

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 13516 of 2014

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Anil Kumar Sinha, son of Late Kailash Nandan Prasad, resident of Shastri Nagar, Madhubani, P.S. Khajanchi Hat, District - Purnea

... .. Petitioner/s

Versus

1. The State Of Bihar through Secretary, Registration, Excise & Prohibition, Government of Bihar, Patna
2. The Inspector General Registration, Excise and Prohibition, Government of Bihar, Patna
3. Assistant Inspector General, Registration, Purnia (Commissioner), Purnia
4. District Sub - Registrar, Registration Office, Katihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr S N P Sinha, Sr Advocate with Mr Sanjeev Kr Jha, Advocate
For the Respondent/s	:	Mr Md Obaidullah, AC to SC X

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 23-07-2019

Heard learned counsel for the petitioner as well as learned counsel for the respondent-State.

2 Petitioner is aggrieved by order dated 20.03.2014 issued by the Inspector General Registration, Excise and Prohibition, Government of Bihar, Patna (hereinafter referred to as the IG Registration). Petitioner's entire pensionary benefits have been withheld as a result of the punishment communicated by Inspector General Registration under order dated 20.03.2014.



3 Petitioner preferred an appeal before respondent No 1, i e, Secretary, Registration, Excise and Prohibition. Petitioner's appeal against the order of the IG Registration has been rejected by the Secretary under order dated 25.06.2014 which also has been assailed in the instant proceedings.

4 The petitioner was working as an Extra Clerk in the Department of Registration since 1982. Services of the petitioner were regularized on 16.09.1997. While working as a Clerk in the Registration Department, he was arrested by the Vigilance Raiding Party on the allegation of taking Rs 4,000/- as bribe. Petitioner was forwarded to judicial custody which gave rise to Vigilance Police Station Case No 34 of 2012.

5 On the same set of charges, petitioner was proceeded against by the Authorities under charge memo which is dated 03.09.2013 (Annexure 4 of the writ petition). After examining witnesses and on going through the evidence available on record, the Enquiry Officer submitted his report to the Disciplinary Authority. The report of the Enquiry Officer dated 28.08.2013 has found the charges against the petitioner "not proved". The Enquiry Report is an elaborate report which manifests due consideration of the material on record.



6 In view of such a finding, the course open to the Disciplinary Authority, as per the procedure prescribed in Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for brevity, Bihar CCA Rules), are available in Rule 18. The Disciplinary Authority, under his Communication dated 18.02.2014, has called for a second show cause from the petitioner differing with findings of the Enquiry Officer.

7 Communication dated 18.02.2014, therefore, is required to stand the procedural test as per Rule 18 (2) of the Bihar CCA Rules.

8 Rule 18 (2) of the Bihar CCA Rules requires recording of reasons for disagreement and own tentative findings of the Disciplinary Authority on the charges in respect of which disagreement is being communicated. Same is permissible only if the evidence on record is sufficient for the said purpose. This Court would consider it useful to quote Rule 18 (2) of the Bihar CCA Rules which reads as follows:

“18. Action on the inquiry report. -(1)

(2) The disciplinary authority, after receipt of the enquiry report as per rule 17 (23) (ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and



record its own finding on such charge, if the evidences on record is sufficient for the purpose.”

9 Communication dated 18.02.2014 is in purported exercise of discretion under Rule 18 (2) of the Bihar CCA Rules. However, the same does not record any reason for disagreement. The Disciplinary Authority has not recorded his own findings on the basis of any material.

10 The facts in sequence, as per allegations against the petitioner, has been reproduced in the Communication dated 18.02.2014 and the petitioner has been called upon to submit his second show cause. There is no compliance of the procedure prescribed under Rule 18 (2) of the Bihar CCA Rules. The Communication of the Disciplinary Authority dated 18.02.2014 is unsustainable in the eyes of law and is hereby quashed.

11 The resultant order of punishment dated 20.03.2014 issued by respondent No 3 as well as the order passed by the Appellate Authority dated 25.06.2014 are, therefore, unsustainable being product of such an illegal exercise. The said two orders are also quashed.

12 Since the Authorities were proceeding against the petitioner under Rule 43 (b) of the Bihar Pension Rules, it will be



open to them to proceed after second show cause and fulfilling the requirements of Rule 18 (2) of the Bihar CCA Rules.

13 Writ petition is allowed with liberty to the respondents, as aforesaid.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.07.2019
Transmission Date	NA

