

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12736 of 2014

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Bhanu Pratap Chauhan S/o Late Nathuni Chauhan Resident of Village-
Phatehpur, Tolla- Digha, P.O.- Machhgar, P.S.- Mirganj, District- Gopalganj.
suspended Panchayat Secretary Bijayipur Block Navtan Panchayat, District-
Gopalganj, Presently Head Quarter- Uchakagaon Block, District- Gopalganj.

... .. Petitioner

Versus

1. The State Of Bihar
2. The Chief Secretary, Govt. of Bihar, at Patna.
3. The Commissioner, Saran Division, Saran at Chapra.
4. The District Magistrate, Gopalganj, District- Gopalganj.
5. Additional Collector- cum- Conducting officer Departmental Inquiry
Officer, Gopalganj, District- G
6. Deputy Development Commissioner, Gopalganj, District- Gopalganj.
7. District Panchayat Raj Officer, Gopalganj District- Gopalganj.
8. Sub- Divisional Officer, Hathwa, District- Gopalganj.
9. Block Development Officer, Kateya, District- Gopalganj.
10. Block Development Officer, Bijayipur, District- Gopalganj.
11. Block Development Officer, Uchakagaon, District- Gopalganj.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Ranjan Kumar Srivastava Mr. Jitendra Kumar Shrivastwa Ms. Rajni Gandha
For the Respondents	:	Mr. Rakesh Ranjan, AC to AAG 12

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

8 20-08-2019 Heard learned Counsel for the petitioner and the
learned Counsel for the respondent State.

The petitioner was posted as Panchayat Sachiv at the
relevant time at Gram Panchayat Raj Karkatha under Block
Kayeya in the district of Gopalganj. On 22.12.2010, he was
caught red handed and taken into custody and the arrest gave



rise to lodging of Vigilance PS Case No. 90 of 2010. The petitioner thereafter was released from custody and submitted his joining in the Sub Divisional Office at Hathua. Pursuant to orders of the District Magistrate dated 16.5.2011 charges were framed and charge memo in Prapatra “Ka” dated 4.7.2012 was issued to the petitioner in respect of the same occurrence. The enquiry, thus, proceeded. The District Magistrate thereafter on 14.8.2012 revoked suspension of the petitioner and allowed him to rejoin his duties. Without any enquiry report being served in respect of the proceedings arising out of charge memo dated 4.7.2012, the petitioner was put back in service and awarded a minor punishment of withholding of one increment. Though the proceedings had not concluded, the petitioner was reinstated in service with a very minor punishment which was never assailed.

Since the enquiry on the basis of charge memo dated 4.7.2012 was not completed by the Enquiry Officer and the petitioner came to be reinstated in service, the issue was reviewed at the level of the Commissioner. Since the first enquiry had not been taken to its logical conclusion, the Commissioner after considering the matter directed for issuance of supplement charge memo. Such supplement charge memo was also necessary in view of the fact that since earlier charge



memo dated 4.7.2012 did not contain any allegation. Merely the fact of petitioner's arrest was recorded in the earlier charge memo, and on that basis, enquiry had been initiated.

As a result of the aforesaid exercise, second charge memo dated 30.4.2014 came to be issued wherein details of the charges were communicated to the petitioner so as to enable him to submit an effective response and enable an enquiry into the charges. The charges were that the petitioner had demanded illegal gratification for making available the funds under the Indira Awas Yojana to the intended beneficiaries. It is pursuant to the said supplement charge memo that proceedings were started afresh. The petitioner had submitted his detailed response to the second charge memo. One of the objections raised by the petitioner was that proceedings on the basis of second charge memo were not maintainable as the same was nothing less than a de novo proceeding in respect of the same charges which had concluded pursuant to the earlier order of District Magistrate dated 12.1.2013.

Before the Enquiry Officer the petitioner however had submitted his response in respect of the allegations along with his objection regarding maintainability. The objection regarding de novo proceeding not being maintainable is being considered



by this Court. The earlier charge memo dated 4.7.2012 did not disclose details of the allegation. No reply could be furnished on the basis of first vague charge memo dated 4.7.2012. Proceedings arising therefrom never concluded by submission of enquiry report. Upon consideration of entire matter the Commissioner considered it appropriate to issue supplement charge memo along with details of charges so as to facilitate an effective enquiry wherein the petitioner would have opportunity to know the allegation and submit his response. The plea raised regarding charge memo dated 30.4.2014 being a denovo proceeding therefore does not find favour with this Court.

Counsel for the State submits that the charges against the petitioner were grave involving acts of corruption. The Presenting Officer had given his opinion based on the documents which were arising out of the criminal investigation and petitioner's arrest in the vigilance case. In view of the misconduct committed by the petitioner he is not entitled to any leniency and cannot be permitted to invoke equitable jurisdiction of this Court under Article 226 of the Constitution of India.

Irrespective of maintainability of the proceedings arising out of the supplement charge memo dated 30.4.2014, the



same were to be conducted as per the procedure prescribed under Bihar CCA Rules 2005 and in conformity with the principles of natural justice and fair play. On this account, the proceedings before the Enquiry Officer pursuant to charge memo dated 30.4.2014 suffers from such procedural lapse which has the effect of vitiating entire proceedings, for the following reasons.

Perusal of the enquiry report dated 22.8.2014 would show that neither documentary nor any oral evidence has been placed in support of the charges by the Presenting Officer. The proceedings before the Enquiry Officer is prima facie a proceeding without considering any material, and without there being any material the Enquiry Officer submitted a report regarding the charge being proved.

The petitioner has raised this issue in his response to second show cause filed before the Disciplinary Authority. The specific pleadings in this regard are to be found in para 3 and 5 of his response dated 30.8.2014 to the second show cause. The Disciplinary Authority in his order of punishment dated 15.9.2014 has not considered this objection raised by the petitioner.

The role of Presenting Officer is not to give his



opinion, but is to adduce evidence documentary or oral in support of the charge. On this score, the Presenting Officer has miserably failed in the proceedings. No material whatsoever has been produced before the Enquiry Officer. In spite of there being no material on record and in spite of petitioner's objection in this respect in his response to the second show cause, the Disciplinary Authority has proceeded to award the extreme punishment of dismissal on the basis of such an enquiry report.

The order of dismissal on reading shows that it is obsessed with the petitioner's arrest and the process leading to his arrest such as preparation of pre arrest and post arrest memorandum. The findings on the basis of such document forming part of the criminal investigation, more so when no witness has been examined in support of the same is also unsustainable in view of the law laid down in the case of Roop Singh Negi vrs Punjab National Bank reported in (2009) 2 SCC 570.

The petitioner being aggrieved by by dismissal has raised this issue before the Commissioner, Saran at Chapra in Service Appeal No. 301 of 2014. Being overwhelmed by gravity of allegations the Appellate Authority has rejected the petitioner's appeal. The order of the Appellate Authority shows



total non consideration of the aforesaid infirmity in the proceeding before the Enquiry Officer as well as in decision of the Disciplinary Authority.

For the reasons indicated hereinabove, this Court would hold that the order of dismissal dated 15.9.2014 as well as the order of the Appellate Authority dated 1.6.2016 are grossly unsustainable in the eyes of law. The two orders are hereby quashed. The petitioner is directed to be reinstated and considered to be under suspension. The proceedings should commence on the basis of submission of charge memo after submission of petitioner's written statement of defence afresh. The other entitlement of the petitioner would be subject to final outcome of the proceedings in the enquiry. It is, however, made clear that the dues on account of arrears of subsistence allowance and current subsistence allowance should be paid to the petitioner upon his reinstatement forthwith.

The writ petition stands allowed.

(Madhuresh Prasad, J)

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