

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17028 of 2016

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Mahesh Prasad Singh, S/o Late Gajendra Singh, Resident of At + P.O. Ram Nagar
Diyara, P.S. Athmalgola, District- Patna, at present residing at Village - Rani Sarai,
P.S.- Bakhtiyarpur, District – Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Rural Development Department, Govt. of Bihar, Patna.
3. The Divisional Commissioner, Patna Division, Patna.
4. The District Magistrate, Nalanda at Biharsharif.
5. The Additional Collector, Departmental Enquiry, Nalanda at Biharsharif.
6. The Deputy Collector, Establishment, District- Nalanda at Biharsharif.
7. The Sub-Divisional Officer, Biharshariff, District- Nalanda.
8. The Block Development Officer, Block- Bind, District- Nalanda.
9. The Block Development Officer, Block - Harnaut, District- Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Prasad Singh, Sr. Adv. with
Mr. Onkar Kumar, Adv.
For the Respondent/s : Mr. Akash Chaturvedi, AC to SC-11

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 30-08-2018

The petitioner prays for quashing of the order bearing Memo No.6-67/12-138 dated 21.01.2014 passed by the District Magistrate, Nalanda, whereby he has been punished with a penalty of compulsory retirement in exercise of powers vested under the provisions of rule 14 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the 'Disciplinary Rules'). The petitioner also prays for quashing of the order dated 15.12.2015 passed by the Divisional Commissioner, Patna, whereby his Service Appeal No.219 of 2014 has been dismissed.

The facts essential for disposal of the writ petition as



noted from the pleadings is that the petitioner was proceeded under the 'Disciplinary Rules' for his alleged act of misconduct while posted as Clerk (Nazir) in Block Office at Bind in the district of Nalanda by service of charge memo bearing Memo No.337 dated 01.09.2012, a copy of which is enclosed at Annexure 3 to the writ petition. Four charges were levelled against the petitioner which are as follows:

- (1) Non-deposit of D.C. Bill (Detailed Contingent Bill) in respect of advance amount received by him during the Panchayat General Election, 2011 which was violation of rule 3(ii) of the Bihar Government Servant Conduct Rules;
- (2) Getting Bill No.52/2011-12 for an amount of Rs.63,200/- towards office expenditure passed from the Treasury on 13.01.2012 which included a voucher for Rs.14,441/- which had not been passed by the competent authority;
- (3) Violation of the order passed by the District Panchayat Raj Officer, Nalanda for making payment of allowance to Kali Paswan, Dalpati, Gram Raksha Dal, Bind; and
- (4) Avoiding to give details of the advance taken by the Officer and staff of the establishment and his failure to present it before the appropriate authority.

The petitioner filed reply denying each of the charges and also gave explanation for the rebuttal. It is the case of the petitioner



that without holding any proceeding and simply on the basis of the reply filed by the petitioner, a copy of which is enclosed at Annexure 5 that an enquiry report was submitted which is at Annexure 6. The petitioner was served with a second show cause notice on 22.08.2013 vide Annexure 7 with a reminder vide Annexure 8. An exhaustive reply was again filed by the petitioner rebutting the allegations as well as the report of the Enquiry Officer in so far as it upholds the charge nos.1, 2 and 4. A copy of the reply is at Annexure 9 to the writ petition and which is followed by the order of compulsory retirement passed by the District Magistrate, Nalanda in exercise of powers vested under rule 14 of the 'Disciplinary Rules' bearing Memo No.138 dated 21.01.2014 which is impugned at Annexure 1 to the writ petition and has been confirmed in appeal on dismissal of the appeal of the petitioner under the order of the Divisional Commissioner, Patna dated 15.12.2015 impugned at Annexure 2. Feeling aggrieved the petitioner is before this Court.

Mr. Rajendra Prasad Singh, learned senior counsel has appeared for the petitioner along with Mr. Onkar Kumar, the Advocate on record and the State is represented by Mr. Akash Chaturvedi, learned Assisting Counsel to Standing Counsel No.11.

Mr. Singh, learned senior counsel appearing for the petitioner in reference to the reply filed by the petitioner to the charges at Annexures 5 and at the stage of second show cause notice



vide Annexure 9 has submitted that no case of misconduct is made out against the petitioner because none of the charges do allege a financial irregularity by the petitioner or any attempt to misappropriate the money or of obtaining unjust gain for himself. It is submitted that despite such position the enquiry was held in which a report was submitted simply in consideration of the reply filed by the petitioner even though a major penalty of compulsory retirement has been imposed and rule 17 of the 'Disciplinary Rules' clearly lays down the procedure to be followed in such cases. It is submitted that no evidence was led in support of the allegation which has been upheld mechanically not only by the Enquiry Officer but even by the Disciplinary Authority for imposition of extreme punishment of compulsory retirement and which order has been upheld by the Appellate Authority. According to Mr. Singh, the order is resting on no evidence and the allegations are without substance. In reference to Annexure 13 series he submits that each of the document in the possession of the petitioner, has been handed over to the successor in office namely, Anuj Kumar.

Per Contra, it is supporting the orders impugned that Mr. Akash Chaturvedi, learned Assisting Counsel to Standing Counsel No.11 has made reference to a letter of the Block Development Officer, Bind enclosed at Annexure 'C' to the counter affidavit to submit that huge advances have not been accounted for by the petitioner during his stay as 'Nazir' in Block Office, Bind.



It is taking note of such submission made by the learned State Counsel that this Court while allowing the counsel for the petitioner to add the Block Development Officer, Bind as a party respondent to the proceeding, also directed him to file his affidavit in support of the stand so eloquent in the counter affidavit, initially filed. It is in compliance of the direction of this Court that a counter affidavit is filed on behalf of the Block Development Officer, Bind.

Mr. Chaturvedi has referred to the statement made in paragraph 7 of the counter affidavit of the Block Development Officer, Bind to submit that the petitioner has failed to account for an amount of Rs.1,11,19,953/- inasmuch as he has never handed over the vouchers for this amount. He submits that after much persuasion yet, the petitioner has given only partial charge to his successor (wrongly typed as 'predecessor') in office but the vouchers pertaining to the cash-book prepared by him has not been handed over till today. It is in reference to paragraph 10 of the counter affidavit submitted that the successor in office has also complained of this default of the petitioner as manifest from Annexure 'G' to the said affidavit. He thus submits that the petitioner was dealing with public funds and had a responsibility to discharge by accounting for the advances made to him but despite repeated reminders he has failed to discharge this obligation.

I have heard learned counsel for the parties and I have perused the records and in the nature of the order that I intend to



pass I would not deal with the inter-party merits accompanying the case.

It is not in dispute that the petitioner has been visited with the major penalty of compulsory retirement. The petitioner has specifically pleaded at paragraphs 10 and 11 of the writ petition that he was never informed that the disciplinary proceeding was to be held or regarding appointment of the Conducting Officer. He also complained that no document was annexed with the charge memo in support of the allegation. It is mentioned in paragraph 12 of the writ petition that despite this position the petitioner appeared before the Conducting Officer on 22.11.2012 and submitted his reply denying the charges but thereafter according to Mr. Singh, learned senior counsel appearing for the petitioner, no enquiry was held in the manner prescribed under the 'Disciplinary Rules' rather simply on the presentation of the respective stand by the petitioner and the Presenting Officer that an enquiry report is submitted which has led to the order of penalty.

Neither the pleadings on the writ petition encloses any order of the Disciplinary Authority i.e. the District Magistrate in informing the petitioner of initiation of disciplinary proceeding against him rather it is vide Annexures 3 and 4 that the Conducting Officer himself directed the petitioner to file his reply to the charge memo which was enclosed with the letter of the Conducting Officer. The counter affidavit filed on behalf of the respondent nos.4 to 9



which includes the Disciplinary Authority himself, nowhere contests this position rather accepts that the charge memo was sent by the Sub-Divisional Officer, Biharsharif, Nalanda to the Conducting Officer i.e. the Additional Collector, Nalanda for making enquiry thereafter. Paragraph 11 of the counter affidavit also accepts the filing of the show cause by the petitioner and of receiving the opinion of the Presenting Officer on the show cause and paragraph 12 of the counter affidavit deals with the submission of the enquiry report. In short the allegation of the petitioner that the mandatory procedure as detailed in rule 17 of the 'Disciplinary Rules' for holding enquiry for imposition of major penalty and submission of report, has been violated by the Disciplinary Authority and the Enquiry Officer, stands confirmed.

Another serious infirmity in the proceeding is that the charge memo enclosed at Annexures 3 and 4, does not refer to any evidence which though was submitted by the Presenting Officer before the Conducting Officer as reflected from his report but where the enquiry itself has not been held in tune with the procedure underlying rule 17 of the 'Disciplinary Rules', this discharge by the Presenting Officer would not validate the proceedings.

Rule 17 of the 'Disciplinary Rules' is eloquent and I am constrained to observe that the Disciplinary Authority i.e. the District Magistrate has failed to abide by the requirements as mandated in the 'Disciplinary Rules'. It is unfortunate that even when the procedure to be followed for imposition of major penalty right from the stage of initiation of proceeding by service of charge memo under rule 17(3)



until the submission of the enquiry report under rule 17(23), is so clearly laid down, the obligation to be discharged by the Disciplinary Authority as well as the Enquiry Officer, is found wanting.

The observations above are sufficient to uphold the objections raised by Mr. Singh, learned senior counsel appearing for the petitioner that the entire proceedings was held in contravention of the 'Disciplinary Rules'.

There is another aspect of the matter which is reflecting from the letter of the Block Development Officer, Bind at Annexure 'C' to the counter affidavit of respondent nos.4 to 9 dated 15.10.2013 addressed to the Block Development Officer, Harnout where the petitioner had been transferred, requesting him to relieve the petitioner for handing over the charge of the office at Bind to his successor. The details of the records which was not handed over by the petitioner, is clearly mentioned. In fact, even the letter of the successor in office of the petitioner at Bind dated 27.3.2014 enclosed at Annexure 'G' to the counter affidavit of the Block Development Officer, Bind, whereby he has been informed about the documents/ledgers/vouchers which are yet in possession of the petitioner and have not been handed over to him. The contents of these two letters are supplemental to the charge nos.4 and definitely the petitioner needs to answer the same.

The discussions above would confirm laches in holding a proper proceeding in tune with the rules with no proper opportunity to the petitioner to rebut the serious charges including those present in Annexure 'C' to the counter affidavit of respondent nos. 4 to 9 and



Annexure ‘G’ to the counter affidavit of the Block Development Officer,
Bind.

For the discussions above, I am persuaded to hold the enquiry vitiated and as a consequence, the enquiry report impugned at Annexure 6 together with the order of penalty passed by the District Magistrate, Nalanda dated 21.01.2014 impugned at Annexure 1 and the appellate order dated 15.12.2015 passed by the Divisional Commissioner, Patna dismissing the appeal impugned at Annexure 2 are accordingly quashed.

Paragraph 24 of the writ petition informs that the petitioner has since reached the age of superannuation in the meanwhile. Meaning thereby he cannot be proceeded under the ‘Disciplinary Rules’. However since the charges had already been drawn against the petitioner during his service tenure, even though, it is not strictly in tune with the statutory provisions of rule 17(3) of the ‘Disciplinary Rules’, I deem it proper to remit the matter to the Disciplinary Authority i.e. the District Magistrate Nalanda and leave it at his wisdom for taking a decision whether or not to proceed afresh against the petitioner but in case he does so, the proceeding is to be held in accordance with law.

The writ petition is allowed with the direction aforementioned.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	11-09-2018
Transmission Date	NA

