

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4463 of 2015

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1. Rupa Sinha Wife of late Rajani Kumar
2. Chandan Prakash
3. Kundan Prakash Both Sons of late Rajani Kumar
4. Rasana Rani Sinha Daughter of late Rajani Kumar All Resident of Singh Colony
Road No. 1, Brij Bihari Lane, Brahampura, P.S. and District Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Commissioner, Tirhut Division, Muzaffarpur.
3. The District Magistrate, Muzaffarpur.
4. The Additional Collector, Muzaffarpur.
5. The Sub Divisional Officer (West), Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar No. 7
Mr. Anant Kumar Mishra

For the Respondent/s : Mr. Vinay Kumar Mishra, AC to AAG-15

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 24-04-2018

Heard the learned counsels for the petitioners and the respondents.

The short point raised against the petitioner is that charge was in respect to creating *Jamabandi* in respect of two persons in Mutation Case No. 413/2003-04 and 2454/2003-04. It is alleged in the charge memo that said lands had earlier been acquired for National Highway. The petitioner had committed error in allowing mutation of the acquired lands in favour of two persons while he was posted as Revenue Karmchari.

The findings of the Enquiry Officer in order dated



16.07.2008 is that the *Jamabandi* in question has been created in the year 2003-04 whereas the petitioner had already been transferred from the place in the year 2002 itself. Since the *Jamabandi* has been created by his successor in office, therefore, it was concluded that wrong *Jamabandi* was not created during his posting as Revenue Karmchari. However, findings have been recorded in respect of creation of *Jamabandi* in favour of two other persons in respect of other lands and accordingly punishment has been awarded to the petitioner placing the petitioner in the minimum admissible grade pay which is a major punishment.

It has been submitted on behalf of the petitioner that since the findings are recorded in respect of different *Jamabandi* creation for which no charge has been constituted and no opportunity was afforded to the petitioner. The order is illegal. It has also been submitted that even the *Jamabandi* created in respect of other two lands, which form the basis of the punishment have been affirmed by the Revisional Authority in the order dated 16.10.2012 in Revisional Case No. 21/2008-2009 and also the order dated 16.10.2012 in Revisional Case No. 22/08-09 which are Annexures 9 and 9/A of the writ petition.

The said facts has not been considered by the authority even though, the issue was specifically raised as would be apparent



from the order passed by the Divisional Commissioner in Service Appeal Case No. 393/2013. The order passed in the Service Appeal by the Divisional Commissioner shows that these facts have been raised by the petitioner. However, order dated 15.12.2014 passed on petitioner's Service Appeal shows no consideration of the said fact that the Revisional Authority had already affirmed the creation of *Jamabandi* in respect of two persons and as such, the creation of *Jamabandi* in their favour cannot constitute any misconduct. That apart, the petitioner was not served the charge of mutation/creation of *Jamabandi* in respect of two other persons in Mutation Case No. 3389/2001-02 and 3390/2001-02.

This fact has been considered by the Appellate Authority and he has come to a finding that no enquiry had been conducted against the petitioner in respect of other these two *Jamabandi* creations. He has also concluded that the procedural requirement was of communicating the said allegations by supplementary or modified charge memo. The same has admittedly not been done. There is total violation of the procedure prescribed under the Bihar Government Servants (Classification, Control & Appeal) Rules, inasmuch as the order of the Revisional Authority clearly shows that the punishment in respect of the *Jamabandi* created in Mutation Case No. 3389/2001-02 and 3390/2001-02 for which no



charge had ever been framed or served upon the petitioner and no inquiry in respect of the same was conducted. In the light of such admitted position as emerging from the order dated 15.12.2014 of the Divisional Commissioner in Appeal Case No. 393/2013, the entire proceedings, including the report of the Enquiry Officer dated 16.07.2008, order dated 20.07.2013 passed by the Disciplinary Authority are violative of the principles of natural justice, in as much as no opportunity whatsoever has been afforded to the petitioner in respect of the *Jamabandi* created in Mutation Case No. 3389 of 2001-02 and Mutation Case No. 3390 of 2001-02 for which he has been punished.

In this connection, this Court would refer to the procedure under rules 17 of Bihar Government Servants (Classification, Control & Appeal) Rules, inasmuch as the punishment of lowering the pay scale to the basic grade constitutes a major punishment. The same could not have been done without following the procedure in respect of Rule 17. The rule has not been followed as is evident from the order dated 15.12.2014 passed on the petitioners' Service Appeal No. 393 of 2013 passed by the Divisional Commissioner.

In view of the aforesaid consideration, the order of punishment dated 20.07.2013 passed by the District Magistrate,



Muzaffarpur and also the order dated 15.12.2014 passed in Service Appeal No. 393 of 2013 are unsustainable and are hereby quashed.

The present writ petition is allowed.

(Madhuresh Prasad, J.)

Rakhi

AFR/NAFR	
CAV DATE	N.A.
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