

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 20002 of 2014

=====

Satyendra Kumar, Son of Late Ramavtar Singh, Resident of Village+Post-Pyrepur,
P.S.-Giriyak, District-Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar.
2. The Principal Secretary, Labour Resources Department, Government of Bihar.
3. The Joint Secretary to the Government of Bihar, Labour Resources Department.
4. The Bihar Public Service Commission through its Secretary, Bailey Road, Patna.
5. The Secretary, Bihar Public Service Commission, Bailey Road, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr Dinu Kumar, Ms Ritika Rani, Ms Neha, Mr Vijay, Advocates
For the S t a t e	:	Mr G P Ojha, GA VII with Mr Gopal Krishna, AC to GA VII
For the B P S C	:	Mr Rajni Kant Jha, Advocate

=====

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 31-07-2018

Heard learned counsel for the petitioner and the
respondent-State.

2 It is submitted by the learned counsel for the petitioner that the entire proceedings leading to the award of punishment of dismissal under order dated 15.10.2013 vide Resolution No 3839 of the Joint Secretary to the Government of Bihar in the Labour Resources Department is without following procedure as prescribed under the Rules under which the same has been initiated. A consolidated order of punishment has been inflicted in respect of the



allegations made at two different times. One charge memo was issued under the earlier Bihar Government Servant (Classification, Control & Appeal) Rules, 1935 (for brevity, *Bihar CCA Rules*), and the second proceedings were conducted under the Bihar CCA Rules, 2005. It is the specific case of the petitioner that right from initiation of the proceedings, the respondents have not observed the procedure as even charge memo was not communicated to the petitioner. Petitioner has also asserted that during the proceedings before the Enquiry Officer, there was no evidence whatsoever, either documentary or oral in support of the charges. The petitioner has asserted that since no evidence was led in respect of the charges, the recommendation of the Enquiry Officer was without any basis. Even the Bihar Public Service Commission (for brevity, *BPSC*), which was a necessary consultant in the matter with respect to the petitioner, has opined that the proposed punishment of dismissal was grossly disproportionate to the charges levelled against the petitioner.

3 The petitioner, in his response to second show cause, which has been submitted before the Disciplinary Authority on 02.07.2012, has raised all these issues highlighting the procedural lapse and total non-compliance of the procedure of fairness. The petitioner has given point wise response to all the allegations in respect of which the Enquiry Officer has submitted his



recommendations of the charges having been proved. The detailed response to second show cause of the petitioner in respect of both the set of charges have been rejected by the Disciplinary Authority while recording the impugned order of punishment by recording as follows:

“5. श्री कुमार से द्वितीय कारण—पृच्छा माँगी गई। श्री कुमार से प्राप्त द्वितीय कारण—पृच्छा से संबंधित स्पष्टीकरण समीक्षोपरान्त असंतोषजनक पाया गया।”

4 No reason whatsoever has been assigned by the Disciplinary Authority while dealing with the response highlighted by the petitioner on all the aforesaid procedural irregularities and lapses leading to injustice and the conduct of proceedings. The importance of assigning reasons have been reiterated by this Court as well as the Hon'ble Apex Court . This is a glaring example where non-assigning of reasons visited the petitioner with grave prejudice inasmuch as all the points, which have not been controverted in substance even in the counter affidavit, have not been considered by the Disciplinary Authority. Recently, this Court in the case of *Hassan Muzahid – Versus- The Bihar State Electricity Board & Others* reported in 2015 (4) PLJR 435 has observed as follows regarding non-consideration of the points raised before the Disciplinary Authority:

7. The petitioner was dismissed by the Disciplinary Authority, after conducting enquiry. The only flaw pointed out by the petitioner and the one that weighed with the learned Single Judge, is that the Disciplinary Authority did not furnish any reason in support of his conclusions. It needs hardly any mention that the issuance of second show cause has a definite



purpose to serve and that is the only occasion, or avenue where the delinquent employee can make an attempt to convince the Disciplinary Authority that the findings by the Enquiry Officer are not correct. He can also impress upon the Disciplinary Authority that the proposed punishment need not be awarded and he can plead extenuating circumstances. Since, the order passed by the Disciplinary Authority was passed without taking into account, the grounds pleaded by the delinquent employee in his reply to the second show cause, it certainly turns to be defective. Time and again, the Hon'ble Supreme Court held that such exercise tends to be violative of one of the facets of the principles of natural justice, and the opportunity given to an employee would be reduced to empty formality. We, therefore, do not find any basis to interfere with the view taken by the learned Single Judge in this behalf."

5 In view of the aforesaid consideration, similar order may be passed in the instant case also so that all the issues raised by the petitioner in response to the second show cause may be considered by the Disciplinary Authority afresh. Such consideration must be done having due regard to the opinion given by the BPSC in favour of the petitioner. Since the matter has been lingering and the petitioner is being harassed, this Court considers it appropriate that the Disciplinary Authority may take a final decision in respect of the petitioner by a reasoned and speaking order dealing with all the points raised by the petitioner in his second show cause within a period of three months from the date of receipt/production of a copy of this



order. The entitlement of the petitioner would abide by the final result as has been done in the case of *Hassan Muzahid (supra)*.

6 If the final decision is not taken within three months, the entitlement of the petitioner would not be kept pending.

7 It is made clear that upon remand of this matter before the Disciplinary Authority, the petitioner would be treated as under suspension and benefits arising out of such status should be made available to him.

8 It is submitted on behalf of the petitioner that during the period of suspension, he has not been paid any subsistence allowance.

9 Without expressing any opinion on the merit of this submission, this Court would leave it to the petitioner to make his application for the subsistence allowance within a period of two weeks from today.

10 In the event, such application is filed, the Authority would be under an obligation to take a decision on his dues of subsistence allowance within the aforesaid period for passing a final order by the Disciplinary Authority.

11 Writ petition is allowed to the extent indicated hereinabove.

12 The order dated 15.10.2013 impugned in the instant



writ petition shall not stand in the way of the Authorities for taking a final decision.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.08.2018
Transmission Date	NA

