

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2835 of 2013

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RAMJEE PRASAD MANDAL S/O LATE FUDAN MANDAL R/O
VILLAGE-HARIHAR PATTI, P.O.-GONHA, P.S.-TRIVENI GANJ,
DISTT.SUPAUL

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE COLLECTOR-CUM-DISTRICT
MAGISTRATE, SUPAUL
2. COLLECTOR-CUM-DISTRICT MAGISTRATE, SUPAUL
3. CIRCLE OFFICER, CHATAPUR, DISTT.-SUPAUL

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Akashdeep, Adv
For the Respondent/s : Mr. Raghwanand GA-11 and Mr. Sanjay Kr Tiwari
AC to GA-11.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 16-05-2018

Heard learned counsel for the parties.

2. This writ petition under Article 226 of the
Constitution of India has been filed for quashing the order of
punishment dated 14.09.2012.

3. Briefly stated the case of the petitioner is that he
was appointed as Revenue Karamchari on 26.08.1977 and
retired on 31.01.2010 and his services had been satisfactory
throughout his service period of 33 years.

4. In the year 2008 a devastating flood came in Koshi
region and Government announced compensation to flood
affected people. The petitioner was posted as Revenue
Karamchari in Chatapur Circle Office in Supaul district. The



funds for distribution of relief was to be released by the Government to the District Magistrate which was to be distributed to different Sub-divisions and relief was to be provided through the Circle/Block Office.

5. A list of beneficiaries was to be prepared village wise and panchayat wise and to be recommended by monitoring committee at Panchayat Level. All the payments above Rs. 2000/- was to be paid through account and below Rs. 2000/- through bearer cheques.

6. The funds were handed over to District Magistrate, Supaul and the same was transferred to different Sub-divisions and for payment to beneficiaries blank cheques were issued by the Bank through various Circle Officers. Petitioner was allotted 152 blank cheque volumes to be prepared as per the survey list of beneficiaries. Petitioner was transferred on 25.06.2009 from Chatapur to Supaul and petitioner handed over charge to one Shashi Bhushan Singh, however, he refused to take charge of cheque book which was reported to Circle Officer, Chatapur and petitioner as per order of Circle Officer handed over all 152 cheque books to Dayanand Prasad, however, no receipt was granted by him and petitioner was relieved on 30.06.2009 and he joined in Supaul, Circle Office as Revenue Karamchari.



7. Petitioner was again transferred on 10.12.2009 to Chatapur, Circle Office to hand over cheque-books and he joined on 11.12.2009 and petitioner found cheque-books lying beneath the table of Dayanand Prasad wrapped in a red cloth. Petitioner while handing over cheque-books to Satayanarain Ram, Circle Najir found that two cheque-books were missing from the lot and reported the matter to Circle Officer, Chatapur and handed over remaining 150 cheque-books to Circle Najir on 11.12.2009. FIR being Chatapur P.S. Case NO. 163/2009 was lodged against 33 beneficiaries.

8. A three member Committee was constituted by the District Magistrate comprising of District Accounts Officer, Sub Divisional Officer and Circle Officer and said Committee conducted enquiry behind the back of petitioner and submitted a report on 13.01.2010 in which petitioner and two other employees of the Circle were found *prima facie* to be responsible for missing cheques. The said Committee found one Dhirendra Kumar, Office Peon, responsible for misappropriation of amount and no allegation was found true against petitioner. Subsequently, on receipt of complaints regarding distribution of relief funds the State Government constituted Three Member



High Level Committee to inquire into the matter which submitted its report on 19.01.2010.

9. Petitioner was suspended on 18.01.2010, 12 days prior to his retirement on the basis of enquiry report dated 13.01.2010 and he retired from service on 31.01.2010.

10. Departmental Proceeding was initiated against the petitioner and memo of charge dated 16.03.2011 was served upon the petitioner in Form-Ka by which four charges were framed against him. The S.D.O. Birpur was appointed as Enquiry Officer and Circle Officer, Chatapur was appointed as Presenting Officer. The memo of charge was served upon the petitioner. On 24.06.2011 petitioner appeared before the Enquiry Officer and submitted a detailed reply denying the charges.

11. It has been submitted on behalf of petitioner that no document or witness were adduced before the Enquiry Officer by the department and explanation submitted by petitioner was forwarded to Presenting Officer, who agreed with the charges framed by his letter dated 12.11.2012. However, the Enquiry Officer on the basis of report dated 13.10.2011 found the charges to be proved, although in said report also nothing adverse was found against the petitioner.



12. The Enquiry Officer submitted his Enquiry Report to the Disciplinary Authority and a second show cause notice with a decision of imposing major punishment was served upon the petitioner vide memo dated 22.02.2012 and 13.03.2012. Petitioner submitted his reply dated 26.03.2012 against the findings of Enquiry Officer. However, without considering the reply of petitioner against the finding of Enquiry Officer imposed punishment vide order dated 14.09.2012 forfeiting full pension was imposed upon him.

13. A counter affidavit has been filed on behalf of respondents that the petitioner received cheque-books from Anchal Najir for which receipts have been given by the petitioner and subsequently two cheque-books were neither returned nor any bill was submitted by the petitioner and got withdrew a huge amount fraudulently in the name of different persons and for which he was suspended and departmental proceeding was initiated. Petitioner had handed over charge but did not hand over two cheque-books. Three Member Committee was constituted by the D.M. Supaul, to make enquiry in respect of fraudulent withdrawal by said cheques and petitioner being custodian of cheques was responsible for withdrawal of the



amount. Petitioner retired on 31.10.2010 and proceeding was converted under Rule-43B of Bihar Pension Rules.

14. Petitioner has filed a reply to the counter affidavit in which it has been stated that proceeding against the petitioner was initiated after his retirement, as such Bihar Government Servant (Classification, Control & Appeal) Rules-2005, is not applicable and Bihar Pension Rules were applicable. Respondents have not disputed that during departmental proceeding neither any oral or documentary evidence were produced on behalf of department and only on the 3 Men enquiry report the charges have been found to be proved, as such the enquiry was conducted not in conformity with the procedure as prescribed under 2005 Rules. The Disciplinary Authority even prior to considering the reply filed by the petitioner came to conclusion that petitioner is guilty of charges and liable to be punished and had predetermined the charges as proved, as such the issuance of show cause notice was only a formality. A FIR was lodged with respect to same allegations of withdrawal of amount and two parallel proceedings for similar allegations is not permissible. The Three Man Enquiry Committee was constituted by the District Magistrate, which held enquiry behind the back of petitioner, as such on the basis of said



enquiry charges cannot be proved and punishment imposed. The preliminary enquiry is only for the purpose to see if there are sufficient materials so that Disciplinary Authority take a decision to initiate departmental proceeding against delinquent. The Enquiry Officer has relied upon said enquiry report and found the charges to be proved although none of the authorities who had prepared the report were brought by the Presenting Officer to depose on behalf of department and to prove the contents of enquiry report with opportunity to the petitioner to cross-examine. Petitioner retired from service on 31.01.2010 and memo of charge was served upon him on 14.06.2011 and departmental proceeding commences after memo of charge being served, and as such sanction of the State Government is mandatory for initiation of departmental proceeding under Bihar Pension Rules after retirement, which has not been obtained by the Disciplinary Authority. On the direction of Court, the enquiry report has been enclosed on behalf of respondents by which charges have been held to be proved by the Enquiry Officer. On perusal of enquiry report, it appears that no witnesses on behalf of department was examined or any documents were adduced on behalf of department in support of charges. The enquiry report says that petitioner had submitted



his reply against the memo of charges on 08.06.2011 which was sent to Circle Officer, Chatapur cum Presenting Officer, for his opinion and he submitted his opinion on 12.11.2011 and on the basis of said opinion the Enquiry Officer has found the charges to be proved. The procedure adopted by the Enquiry Officer to prove the charges is not in conformity with the procedure as prescribed under Bihar Government Servant (Classification, Control & Appeal) Rules-2005 and Bihar Pension Rules. The departmental proceeding was initiated against the petitioner after retirement as such sanction of the State government is mandatory for initiation of proceeding under Bihar Pension Rules and no sanction being obtained by the Disciplinary Authority, the whole proceedings stands vitiated.

15. For the reasons as stated above, the order passed by the Disciplinary Authority is not sustainable and is accordingly quashed. Respondents are directed to release the pension and gratuity in favour of the petitioner within three months from the date of production/ receipt of the copy of the order. However, this order will not preclude the Disciplinary Authority to initiate fresh proceeding against the petitioner in accordance with law and procedure as prescribed under Bihar Government Servant (Classification, Control & Appeal) Rules-



2005 and Bihar Pension Rules after obtaining sanction from the
State Government.

The writ petition is allowed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	26.06.2018
Transmission Date	N.A.

