IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1926 of 2015

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Niranjan Kumar Ghosh Son of Late Kamini Mohan Ghosh Resident of Mohalla - Adarsh Coloney, Patel Nagar, P.S. - Shashtri Nagar, District - Patna.

.... **Petitioner**

Versus

1. The State of Bihar.
2. The Accountant General, Bihar, Patna.
3. The Secretary, Planning and Development Department, Government of Bihar, Patna.
4. The Secretary-cum-Commissioner, Department of Personnel and Administrative Reforms, Government of Bihar, Patna.
5. The Member Board of Revenue, Government of Bihar, Patna.
6. The Joint Secretary, Department of Personnel and Administrative Reforms, Govt. of Bihar, Patna.
7. The Director-cum-Deputy Secretary Administration, Education Department, Patna. .... **Respondents**

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Appearance :

For the Petitioner : Mrs. Mahasweta Chatterjee, Advocate and Mr. Samir Kumar Sinha, Advocate

For the State : Mr. Ajit Kumar Jha, AC to GP 2

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 31-08-2018

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

2. The petitioner has challenged punishment awarded to him under order dated 15.12.2010 bearing Memo No. 4655 by the Joint Secretary, Department of Personnel and Administrative Reforms, Govt. of Bihar, Patna, (respondent no.6) withdrawing one increment with cumulative effect.

3. On the allegation of tempering with the date of establishment of a college, namely, Shikshak Prashikshan Mahavidayalay, Arer, Madhubani the petitioner was proceeded against.

4. Allegation is that by tempering the date of establishment of the said college to be 1987 in stead of 1991 date of affiliation of the college has been extended with effect from 1987, though the college in question was established in 1991. The charge memo was issued to the petitioner on 25.11.1999. The petitioner submitted his response thereafter the Enquiry Officer conducted the proceedings.

5. Before the Enquiry officer, specific case of the petitioner was that prior to the affiliation being allowed by the department, the petitioner had not dealt with the concerned file. Thereafter, the Section Officer was responsible for further processing of the file. The petitioner has specifically pleaded that in the proposal forwarded he had mentioned the date of establishment of the college on 1991. This fact has been accepted by the Enquiry officer with reference to the records. Accordingly, charge was not found proved by the Enquiry Officer. The Enquiry Officer therefore exonerated the petitioner of all the charges under his report dated 11.8.2010 (Annexure 9). Till this stage, the petitioner is not aggrieved by the proceedings.

6. It is the action of the Disciplinary Authority thereafter that has caused prejudice to the petitioner. The Disciplinary Authority under his communication dated 20.12.2010 bearing Memo no. 3675 has communicated the enquiry report to the petitioner and expressed disagreement with the findings on charge no.3, being charge regarding tempering/overwriting in the date of establishment of the college mentioned herein above. The only point of disagreement is that because the petitioner was the custodian of the file, therefore *prima facie* findings of the Enquiry Officer appears to be not correct. The said communication dated 20.9.2010 is a second show cause on the point of disagreement with the findings of the Enquiry Officer in purported exercise of power under Rule 18(2) of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (herein after referred to as 'the Bihar CCA Rules, 2005'). In order to appreciate the action taken by the Disciplinary Authority, it would be appropriate to refer the procedure to be observed in case of disagreement:-

> *(2) The disciplinary authority, after receipt of the enquiry report as per Rule 17 (23)(ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose..*"

7. It is clear from the provision that in case of disagreement with the findings of the Enquiry Officer in article of charge, the Disciplinary Authority is required to record its reason for the disagreement. It is required to record its tentative findings on such charge with reference to the findings on record, only if the material is sufficient for the said purpose. The manner in which second show cause on the point of disagreement has to be communicated has clearly been declared by the Hon'ble Apex Court in case of **Punjab National Bank & Ors. Vs. Kunj Bihari Misra,** reported in **(1998) 7 SCC 84.** When an enquiry report favourable to the petitioner is submitted then at this stage, if the Disciplinary Authority proposes to differ with findings of the Enquiry Officer, then the opportunity contemplated at this stage is a very vital opportunity.

8. From perusal of the communication dated 20.9.2010, it is apparent that the Disciplinary Authority has not assigned any reason for disagreement with the findings of the Enquiry Officer. No tentative findings have been recorded nor any evidence on record has been referred to in the second show cause dated 20.9.2010. Merely a suspicion has been raised with reference to the circumstance that the petitioner was custodian of the file. The Enquiry Officer referring to various stages of the file movement as well as the depositions of various staff and officers in the department, has come to a definite conclusion as has been indicated herein above. The Enquiry Officer has come to a finding that the petitioner could not have been held responsible for the alleged interpolation/overwriting. Thus, it is apparent that the second show cause has been issued in violation of the provisions in the Bihar CCA Rules, 2005 and law declared in the case of **Kunj Bihari**

Misra (Supra). The Disciplinary Authority however has proceeded to award punishment to the petitioner under the impugned order dated 15.12.2010.

9. The other reason assigned for awarding punishment to the petitioner is even more perverse as in the order of the Disciplinary Authority, the onus of disproving the charge seems to have been shifted on the petitioner. The Disciplinary Authority has recorded in the order that since the petitioner has not been able to produce any evidence or material before the Disciplinary Authority, the petitioner's response to the second show cause has been rejected and punishment has been awarded. Such action of the Disciplinary Authority contrary to the procedure prescribed under Rule 17 of the Bihar CCA Rules, 2005.

10. In this regard, this Court would refer to the judgment in case of **A. Savariar Vs. Secretary, Tamil Nadu Public Service Commission & ors, reported in 2013 Lab IC 168.** The onus of establishing guilt lies upon the Disciplinary Authority. More so, in view of the fact that in the enquiry, with reference to materials on record and pleadings, a definite finding has been recorded by the Enquiry Officer that the charges against the petitioner could not be proved. The findings of the Disciplinary Authority are not only illegal being contrary to the prescribed procedure under the Bihar CCA Rules, 2005, but the same also defies logic and is perverse. On basis of such illegal exercise of power by the Disciplinary Authority, the petitioner cannot be made to suffer the consequences of withholding of an increment with cumulative effect.

11. The impugned order of punishment dated 15.12.2010 (Annexure 12) is quashed. As a result of quashing of order of punishment, the appellate order dated 1.10.2013 (Annexure 13), issued by the Member Board of Revenue (respondent no.5) on petitioner's Service Appeal No. 39 of 2012 would also collapse. The petitioner as a result of quashing of the impugned order is entitled to all consequential benefits.

12. The writ petition is allowed.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	NAFR
CAV DATE	NA
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