

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 19280 of 2015

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Suresh Prasad, son of Satya Narayan Prasad, resident of Village- Sawali, P.S.-
Baikunthpur, District- Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Chief Secretary Bihar
3. The Principal Secretary, Co-operative Department, Bihar, Patna
4. Joint Secretary, Vigilance, Co-operative Department, Bihar, Patna
5. The Deputy Secretary-cum-Chief Vigilance Officer, Co-operative Department,
Bihar, Patna
6. Joint Registrar, Co-operative Society, Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr Chitranjan Sinha, Sr Advocate with
Mr Akhilesh Dutta Verma, Advocate

For the Respondent/s : Mr Nagendra Prasad Yadva, SC XXIII with
M/s Ranvijay Singh and Vijaya Laxmi
Srivastava, ACs to SC XXIII

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 10-04-2018

Heard the learned Senior Counsel appearing on behalf of
the petitioner and the respondent-State.

2 The short point advanced on behalf of the petitioner is
that in the proceedings conducted against the petitioner, the procedure
prescribed under Rule 18 of the Bihar Government Servants
(Classification, Control & Appeal) Rules, 2005 (for brevity, *Bihar
CCA Rules*), which provides the course of action to be adopted by the
Disciplinary Authority on the enquiry report, has been violated in the



instant case.

3 The brief and undisputed facts leading to filing of the instant writ petition are that one charge memo was served upon the petitioner containing seven charges on *Prapatra Ka* dated 08.11.2007. The seven charges were framed alleging several incidences showing that the petitioner had done dereliction of his duties. While working as the Managing Director of the respondent-Bank, Charge No 1 alleges that the inspection of the Cooperative Bank was done by the National Bank for Agriculture and Rural Development and due to irregularities detected, there had been a ban on operations of the Bank. Charge No 2 was a mere extension of the first charge. Charge No 3 alleged that recovery of the loan was not up to the mark during the period petitioner was posted in the respondent-Cooperative Bank and that he was not supervising or controlling the affairs of the Bank properly. The other charges were in respect of some minor allegations in respect of the petitioner being absent from the Bank on account of his implication in some criminal case and that there was some delayed recovery of loan advanced to some cold storage loanees. The other two allegations, namely, allegations 6 and 7 were alleging unsatisfactory performance by the petitioner that he had violated the transfer order dated 04.06.2005 as he had been allegedly relieved on 16.06.2005, but joined at the transferred place on 01.07.2005.



4 Another charge Memo (Annexure 5) dated 16.04.2009 was also served on the petitioner. This charge memo is in respect of charges alleging that the petitioner had demanded Rs 11,000 as illegal gratification and that on 01.10.2008, he had been apprehended red handed in connection with the said allegations and forwarded to judicial custody. The same has been served upon the petitioner under Resolution dated 29.07.2009.

5 Two enquiry reports have been submitted by the Enquiry Officer pursuant to the enquiry conducted in respect of the said charge memos. In respect of the first charge memo wherein there were seven allegations, the conclusion of the Enquiry Officer in his enquiry report has been communicated under Letter dated 01.02.2011 (Annexure 13). It has been concluded by the Enquiry Officer that the allegations made against the petitioner in the charge memo were baseless and that the petitioner's response to the charge memo has been found satisfactory. The charges in respect of the first charge memo were, thus, not proved against the petitioner.

6 In respect of the second charge memo, the enquiry report has been communicated under Letter dated 27.01.2010 (Annexure 9). This enquiry report, which arises out of the vigilance case alleging demand of illegal gratification of Rs 11,000/- and petitioner's arrest in connection with the said allegations, concludes



that decision regarding the petitioner's guilt or innocence could be possible only after conclusion of the judicial proceedings pending in the vigilance case.

7 The Disciplinary Authority under letter dated 09.11.2011 (Annexure 17) has issued second show cause communicating his disagreement with the enquiry report submitted in connection with the first charge memo. Another similar second show cause notice (Annexure 22) dated 07.10.2013 has been issued to the petitioner in relation to the second charge memo dated 29.04.2009. Perusal of this second show cause (Annexure 22) dated 07.10.2013 would show that the respondents have also incorporated the fact of disagreement with the first charge memo.

8 From perusal of both the letters that is Letter dated 09.11.2011 (Annexure 17) and 07.10.2013 (Annexure 22) purporting to be a second show cause notice by the Disciplinary Authority in respect of the two charge memos, it is clear that all the Disciplinary Authority had done is to reproduce the charges which were contained in the charge memo whereby the two proceedings were initiated. Other than recording or reproducing the charges contained in the charge memo and recording his conclusion in respect of the charges, no reason for disagreement has been communicated to the petitioner, nor is the disagreement with reference to any material on record.



9 The petitioner, thereafter, gave his response to the two second show cause notices issued upon him. His response to the first charge memo is Annexure 21 to the writ petition and the same has been submitted on 24.01.2013. The petitioner had pointed out to the Disciplinary Authority that in the second show cause notice issued to him, there is infraction of procedure laid down under Rule 18 of the Bihar CCA Rules inasmuch as apart from being a post decisional opportunity, no reasons for disagreement with the findings of the enquiry have been communicated to the petitioner. In response to the second show cause notice dated 07.10.2013, the petitioner has submitted his written response which is dated 17.01.2014 (Annexure 24). The same is an elaborate response raising similar contentions highlighting violation of the provisions contained under Rule 18 of the Bihar CCA Rules.

10 Both these elaborate representations made in response to the two second show cause notices issued to the petitioner have finally been dealt with by the Disciplinary Authority and under notification dated 26.03.2014, the Disciplinary Authority has communicated its decision purporting to be under Rule 14 (xi) of the Bihar CCA Rules dismissing the petitioner from service. It has been further directed that during the period of suspension, the petitioner would not be entitled to anything other than subsistence allowance



and that the order of punishment has the concurrence of the competent authority including the Bihar Public Service Commission.

11 Being aggrieved by the said order of punishment, the petitioner has filed his review (Annexure 26) before the State Government on 20.05.2014. At this stage, the petitioner has approached this Court by filing *CWJC No 3776 of 2014* challenging the said proceedings. This Court, under order dated 31.07.2015 passed in *CWJC No 3776 of 2014*, has disposed of the writ petition considering pendency of the review application filed by the petitioner. By order dated 31.07.2014, this Court has directed that the review application filed by the petitioner be disposed of by a reasoned and speaking order within a period of three weeks from the date of appearance of the petitioner with a certified copy of that order. The State Government under Order dated 26.12.2014 (Annexure 32) has disposed of the review application filed by the petitioner by considering the same unworthy of consideration. During pendency of the instant case, realizing the fact that there is specific mandate of this Court to dispose of the review application filed by the petitioner by a reasoned and speaking order, the respondent-authorities have disposed of the review application filed by the petitioner by order dated 13.10.2014. The same has been challenged by filing an Interlocutory Application bearing IA No 2423 of 2018. The respondent-State has



also filed its response to the said IA by filing the supplementary counter affidavit.

12 In view of the aforesaid facts and since the pleadings are complete, with agreement of the parties, the matter is being taken up for its final disposal at the stage of admission itself.

13 This Court would now aver to the submission made by the learned Senior Counsel for the petitioner with reference to the two notices dated 09.11.2011 (Annexure 17) purporting to be the second show cause disagreeing with the findings of the Enquiry Officer dated 01.02.2011 in respect of the first charge memo; and the letter dated 07.10.2013 (Annexure 22) purporting to be the second show cause differing with the findings of the Enquiry Officer dated 27.01.2010 in respect of the second charge memo.

14 It has been rightly pointed out by the learned Senior Counsel for the petitioner that the two letters purporting to be second show cause notices are in violation of the statutory procedure laid down by Rule 18 of the Bihar CCA Rules. Perusal of the same would show that they do not communicate any reason showing disagreement with the Enquiry Officer other than to reproduce the allegations which have been enumerated in the two charge memos issued against the petitioner and recording his guilt in respect of the same. There is no reference in regard to any material in course of the enquiry or any



reason for disagreement with the findings of the Enquiry Officer. The two letters purporting to be second show cause are, thus, clearly unsustainable and in violation of the procedure prescribed under Rule 18 of the Bihar CCA Rules. Rule 18 of the Bihar CCA Rules are being reproduced herein for easy reference:

“18. Action on the inquiry report.

–(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recoded by it in writing, may remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of rule 17 as far as may be.

(2) The disciplinary authority, after receipt of the enquiry report as per rule 17 (23) (ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.

(3) The disciplinary authority shall forward or cause to be forwarded a copy of the inquiry report, together with its own findings, if any, as provided in sub-rule (2), to the government servant who may submit, if he or she so desires, his or her written representation or submission to the disciplinary authority within fifteen days.

(4) The disciplinary authority shall consider the representation or submission, if any, submitted by the government servant before proceeding further in the manner specified in sub rules (5) and (6).

(5) If the disciplinary authority



having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (v) of rule 14 should be imposed on the government servant, it shall, notwithstanding anything contained in rule-19, make an order imposing such penalty.

(6) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in [clauses (vi) to (xi) of Rule 14] should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the government servant any opportunity of making representation on the penalty proposed to be imposed:

(7) Notwithstanding anything contained in sub-rule (5) and (6), in every case where it is necessary to consult the Commission, the Commission shall be consulted and its advice shall be taken into consideration before making any order imposing any penalty on the government servant.

15 In the instant case, the authorities have not only violated sub rules (2) and (3) of Rule 18 of Bihar CCA Rules but also have violated sub rules (4) to (6) of Rule 18 of the Bihar CCA Rules in respect of further step taken after issuance of second show cause against the petitioner. The elaborate response/representation filed by the petitioner in response to the second show cause notice issued to him have not at all been considered as is prima facie evident from bare perusal of the order of punishment (Annexure 25).



16 In response to the two elaborate submissions/representation made by the petitioner in response to the second show cause, a very cryptic order has been issued by the Disciplinary Authority wherein there is no reason whatsoever in support of the conclusion that the petitioner is guilty of the allegations made out in the charge memo and that the punishment of dismissal is warranted in the case.

17 Even though in respect of the second charge memo alleging the petitioner of being guilty of demanding illegal gratification of Rs 11,000/-, the Enquiry Officer has submitted a report that till conclusion of the judicial proceedings pending in the vigilance case in respect of the same charges, it was not possible to arrive at a conclusion regarding the said allegations. However, the Disciplinary Authority, in the order of punishment dated 26.03.2014, has recorded that the Enquiry Officer has found the allegations in respect of the said charge to be proved. The said finding is clearly perverse finding without any basis inasmuch as in the Enquiry Report dated 27.01.2010 in respect of the second charge memo dated 29.07.2009, there is no such conclusion of the Enquiry Officer. As noticed above, on the contrary, the Enquiry Officer has submitted a finding that till conclusion of the pending judicial proceedings, it was not possible to arrive at a conclusion regarding the petitioner's guilt or



innocence in respect of the charges arising out of second charge memo dated 29.07.2009. The Disciplinary Authority has recorded no finding whatsoever.

18 The said order also lacks total non-consideration of the representation or submissions submitted by the petitioner. No findings have been recorded in the order of the Disciplinary Authority dated 26.03.2014 in respect of any of the articles of charges with reference to any evidence adduced in the enquiry against the petitioner before the Enquiry Officer. Thus, there has been total non-compliance of the procedure prescribed in the Bihar CCA Rules. Clearly, the entire proceedings arising from the stage of issuance of the two second show cause notices till the issuance of the order of punishment dated 26.03.2014 (Annexure 25) are in clear violation of the statutory provisions prescribed under the Bihar CCA Rules as also violative of principles of natural justice inasmuch as total non-consideration of the plea put forward by the petitioner renders the procedural safeguards provided under the Bihar CCA Rules to be redundant. The procedure adopted by the Disciplinary Authority is nothing but an empty formality. Such procedure cannot subserve the principles of natural justice.

19 In respect of the order dated 13.02.2018 passed on the petitioner's Review under Rule 24 (2) of the Bihar CCA Rules, in



compliance of this Court's earlier order dated 31.07.2014 passed in *CWJC No 3776 of 2014*, this Court would observe that the authority passing the order on review, from bare perusal of the conclusion, clearly appears to be obsessed with the fact that the petitioner, pursuant to a pre trap memorandum and post trap memorandum, has been arrested in relation to the allegations of demand of illegal gratification and the fact that vigilance proceedings in respect thereof are still pending against the petitioner. Considering these facts, the authority has come to the conclusion that the petitioner's conduct is unbecoming. Accordingly, he has expressed his agreement with the findings and conclusions of the Disciplinary Authority and rejected the petitioner's review.

20 While rejecting the petitioner's review, he has assigned the reason that there was no fact worthy of consideration in the review application filed by the petitioner. The authority passing the order dated 13.03.2018 on the review application filed by the petitioner appears to have committed the same mistake as has been committed by the Disciplinary Authority. He has recorded that, agreeing with the findings of the Enquiry Officer, the charges against the petitioner are found to be unbecoming of a Government servant. Clearly, the order on review application is perverse. The Enquiry Officer has not found the charges in respect of demand of illegal



gratification under the second charge memo to have been proved. This is a clear error of record and shows total non-application of mind by the review authority. The conclusions of the Enquiry Officer in respect of the second charge memo arising out of the vigilance case was that the final decision in respect of the petitioner's guilt or innocence was not possible till conclusion of the criminal proceedings against the petitioner. The review authority has also placed reliance on the pre trap memorandum and post trap memorandum which contained the charge of illegal gratification. This Court would observe that the pre trap memorandum and post trap memorandum at the time of petitioner's arrest are issues which are yet to be examined in the pending criminal proceedings arising out of *Vigilance PS Case No 75 of 2008* dated 01.10.2008. The same per se cannot be taken to be evidence to support the petitioner's guilt in respect of the charges regarding which the criminal proceedings are yet to be decided. Apart from this fact, this Court would also notice that there is no other evidence which has been relied upon by the review authorities. What is the sanctity of such document which is part of the criminal investigation, has already been decided by the Apex Court in the case of *Roop Singh Negi –Versus- Punjab National Bank and Others, (2009) 2 Supreme Court Cases 570*. This Court is also of the opinion that the pre trap memorandum and post trap memorandum cannot by



itself be considered to be evidence in respect of the charges and cannot by itself form the basis to conclude the petitioner's guilt arising out of the arrest on the basis of pre trap memorandum and post trap memorandum.

21 For the reasons indicated hereinabove, having considered the plea that procedural safeguard under the Bihar CCA Rules has not been followed, this Court would quash the order of the Disciplinary Authority dated 26.03.2014 bearing notification No 1379. As a result of quashing of the order of punishment notified under the said order, and for the reasons indicated hereinabove, the order passed in review application is also unsustainable. The same are quashed.

22 It would be open to the authorities to proceed afresh against the petitioner from the stage of second show cause under Rule 18 of the Bihar CCA Rules by complying with the procedure prescribed therein.

23 The writ petition stands allowed to the extent indicated hereinabove.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.04.2018
Transmission Date	NA

