

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21968 of 2011

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Subhash Pandey, son of Ram Narayan Pandey, resident of village-Bhakura, P.S.-
Simri, Distt.-Buxar.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Director, Panchayati Raj, Bihar, Patna.
3. The Divisional Commissioner, Patna Division, Patna.
4. The District Magistrate, Buxar.
5. The District Panchayati Raj Officer, Buxar.
6. The Executive Magistrate -cum- Enquiry Officer, Buxar.
7. The Block Development Officer, Chousa, District-Buxar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kaushalesh Choudhary, Adv.
Mr. Amarendra Kumar, Adv.

For the Respondent/s : Mr. Prabhu Narayan Sharma, AC to AG.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-09-2018

Heard Mr. Kaushalesh Choudhary, learned counsel
appearing for the petitioner and Mr. Prabhu Narayan Sharma,
learned Assisting Counsel to the Advocate General for the State.

The petitioner is aggrieved by the dismissal order
bearing Memo No.66 dated 30.03.2005 passed by the District
Magistrate, Buxar which order has been affirmed by the Appellate
Authority, the Commissioner, Patna Division, Patna who has
dismissed the appeal of the petitioner bearing Service Appeal Case
No.556 of 2010 vide order passed on 26.07.2011.

The pleadings on record would show that this petitioner
holding the post of Panchayat Sewak, Gram Panchayat- Sikraul,



Block- Chousa in the district of Buxar, was proceeded against by service of charge memo, a copy of which is enclosed at Annexure 3 to the writ petition and charges the petitioner of financial irregularity on five different counts. In sum and subsistence the allegation against the petitioner as a Panchayat Sewak is of making incorrect recommendation for payment of relief under the “पारिवारिक लाभ योजना” for people below the poverty line. On enquiry it transpired that the recommendations were not correct.

The counter affidavit filed in the proceedings at paragraph 5 onwards amply explains the charges to inform that one Sanfula Devi was given the relief twice. Once as a wife of late Sheo Murat Singh and again as wife of Late Shiv Nath Rai. In a similar manner one Budhiya Devi was granted relief of on account of death of her husband Raj Bali Singh when in fact her husband Sri Ram Singh was yet alive and the person Raj Bali Singh in fact was her son and not her husband. The other paragraphs of the counter affidavit explain the financial embezzlement to which the petitioner as a Panchayat Sevak was party and the documents in support have been enclosed with the charge memo.

The petitioner filed his reply denying the charges of recommendation by disowning the signature present on the recommendations. The Enquiry Officer submitted his report



holding the charges proved. A second show cause was served on the petitioner to which he replied through Annexure 7 but has resulted in a dismissal order bearing Memo No.66 dated 30.03.2005 at Annexure 1. Feeling aggrieved the petitioner came before this Court in CWJC No.1397 of 2006 but was allowed to pursue the appellate remedy vide order present at Annexure 8. In appeal the Commissioner, Patna Division, Patna vide order present at Annexure 9 has confirmed the dismissal order.

Since the appeal was dismissed on grounds of limitation that the petitioner again came before this Court in CWJC No.4544 of 2010 and vide order passed on 28.10.2010 a coordinate Bench of this Court directed the appellate authority to consider the appeal on merits and dispose of the same within three months of the receipt of a copy of the order. On remand, the appeal has again been dismissed by the Commissioner, Patna Division, Patna vide order passed on 26.07.2011 impugned at Annexure 2 to the writ petition. Feeling aggrieved the petitioner is before this Court.

I have heard learned counsel for the parties and I have perused the records.

There is absolutely no dispute that reasonable opportunity was given to the petitioner to defend himself. The dispute that is being raised by Mr. Choudhary, learned counsel



appearing for the petitioner to contest the order impugned is that :

- (a) the signature on the recommendation was not of the petitioner; and
- (b) the documents relied upon by the department was not supplied to the petitioner.

He refers to a Division Bench Judgment of this Court since report in **2016 (3) PLJR 207 (Digvijay Narayan Singh Vs Union of India)**, paragraph 5 in support of his proposition that non-supply of documents would vitiate the proceeding.

There is absolutely no contest on the proposition advanced by Mr. Choudhary for non-supply of the documents on which the charges are founded, definitely would vitiate a proceeding but the case in hand is different and not covered by the proposition advanced because the charge memo itself encloses the documents/evidence on which each of the charge is framed and the reply of the petitioner at Annexure 2 nowhere pinpoints any lapse on the part of the department in failing to supply any of the relevant documents. In fact the petitioner has filed his reply and contested the matter before the Enquiry Officer and it is only after the guilt is upheld that as an after thought, he has chosen to raise the bogey of non-supply of the documents through the second show cause reply which is again a vague allegation because there is nothing on the



record of the proceedings which would show that any attempt was made by the petitioner during the course of enquiry to demand any document other than those relied upon by the Department for framing of charges.

The charges faced by the petitioner are of financial embezzlement of public money and considering that the petitioner was at the centre of embezzlement by recommending payment in favour of those who were either not eligible or whose identity itself was doubted, the order of dismissal needs no interference.

The writ petition is dismissed.

(Jyoti Saran, J)

SKPathak/Anjula

AFR/NAFR	NAFR
CAV DATE	NA
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