

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20805 of 2014

Awadhesh Prasad Singh Yadav S/o Late Sakaldip Ray , Resident of Village-Khapura, P.O. Kalayanpur, P.S. Pipra, District - Patna, Bihar, Presently residing at C/52 , Road No. 6, Non-Gazetted Quarter, Punaichak, P.S. Shastri Nagar, Patna, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of General Administration, Government of Bihar, Patna.
3. The Principal Secretary, Department of Health, Government of Bihar, Patna.
4. The Joint Secretary, Department of General Administration, Government of Bihar, Patna.
5. The Additional Secretary , Department of General Administration, Government of Bihar, Patna.
6. The Additional Secretary , Disaster Management-cum-Enquiry Officer, Government of Bihar, Patna.
7. The Under Secretary, Department of General Administration, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Kumar Kaushik, Adv.
For the Respondent/s	:	Mr. Amar Nath Deo, Adv.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 04-04-2018

This application under Article 226 of the Constitution of India has been filed for quashing the order dated 7.7.2014 issued under the signature of Respondent No. 7 by which petitioner has been awarded the punishment of censure under Rule 14 of the Bihar Government Servants (Classification, Control and Appeal)



Rules, 2005 (hereinafter referred to as 'CCA Rules') and order dated 25.9.2014 by which review filed by petitioner has been rejected.

Briefly stated the case of petitioner is that he was appointed as Assistant on 18.7.1984 and was posted in Department of Revenue and Land Reforms at the time of appointment. He was promoted to the post of Section Officer in the year 2010 and posted in the Department of Health and presently he is posted as Section Officer in the office of learned Advocate General, Government of Bihar, Patna. Petitioner while posted in the Health Department, the Joint Secretary, Health Department, recommended the General Administrative Department to initiate departmental proceeding against petitioner vide letter dated 29.7.2013 on account of two charges as contained in Memo of charge.

The 1st charge was based on the complaint made by Sri Prem Prakash Sharma on 10.4.2013 in which it was stated that petitioner misbehaved with him when he had gone to the Section seeking information with respect to his file relating to advance payment of Provident Fund. No document or letter dated 10.4.2013 was provided along with memo of charge.



Similarly charge no. 2 was based on complaint made by Sri Bindu Kumar Pandey dated 10.12.2012 in which he had made allegation of misbehaviour against petitioner. The Department of General Administration issued show cause notice to petitioner vide memo dated 16.8.2013 to put forth his explanation against the charges and petitioner submitted a detailed reply vide letter dated 6.9.2013 refuting charges levelled against him. Petitioner had categorically stated that charge no. 1 is levelled by Sri Prem Prakash Sharma, Physiotherapist, in view of the fact that petitioner has asked him to bring all the relevant paper in accordance with rules before the petitioner for advance payment of GPF.

The Assistant of the Department had pointed out that certain papers/documents were necessary for approval and petitioner forwarded the file to higher authorities on 10.4.2013 and letter dated 14.4.2013 was issued under the signature of Director in Chief of the Department that application of the complainant was incomplete and further information was required for such approval for grant of GPF. Similarly, petitioner had also taken specific plea with respect to complaint made by one Bindu Kr. Pandey that the aforesaid person is not posted as B.C.G. Team Leader and he was never appointed on that post. The appointment was invalidated by



the Department and he had obtained a recommendation from the Bihar Public Service Commission which was not found to be genuine. The motive behind the complaint was that petitioner was not cooperating with the complainant.

The Department of General Administration thereafter requested the Joint Secretary, Health Department, vide Memo dated 19.9.2013 to give opinion with respect to defence taken by petitioner in his reply dated 6.9.2013.

In pursuance of the aforesaid communication the Health Department conducted the preliminary enquiry and the Deputy Secretary after obtaining necessary approval of Principal Secretary recommended the Department of General Administration to accept the reply dated 6.9.2013 submitted by petitioner vide letter dated 2.1.2014.

The General Administration Department without awaiting the response of the Health Department decided to initiate departmental proceeding under Rules 17 and 19 of the C.C.A. Rules vide memo dated 2.1.2014 on the basis of two charges as framed by letter dated 29.7.2013. The General Administration Department thereafter received the opinion of the Health Department on 2.1.2014 but refused to act upon it as Memo of charge against petitioner was already issued and directed the



Health Department to bring it to the notice of enquiry officer vide letter dated 8.1.2014 through the Presenting Officer. The enquiry officer conducted the enquiry in one day and submitted the enquiry report to the Additional Secretary, General Administration Department, vide letter dated 25.4.2014 finding the charges to have been partly proved and petitioner was asked to file 2nd show cause with respect to enquiry report dated 15.5.2014 and petitioner submitted his reply to the show cause notice dated 28.5.2014. The enquiry officer conducted the enquiry only in one day and no witness was examined during the enquiry and no evidence was laid by the Department for proving the charges.

The Presenting Officer also produced report dated 2.1.2014 of the Health Department approved by the Principal Secretary but same was not considered by the enquiry officer. Even the two complainants namely Prem Prakash Sharma and Bindu Kumar Pandey were not examined to prove the complaint. As such, no reliance can be placed on the complaint application made by them on 10.4.2013 and 10.12.2012.

The defence of petitioner that complaints made by Sri Prem Prakash Sharma and Sri Bindu Kumar Pandey were not genuine and only as petitioner had not agreed to their request for cooperating with them by relaxing the Rules and even finding of



the Health Department during the preliminary enquiry was not considered by the enquiry officer. Although there was no evidence on record still the enquiry officer found the charge no.1 as partly proved and charge no. 2 proved. The conclusion of enquiry officer is based on conjectures and surmises and presumption and not on the basis of any evidence adduced during enquiry proceeding.

The enquiry officer has not considered the defence of petitioner and has not even examined the file of the first complainant with respect to the payment of his provident fund and second complaint with respect to his appointment as Team Leader so that the reason as stated by the petitioner could be verified.

No reliance can be placed on the basis of written complaint made by two persons unless and until they are produced by the Department in support of charges and after giving opportunity to petitioner to cross-examine them.

On the basis of enquiry report and submission of reply filed by petitioner pursuant to second show cause notice he has been awarded with punishment of censure under Rule 14 of the C.C.A. Rules.

The Disciplinary Authority had decided to hold an enquiry under Rule 17 and 19 of the C.C.A. Rules and therefore



the enquiry officer was bound to follow the provisions of Rule 17(3) to 17(23). However, the entire proceeding was conducted in one day without examining any witnesses and without proving any documentary evidence, as such enquiry proceeding suffers from procedural illegality. The Explanation-2 of C.C.A. Rules clearly provides that censure shall be entered in the character roll of the year of allegation of omission and commission. The adverse effect of censure on the confirmation and promotion of the employee shall be for the next three consecutive years after the year of allegation or omission and commission for which the employee has been censured.

The General Administration Department has issued a direction vide letter dated 11.8.2014 to supply information with respect to the Section Officers of the Department for promotion to the post of Under Secretary as the Department is considering and preparing a panel for such promotion and petitioner is placed at Serial No. 166 in the gradation list and his name was likely to be considered for promotion but in view of the punishment order he is not entitled to be considered.

It has been further submitted that 3rd MACP of petitioner was also due since 18.7.2014 i.e. after completion of 30 years of



service but due to punishment of censure he could not be granted his 3rd MACP.

The proceeding against the petitioner was initiated for imposing major penalty under Rule 17 of the C.C.A Rules, as such even though he has been imposed a minor punishment of censure but since the proceeding was initiated under Rule 17 of the C.C.A Rules, it was mandatory for the enquiry officer to follow the complete procedure as prescribed under Rule 17 and 19 of C.C.A. Rules.

Admittedly, the proceeding was conducted and concluded in one day when no documentary or oral evidence was adduced by the Presenting Officer and even the report of Health Department was not considered by the enquiry officer which was prepared after completion of enquiry by the Health Department on the basis of allegation made in the complaint petition as well as defence of the petitioner but same was not considered by the enquiry officer and although there was no evidence on record yet the enquiry officer has found charges to be partly proved and proved and same is based on conjecture and surmises, presumption and assumption. The Disciplinary Authority has not considered the defence of petitioner while passing the punishment order and



has accepted the enquiry report without considering the reply of petitioner against finding of Enquiry Officer.

Considering the facts and circumstances of the present case and going through the orders of the Disciplinary Authority, this Court finds that once a decision was taken by the Disciplinary Authority to conduct the disciplinary proceeding under Rule 17 of the C.C.A. Rules then procedure as prescribed under Rule 17 has to be fully followed and any non-compliance and deviation makes the enquiry vulnerable and punishment based on such enquiry is liable to be set aside. Accordingly, the orders of Disciplinary Authority and the order passed on Review filed by petitioner are set aside. Petitioner is entitled for consequential benefits.

Writ petition stands disposed of.

(S. Kumar, J)

sudip/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.04.2018
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