

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.11078 of 2005**

Parashuram Prasad Singh son of late Dwarika Prasad Singh, resident of village Tara Bishunpur, P.S. Sakra, District Muzaffarpur, at present dismissed clerk, Circle Officer, Purnahiya, District Sheohar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
3. Commissioner, Tirhut Division, Muzaffarpur.
4. District Magistrate, Sheohar.
5. Circle Officer, Purnahiya, District Sheohar.

... .. Respondent/s

**Appearance :**

|                      |   |                                 |
|----------------------|---|---------------------------------|
| For the Petitioner/s | : | Mr. Bishnu Kant Dubey, Advocate |
|                      | : | Mr. Arun Kumar Singh, Advocate  |
|                      | : | Mr. Ranjeet Kumar, Advocate     |
| For the State        | : | Mr. H.S Roy, Advocate           |
|                      | : | A.C to A.G                      |

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

**Date : 25-09-2019**

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

2. The petitioner who was a clerk in the Circle Office, Purnahiya, has approached this court for quashing of the order dated 17.05.2003 of the District Magistrate, Sheohar (hereinafter referred to as D.M.), whereby the petitioner has been dismissed from service. It has also been directed that other than subsistence allowances nothing shall be paid to the petitioner for the period of suspension. Petitioner has assailed the said order before the Commissioner, Tirhut Division, Muzaffarpur. Order of the Commissioner dated 19.07.2005 rejecting the petitioner's service appeal case no. 41 of 2004/05 has also been assailed in the instant proceeding.



3. Brief background is that the authorities proceeded against the petitioner by charge memo dated 01.10.2002. The same alleges that in spite of specific instruction in the transfer order transferring him from Purnahiya Circle Office to Office of Land Reforms Deputy Collector, the petitioner did not comply with the same. The charge memo on Prapatra Ka further alleges that the authorities had given directions to hand over the charge of the earlier post at Purnahiya pursuant to the transfer order, which also was violated by the petitioner. The transfer order is 27.06.2001 and the direction for petitioner to submit his relieving was issued on 19.07.2001. It is also alleged that the petitioner who was then posted as a Head Clerk in the office of the Circle Officer, Sheohar, had not submitted the updated cash book and registers and that he was not obeying the authorities. Certain allegations are also made that some amounts have been withdrawn by the petitioner on the basis of bills, for which, there is no accounting in the books of accounts, maintained in the office where the petitioner was then posted as a Head Clerk. The charges were served on the petitioner and he was called upon to give his written statement of the defence. The petitioner in response to the same submitted his representation on 08.10.2002. The petitioner had denied the allegations and made a request to the authority that since a criminal proceeding had also been instituted in respect of the same charges, in G.R. Case No. 282/2001, the departmental proceedings should await conclusion of the criminal proceedings since the Purnahiya P.S. Case No. 34/2001 was in



respect of the same charges and that the petitioner was to be prejudiced by disclosing his defence in the departmental proceedings since the criminal court was considering the same allegations.

4. The authorities have proceeded further in the matter and the records show that the petitioner was issued notices to appear before the authorities. The petitioner, however, alleges that notices were not served to him, as has been recorded in the orders passed by the authorities.

5. Be that as it may, the issue which falls for consideration is that the authorities have pursuant to the inquiry concluded to hold the petitioner guilty of the charges prior to the finding being recorded by the Inquiry Officer. The petitioner had requested for change of the Inquiry Officer, which request of the petitioner was acceded by the respondent authorities. By order dated 28.11.2002, the Inquiry Officer was also changed on the request of the petitioner. Upon change of the Inquiry Officer, the Sub Divisional Officer, Sheohar, instead of Deputy Collector Land Reforms was appointed as the Inquiry Officer. The petitioner's headquarter for the purpose of inquiry was fixed in the Sub Divisional Office, Sheohar.

The admitted position is that the petitioner has also not joined at the Sub Divisional Office, Sheohar. The Inquiry Officer, thereafter, proceeded in the matter and the findings of the Inquiry Officer were submitted to the disciplinary authority and subsequently, second show cause notice was issued by the District Magistrate, Sheohar on 10.02.2003. The petitioner even after issuance of second show cause



had not submitted his response, thereafter the District Magistrate, Sheohar was compelled to issue a notice in the Newspaper on 12.04.2003. The notice (Annexure – 26) clearly records that the petitioner, in the meantime had also been relieved of his suspension, as suspension was revoked on 25.10.2002, the order records that despite the suspension having been revoked the petitioner had not appearing before the Inquiry Officer and the inquiry report, along with second show cause notice, was delivered to the petitioner on the address for correspondence. However, no response has been received by the Disciplinary Authority. Petitioner has responded to this notice. Response of the petitioner is dated 25.04.2003 (Annexure 27). The petitioner in his response to second show cause has not submitted anything in respect of the inquiry report.

6. Learned counsel for the petitioner submits that inquiry report was not available to the petitioner as he had appeared in response to the paper publication. Petitioner has not said so in his response dated 24.04.2003. There is no averment to this extent. The presumption would be, therefore, that there was services of the inquiry report, or that the petitioner was not interested in seeing the inquiry report. The petitioner has not participated in the proceeding before the inquiry officer and now at the stage of second show cause he choose not to comment on the inquiry report.

The consistent demand of the petitioner has been that the proceedings should await out come of the pending criminal proceedings. The authorities in the circumstances have therefore



proceeded with the inquiry against the petitioner in his absence. The disciplinary authority under order dated 17.05.2013 bearing memo no. 346 has dismissed the petitioner from his services. The order (Annexure 28) takes note of the various endeavours by the authorities to ensure that the petitioner appeared in the inquiry. It also takes note of the fact that subsequent upon lodging of the FIR the petitioner has himself deposited the amounts which was alleged to have been withdrawn by the petitioner without maintaining any accounts. Taking note of these factors the order has been passed by the disciplinary authority.

7. Learned counsel for the petitioner has also placed reliance on the communication dated 21.09.2001 issued from the office of the District Magistrate to the Commissioner, Tirhut Division. The said communication is a communication much prior to the proceedings having been instituted against the petitioner which started in October, 2002, prior to institution of the proceedings. It appears that in response to the communication from Commissioner, Tirhut Division District Magistrate, Sheohar had submitted a report regarding the lapses which are also the subject matter of the proceedings instituted against the petitioner. .

8. Learned counsel for the petitioner submits that from perusal of this report, it is obvious that the District Magistrate has found responsibility of the Circle Officer, Sheohar. The petitioner who was a clerk has wrongly been proceeded against in spite of such report having been sent by the same District Magistrate, who later on



issued the charge memo against the petitioner.

9. From Bare reading of the report dated 21.09.2001 (Annexure-32) this court would find that the same does show such responsibility attributed to the Circle Officer, Sheohar, however, the report does not absolve the petitioner. The petitioner as well as Circle officer was equally found responsible for the lapses.

The fact remains that in the entire proceedings before the Inquiry Officer, the petitioner has not participated despite various opportunities and even in his response after paper publication at the stage of second show cause by the disciplinary authority, he has not made any submission in respect of proceedings before the Enquiry Officer.

10. Counsel for the petitioner submits that the conclusion of the Inquiry Officer leading to the order of dismissal against the petitioner is based on no evidence. The procedure prescribed under Rule 17 of Bihar CCA Rules, 2005 has not at all been followed. No Presenting Officer has presented the case on behalf of the department and that without examining any evidence or witness the conclusion have been recorded by the Inquiry Officer. The proceedings therefore, and the findings stand vitiated as per the law laid down by the Apex Court in the case of *State of Uttar Pradesh & Ors. Vs. Saroj Kumar Sinha, reported in (2010) 2 SCC 772*.

11. The petitioner thereafter has approached the Appellate Authority, and the Appellate Authority has also over looked these infirmities in the procedure adopted by the Authorities in the inquiry



and therefore order of the Appellate Authority is also unsustainable in law.

12. The second leg of the submission of the petitioner's counsel is that dismissal in the proceedings was on the same set of charges and could not be established on the same set of evidence in the criminal proceedings arising out of G.R. Case No. 282 of 2001 and Trial Case No. 443 of 2007. The petitioner has finally been acquitted in the criminal case, though at the appellate stage. The order is dated 29.09.2011 passed in Criminal Appeal No. 2 of 2008 (Annexure-14). Placing reliance on the judgment of the Apex Court in the case of ***G. M. Tank Vs. State of Gujarat & Ors. reported in (2006) 5 SCC 446***. It is thus submitted that this Court should quash the punishment order as the same is unsustainable in the law.

13. Counsel for the State, on the other hand, has submitted that there was total non-cooperation by the petitioner in the proceedings, in spite of extraordinary efforts made by the Authorities to ensure petitioner's participation, he has chosen not to avail opportunity granted to him. The specific demands of petitioner for revoking his suspension which have been recorded in Annexure – 28 has also been allowed. The petitioner has chosen not to participate in proceeding and is precluded from alleging procedural violation. He further submits that the proceeding in the departmental inquiry was not the same as that being looked into by the criminal court in the criminal case. Before the Inquiry Officer the issue regarding petitioner's disobeying the transfer order and reliving order was an



additional misconduct which was not the subject matter to the criminal trial as the same did not constitute any criminal offence. The fact that these charges have been mentioned in the F.I.R. is inconsequential there is no findings based on petitioner's disobedience in respect of transfer order in the criminal proceedings.

14. Having considered the rival submission of parties and in light of law as laid down 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***. This court would observe that the petitioner is not in a position to allege violation of procedure or natural justice in the proceedings, on account of the fact that he has chosen not to participate in the proceedings. The records show that various opportunities were granted to the petitioner. Despite of the same the petitioner has abstained from the proceedings. Having chosen not to avail of the opportunity granted by the authorities, a presumption of waiver of natural justice arises against the petitioner in terms of decision of the Apex Court in the case of K.C. Rahi (supra). In response to the various opportunities for participating in the departmental proceedings granted to the petitioner, he has merely reiterated his request for keeping the proceedings pending on account of pendency of the criminal proceedings arising out of Purnahiya P.S. Case No. 34 of 2001. Neither the petitioner has made submissions on merits of the matter, nor has he participated in the proceedings, respondents on their part, as it appears from the records have been issued notices and paper publications on account of the petitioner's



non-joining at the Sub-Divisional Office in Sheohar subsequent to his transfer, as also during the course of departmental proceedings. Even when opportunity was granted to comment on the enquiry report, the petitioner has chosen not to file his response to the second show cause by dealing with inquiry report. He has merely reiterated his request for awaiting the outcome of the criminal proceedings.

15. The petitioner all along was knowing about the departmental enquiry. Non participation in the same was at his own risk clearly this is a case of deemed waiver of natural justice. Petitioner is estopped from raising the question of non-compliance with the principles of natural justice. In the inquiry relevant extract of decision of the Apex Court in the case of K.C.Rahi (supra) from paragraph-8 of the Judgment is being reproduced;

**“In the instant case we have been taken through various documents and also from the representation dated 19.10.1993 filed by the respondent himself it would clearly show that he knew that a departmental enquiry was initiated against him yet he chose not to participate in the enquiry proceedings at his own risk. In such event plea of principle of natural justice is deemed to have been waived and he is estopped from raising the question of non-compliance with principles of natural justice”.**

16. Having observed as above this court would now proceed



to deal with the petitioner's submission that he finally stands acquitted in the criminal trial on account of the Judgment dated 29.09.2011 passed in Criminal Appeal No. 2 of 2008 filed by the petitioner (Annexure-40).

Submission of the State counsel that in the departmental proceedings apart from the charges in the criminal trial, one additional charge of non-joining at the transfer place of posting in the office of the Sub-Divisional Officer was also the subject of enquiry is correct as per the records. Apart from the allegation of non-joining at the transfer place of posting, all other charges in the departmental proceedings and the criminal trial were one and the same. In respect of all the other charges the petitioner stands acquitted by the Appellate Court which fact has also been taken note of. In the circumstances the punishment of dismissal on the same allegations, prima facie appears to this court be excessive and harsh. Acquittal of the petitioner in the criminal case is a relevant factor. The same has to be considered with reference to the evidence. If evidence in the criminal trial and departmental proceedings were same then allegations being same, respondents would be required to reconsider the matter regarding the quantum of punishment. The punishment of dismissal necessarily requires re-look in light of petitioner's acquittal on the same allegations in the criminal trial. Even if, non-joining of the petitioner pursuant to the transfer of the office of the S.D.O. is accepted as a misconduct on account of the findings in the disciplinary proceedings, which is not common to the allegations in



the criminal trial, this court is of the opinion that the punishment of dismissal would be extremely harsh and disproportionate.

17. The observations of this court on account of the quantum of punishment having regard to the findings in the criminal proceedings is based on decision of the Apex Court in the case of ***Captain M. Pal Anthony*** as well as in the case of ***G.M. Tank vs. State of Gujarat & Ors. reported in (2006) 5 SCC 446.***

Commissioner, Tirhut Division, Muzaffarpur should therefore reconsider the punishment of dismissal having regard to the mitigating circumstances of the petitioner's acquittal by the Appellate Court in Purnahiya P.S. Case No. 34 of 2001.

18. Having regard to the decisions of the Apex Court taken note of hereinabove. The commissioner would be obliged to reconsider the quantum of punishment by reasoned and speaking order in accordance with law within a period of three months from the date of receipt/production of a copy of this order.

The writ petition is disposed of with the aforesaid observations and directions.

**(Madhuresh Prasad, J)**

Rahul/  
S. Katyayan/-

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