

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14195 of 2014

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Daya Nand Mishra SON OF LATE CHINTA MANI MISHRA RESIDENT
OF VILLAGE- BARKAGAON, P.O.- NAGPURA, P.S.- SIMRI, DISTRICT-
BUXAR BIHAR, PIN CODE- 802118

... .. Petitioner

Versus

1. The State Of Bihar through the Chief Secretary, Old Secretariat, Patna, District- Patna Bihar
2. The Secretary, Personnel And Administrative Department, Government Of Bihar, Old Secretariat, Patna, District- Patna Bihar
3. The Secretary, Revenue And Land Reforms Department, Government Of Bihar, Patna, District- Patna Bihar
4. The Divisional Commissioner, Purnea Division, Purnea, district- Purnea Bihar
5. The District Magistrate, Kishanganj, P.S.- Kishanganj, District- Kishanganj Bihar
6. The Deputy Collector, In-Charge District Establishment, Kishanganj, District- Kishanganj Bihar
7. Sri A.K. Tripathi, Executive Magistrate-Cum-Conducting Officer, Kishanganj, District- Kishanganj Bihar
8. The Sub-Divisional Officer, Kishanganj, District- Kishanganj Bihar
9. The Block Development Officer, Kishanganj, District- Kishanganj Bihar
10. The Circle Officer, Kishanganj, District- Kishanganj Bihar

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. r.k.sINHA No. 2 Mr. Gajendra Nath Ojha
For the Respondent/s	:	Mr. Kumar Kamal Nayan, AC to SC 28

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 17-09-2019

Heard learned Counsel for the petitioner and the learned
Counsel for the respondent State.

On 6.3.2003 the petitioner was appointed as a Clerk. The
petitioner was posted in the Block Office at Kishanganj. The



petitioner from October 2003 was not attending to his duty. On account of his continued absence, a show cause notice was issued to him by the Block Development Officer, Kishanganj on 20.5.2004. Similar show cause notice was issued to the petitioner by Deputy Collector Incharge of the Establishment on 16.10.2004 on the petitioner's permanent address, the same was also not responded. The authorities thereafter resorted to paper publication in Hindustan on 10.10.2005. The paper publication required the petitioner to report to his duty by 16.10.2005 failing which he would be deemed to be under suspension with effect from 18.10.2005. In spite of these various show cause notices including the paper publication, the petitioner did not turn up to join his duties. The District Magistrate in the circumstances directed for initiation of proceeding against the petitioner on 23.1.2006. The petitioner was thereafter proceeded against in a departmental proceeding on account of his continued absence. One Executive Magistrate was appointed as the Conducting Officer. The petitioner send his response to the charge memo before the conducting officer annexing certain medical prescriptions in support of his continued long absence. He chose not to appear before the authorities. In the circumstances, the authorities proceeded against the petitioner on the basis of medical



prescriptions which the petitioner had submitted in support of his continued long absence from duty since October 2003.

The nature of the proceedings being conducted against the petitioner was not alleging any positive act of misconduct or corruption which was required to be proved by establishing any evidence or document before the Enquiry Officer. The absence was admitted. Whether the same was for sufficient cause or not is the issue which was the point for consideration in the proceedings before the Enquiry Officer. Certain prescriptions which showed the petitioner to be suffering from abdominal problem, pain in the back and eye problem was placed on record through a representation before the Enquiry Officer by the petitioner. There was nothing to show that he was an inpatient admitted for any major serious ailment requiring him to absent himself from duties for such a long period. These facts are being taken note of from the averments made in the counter affidavit which have neither been replied nor disputed in the reply which has been filed.

Counsel for the petitioner complains regarding non appointment of Presenting Officer. It is submitted that in absence of Presenting Officer, in the circumstances where the Enquiry Officer assumes the role of Presenting Officer, the proceeding would stand vitiated. Reliance is placed on a decision of this Court



in the case of *Mostt. Sharda Devi Vrs. Patliputra Central Bank Ltd.* reported in *2017(1) PLJR 859*.

The issue that non appointment of Presenting Officer would strike at the root of fairness in a departmental proceeding and level of conduct or standard of fairness required from the Enquiry Officer performing quasi judicial function now stands settled in view of decision of the Apex Court in the case of *State of U.P. Versus Saroj Kumar Sinha* reported in *(2010) 2 SCC 772*. The same has also been relied upon in the decision of *Mostt. Sharda Devi (supra)* which has been referred to by petitioner's Counsel.

The issue which is required to be seen is whether having absented himself from duties for such a long period and thereafter choosing not to participate or appear in the proceedings after due service of charge memo, the petitioner can be permitted to raise the issue of infirmity of procedure adopted in the enquiry. It is axiomatic that when a delinquent chooses not to participate in the departmental enquiry inspite of due intimation there will be deemed waiver of natural justice. This stands settled by the Apex Court in the case of *Board of Directors, Himachal Pradesh Transport Corporation vs. K.C.Rahi* reported in *(2008) 11 SCC 502*.



The petitioner, as per pleadings on record, which have not been denied in the rejoinder or reply, has absented from duty for a long period. Submitting prescriptions for minor ailment would not justify his absence. He has also chosen not to appear before the Enquiry Officer. In the circumstances, placing reliance on the decision of the Apex Court on the case of ***K.C.Rahi (supra)*** this Court would observe that the petitioner is estopped from raising violation of natural justice.

This Court is not inclined to interfere with the findings recorded in the proceedings where the petitioner has chosen not to participate.

The writ petition is dismissed.

(Madhuresh Prasad, J)

SNkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
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