

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 5955 of 2016

=====

Maheshwar Prasad, son of Lakshmi Narayan Prasad, resident of Village- Raghapur, P.O.- Harkhaili, P.S.- Katra, District- Muzaffarpur at present residing in Mohalla- Saraisatar Khan, Thakur Tola near Gayatri Mandir, Wakarganj, P.S. Laheriasarai, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna
2. Minister, Dept. of Revenue and Land reforms, Govt. of Bihar, Old Secretariat, Patna.
3. The Principal Secretary, Dept of Revenue and Land Reforms, Govt of Bihar, Old Secretariat, Patna.
4. Senior Deputy Collector, Madhubani.
5. Director, Revenue and Land Reforms Department, Govt. of Bihar, Old Secretariat, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr Ram Hriday Prasad, Ms Maruti Kumari, Advocates
For the Respondent/s	:	Mr Sunil Kumar, AC to GP XI

=====

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 02-05-2019

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

2 The writ petition has been filed for quashing the order of dismissal dated 12.01.2016 issued by the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna as also for grant of consequential benefits.



3 Brief facts leading to filing of the writ petition is that the petitioner, while posted as Circle Inspector, was impleaded in Vigilance Police Station Case No 94 of 2008. It is alleged that he was caught red handed while receiving a bribe from one Vishwanath Singh. The bribe had been solicited by the petitioner to facilitate and perform the creation of *Jamabandi* in favour of the said Vishwanath Singh and also for making entries in Register II. The petitioner was taken into custody and the proceedings in the trial commenced.

4 On the basis of the same charge, departmental proceedings were initiated against the petitioner. Petitioner has not placed on record the charge memo as it is his case that charge memo was never served on him. However, he has participated in the entire proceedings. After the proceedings concluded, the Enquiry Officer submitted a report which is dated 13.09.2011.

5 Petitioner's contention that the amount of bribe (Rs 20,000/-) was not recovered from his possession, and that the same was recovered from the pocket of the *Halqa Karamchari* at his rented house, was accepted by the Enquiry Officer. Regarding receipt of Rs 20,000/- bribe, the finding of the Enquiry Officer was that it could not be established and explanation offered by the petitioner was accepted. Petitioner was, thereafter, visited with the



punishment of dismissal without issuing any second show cause notice.

6 The punishment of dismissal was, thereafter, challenged by the petitioner before the Departmental Minister in appeal and the Civil Appeal Case No 5 of 2014 - 2015 was allowed. Direction was given to the Principal Secretary, Revenue and Land Reforms to serve second show cause notice upon the petitioner within three months and, thereafter, proceed in accordance with law.

7 Second show cause notice, thereafter, was issued to the petitioner on 15.10.2015. Same does not contain any reason for disagreement. The same does not indicate on which ground, Disciplinary Authority has differed with the findings of the Enquiry Report. Petitioner, thus, could not have known that he was being asked to submit his show cause in respect to the allegation of accepting Rs 20,000/- bribe which has been found by the Enquiry Officer not to be proved.

8 The detailed and elaborate response of the petitioner is dated 16.10.2015 and is Annexure 5 to the writ petition. It would be relevant to notice that not only the second show cause was without any disagreement with the findings of the Enquiry Officer but the same only granted one day's time to the petitioner to



submit his reply to second show cause. Petitioner has submitted his reply to the second show cause. The Disciplinary Authority has, thereafter, by order dated 12.01.2016, awarded the petitioner the punishment of dismissal from his service.

9 Disciplinary Authority, in the order of punishment, in paragraph 8, recorded the reasons for disagreement that findings of the Enquiry Officer, which proceeded the issuance of second show cause notice dated 15.10.2015 does not appear to be probable. He has proceeded to hold the entire allegations including the allegation of accepting Rs 20,000/- cash as bribe to be proved. These findings are based on the disagreement with the enquiry report which was prior to issuance of the second show cause notice dated 15.10.2015. However, no reason for disagreement was communicated to the petitioner in the second show cause notice dated 15.10.2015.

10 Petitioner had no opportunity to know that the second show cause notice was issued pursuant to an opinion of disagreement to the findings of the Enquiry Officer as disagreement had not been communicated to the petitioner, let alone the reasons for disagreement. It is for the first time that when the petitioner was visited with the punishment of dismissal that he came to know that prior to issuance of the second show



cause notice, there was an opinion that the findings of the Enquiry Officer were incorrect on the point of the petitioners not receiving the amount of Rs 20,000/- cash as bribe.

11 Findings favourable to the petitioner on the said charge that petitioner had not accepted Rs 20,000/- cash as bribe have been reversed by the Disciplinary Authority in the order of punishment dated 12.01.2016, without even indicating disagreement, let alone reasons for disagreement in the second show cause notice dated 15.10.2015. The procedure adopted by the Disciplinary Authority is violative of Rule 18 of the Bihar Government Servants (Classification, Control & Appeal) Rules (for brevity, *Bihar CCA Rules*) as also in teeth of the law laid down by the Apex Court in the case of *Punjab National Bank & Others -Versus- Kunj Behari Misra, (1998) 7 Supreme Court Cases 84*. The procedure strikes at the route of fairness in the matter of conduct of departmental proceedings. Such findings based on grave procedural lapse causing grave prejudice to the petitioner are clearly unsustainable in the eyes of law.

12 Learned counsel for the State has submitted that there was pre trap and post trap memorandum. Petitioner has been caught red handed and that the occurrence for initiation of proceedings were serious in nature. The Authorities should be



given some privilege with such corrupt employees. The said submission of the learned State Counsel should have been kept in mind by the officers while conducting the proceedings. Proceedings should have been conducted with due seriousness to maintain the procedural requirements and fairness. Having failed to do so, they cannot be permitted to contend that merely because the charges are grave, findings which are as a result of a procedure contrary to the Bihar CCA Rules and in violation of principles of natural justice, should be sustained.

13 For the reasons aforesaid, this writ petition is allowed. The order of punishment dated 12.01.2016 is, therefore, quashed. Writ petitioner is directed to be reinstated forthwith with all consequential benefits in accordance with law.

14 This order, however, shall not preclude the Authority from proceeding afresh by issuing a proper show cause in accordance with law and proceed in accordance with the principles of natural justice and the procedure prescribed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.05.2019
Transmission Date	NA

