IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1397 of 2017

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Awadhesh Kumar Singh Son of late Krishnanand Das, Resident of Village- Bishanpur, P.O.- Garhbanaili, Police Station- Jalalgarh, District- Purnea.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
3. The Divisional Commissioner, Purnea Division, Purnea.
4. The Collector and District Magistrate, Araria.
5. The Additional Collector, Araria.
6. The Sub-Divisional Officer, Araria.
7. The Circle Officer, Raniganj, District- Araria.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gyanand Roy, Adv
For the Respondent/s : Mr. Rishi Raj Sinha-SC-19
Mr. Akhilesh Kumar Sinha, AC to SC-19
Mr. Saurabh Kumar, AC to SC-19

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 31-01-2019

The petitioner, who was at the relevant time Revenue Clerk and was holding charge of Circle Inspector in Raniganj Block in the District of Araria, is aggrieved by the order dated 15.10.2014 passed by the District Magistrate, Araria and communicated to him vide Memo No. 1840 dated 16.10.2014 whereby after disciplinary proceeding against him, the petitioner has been dismissed from service; as also the order dated 30.06.2016 passed by the Divisional Commissioner, Purnea in Service Appeal No. 21 of 2014 whereby the appeal preferred by the petitioner has been dismissed and the order of the Collector has been affirmed and sustained.

2. The petitioner seeks to challenge and assail the aforesaid orders on the grounds that (i) the copy of the documents demanded by him in the course of disciplinary proceeding by several representations, turned on deaf ears and such documents were never supplied to him; and (ii) during the course of the disciplinary proceeding, a supplementary charge was framed by the Inquiry Officer which he was not competent to frame as only the Disciplinary Authority could have framed such additional charge. Framing of additional charge, it has been alleged did not have the sanction of the Disciplinary Authority.

3. The further ground of challenge is that no oral or documentary evidence was produced or proved and the petitioner was not afforded the opportunity of examining witnesses even though a specific averment was made by way of an application before the Enquiry Officer.

4. The entire basis of coming to the conclusion by

the Enquiry Officer and which has been relied upon by the Disciplinary Authority as well as the Appellate Authority is the involvement of the petitioner in the vigilance case viz. Vigilance Case No. 56 of 2012.

5. From the charges framed against the petitioner, it appears that he was put to the rigors of the departmental proceedings on three charges: two being of having colluded with the land owner for projecting a higher price of land which was purchased under a scheme for *Maha Dalits* and higher amount was consequently paid to such vendors, and one for his involvement in vigilance case referred to above with respect to the aforesaid lapse on the part of the Revenue Administration.

6. Mr. Gyanand Roy, learned advocate for the petitioner has laid stress on the fact that nowhere from the enquiry report can it be said that there was any evidence for the Enquiry Officer to come to the conclusion that petitioner had colluded with the land owner for projecting a higher price of land which was purchased and for which higher amount was paid to the vendors.

7. Thus, the entire allegation of being in collusion was based on guesswork and the figure quoted by the Enquiry Officer of the loss to the Revenue Department was only a guesstimate and nothing more.

8. It has further been submitted that under the scheme for the purchase of land for rehabilitation of *Maha Dalit* families, the Circle Officer was designated as the facilitator and in the process of selection and purchase of land under the scheme, the facilitator was only to be helped and aided by the Circle Inspector.

9. Thus, the primary role of the purchase of the land under the scheme was of Circle Officer and not of Circle Inspector.

10. It has further been pointed out by the learned counsel for the petitioner that prior to the Departmental Enquiry having been initiated against him, an enquiry was conducted by three of the Officers with respect to the correctness of the allegation and the charge against the petitioner as well as the Circle Officer and the report which was submitted clearly gave a clean-chit to the petitioner and

another.

11. All these aspects have been ignored, it has been argued, by the Disciplinary Authority and an order of dismissal has been passed.

12. The appellate order, it definitely need be said, is only a reiteration and affirmation of the order passed by the Disciplinary Authority. The manner in which the appellate order has been passed, it has further been argued, reflects a complete non-application of mind.

13. What has struck this Court is that the Circle Officer was also subjected to the departmental proceeding and was found guilty. However in his case, he was let off by a minor punishment.

14. In this manner, learned counsel for the petitioner contends, the petitioner has been singled out and has been subjected to the harsh punishment of dismissal from service.

15. The orders passed by the Collector and by the Appellate Authority do not reflect that such aspects were taken into account. Even during the second show cause

notice to the petitioner, there was a reiteration of the demand of certain documents which were relied upon by the Disciplinary Authority but at that stage also, those documents were not made available to him.

16. In any view of the matter, looking at the proceeding, it becomes very clear that many of the provisions of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 specially Section 17(iii)(iv)(xvi) have been breached without any justification.

17. It is difficult to sustain the supplementary charge framed against the petitioner by the Enquiry Officer.

18. The learned counsel for the petitioner has further assailed the aforesaid orders on the ground of proportionality of the sentence and has submitted that different treatment has been meted out to two different persons of the Revenue Administration which cannot be countenanced or sustained in the eyes of law.

19. In a departmental/domestic proceeding, the decision with respect to the quantum of sentence is that of a Disciplinary Authority and unless it is shown that it is

absolutely disproportionate or shocking to the conscience, no interference normally ought to be made. However, in the present case, it appears that for some lapse on the part of the petitioner, he has been visited with the most serious of the penalties i.e. of dismissal from service. The aspect of proportionality of sentence entails the test of sentence on the basis of reasonableness as well. It would surely not be considered to be reasonable if for similar charge against a person with more onerous responsibility in execution of a particular work, two different sets of punishment is awarded to them.

20. This definitely reflects lack of probity and objectivity.

21. For the aforesaid reasons, it is difficult to sustain the orders impugned. Both the orders dated 15.10.2014 passed by the District Magistrate, Araria as well as dated 30.06.2016 passed by the Divisional Commissioner, Purnea in Service Appeal No. 21 of 2014 are set aside.

22. The case is remitted to the District Magistrate,

Araria to afford a fresh hearing to the petitioner, make him available the documents which is desired by him and which has been relied upon as far as practicable and after hearing the petitioner, a fresh order be passed keeping in mind the grounds which have been urged in the present petition and which has been noted in the present order. The exercise be completed within a period of four months from date of production/receipt of a copy of this order.

23. The hearing of this case shall be undertaken on the same charges but affording the petitioner a fresh hearing and allowing him an opportunity to examine witnesses if so desired.

24. With the aforesaid direction, the writ petition is disposed off.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
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