

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5443 of 2015

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Umesh Prasad son of Late Girdhari Sah R/o Village- Siwaipatti, P.O.-
Siwaipatti P.S. Siwaipatti, District- Muzaffarpur, Bihar.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Principal, Secretary, Department of Revenue and Land Reforms,
Government of Bihar, Patna.
3. Commissioner, Tirhut Division, Muzaffarpur.
4. District Magistrate-cum-Collector, west Champaran, Bettiah.
5. Deputy Collector, District Establishment, West Champaran, Bettiah.
6. Additional Collector-cum-Enquiry Officer, West Champaran, Bettiah.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Kumar Kaushik
		Mrs Namrata Dubey
For the Respondent/s	:	Mr.Rohitabh Das,AC to AAG10

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 10-05-2019

Heard counsel for the petitioner and counsel for the
respondents-State.

Petitioner was working as revenue clerk at Yogapatti
circle office. On 12.06.2012, he was trapped by the Vigilance and
taken into custody. Vigilance P.S. Case No. 43 of 2012 was
registered against the petitioner and allegation was that he was
soliciting bribe, and a sum of Rs 10,000/- was recovered from his
possession. Allegation is that bribe was solicited for facilitating
settlement of some land in favour of allegationist.



On the same set of charge, charge memo dated 30.07.2013 came to be issued. Petitioner submitted his written statement and the proceeding commenced before Enquiry officer. Enquiry officer after concluding the proceeding, returned a finding of 'charges not being proved'. Finding of the Enquiry officer was considered by the Disciplinary Authority. It was felt that enquiry was not conducted properly and further enquiry was deemed necessary under rule 18(1) of Bihar CCA Rules,2005.

Counsel for the petitioner has submitted that the decision of the disciplinary authority is contrary to CCA Rule 2005.

On going through the findings of the Disciplinary Authority, it is clear that direction was issued to the Enquiry officer under rule 18(1) of Bihar CCA Rules. Rule 18(1) of Bihar CCA Rules,2005 contemplates direction for further enquiry. The Enquiry officer thereafter proceeded to consider the matter further.

On 26.02.2014 enquiry report was submitted by the Enquiry officer, pursuant to further enquiry. This time the same Enquiry officer returned a finding that charges against the petitioner have been proved in the enquiry.

Record of the enquiry reveals that none had been examined in support of charges levelled against the petitioner



even the allegationist namely, Nasrullah Ansari was also not examined. No documentary evidence was led in support of the allegation. In fact, petitioner on the contrary had produced two witnesses in his defence. He had pleaded that allegation pertains to pending application for settlement of land which had been submitted in the office in December, 2011. Petitioner had joined in the office much thereafter and hence, he has submitted that he had wrongly been implicated in this case. Two affidavits on behalf of two defence witnesses Bipin Kumar Singh and Prabhat Ranjan Shukla in the enquiry were disbelieved by the Enquiry officer. Conclusion to disbelieve affidavits submitted by two witnesses is without any basis and based on surmises and conjectures. Enquiry officer has taken into consideration the fact that on 12.06.2012 i.e. date on which petitioner was arrested, he was working in the concerned office where allegationist's application for settlement was pending. On consideration of this fact only Enquiry officer had disbelieved the defence of the petitioner, show cause of the petitioner had been rejected by the Enquiry officer in its report dated 26.02.2014.

Counsel for the respondents-State submits that the petitioner was employee in the office at the time of his arrest. The manner in which recovery has been made supports the allegation



of bribe against the petitioner and as such findings of the Enquiry officer are legal and do not require any interference. Procedure was complied with and due opportunity was granted to the petitioner and therefore, there is no occasion for this court to exercise its jurisdiction of judicial review in the instant matter. Fact that the petitioner was caught red handed supports the case of the department. He relies upon decision of the Apex Court in the case of State of Bihar & others vs. Lakshmi Shankar Prasad reported in (2002) 10 Supreme Court Cases 351. He submits that conclusion of the Enquiry officer on the point of taking bribe is sustainable in the eye of law.

On going through the enquiry report, it is clear that there was no material whatsoever before the Enquiry officer on the basis of which the allegation of demanding or accepting bribe could have been established.

In the instant case, there is no material whatsoever in support of the allegation in the enquiry. Findings of Enquiry officer therefore, are clearly unsustainable in the eye of law. This court would take notice of the fact that even the allegationist who had levelled the allegation had not appeared before the Enquiry officer and was not examined in course of the proceeding. Order of the Enquiry officer was clearly without any basis. Petitioner has



raised this issue before Disciplinary Authority in his response to second show cause upon submission of enquiry report.

Disciplinary Authority, after taking note of entire chronology of events has accepted the findings of the Enquiry officer. The Disciplinary Authority has accepted enquiry report which as noted hereinabove was without any basis.

Upon consideration of second show cause, disciplinary authority has assigned a reason that petitioner has not brought any new fact. This court would observe that there is no such procedural requirement in law that the delinquent at the stage of filing response to second show cause is required to bring any new fact/material. After submission of enquiry report, which is communicated along with second show cause by the Disciplinary Authority, the delinquent is given an opportunity to persuade the Disciplinary Authority to accept the findings of the Enquiry Officer favourable to the petitioner; and also to reject the findings which are against the delinquent. While availing the opportunity at this stage, the delinquent, on the contrary, is required to refer to enquiry report and records of the enquiry to show that findings of the Enquiry Officer are sustainable/ unsustainable on basis of the material on record before the Enquiry officer and having regard to the procedure adopted by the Enquiry Officer in the enquiry itself.



Other reason assigned for accepting finding of the Enquiry officer is that the petitioner had been caught red handed.

From the findings of the Disciplinary authority, it is also apparent that disciplinary authority has relied upon opinion of the presenting officer. At this stage, this court would only observe that role of presenting officer is not to give his opinion in support of the charge. Presenting officer is expected to discharge his duty as contemplated under rule 17(14) of Bihar CCA Rule 2005. He is expected to place documentary as well as oral evidence in the proceedings in support of the charge which has not been done. No evidence has been brought. Opinion of the presenting officer is not a relevant factor. Opinion of the Presenting Officer cannot form the basis for arriving at conclusion of charge being proved, or on basis of which punishment can be awarded to a delinquent

Having regard to the procedure prescribed by Bihar CCA Rules 2005 it was incumbent upon the Disciplinary Authority to see that proceeding was conducted in accordance with law. The Disciplinary Authority was required to see whether the Enquiry Officer has based the decision of punishment on the basis of materials which were placed in support of the charges against the petitioner in the proceeding. From record, it is clear that no such



procedure has been adopted by the authorities. Findings are baseless and clearly unsustainable in law.

In view of the aforesaid discussions, punishment order dated 31.03.2014 awarded by the Disciplinary Authority is therefore quashed. The order of the appellate authority rejecting the petitioner's appeal and affirming order of punishment must also collapse. The appellate order dated 08.02.2014 passed in Service Appeal no. 193/2014 is also quashed. As a result of quashing of punishment order, petitioner is entitled to all consequential benefits. The order however, shall not preclude respondents-authorities, if law so permits, to proceed against the petitioner afresh.

With the aforesaid directions/observations, writ petition is allowed.

(Madhuresh Prasad, J)

s.hassan/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	
Transmission Date	

