

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14573 of 2011

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Parasuram Kumar, S/O Late Baleshwar Singh, R/O Vill.- Barabigha, P.O.-
Pawapuri, P.S.- Giriyak, Distt.- Nalanda

.... Petitioner/s

Versus

1. The State Of Bihar through Secretary Rural Development Department
2. District Magistrate, Nalanda at Biharsharif
3. District Supply Officer-cum-Conducting Officer
4. Block Development Officer, Sarmera, Bihar Sharif, Distt.- Nalanda

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Sandeep Kumar, Advocate.
For the Respondent/s : Mr. D.P. Choudhary, SC 7.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 03-07-2018

This Writ Application has been preferred for quashing the order dated 04.05.2011 passed by the District Magistrate, Nalanda, as contained in Memo No. 784 dated 04.05.2011 (Annexure-12), by which the petitioner has been dismissed from service and a direction has been issued to recover a sum of Rs. 21,02,653/- through the certificate proceedings.

Learned counsel representing the petitioner has placed before this Court Annexure 12 which is the order of dismissal. A limited prayer has been made submitting that the impugned order is fit to be set aside on the ground of violation of principles of natural justice alone. It is submitted that the District Magistrate, Nalanda, being the Disciplinary Authority, was obliged to consider the reply



submitted by the petitioner to the second show cause notice. Learned counsel submits that from a bare perusal of the operative part of the order, as contained in Annexure-12, it would appear that the Disciplinary Authority has only stated that the reply submitted by the petitioner has been analyzed but on analysis no concrete proof could be found in the show cause. One of the submissions of the learned counsel is that from a reading of the impugned order it would also appear that the Disciplinary Authority had already decided in his mind to dismiss this petitioner from service and this state of mind of the Disciplinary Authority is reflected in his order where he says that the second show cause of the petitioner is rejected and the decision taken to dismiss him is maintained. Learned counsel submits that there was no prior decision to dismiss the petitioner from service and, therefore, there was no question of maintaining any such decision, according to the learned counsel, it is crystal clear from the order that the Disciplinary Authority had a pre-conceived mind and with that he not only did not go into the issues raised and the submissions made in the second show cause on behalf of the petitioner but has also stated that the decision to dismiss the petitioner from service is maintained.

Learned counsel for the State is present. It is submitted on behalf of the State that the petitioner was given adequate opportunity to represent himself in the enquiry but he did not appear as a result



thereof the Enquiry Officer submitted the enquiry report which has gone against the petitioner and, at this stage, the petitioner cannot be allowed to assail the impugned order on the ground of violation of principles of natural justice.

Having gone through the materials on the record, particularly the contents of the impugned order as contained in Annexure-12, this Court is of the opinion that the Disciplinary Authority has not at all gone through the reply of the petitioner in response to the second show cause notice. The Disciplinary Authority being the first authority to take a decision as regards the imposition of punishment should have looked into the reply and the issues raised by the petitioner in his reply could have been discussed briefly and in ultimate analysis if the Disciplinary Authority was not satisfied with those issues he could have rejected the same by giving reasons but, in the present case, no such exercise has been taken by the Disciplinary Authority.

This Court agrees with the submissions of the learned counsel for the petitioner that the Disciplinary Authority had no reason to say that the decision with regard to dismissal of the petitioner is to be maintained because there was no decision prior to the decision of dismissal and such kind of reason provided in the impugned order would only go to show that the Disciplinary Authority had been



passing the order impugned in the present application with a pre-conceived mind.

Taking into consideration the principle of fairness and the concept of impartial adjudication being a facet of the principle of natural justice this Court would have no hesitation in setting aside the impugned order as contained in Annexure-12 on this ground alone. The impugned order, as contained in Annexure-12, is therefore set aside; the Disciplinary Authority is directed to consider the reply of the petitioner to the second show cause and after considering the same a fresh order in accordance with law may be passed within a period of two months from the date of receipt / production of a copy of this order.

The Writ Application is allowed to the extent indicated here-in-above.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
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