

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13428 of 2006

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GULAICHI DEVI Wife of late Rajendra Prasad Sah Resident of Village-
Auraiya Shiv Tola, P.O. Auraiya, Police Station- Bettiah Muffasil, Block-
Chanpattiya, District- West Champaran at Bettiah.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. The Secretary, Department of Rural Development, Panchayati Raj,
Government of Bihar, Patna.
3. The Director, Directorate of Panchayati Raj, Government of Bihar, Patna.
4. The District Magistrate West Champaran at Bettiah.
5. The District Panchayat Officer West Champaran at Bettiah.
6. The Sub- Divisional Officer Narkatiyaganj Sub- Divisional, District-West
Champaran at Bettiah.
7. The Block Development Officer Sikta, District West Champaran at Bettiah.
8. The Block Development Officer, Bettiah Sadar, District- West Champaran at
Bettiah.
9. The Gram Panchayat Officer Sugha Bhawanipur, Block-Sikta, District- West
Champaran at Bettiah.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jitendra Kumar Roy Mr. Ashish Dev
For the Respondent/s	:	Mr. Tej Pratap Singh, AC to AAG-13

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date:09-08-2018

The present writ petition has been filed for quashing
the order dated 05.08.2006 by which the petitioner has been
dismissed from his services.

The brief facts of the case are that a departmental
proceeding was initiated against the original petitioner who was
a Panchayat Sewak vide charge sheet dated 24.09.2004 and an



Enquiry Officer was appointed, who submitted his report dated 07.12.2004, whereby and where under all the charges levelled against the original petitioner were found to have not been proved. Thereafter, the disciplinary authority, finding irregularity in the conduct of the departmental enquiry, appointed a fresh Enquiry Officer vide Memo No. 195 dated 24.04.2005 who submitted his report dated 14.09.2005 and though none of the charges could be proved during the course of the said enquiry, as well, he recommended for imposing punishment of withholding of two annual increments with cumulative effect and also further recommended for non-payment of any sum apart from the subsistence allowances for the period of suspension. Thereafter, the District Magistrate, West Champaran at Bettiah vide Memo No. 757 dated 24.12.2005 sought the response of the petitioner to the charge of making fraudulent payment to those pensioners who had already died. The said memo no. 757 dated 24.12.2005 has been produced by the petitioner and is on record. It appears that thereafter the District Magistrate, West Champaran, Bettiah has passed the order of dismissal dated 05.08.2006.

The learned counsel for the petitioner has submitted that a bare perusal of the second enquiry report dated



14.09.2005 would show that none of the charges have been proved. It is further submitted that the disciplinary authority while giving second show cause notice was required to give reasons for differing with the opinion of the Enquiry Officer but no reasons whatsoever has been furnished in the second show cause notice dated 24.12.2005, hence order of punishment dated 05.08.2006 is illegal and has been passed in violation of the principles of natural justice as the petitioner has not been afforded an opportunity to put forth his defence before the disciplinary authority, to the grounds which have been furnished in the impugned order dated 05.08.2006, for the purposes of punishing the petitioner. It is further submitted that the order of punishment dated 05.08.2006 has been passed taking into account extraneous materials and facts which were never ever proved during the departmental enquiry and which has never been put to the petitioner in order to seek his reply or response to the same, hence the same amounts to violation of principles of natural justice leading to the order of punishment dated 05.08.2006 being contrary to law and perverse.

Per contra, the learned counsel for the respondents has submitted that he has not gone through the second enquiry report and he be granted a chance to bring on record the second



enquiry report. Nonetheless, the learned counsel for the respondents submits that the charges have been proved.

I have heard the learned counsel for the parties and gone through the materials on record and I find that the second enquiry report is the one which is dated 14.09.2005 and is placed at running page no. 75 (Annexure-14) of the writ petition. A bare perusal of the said enquiry report dated 14.09.2005 shows that none of the charges have been proved as against the original petitioner. I further find that the second show cause notice issued to the original petitioner does not contain any reasons for differing with the opinion of the Enquiry Officer, hence the petitioner has been precluded from submitting his defence to the issues which have been considered by the disciplinary authority while passing the order of punishment of dismissal. Reference in this connection be had to a judgment of the Hon'ble Apex Court rendered in the case of ***S.P. Malhotra Vs. Punjab National Bank & Ors. (2013) 7 SCC 251***. Another issue which arises for consideration is that the order of punishment dated 05.08.2006 has been passed taking into consideration extraneous materials which were never a part of the enquiry report and which have never been put to the petitioner, seeking his response/defence, hence the said



materials could not have been relied upon by the disciplinary authority for inflicting punishment of dismissal upon the petitioner especially since the said material have never been proved during the course of departmental enquiry.

Reference be had to a judgment of Hon'ble Apex Court reported in (1998) 7 SCC 84 (Punjab National Bank vs. Kunj Behari Misra) and the one reported in (2003) 4 SCC 557 (Canara Bank vs. Debasis Das) as also the one reported in (2015) 2 SCC 610 (Union of India & ors. vs. P. Gunusekaran).

Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, the order of punishment dated 05.08.2006 passed by District Magistrate, West Champaran, Bettiah is held to be perverse and illegal as well as contrary to law of the land, hence the same is quashed.

The writ petition is allowed.

It goes without saying that the consequential benefits shall be paid to the wife of the original petitioner since the original petitioner has already died.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	29.05.2019
Transmission Date	

