

## IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13226 of 2014

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Krishna Kant Jha Son of Late Kamla Kant Jha resident of Village- Ballia  
Bikrampur, Tole- Dahora, P.O.- Ballia, P.S.- Manigachhi, District- Darbhanga.

.... .... Petitioner

Versus

1. The State of Bihar, through the Secretary, Law Department, Bihar.
2. The High Court of Judicature at Patna ( Administrative side), through the Registrar General.
3. The Registrar General, High Court of Judicature at Patna.
4. The Registrar ( Administration), Patna High Court, Patna.
5. The District Judge, Darbhanga, District- Darbhanga.

.... .... Respondents

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**Appearance :**

For the Petitioner : Mr. Gayanand Roy, Advocate and  
Mr. Sheo Nandan Mishra, Advocate  
For the State : Mr. Manoj Kumar , AC to GP 4  
For respondents no.2 to 5 : Mr. Bindhyachal Singh, Advocate  
Neel Nikhar, Advocate

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

ORAL JUDGMENT

**Date: 30-08-2018**

Heard learned counsel for the petitioner and learned  
counsel for the respondents

2. The writ petition has been filed for quashing of order dated 26.8.2013 of the District Judge, Darbhanga awarding punishment of dismissal from service to the petitioner who was then working as clerk in the Civil court, Darbhanga. Order dated 18.3.2014 under letter no. 12935 issued by the Registrar (Administration), Patna High Court communicating rejection of he petitioner's appeal against order of dismissal has also been challenged. The petitioner has also prayed for a consequential relief



of re-instatement.

3. The petitioner has been proceeded against under charge memo dated 28.11.2011. Allegation which was being enquired was that while posted as Sristadar the petitioner had demanded Rs.200/- for expeditious scrutiny of one case (Partition Suit No. 262 f 2002) and that subsequently the amount had been returned by the petitioner. Petitioner's response to the charge memo is dated 14.12.2011. He has denied the allegations. Thereafter he has been subjected to proceedings and after conduct of enquiry the petitioner has been issued a second show cause under Memo no. 13 dated 11.3.2013. In response thereto, the petitioner has made his reply dated 25.3.2013. In his response to the second show cause, the petitioner has not alleged violation of any procedure. No allegation has been made regarding any procedural deficiency in the proceedings conducted before the Enquiry Officer. He has expressed mere denial of charges in his response to the second show cause. The petitioner thereafter has filed a detailed memo of appeal before the High Court. In his appeal, for the first time the petitioner has raised a grievance that the documents, being the statement of witnesses recorded earlier by the District Judge in the preliminary enquiry, were not served on the petitioner along with the charge memo. He has alleged that without giving copies of the



statement of witnesses recorded during the preliminary enquiry, they have been called to depose before the Enquiry Officer in the proceedings. Petitioner has admitted in his appeal that he was allowed to cross examine the said witnesses. Petitioner has specifically stated regarding examination-in-chief of the witnesses as well as their cross-examination before the Enquiry Officer.

4. Petitioner's counsel submits that non-supply of statements of the witnesses recorded during the preliminary enquiry has prejudiced his case. He further submits that order of the Appellate Authority does not disclose any reason and that for the said reason the order on the petitioner's appeal dated 18.3.2014 is unsustainable in the eyes of law. Referring to the proceedings of the meeting of the Standing Committee dated 11.3.2014 wherein petitioner's appeal was considered, it is submitted by learned counsel for the petitioner that the rejection of his appeal without assigning any reason has caused gross prejudice to the petitioner since none of the submissions raised by the petitioner have been considered by the Appellate Authority.

5. It is worth noting that prior to memo of appeal, petitioner has not raised any procedural unfairness in the conduct of proceedings before the Enquiry Officer. Even in the appeal the only issue the petitioner has been raising is non-supply of the statement



of witnesses which were recorded in the preliminary enquiry prior to initiation of the disciplinary proceedings. In Ground No. (viii) of his appeal, the petitioner has raised a grievance which is as follows:-

*“For that, the appellant was, therefore, seriously prejudiced in his defence because the earlier statements of aforesaid three witnesses were not available with him at the time of deposition of these witnesses in course of departmental proceeding.”*

6. Even prior thereto in the statement of facts in the appeal, the petitioner has clearly stated that the witnesses were examined and cross-examined in the course of enquiry. Since witnesses, relying upon whom final decision has been taken in the proceedings, were examined before the petitioner, non-supply of there statements recorded earlier in the preliminary enquiry, cannot be said to cause any prejudice to the petitioner. Admittedly, as per averments made in the appeal as well as the writ petition, the petitioner was also afforded opportunity to cross examine the witnesses before the Enquiry Officer.

7. As per admitted case of petitioner this Court would find that non supply of statement of witnesses recorded in the preliminary enquiry has lost its relevance since they were examined in presence of petitioner and he was allowed opportunity of cross-



examination. This alleged irregularity has not caused prejudice to the petitioner. Other than this infirmity, no other procedural lapse has been raised by the petitioner either before the Disciplinary Authority in his response to the second show cause or before the Appellate Authority in his memo of appeal. Learned counsel has vehemently argued that non-supply of the said statements has vitiated the proceedings. He has relied upon a decision in the case of **State of Uttar Pradesh and others Vs. Saroj Kumar Sinha**, reported in **(2010) 2 SS 772** in support of the said submission. Petitioner's counsel has also relied upon a decision reported in case of **Nirmala J. Jhala Vs. State of Gujrat and another**, reported in **(2013) 4 SCC page 301**. Referring to paragraphs 52.2, 52.4 & 52.8 of the said decision he submits that reliance upon the statement of the witnesses recorded earlier during the preliminary enquiry have lost its significance once the regular enquiry was initiated by issuing a charge sheet. He has also submitted that prior to the allegations in question, the petitioner had an unblemished past service record. Thus, he has submitted that by relying upon the statements recorded during the course of preliminary enquiry the Enquiry Officer has committed gross error. He has also submitted that past service record of the petitioner should have been considered while awarding the punishment to the petitioner.



8. This Court has also considered that witness upon whom reliance has been placed by the Enquiry Officer, was admittedly examined and cross examined in the proceedings in presence of the petitioner. No prejudice has been caused by relying upon the statement of witness recorded in the enquiry since the petitioner got an opportunity in the enquiry to cross examine the witnesses where they were examined in his presence. Since there is no other allegation of unfairness in the conduct of proceedings and since the non-supply of the statements of witnesses recorded earlier has caused no prejudice to the petitioner, the petitioner cannot be permitted to take advantage of non-supply of the statements in the course of enquiry. It is a trite law that the principle of Natural Justice is not to be applied everywhere and is not a straight jacket formula which can be relied to invalidate actions which have caused no prejudice to the person complaining violation of the principles.

9. Recourse to Natural Justice should not be ritualistic as the rules of Natural Justice are required to be followed for doing substantial justice and not for completing mere ritual. In a case where non compliance principles of Natural Justice cause no prejudice, as in the instant case, the petitioner cannot be heard to say that the consequent action is invalidated on account non



compliance with the principles. Even if the matter is remanded to the Appellate Authority for a decision by assigning reasons the same would be of no legal consequence. There is no possibility of change in the decision of the Appellate Authority since the alleged non supply of statement of witnesses recorded in the preliminary enquiry, prior to initiation of the departmental proceedings would not change the decision of the Appellate Authority and since no other procedural lapse has been alleged. In this connection, this Court would refer to the decision in the case of **Escorts Farm Limited Vs. the Commissioner, Kumaun Division, Nainital and others, reported in (2004) 4 SCC 281.**

**10.** The writ petition is devoid of merit for the reasons indicated herein above and the same is dismissed.

**(Madhuresh Prasad, J)**

Shashi.

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