

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.9065 of 2015**

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Tej Narayan Choudhary Block Office, Amarpur Present Posting- Block Office, Katoria, Permanent Address Village/ P.O. Panjwara, P.s Barahat, District Banka.

... .. Petitioner

Versus

1. The State Of Bihar through Principal Secretary, Panchayat Raj Department, Bihar, Patna
2. The commissioner, Bhagalpur Division, Bhagalpur
3. The District Officer, Banka.
4. The Senior Deputy Collector -cum-conducting Officer, Banka,
5. The Block Development Officer, Amarpur, Banka.

... .. Respondents

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**Appearance :**

For the Petitioner/s : Mr. Jai Shankar Prasad  
For the Respondent/s : Ms. Smriti Singh, AC to AAG 10

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**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD**  
**ORAL JUDGMENT**

**Date : 06-11-2019**

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

While working as Panchayat Sevak, petitioner was served with a charge memo dated 22.9.2012. The same contained three charges. Substance of the allegation was that the petitioner had not distributed coupons to the beneficiaries for availing the benefits of ration at subsidised rate. The second allegation was that he had not submitted documents in respect of beneficiaries of the Indira Awas Yojana. The third allegation was that since March 2012 he had been absent and had not responded to the various



show cause which was being issued to him to explain the reasons of his absence.

The petitioner submitted his written submissions in response to the charges on 29.7.2013. The enquiry officer thereafter proceeded to examine the charges with reference to the petitioner's written submission. The enquiry report was submitted on 28.11.2013 to the District Magistrate, Banka (disciplinary authority). Copy of the same was communicated to the petitioner by the District Magistrate on 13.5.2014. Having considered the enquiry report and petitioner's response to the second show cause dated 13.5.2014 the disciplinary authority has inflicted punishment of dismissal upon the petitioner on 4.8.2014 on the charges having been found proved. The petitioner preferred Service Appeal No. 103 of 2014-15. The Divisional Commissioner Bhagalpur vide order dated 9.4.2015 has rejected petitioner's appeal. It is these orders which are under challenge in the instant proceeding.

The submissions advanced by the petitioner's counsel is that no evidence whatsoever was produced, either documentary or oral, in support of the charge before the enquiry officer. In fact there was no Presenting Officer on the date on which the enquiry officer has considered the charges. By submitting so, it is



submitted that the proceedings stand vitiated on account of such procedural irregularities which strikes at the root of fairness in the proceeding.

Counsel for the State submits that the nature of allegation proved against the petitioner leaves no scope for leniency. The petitioner has frustrated scheme of welfare measure for downtrodden in the locality and as such the authorities have rightly inflicted punishment upon the petitioner.

Petitioner's Counsel has placed reliance on the leading judgment of the Apex Court in the case of *Union of India vs. H.C.Goel* reported in *AIR 1964 SC 364* as well as the judgment of *State of Uttar Pradesh & ors Vs. Saroj Kumar Sinha* reported in *(2010) 2 SCC 772*.

Relying upon the said judgments this Court would hold that the order of punishment is based on no evidence and on that score alone having regard to the decisions of the Apex Court in the case of *H.C.Goel* (supra) the order is unsustainable. Enquiry Officer has also proceeded to hold the charges proved without there being any Presenting Officer.

The high degree of fairness expected from the Enquiry Officer , who performs a quasi judicial function has been emphasised by the Apex Court in the case of *Saroj Kumar Sinha*



(supra). Clearly the same has been violated in the instant case. The Enquiry Officer has arrogated upon himself the role of Presenting Officer. Once the Enquiry Officer steps into the shoes of prosecutor and acts as an agent of the department the independence of the Enquiry Officer is lost and findings arrived at as a result of such process cannot stand the test of fairness.

The stand of the respondents in the counter affidavit is also worth consideration in the instant proceeding having regard to the fact that the admitted position that emerges from the stand of the respondents 3 to 5 in paragraph 10 of the counter affidavit is that no evidence whatsoever was produced in the enquiry and charges were not proved. In fact, the authorities have proceeded to hold the charges proved apparently on the ground that the petitioner did not disprove the charges levelled by the authorities.

In this respect also, it is axiomatic that it is for the author of the charges to prove the same. Even though on the standards of the preponderance of probability, the same are to be proved based on some material which has to be produced by the department in the proceedings and it is not for the delinquent to produce negative evidence to prove his innocence. Such findings which are based on shifting of onus of disproving the charges upon the delinquent are clearly unsustainable. In this connection law is well settled by the



Apex Court in the case of *Delhi Cloth and General Mills Company vs. Ludh Budh Singh*. reported in (1972) 1 SCC 595.

In view of the various infirmities in the procedure adopted by the authorities, the order of punishment dated 4.8.2014 as well as the order of the appellate authority dated 9.4.2015 affirming such illegal order are quashed. As a result of quashing of the order of punishment the petitioner would be entitled to all consequential benefits.

Counsel for the State submits that liberty be granted to proceed against the petitioner afresh.

This Court would only observe that this Court would not give licence to the respondent authorities to proceed against the petitioner other than what is provided in the relevant Service Rules or Bihar Pension Rules.

The writ application stands allowed.

**(Madhuresh Prasad, J)**

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