, this Court would only observe that the manner in which the Disciplinary Authority has proceeded to award the severe punishment of dismissal without considering the aforesaid facts and without even considering the submissions made by the petitioner, has occasioned the miscarriage of justice and violation of the Principles of Natural Justice.

12. Having considered the same, this Court would quash the order dated 26.02.2014, issued by the Disciplinary Authority. The Disciplinary Authority would be obliged to take a final decision with reference to the material available on record before the Enquiry Officer and pass a reasoned and speaking order within a period of eight weeks from the date of receipt/production of a copy of this order.

13. The petitioner's counsel submits that he would also place some judgments before the authority in which other persons who have been made accused in the same transaction have been granted relief under the various orders.

14. Petitioner is permitted to do so. He may submit the judgments in support of his claim within a period of four weeks from



today.

15. The entitlement of the petitioner will abide by the final decision to be taken by the Disciplinary Authority in the proceedings.

16. The writ petition is disposed off.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

