

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9916 of 2013

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Parma Nand Rishideo S/O Late Kantu Rishideo R/O Vill.+P.O.- Rahikpur Thela
Mohan, P.S.- Simraha, Distt.- Araria

.... **Petitioner**

Versus

1. The State Of Bihar
2. The Principal Secretary Personal & Administration Reform Department, Govt.
Of Bihar, Patna
3. The Joint Secretary Rural Development Department, Govt. Of Bihar, Patna
4. The District Magistrate, Araria
5. The Deputy Development Commission, Araria
6. The Deputy Election Officer, Araria
7. The Block Development Officer, Block- Sikati, Dist.- Araria

.... **Respondents**

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Appearance :

For the Petitioner : Mr. Ram Chandra Sahni, Advocate

For the Respondents : Mr. AC to GA 9

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 05-07-2018

Heard learned counsel for the petitioner and respondent
state.

2. The petitioner has served with the charge memo ‘Prapatra K’ dated 14.03.2010 by the District Magistrate, Araria, alleging that while the petitioner was posted as Head Clerk in the office of the Block Development Officer (hereinafter referred to as ‘the B.D.O.’), Sikti cheques worth corers of rupees made for Indira Awas Yojana were deposited in the Bank Account No. 163 of Dehati Primary Agricultural Credit Society (hereinafter referred to as ‘the PACS’).

3. The allegation was that as per the Indira Awas Yojana



guidelines the funds were to be deposited in the Nationalized Bank's Account or post office and as such the petitioner had deposited the cheques in the PACS account, he has violated the Indira Awas Yojana guidelines. The proceedings were conducted against the petitioner. The enquiry report is dated 21.06.2010. Perusal of the same shows that the Enquiry Officer has taken note of the petitioner's plea raised in the proceedings that it was the B.D.O. who had deposited the cheques in question and who could have been made responsible for the violation of the guidelines as alleged against the petitioner.

4. Enquiry report reveals that the B.D.O. against whom the petitioner has made allegations regarding depositing the cheques has been made the Presenting Officer in the proceedings being conducted against the petitioner giving rise to a grave and reasonable likelihood of bias. The B.D.O. has tried to highlight the petitioner's role by suggesting that since he was in the process of maintaining the registers etc., in the office he was having knowledge regarding the cheques being deposited in the PACS account instead of nationalized Banks or the Post Office.

5. The Disciplinary authority considering the plea raised by the petitioner as also the opinion of the Enquiry officer which was without reference to any documents or depositions and in



violation of the law laid down by this court in the judgment of *State of Uttar Pradesh and Others Vs Saroj Kumar Sinha* reported in (2010) 2 SCC 772 came to a finding that even though the petitioner could not be held to be responsible with regard to deposit of the cheques, but the responsibility of the petitioner cannot be ruled out since he was having an important role in the office and had he informed the higher officials within time, the entire thing could have been avoided. The findings therefore, are at total variance with the charges which were levelled against the petitioner. No enquiry had been conducted with respect to the findings recorded by the Enquiry Officer. Even if these findings are taken to be sacrosanct then the same at best only suggests that the petitioner did not inform the higher authorities. The same is not a finding to the extent that the petitioner had deposited the cheques in violation of the Indira Awas Yojana, which was the charge being enquired into. In respect of the charge, there is in fact a finding that the responsibility was of the B.D.O.

6. The charges levelled against the petitioner under charge memo dated 14.03.2010 have thus not been proved. The same is *prime facie* evident from a bare perusal of the conclusions of the Enquiry Officer dated 21.06.2010.

7. Having noticed the irregularity/procedural lapse



conducted during the enquiry, this court would only notice that since the charges have not been proved, the disciplinary authority had an opportunity to defer with these findings and give a second show cause to the petitioner communicating the points of disagreements with his tentative conclusions so as to grant the petitioner an opportunity as per procedure prescribed under Rule 18 of the Bihar CCA Rules, 2005. But contrary to the said procedure, the Disciplinary authority has proceeded to issue the second show cause as if the charges which had been levelled against the petitioner in charge memo dated 14.03.2010 have been proved as per the enquiry report, the Disciplinary authority has issued a second show cause dated 12.07.2012 to the petitioner communicating the enquiry report and asking for his response to the second show cause on the *non est* premise that the Enquiry Officer has held the charges proved against the petitioner, when the enquiry report is to the contrary.

8. As noticed above, the charges have not been proved. However, Disciplinary authority has given such a second show cause, which shows total non application of mind and which is not sustainable as per the procedure prescribed under the Bihar CCA Rules, 2005. The Disciplinary authority has proceeded to impose the punishment of dismissal of service upon the petitioner. The



petitioner's Service Appeal No. 164 of 2011 has also met the same fate in as much as the same has been dismissed by the Appellate authority, the Commissioner, Purnea Division. The second charge which was levelled against the petitioner in the charge memo is only an offshoot of the first charge and as such has not been dealt with separately in this order since it only states that the petitioner has violated the Indira Awas Yojana guidelines.

9. In view of the findings in respect of the first charge as recorded by the Enquiry Officer, the findings in respect of the second charge could not be otherwise.

10. As the issue is yet to be decided by the Disciplinary authority, since the order of punishment is perverse and without assigning any reason and shows total non compliance of the mind, the same cannot be made the basis of visiting the petitioner with civil consequence inasmuch as the same is in violation of the Bihar CCA Rules, 2005 as well as the principle of the Natural Justice.

11. This Court is of the opinion that the interest of justice would be served by remanding the matter to the disciplinary authority after the stage of submission of the Enquiry report.

12. Accordingly, order dated 18.1.2011, issued by the District Magistrate, Araria by which the petitioner has been dismissed from service, is quashed. Order dated 8.8.2012, passed in



Service Appeal No. 164 of 2011, by the Divisional Commissioner, Purnea rejecting petitioner’s appeal against order dated 18.1.2011, is also quashed. The Disciplinary authority may proceed to expeditiously consider the Enquiry report and pass reasoned and speaking order in accordance with law.

13. The writ petition is allowed to the extent indicated above.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA

