

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 11450 of 2014

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Kedar Nath, Son of Late Babban Prasad, resident of Village- Zafarpura, P.O.- Mohamdabad, District- Ghazipur Uttar Pradesh, Presently posted as Joint Commissioner-cum- Secretary, Regional Transport Authority, Darbhanga Division, Darbhanga

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, General Administration, Govt. of Bihar, Patna
3. The Principal Secretary, Department of Home, Govt. of Bihar, Patna
4. The Principal Secretary, Welfare Department, Government of Bihar, Patna
5. The Commissioner, Tirhut Division, Muzaffarpur-cum-Conducting Officer
6. The Director Account Administration & Self Employment District Rural Development Authority, Sitamarhi-cum-Presenting Officer
7. The District Magistrate, Sitamarhi

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Bindhyachal Singh, Kr Manavendra & Satya Prakash, Advocates

For the Respondent/s : Ms Binita Singh, SC XXVIII with Mr Nishant Kr Jha, , AC to SC XXVIII

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 08-01-2018

Heard counsel for the petitioner and the respondents.

2 While the petitioner was posted as Block Development Officer, Block – Riga in the district of Sitamarhi, some communal violence broke out on 07.10.1992. The same resulted in destruction of property and loss of life also. Pursuant thereto, a commission of enquiry was conducted by Member, Board of Revenue on the said communal riot and in the same, petitioner has also submitted his explanation on 21.04.1993. No action was



communicated on the basis of the said enquiry commission. About 14 years thereafter, the petitioner was served with a charge memo in relation to the said communal violence which had taken place in the year, 1992 and in the charge memo, some vague allegations have been made that the petitioner did not inform the authorities within time so as to facilitate further action to control the communal violence. On the basis of the said charge memo which is dated 14.06.2007, the proceedings were initiated against the petitioner about 15 years after the alleged occurrence dated 07.10.1992. The petitioner submitted his explanation in response to the said charge memo and after conclusion of the proceedings, vide Annexure 8, the enquiry report dated 20.03.2010 was submitted by the Commissioner, Tirhut Division.

3 In the enquiry report, the enquiry officer had concluded that the charges of dereliction of duty and negligence attributed to the petitioner could not be established and, accordingly, the enquiry officer vide enquiry report dated 20.03.2010 recommended that the charges against the petitioner be dropped. Petitioner was, thereafter, asked to submit his second show cause, which also was submitted by him.

4 By an order dated 17.05.2010, the Department remanded the matter to the enquiry officer with a direction that a detailed enquiry may be conducted and the enquiry report may be



submitted afresh expeditiously. Pursuant thereto, the proceedings were again conducted and on 24.08.2010, the then Commissioner, Tirhut Division submitted detailed report after considering all the materials. From perusal of the same (Annexure 12), it is apparent that the only allegation, which was leveled against the petitioner, was that he had not informed his superior officers and the District Control Room regarding the said communal violence with due diligence. Findings of the Enquiry Officer are that the allegations pertain to a period of about 18 years prior to the issuance of the second enquiry report when telecommunication was not so well developed. After taking appropriate steps and control measures in the morning of 07.10.1992 when the communal violence had broken, with due diligence, petitioner had informed the authorities by a telephone from the nearby telephone booth and by wireless from the Riga Police Station under whose jurisdiction, incident had occurred. Intimation was sent to the authorities by 11 am. The Enquiry Officer has also relied upon the telephone booth receipts and documentary evidence of wireless message issued from the Police Station submitted by the petitioner. Accordingly, the enquiry officer had concluded that there was no dereliction of duty and negligence on the part of the petitioner.

5 In the enquiry report dated 24.08.2010, the enquiry officer has also considered that the district officials had also



confirmed these facts and after considering the material in detail, has this time again submitted a report stating that the charges against the petitioner have not been proved.

6 On receipt of the enquiry report, the Department has submitted a second show cause notice which, as per submission of the counsel for the petitioner, is in total violation of the principles of Bihar Government Servants (Classification, Control & Appeal) Rules (for brevity *Bihar CCA Rules*) under which the proceedings were conducted. He draws attention of the Court towards the second show cause notice dated 03.09.2012. He submits that from perusal of the same, it appears that the Department has not indicated any point of difference with the enquiry report. No tentative decision has been communicated to the petitioner which could have been responded effectively. The same was in violation of Bihar CCA Rules and also violative of principles of natural justice. He further submits that the perversity of the second show cause notice would be evident from the fact that the same is purportedly issued on basis of the enquiry report and evidence available on record but what is the evidence, which has been relied upon, has not been disclosed. This Court has already considered that the enquiry report itself has exonerated the petitioner from the charges with reference to material on the records in the Enquiry. In the said background, it is submitted that the second show



cause was not only violative of Rule 18 (2) of the CCA Rules but also violative of principles of natural justice as well as based on baseless and perverse reasons and not with reference to any material or evidence on record. The petitioner, however, submitted his response to the said second show cause notice reiterating his stand as taken before the enquiry officer because there was no any fresh material nor had any evidence been indicated in the second show cause which was not discussed by the enquiry officer.

7 On the basis of the aforesaid second show cause, which was unsustainable and illegal in the eyes of law, the disciplinary authority has inflicted the punishment of censure for the period 1992-1993 as well as withholding of two annual increments with cumulative effect vide Resolution dated 15.04.2014. It is submitted by counsel for the petitioner that the resolution awarding punishment to the petitioner has been issued in violation of Rule 18 (6) and (7) of the CCA Rules. From bare perusal of the Resolution dated 15.04.2014, it is obvious that the same is not with reference to any evidence adduced during the enquiry. In fact, for no reasons whatsoever, the findings of the enquiry officer have been differed with and the impugned order of punishment has been inflicted upon the petitioner. In this connection, he draws attention of this Court towards the fact that the Bihar Public Service Commission (for



brevity *BPSC*) had in fact vide its communication dated 15.03.2013 expressed its disagreement with the proposed punishment. No concurrence of the BPSC has been received for inflicting the punishment upon the petitioner and neither the report of BPSC declining to concur with the proposed punishment has been considered under Rule 18 (7) of the Bihar CCA Rules.

8 On basis of submissions noted above, this Court finds that initiation of the proceedings in respect of allegation, which is 15 years old, was wholly unjustified as it is evident from the records that a commission of enquiry had been constituted with respect to the same allegations way back in the year, 1993 wherein the petitioner had also submitted his explanation. The authorities were, thus, well aware of the charges all throughout these 15 years. Further, the petitioner has drawn attention of the Court towards one application made under the Right to Information Act and its response issued by the District Confidential Section in the office of the Collectorate, Sitamarhi which is Annexure 15 dated 15.05.2013 wherein it has specifically been stated that the information in respect of the said occurrence of the year 1992, in respect of which the proceedings were being conducted, could not be made available as the file in relation to the said incident, which took place long back, was traceless in the office of the District Control Room where the records were



maintained. In the said information with respect to the proof of intimation regarding the communal violence, being sent by the petitioner through wireless message from the Riga Police Station, was said to be available on the records. It is only this piece of evidence, which was made available to the petitioner under the Right to Information Act. In respect of the submission made by the petitioner regarding the enquiry being vitiated on account of delay and in view of the aforesaid facts, no cogent response is available from the State. Counsel for the petitioner has placed reliance on the case of *State of Madhya Pradesh –Versus- Bani Singh & Another* reported in *AIR 1990 Supreme Court 1308* in support of his submission that delay in the instant case is inordinate and unexplained and, therefore, the respondents cannot be permitted to punish the petitioner on the basis of an enquiry conducted 15 years after the incident, more so when, as per the letter dated 15.05.2013, the admitted position is that the records of the occurrence of the year, 1992 are not available even with the respondent-authorities. Such submission of the petitioner is wholly justified in the facts of the case, as noticed above.

9 In respect of submissions that petitioner has been denied of his vital opportunity to respond to the second show cause which is dated 03.09.2012 as the same does not indicate any reason for differing with the findings of the enquiry officer dated 24.08.2010



favourable to the petitioner, this Court finds that no reasons whatsoever have been assigned nor any tentative findings recorded in the second show cause notice date 03.09.2012. The same is violative of the procedure under Rule 18 of the Bihar CCA Rules as also violative of principles of natural justice. In view of the specific findings of the enquiry officer in the report dated 24.08.2010 that the petitioner had taken adequate steps with the existing telecommunication available to intimate the officials regarding outbreak of communal violence, with reference to material produced before the enquiry officer, it was incumbent upon the disciplinary authority to assign reasons for differing with the findings recorded by the enquiry officer. Such disagreement was to be based on some material from the records of the enquiry and tentative findings were to be recorded so as to afford the petitioner adequate opportunity in compliance with the principles of natural justice as has been laid down by the Apex Court in the case of Punjab National Bank & Others –Versus- Kunj Behari Misra reported in AIR 1998 Supreme Court 2713. In this connection, paragraph 19 of the judgment is being reproduced:

“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7 (2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its



own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file representation before the disciplinary authority records its findings on the charges framed against the officer.”

10 The aforesaid submissions of the petitioner are worthy of consideration as the records reveal total non-compliance of the procedure prescribed under Rule 18 of Bihar CCA Rules and denial of adequate opportunity to the petitioner to submit his second show cause.

11 The third submission made by the counsel for the petitioner is that the findings have been recorded without reference to any material whatsoever. The said submission also appears to be correct. A perusal of the second show cause notice dated 03.09.2012 would show that the same only refers to the enquiry report and what is the evidence, which the disciplinary authority is referring to, has not been specified. What has been written in the second show cause notice is being reproduced for easy reference:

आयुक्त, तिरहुत प्रमंडल, मुजफ्फरपुर से प्राप्त जाँच प्रतिवेदन एवं



संचिका में उपलब्ध साक्ष्यों के आधार पर यह प्रमाणित होता है कि.....

12 Thus, it is clear that the order of the disciplinary authority is without reference to any material or evidence. The same is impermissible in law. Even though strict rules of evidence are not to be applied in a departmental proceeding, which is to be conducted on the preponderance of probabilities, there has to be some material/evidence. Such action of the disciplinary authority, without any material or evidence whatsoever, cannot be said to be justified in the eyes of law. In this connection, reliance placed by the petitioner's counsel on the judgment reported in the case of Roop Singh Negi – Versus- Punjab National Bank & Others reported in (2009) 2 Supreme Court cases 570 is well founded.

13 In light of the discussion and reasons indicated above, the Resolution of the General Administration Department, Government of Bihar, Patna contained in Memo No 5133 dated 15.04.2014 is quashed. As a result thereof, the petitioner would be entitled to all consequential benefits.

14 The writ petition is allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.01.2018
Transmission Date	NA

