

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.750 of 2015**

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Krishna Nandan Das S/o Late Babu Lal Das R/o Village + P.O. + P.S. - Hathidah,  
District - Patna (Dismissed Revenue Clerk, Mahua Anchal, P.S. - Mahua, District -  
Vaishali)

.... .... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Government of Bihar, Patna
2. Commissioner, Tirhut Division, Muzaffarpur
3. Collector cum District Magistrate, Vaishali
4. Sub Divisional Officer, Mahua, Vaishali
5. Circle Officer, Goraul, Vaishali

.... .... Respondents

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**Appearance :**

For the Petitioner : Mr. Sanjay Kumar @ S.K., Advocate  
For the State : Mr. Kamlesh Kishore, AC to SC 12

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**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD**  
**ORAL JUDGMENT**

**Date: 26-03-2018**

Heard learned counsel for the petitioner as well as learned  
counsel appearing for the State.

2. The writ petition has been filed challenging the order of  
dismissal dated 17.5.2014, issued by the Collector cum District  
Magistrate, Vaishali (respondent no.3) whereby the petitioner,  
Revenue clerk in Goraul Circle, Vaishali has been dismissed from  
service. The petitioner has also challenged order dated 18.11.2014  
passed in Service Appeal No.197 of 2014, whereby petitioner's  
appeal filed against the order of dismissal/punishment has been  
rejected by the commissioner, Tirhut Division, Muzaffarpur



(respondent no.2).

3. Brief facts, giving rise to the instant writ petition, are that on account of delay in disposal of some office work, the petitioner was saddled with the fine of Rs.5000/-. Fine has been imposed alleging violation of the time limit prescribed under the Right to Service Act on three occasions. As a result thereof, he was required to deposit a sum of Rs. 15,000/- as fine under the Right to Service Act.

4. The petitioner was served with the charge memo dated 20.1.2014 (Annexure 4 series) under letter no. 70 issued by the District Magistrate, Vaishali, including '*Prapatra Ka*' which alleged that by not depositing the said fine saddled upon the petitioner he has been charged with indiscipline, negligency and insubordination. The Sub Divisional Officer, Mahua started the proceeding on 27.1.2014. In course of the proceeding dated 10.2.2014 another charge was supplemented and the petitioner was also allowed time for submitting his reply in respect of another charge memo of the same date, i.e., 20.1.2014.

5. The second charge was based on the petitioner's arrest and implication in Vigilance (Patna) Police Station Case No. 21/2013, wherein it was alleged that he was caught red handed taking a bribe of Rs.12,000/-. It is alleged that the petitioner had



taken said bribe for completing the mutation work of the complainant/allegationist, namely, Sunil Kumar. Both the said charges were to be considered by the Enquiry officer together.

6. The petitioner has submitted his written response denying the aforesaid charges. It is also an admitted position that the amount of Rs. 15000/- being fine imposed under the Right to Service Act, had been deposited on 21.1.2014. It is submitted by the counsel for the petitioner that the said amount has been deposited even though his revision against the said penalty imposed upon him under the Right to Service Act was pending consideration before the Revisional authority.

7. In respect of other charge, i.e., the allegation based on the vigilance case, this Court finds that from perusal of the charge memo it is revealed that along with '*Prapatra Ka*', a copy of the FIR of Vigilance case no. 21/2013 is the only 'evidence' which has been relied upon by the department to establish the charges against the petitioner.

8. The enquiry report has been submitted in the proceeding on 8.3.2014. Records of the proceedings have been placed on record by Annexure 4D to the counter affidavit from perusal of which it appears that the Sub Divisional officer, Mahua had granted the petitioner opportunity on 27.1.2014 and 10.2.2014



to furnish his reply to the charge memo. In the proceeding dated 26.2.2014, as also on 28.2.2014 the Presenting officer was absent as has been recorded in the proceeding. Just after 28.2.2014, i.e., on 4.3.2014, the Presenting officer submitted his opinion in respect of the charges dated 28.2.2014 under letter no. 3.

**9.** It appears from the record of proceedings that the Presenting officer cum the Circle officer, Garaul has given his opinion on 4.3.2014 & 8.3.2014 and relying thereupon the Enquiry officer i.e., the Sub Divisional Officer placed the matter for orders on the same day, i.e., 8.3.2014.

**10.** From perusal of the order sheet, it appears that no evidence, oral or documentary, has been produced in the enquiry. Even the FIR arising out of Vigilance Case no. 21 of 2013 has not been produced in the proceedings. Records of proceeding after issuance of charge sheet contains six dates as noticed above. On none of the said dates, it appears that any evidence whatsoever has been produced in the enquiry. It is also apparent from the record of proceedings that no opportunity of personal hearing was afforded to the instant petitioner. Thus, the procedure prescribed under Rule 14 of the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 has not been observed/followed by the Enquiry officer. The enquiry report has been concluded in a



slipshod manner which does not inspire any confidence and is grossly illegal and unjust. The aforesaid illegal manner in which the proceedings have been conducted is evident from Annexure 4/D which has not been disputed or denied by the respondents in the counter affidavit filed by them. Even in the enquiry report holding that the charges against the petitioner have been proved, no evidence, oral or documentary has been considered by the Enquiry officer. Thus, the enquiry does not inspire confidence.

**11.** The matter does not end here. After enquiry report was submitted, the Disciplinary officer/the District Magistrate, Vaishali forwarded the same to the petitioner along with second show cause. In response to the second show cause the petitioner submitted his reply dated 24.3.2014. Surprisingly, the District Magistrate has accepted the findings of the Enquiry officer and the only reasoning assigned by the Disciplinary officer is that the petitioner could not produce any valid evidence in his defence. The conclusion of the Disciplinary officer is not based on any material evidence and merely on the basis of the enquiry report which as noticed above has been prepared in violation of the statutory provisions and in gross violation of the Principles of Natural Justice.

**12.** It would be relevant to notice here that other than the FIR of the vigilance case, there was no evidence, oral or



documentary, before the Enquiry officer. The FIR itself could not have been treated as evidence as has been held by the Apex Court in the case of **Roop Singh Negi Vs. Punjab National Bank and others**, reported in (2009) SCC 570.

13. Other than the procedural infirmity as noticed above, the instant case is also one of no evidence.

14. Petitioner's appeal bearing Service appeal no. 197 of 2014 has also been dismissed by the Commissioner, Tirhuit Division, Muzaffarpur vide order dated 18.11.2014 by assigning reason that the petitioner has not been able to give any explanation or has not been able to give any evidence in support of his defence.

15. Prima facie, the findings recorded by the Appellate authority are illegal and unsustainable as it is established law that it is for the department to bring home the charges in the departmental proceedings. The charges forming the charge memo should be supported by the materials on record to sustain the order of punishment. The same is clearly lacking in the instant case.

16. In the result, the order of dismissal dated 17.5.2014, issued by the Collector cum District Magistrate, Vaishali/ the Disciplinary authority as well as subsequent order of the Appellate authority dated 14.11.2014 are quashed.

17. As the consequence of quashing of the order of



punishment, the petitioner would be entitled to consequential benefits leaving it open to the Disciplinary authority to proceed in the matter in accordance with the provisions of Bihar CCA Rules after giving due opportunity to the petitioner.

**18.** In view of the aforesaid observations and directions, the writ petition is allowed.

**(Madhuresh Prasad, J)**

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