

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2678 of 2015

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1. Ram Suchit Sharma son of late Chandrika Singh resident of Vilalge - Silaunja,
P.s. Belaganj, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar , Patna.
2. Principal Secretary, General Administration Department, Bihar, Patna.
3. The State of Jharkhand through the Principal Secretary, General Administration
Department, Jharkhand , Ranchi. .

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhinav Srivastava
For the State : Mr. Amrendra Kumar, AC to AAG 15
For State of Jharkhand : M r. Anup Kumar Chonghdar

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 31-08-2018

Heard learned Counsel for the petitioner and the respondent
State as also the learned Counsel appearing on behalf of the State of
Jharkhand.

2. Counsel for the petitioner has submitted that in the instant
case there is a grave procedural infirmity in coming to a conclusion of the
petitioner's guilt. It is submitted that the second show cause, dated
18.12.2012, differing from the findings of the Enquiry Officer
communicated vide letter dated 21.10.2011, is not in accordance with Rule
18(2) of the Bihar CCA Rules.

3. For better appreciation of the submission, a brief facts of the
case are necessary. The petitioner has been proceeded against basically on
two charges while he was posted as an officer of the Bihar Administrative
Service as Deputy Collector, Land and Revenue, at Saraikela in the
erstwhile State of Bihar, which presently lies in the State of Jharkhand.
The petitioner upon bifurcation of the State has become officer of the State
of Bihar. It was alleged that a lady had submitted a loan application form



wherein the petitioner, who was already a married officer of the Government of Bihar, was shown to be her husband. On the allegation that such action of the petitioner was not in keeping with the expected standards of an officer of the Bihar Administrative Service, charge No. 1 was issued upon the petitioner that he had signed and submitted a loan document of the said lady posing to be her husband, when actually he was not her husband.

4. The other allegation which has been leveled against the petitioner is also in respect of the same lady wherein, it has been alleged that he has unauthorisedly issued “No Objection Certificate” so as to facilitate mutation of certain lands in favour of the said lady in Mutation Case No. 156 of 2001.

5. The issues were enquired by the Enquiry Officer in detail. On going through the loan application form, which, in the opinion of this Court, would form basis of both the charges, the Enquiry Officer has accepted petitioner’s assertion that he signed a blank form. He has concluded that since details in the form were filled in by someone else, the petitioner cannot be held liable for the contents therein. As a result, it cannot be decisively inferred that the petitioner had actually signed on the said application along with the said lady as her husband. On the basis of said conclusion, the petitioner has been exonerated from the said allegation. In respect of the second charge the Enquiry Officer relied upon a communication of the Executive Engineer of the Jharkhand State Housing Board dated 13.11.2001 which clearly communicated the fact that the land for which the said lady was claiming mutation had not been acquired for the Housing Board and thus the petitioner has granted “No Objection Certificate” in favour of the said lady. Both the charges were not founded true by the Enquiry Officer. Till this stage the petitioner had no grievance.

6. It is only after the second show cause dated 18.12.2012 has been issued that the petitioner has become aggrieved. He submits that without reference to any material or without referring to the conclusions



of the Enquiry Officer, the second show cause has been issued. He alleges that the exercise of jurisdiction by the Disciplinary Authority is not in accordance with Rule 18(2) of the Bihar CCA Rules 2005. He submits that in view of such a procedural lapse by the Disciplinary Authority in light of the law laid down in the case of Punjab National Bank & others vs. Kunj Behari Misra reported in (1998) 7 SCC 84, the entire proceeding thereafter stands vitiated being unfair and contrary to the principles of natural justice.

7. On going through the second show cause, dated 18.12.2012, this Court would find that the Disciplinary Authority has referred to the materials on record before the Enquiry Officer, being the loan application form of the said lady. Referring to the said material in course of enquiry the Disciplinary Authority has considered the same with a different perspective than what the Enquiry Officer has considered the same. The Disciplinary Authority referring to the petitioner's application form and the contents thereof, which has not been disputed, has noticed that petitioner's photograph is also pasted on the application form along with the said lady. Also that he has put his signature on the said application in column meant for husband. Disciplinary Authority has found the said material sufficient to conclude that Enquiry Officer has not considered the same properly. On the basis of aforesaid material, the Disciplinary Authority has, therefore, recorded a tentative finding in the second show cause, dated 18.12.2018 that there was sufficient material to show that petitioner had represented himself as husband of the said lady. Such procedure adopted by the Disciplinary Authority is in accordance with the procedure contained in Section 18(2) of the Bihar CCA Rules.

8. After due consideration of the petitioner's response to show cause with reference to the same material he has proceeded to award punishment of withholding of two annual increments with cumulative effect debarring the petitioner for promotion for three years. The Disciplinary Authority has also directed that decision in respect of payment of salary etc. in respect of the period of suspension will be taken



separately.

9. There is nothing on record to show that any decision has finally been taken with respect to the period of suspension. In view of the consideration hereinabove, in light of the contents of the second show cause, dated 18.12.2012, the submission of the learned Counsel for the petitioner does not find force. This Court is not inclined to interfere with the order of punishment dated 13.3.2014.

10. However, this Court would consider the claim of the petitioner that he was entitled to be considered for promotion after/beyond three years and direct that his case for promotion after/beyond the period during which the punishment was effective may be considered in view of the intervening circumstances of his retirement.

11. It would also be in the interest of justice that if a final decision has not been taken with respect to the entitlement of the petitioner with respect to period of suspension the same may also be taken expeditiously. As the petitioner is entitled to the aforesaid benefits in terms of the order of punishment, this Court considers it proper to observe that final decision in respect of these two issues shall be taken by the respondent authorities within a period of eight weeks from the date of receipt/production of a copy of this order and the consequential benefits arising therefrom be paid to the petitioner within four weeks thereafter.

12. The writ petition stands disposed of.

(Madhuresh Prasad, J.)

Snkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
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