

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9261 of 2013

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Parmeshwar Lal Das S/O Late Bhup Narain Das R/O Village And P.O.- Kahua,
P.S.- Biroul, District- Darbhanga, At Present Residing At Mohalla- Rai Saheb
Pokher, Eastern Side, P.O.- Laheriasarai, P.S.- Bahadurpur, District- Darbhanga

.... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary, Bihar, Patna
2. The Commissioner, Darbhanga Division, Darbhanga
3. The Collector, Darbhanga
4. The District Panchayat Officer, Darbhanga
5. The Block Development Officer, Hayaghat, Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kaushalesh Chaoudhary, Advocate
For the State : Mr. Rajiv Roy, GP 1
Mr. Suresh Kumar, AC to GP 1

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 06-07-2018

Heard learned counsel for the petitioner and the respondent
State.

2. While posted as Panchayat Sewak at the Ladania Block
Dist. Darbhanga, the petitioner was served with a charge memo dated
21.05.2009. The charges were two folds. The first charge was that one
Jaffer Ali and others had lodged a complaint against the petitioner that
he had been demanding Rs. 500/- from the beneficiaries of the
Mukhyamantri Aawas Yojana before allowing the benefits under the
said scheme. The second charge against the petitioner is that he has
given a letter to the Branch Manager of the Bank where the
beneficiaries of Mukhyamantri Aawas Yojna were having their



accounts, restraining the Branch Manager from making payments to them.

3. The petitioner had earlier approached this Court by filing the writ petition. The same was numbered as CWJC No. 19188 of 2011. By order dated 04.11.2011, the same was disposed off. Earlier petitioner had approached this Court against the order of dismissal and now his appeal under the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 which (hereinafter referred to as 'the Bihar CCA Rules, 2005') which was pending consideration before the Commissioner, Darbhanga Division, has been rejected under order dated 20.02.2013.

4. In view of the said developments, the instant writ petition has been filed challenging the order dated 29.08.2011 bearing no. 1852 passed by the District Magistrate, Darbhanga acting as a disciplinary authority whereby the punishment of dismissal has been awarded to the writ petitioner as also the order dated 20.02.2013 of the Commissioner, Darbhanga Division rejecting the petitioner's appeal and confirming the order dated 29.08.2011 passed by the District Magistrate.

5. Bare perusal of "Prapatra K" on which the charge memo has been issued to the petitioner under the Bihar CCA Rules, 2005 would show that the same is not in accordance with mandate of Rule 17 (3) & (4) of the Bihar CCA Rules, 2005. Neither the list of



documents nor the list of witness on the basis of which the department proposes to sustain the charges against the petitioner in the proceedings have been enclosed. The irresistible conclusion from perusal of Enquiry Report also is that no evidence or witness was led by the authorities against the petitioner in the proceedings before the Enquiry Officer. The charge memo in respect of the first charge refers to allegation levelled by Jaffer Ali and others. However the same has not been brought on record. In absence of the allegations levelled by Jaffer Ali and others, this Court would observe that it was impossible to conclude the demand of Rs. 500/- alleged in the enquiry.

6. As regards the second charge regarding the petitioner issuing a letter dated 06.03.2009 under memo No. 29 restraining the Branch Manager of North Bihar Kshetriya Gramin Bank, Manjhaulia from releasing the funds of the beneficiaries of Mukhymantri Aawas Yojna, it is to be observed that even the said letter dated 06.03.2009 bearing memo No. 29 has not been placed by the Presenting Officer before the Enquiry Officer in the proceedings against the petitioner. The petitioner's specific denial to the said two charges was made in his statement of defence. He has specifically pleaded that the said Jaffer Ali and other beneficiaries who are alleged to have made a complaint against the petitioner as regards demand of Rs 500/- from each of the beneficiaries have not supported the allegations even in the preliminary enquiry conducted by the Additional Collector,



Darbhanga.

7. The petitioner has also placed on record copies of the statements of the beneficiaries in favour of the petitioners, who are said to have made allegations against the petitioner. All these facts have not been considered by the Enquiry Officer nor by the Disciplinary Authority while issuing the impugned order of punishment dated 29.08.2011.

8. With respect to first charge, the Disciplinary Authority has ignored the plea raised by the petitioner and referred to preliminary enquiry conducted by the Additional Collector. Even copies of the report of preliminary enquiry had not been made available to petitioner. The petitioner's specific case is that the said Jaffer Ali and other beneficiaries had infact given statements before the Additional Collector, during the preliminary enquiry that they did not support the allegations regarding the petitioner demanding Rs. 500/- from them.

9. This Court would observe that had the report of the Additional Collector which is referred to by the Disciplinary Authority, been placed in the proceedings before the Enquiry Officer then only this fact could have been ascertained whether the said Jaffer Ali and other beneficiaries have supported the allegations or chosen not to support the allegations against the petitioner.

10. As regard the second charge, the petitioner's specific



plea before the Enquiry Officer was that in the letter dated 06.03.2009 bearing memo No. 29 he has not stated regarding the restraining of any payment to the beneficiaries. It is his specific case that under the orders of the Block Development Officer, he had issued a letter to the Branch Manager so as to ascertain proper identification of the beneficiaries. The said letter was issued under the dictates of the Block Development Officer and also to ensure fairness in the matter of grant of benefits under Mukhymantri Aawas Yojna and to ensure that undeserving or fake persons did not use the benefits which were meant for the deprived persons.

11. This plea of the petitioner has not been considered by the disciplinary authority. The letter dated 06.03.2009 issued by the petitioner to the Branch Manager of the Bank, has not been produced in the proceedings to ascertain the purport and contents of the said letter. On the contrary reliance is placed on some alleged opinion of the Public Prosecutor under letter dated 06.05.2009 bearing memo No. 174 to the extent that the petitioner has exceeded his jurisdiction by issuing the letter dated 06.03.2009. Even, this letter of the public prosecutor dated 06.05.2009 which is an opinion and cannot constitute evidence/material, has not been placed in the proceedings.

12. The counsel for the State has submitted that the Disciplinary Authority has taken into consideration the past conduct of the petitioner. He has attempted to sustain the order passed by the



Disciplinary Authority by referring to the report of the public prosecutor as also the preliminary report submitted by the Additional Collector. The said submissions do not merit any consideration.

13. This Court has already taken note of the fact that the none of the documents have been placed before the Enquiry Officer nor copy has been given to the petitioner. In absence of the documents before the Enquiry Officer, it is surprising that findings have been recorded visiting the petitioner severe consequence of dismissal from service. The order passed by the disciplinary authority is *prima facie* an order based on no evidence whatsoever.

14. The legal infirmities do not stop here. In spite of the fact that petitioner has claimed to have written a letter dated 06.03.2009 under the dictates of the Block Development Officer, this Court would find that the Block Development Officer was made as Presenting Officer in the proceedings against the petitioner giving rise to reasonable likelihood of bias. The respondents have conducted the proceedings entirely against the mandate of Bihar CCA Rules, 2005 and as also in gross violation of Principles of Natural Justice and fair play.

15. At this juncture this Court would notice the provisions of Rule 17 (14) of the Bihar CCA Rules, 2005 which reads as follows:

" On the date fixed for the inquiry, the oral and documentary evidence by which the



articles of charges are proposed to be proved shall be produced by or on behalf of the Disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government Servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses, as it thinks fit."

16. On detailed consideration of the proceedings as noticed above, no evidence or witnesses were produced before the Enquiry Officer. The order of the Disciplinary Authority visiting the petitioner with the extreme punishment of dismissal does not refer to or rely upon any evidence whatsoever. The specific plea raised by the petitioner in his reply dated 07.07.2010 to the second show cause has also not been considered. Such non-consideration of the plea raised by the petitioner in his response to the second show cause and action of the Disciplinary Authority concluding the charges to be proved and recording the finding of guilt and awarding the severe punishment of dismissal is also without observing the mandatory procedure under Rule 18 of the Bihar CCA Rules, 2005 in as much as Rule 18 of the Bihar CCA Rules, 2005 mandates that the Disciplinary Authority is



required to examine the issue, assign reasons with reference to evidence. However, the same has not been done. In fact all the pleas raised by the petitioner, as noticed above have been overlooked by the Disciplinary Authority and without there being any evidence whatsoever in the proceedings the petitioner has been visited with the severe punishment of dismissal.

17. Clearly the order of punishment 29.08.2011 is not sustainable in law and the same is quashed. Since the order dated 20.02.2013 of the Commissioner, Darbhanga only mechanically confirms the said order dated 29.08.2011, same is also not sustainable in law. Thus, the order dated 20.02.2013 passed by the Commissioner, Darbhanga in Service Appeal No. 46/11-12 is also quashed.

18. The writ petition is allowed.

19. As a result of quashing the impugned order, the petitioner would be entitled to all consequential benefits.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

