

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11169 of 2017

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Shailendra Kumar Paswan @ Shailendra Paswan, S/o Late Ram Charitra
Paswan, R/o At & P.O.- Chhoti Chak, P.S.- Gogari, District- Khagaria.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.
3. The District Magistrate, Khagaria.
4. The Deputy Collector, Land Reforms, Khagaria.
5. The Circle Officer, Allauli, Khagaria.
6. The Circle Officer, Beldaur, Khagaria.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Rajeev Kumar Singh, Advocate Mr. Anjani Kumar, Advocate Mr. Sita Ram Prasad, Advocate
For the Respondent/s	:	Mr. Md. Khurshid Alam- AAG-12

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 10-09-2018

Heard learned counsel for the petitioner and
learned counsel for the State.

In this case, the petitioner is challenging the order containing memo no.03 dated 02.01.2016 passed by the District Magistrate, Khagaria, by which the petitioner has been dismissed from service. Whereafter, appeal has been preferred by the petitioner vide Service Appeal No.01 of 2016, which has



been dismissed by the appellate authority vide order dated 13.05.2017.

On perusal of the order of the appellate authority, it is very much clear that the appellate authority has not taken care to examine the records of the case and recorded his finding on the charges levelled against the petitioner, inasmuch as, proper procedure has been followed was also required to be looked into by the appellate authority, but the same has not been done by the appellate authority.

Learned counsel for the petitioner submits that the departmental proceeding was initiated and the document which has been mentioned in the charge memo was not given to the petitioner, in such view of the matter, any order of remand will not serve the purpose. It has further been stated that no date of inquiry was fixed but on *ipsi dixit* manner the process of inquiry has been conducted.

These are very serious allegations in decision making process. As the appellate authority has not dealt the appeal on merit of the case, merely he has approved the order of the District Magistrate, Khagaria, it is well known principle of law that the appellate authority while exercising the power of appeal has to examine the facts as well as the law as the appeal



is continuation of trial. When all the records were placed before him for fresh consideration, then on the basis of materials brought during the inquiry he has to take decision showing that he has applied his independent mind but nothing reflects that such action has been taken by the appellate authority.

Accordingly, the order dated 13.05.2017 passed by the appellate authority in Service Appeal No.01 of 2016 is set aside. The matter is remanded back to the appellate authority to allow the petitioner to represent himself or through his agent, give a patient hearing and take decision in accordance with law after examining all the points raised by the petitioner and on the basis of the materials brought during the inquiry proceeding. The appellate authority should complete entire exercise within a period of three months from the date of receipt/production of a copy of this order.

With the aforesaid observations and directions, this writ petition is allowed to the extent as indicated above.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	13.09.2018
Transmission Date	N/A.

