

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16321 of 2008

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Punyadeo Prasad son of late Sadhu Sharan Prasad resident of village Madhurapur
P.S. Pipra District East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, East Champaran.
3. The Sub-Divisional Officer, Chakia At & PO Chakia District East Champaran
4. The Treasury Officer, East Champaran at & PO Motihari
5. The Accountant General Bihar Patna, At & PO Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Ranjan I, Advocate
Mr. Atul Shankar, Advocate

For the Respondent/s : Mr. AC to AAG 4

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 29-03-2018

Heard counsels for the petitioner and the respondent
State.

2. While posted as Nazir in Kalyanpur Block the
petitioner superannuated on 31.07.1994. A charge sheet dated
09.06.1998 after four years of his retirement was served upon him
alleging misappropriation of certain funds. The misappropriation was
on various dates which are specified in the charge memo. The four
dates referred in the charge memo are dated 01.04.1993, 31.03.1994
23.09.1993 and 31.07.1994.

3. There is another allegation in the charge memo
alleging that by making some wrong entries an amount of Rs.
1,15,781/- has been misappropriated by the petitioner. This allegation
is without any details whatsoever. As regarding the date or the head
under which the alleged defalcation has been made, merely a vague



and baseless allegation has been levelled regarding misappropriation by making wrong entries . It is not even specified as to how and in which register wrong entries have been made.

3. How the Department proposes to prove the charges without giving any details in respect thereof is not evident from the charge memo. The charge memo therefore, in respect of this allegation appears to be vague and unsustainable. As regards the other charges which are with specific dates, the petitioner submitted his response to the charge memo by his reply dated 25.03.2003. The same is Annexure 3 to the writ petition.

4. Relying upon the provisions contained in proviso to Rule 43 (b) of the Bihar Pension Rules, the petitioner has raised a grievance that the charge memo in respect of all other charges except the one charge alleging misappropriation of an amount of Rs. 67/- on 31.07.1994 is unsustainable. The submission of the petitioner before the Enquiry Officer was that the charge memo is without jurisdiction as it is in violation of the proviso to Rule 43 (b) of the Bihar Pension Rules which mandates that subsequent upon severance of master servant relationship, a proceeding in respect of an event which is of not more than four years, is permissible. Since the petitioner's date of superannuation was 31.07.1994 the only allegation which could be related to be within four years prior to his date of superannuation was the alleged defalcation of amount of Rs. 67/- on 31.07.1994. The submission regarding the charge memo being in violation of Rule 43 (b) and without jurisdiction has been taken note by the Enquiry Officer while submitting his enquiry report dated 11.11.2006 but the same does not show any consideration whatsoever in relation to the said plea raised by the instant petitioner before the Enquiry Officer. Other than that, the findings of the Enquiry Officer also does not



place reliance on any documentary evidence whatsoever or supported by deposition of any departmental witness. The procedure prescribed under Rule 17 of Bihar CCA Rules for conduct of the proceedings has thus been violated. Other than that the Enquiry Officer has also not considered the plea regarding the charge memo being without jurisdiction since the same was in relation to events beyond the statutory period of 4 years prescribed under the proviso to Rule 43(b) of the Bihar Pension Rules. The Enquiry report shows total non-consideration of the plea raised by the petitioner and is bereft of any reason whatsoever.

5. The Disciplinary Authority also has mechanically accepted the findings of the Enquiry Officer under order dated 07.06.2008 bearing no. 170 issued by the District Magistrate, East Champaran Motihari. The same is also without reference to any material either documentary or oral. The aforesaid illegal and baseless recommendations of the Enquiry Officer have been mechanically accepted by the Disciplinary Authority. Whether such an order which is bereft of any reasons and shows total non-consideration of the plea raised by the petitioner is legally sustainable is no longer res integra.

6. In this connection counsel for the petitioner refers to a decision in the case of **Hassan Muzahid vs. the Bihar State Electricity Board** reported in **2015 4 PLJR 435**. The same deals with non-consideration by the Disciplinary Authority of the points urged by the delinquent there. In this case there is total non-consideration of plea raised by the petitioner before the Enquiry Officer which has mechanically been accepted by the Disciplinary Authority. In the instant case the enquiry report shows total non-consideration of the plea raised by the petitioner and the same has mechanically been accepted by the Disciplinary Authority. At both stages there is total



non-consideration of the plea raised by the petitioner and both the orders are without assigning any reasons and do not subserve the principles of natural justice and are legally unsustainable. Other than that as noticed above the entire proceedings and the impugned order of punishment has been based on no evidence whatsoever either oral or documentary and for this reason also the same is legally unsustainable being contrary to and in violation of the statutory procedure prescribed under Bihar CCA Rules and violative of the Principles of Natural Justice.

7. In view of the aforesaid findings, the enquiry report which is dated 11.11.2006 and the order of the Disciplinary Authority dated 07.06.2008 are quashed. The petitioner as a result of quashing of the impugned order would be entitled to all consequential benefits.

8. The respondent however, will be at liberty to reconsider the issue of maintainability of the charge memo in light of the provisions contained in 43(b) of the Bihar Pension Rules.

9. The writ petition is allowed

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	05.04.2018
Transmission Date	

