

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11647 of 2013

Deonandan Baitha Son Of Saryug Baitha Resident Of Village - Mohanpur,
P.O. Bariyarpur, P.S. And District – Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Commissioner, Tirhut Division, Muzaffarpur.
3. The District Magistrate District Sitamarhi.
4. The Addl. Collector, Sitamarhi.
5. The Sub - Divisional Officer, Sadar Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Birendra Kr. Sinha, Sr. Adv. Smt. Madhuri Lata, Adv. Mr. Krishna Ranjan, Adv.
For the Respondent/s	:	Mr. R.B.N. Singh, AC to GA-10

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 10-04-2019

Heard learned counsel for the parties.

In this case, the petitioner is challenging the order dated 11.1.2013 passed by Commissioner, Tirhut Division, Muzaffarpur in Service Appeal Appeal No. 195 of 2012 (Annexure-11) whereby and whereunder he has rejected the appeal, affirmed the order contained in Memo No.11 dated 21.3.2012 passed by the Collector, Sitamarhi (Annexure-10) by which the Collector has passed the order for compulsory retirement in terms of Rule



14(viii) of the Bihar Government Servant (Classification, Appeal and Control) Rules, 2005.

In the present case, the petitioner at the relevant time was posted as Head-clerk in the Circle Office, Bairgania under the district Sitamarhi. The petitioner in the year 2005 was posted in General Section of Collectorate, Sitamarhi and he was deployed in Assembly Election in vehicle cell, Sitamarhi connected with the election duty. While discharging the duty, a charge-sheet was issued against him, giving description of the imputation, making an allegation that he had made overwriting in the letter no. 161 dated 31.3.2006, was received by him on 31.3.2006 but by making overwriting, he changed the date of receipt of letter as 3.4.2006, put the letter in transmission to the office of D.C.L.R., Sitamarhi, on remittance on 4.4.2006, abandoned the record on the table of the Head-clerk and, as such, proper reply could not be sent, entailed non-utilization of fund, resulted into lapse of fund which creates suspicion on the activity of the petitioner, inasmuch as, he has manipulated the records by overwriting. Further allegation has been made that he has committed act of negligence in discharge of duty, constitute a serious misconduct.

The said charge-sheet was served upon the petitioner and an explanation was sought. The petitioner filed his explanation



and disputed the fact that he has made interpolation in the date of receipt and further said that he had always acted diligently and performed his job without any negligence. The Disciplinary Authority was not satisfied with the explanation and decided to hold departmental enquiry against the petitioner. In pursuance thereof, the D.C.L.R., Sitamarhi was appointed as Enquiry Officer, he submitted the enquiry report and finally the Collector has passed the order. The Commissioner did not find any merit in the appeal filed by the petitioner and the same was rejected affirming the order of the Collector.

This Court had given direction to the State to produce the original records and the same has been made available for the purpose of perusal by this Court. At the first instance, learned counsel for the petitioner has submitted that the copy of the enquiry report was not served upon him but, on perusal of the records, it appears that the same was served upon the petitioner and he cannot deny such service of enquiry report, left to his wisdom, to file second show-cause but, it is not the end of the matter. Learned counsel for the petitioner has drawn attention of this Court towards the enquiry proceeding specially the order-sheet which has been maintained by the Enquiry Officer, submitted, the order-sheet itself shows that the petitioner was not given proper



opportunity to defend himself and further submitted that after submission of the reply, the enquiry was not conducted subsequently but, the Enquiry Officer has submitted the enquiry report on the basis of explanation submitted by the petitioner as well as the records placed before him. He has further submitted that the enquiry should have been done in terms of Rule 17 of the aforesaid Rule, 2005. As per the aforesaid provision, after receipt of the explanation, the enquiry should have been conducted in fair and proper manner in the sense that the prosecution should have brought not only the records but, the same should have been proved by oral evidence which has not been done at all, merely the Enquiry Officer has considered his reply, recorded the findings against him, cannot be sanctified. When the enquiry was entrusted, then it was the bounden duty of the Enquiry Officer that the enquiry should be conducted in terms of Rule-17 in such a manner which would inspire confidence in the mind of employee who is facing the enquiry proceeding. Neither any witness has been examined nor any material has been brought to substantiate the allegation of tampering and failure to act diligently and no material has been brought to contradict the stand taken by the petitioner that he had not manipulated the date in the record mentioned in the charge-sheet.



Learned counsel for the State has vehemently argued and submitted that the enquiry proceeding has been done in a fair and proper manner as the Presenting Officer was appointed and he was given full opportunity and after assessment of the evidences, the Enquiry Officer has recorded the findings against him which has been accepted by the Collector led to passing of the order of compulsory retirement.

Having considered the rival submissions of the parties, the enquiry proceeding should be conducted in fair, proper and transparent manner, so, it should appear that proper opportunity was given, so that a government servant may not have occasion to complaint that he could not get a chance to defend and it must be in a sense that it should reflect transparency in conducting the enquiry. The original record shows that the enquiry proceeding has been started from 3.7.2007 and ended on 5.9.2011. The order-sheet has been maintained and it reflects that the petitioner has filed his explanation and on 29.4.2008 a direction was given to produce the witness in support of the case, the order dated 17.1.2011 shows that the new Enquiry Officer was appointed, the order dated 28.1.2011 shows that further notice was given to the present petitioner. The order-sheet shows that the proceeding was adjourned on different occasions, nothing substantial has been



recorded. Further the order-sheet shows that on 23.3.2011, the Enquiry Officer was busy with the Panchayat Election. The subsequent order dated 15.6.2011, 15.7.2011 and 17.8.2011 reflects the enquiry was adjourned and abruptly on 5.9.2011, the enquiry report has been filed. Nowhere it does disclose that on any date, the witnesses have been examined nor the petitioner was asked to remain present with his witness for evidence. In a stereotype, the order-sheet has been maintained, does not show any substantial act has been done by the Enquiry Officer and abruptly the enquiry report has been submitted.

The Hon'ble Apex Court in the case of *Roop Singh Negi Vs. Punjab National Bank & Ors.* reported in (2009) 2 SCC 570 and in the case of *State of Uttar Pradesh & Ors. Vs. Saroj Kumar Sinha* reported in 2010 (2) SCC 772 has delineated elaborately explained the value of the enquiry proceeding and the manner the enquiry has to be conducted and it has been held that the enquiry must be done in such a manner showing fair treatment has been given to the delinquent, inasmuch as, the prosecution is required to prove the charge by bringing documentary as well as oral evidence but, in the present case, the enquiry has been conducted in a very ipsi dixit manner violating the principle of natural justice.



In that view of the matter, the order contained in Memo No.11 dated 21.3.2012 passed by the Collector, Sitamarhi (Annexure-10) and the order dated 11.1.2013 passed by Commissioner, Tirhut Division, Muzaffarpur in Service Appeal Appeal No. 195 of 2012 (Annexure-11) cannot be said to be proper order and the same are quashed.

Accordingly, the entire proceedings is vitiated. The respondents, if so advised, may initiate a proceeding from the stage of service of charge-sheet and that should be completed within a period of six months from the date of receipt/production of a copy of this order.

Any payment will be made subject to the final result of of the enquiry proceeding.

This writ application is, accordingly, disposed of.

The records produced by the State has been perused, accordingly, the same be returned.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.04.2019
Transmission Date	

