

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5145 of 2015

Sanjay Kumar son of Late Ram Chandra Prasad, resident of Mohalla- Bari Bag, Taj Colony P.S. Kotwali, District- Gaya **Petitioner**

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Finance, Old Secretariat, Bihar, Patna.
3. The Secretary (Expenditure), Department of Finance, Old Secretariat, Bihar, Patna.
4. The Special Secretary, Department of Finance, Old Secretariat, Bihar, Patna.
5. The Officer on Special Duty-cum-Director (Press), Department of Finance, Old Secretariat, Bihar, Patna.
6. The Superintendent, Press and Forms, Gaya Jail Press, Gaya
7. The Deputy Superintendent, Press and Forms, Gaya Jail Press, Gaya

... .. **Respondents**

Appearance :

For the Petitioner	:	Mr. Ajey Kumar, Advocate
For the Respondents	:	Mr. Krishna Kant Tiwari, AC to SC 27

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 19-02-2019

Writ petition has been filed challenging award of punishment by Memo No. 165 dated 6.1.2015 issued by the Officer on Special Duty cum Director (Press) in the Department of Finance. By the said order, petitioner has been reverted from the post of Head clerk to the post of clerk and placed in the initial scale of pay. Order dated 15.1.2015 is the consequential order which has also been assailed in the instant proceedings.

By filing Interlocutory Application No. 4227 of 2015 petitioner has also sought quashing of order dated 24.4.2015 issued by respondent no.3, the Secretary (Expenditure) in the Department of Finance rejecting petitioner's appeal.

Apart from other issues raised by the petitioner before the Enquiry Officer, the petitioner has taken a specific plea that the



Enquiry Officer has conducted the enquiry *dehors* the procedure enumerated in Rule 17(14) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the CCA Rules, 2005'). Specific case of the petitioner before the Appellate Authority was that the Presenting officer was not present on the first three dates fixed in the proceedings. In the enquiry, on those three dates, the Enquiry Officer recorded petitioner's statement. On the fourth date, petitioner prayed sometime which was rejected and on the fifth date the enquiry report was submitted by the Enquiry Officer. Referring to the records of the proceedings before the Enquiry Officer with reference to the five dates of the enquiry, specific claim was that in violation of the procedure prescribed under Rule 17(14) of the Bihar CCA Rules, 2005, report of the Enquiry Officer as well as order of punishment were unsustainable in the eyes of law as the same was a product of unfair and illegal process.

Importance of role of the Presenting Officer in presenting the case of the Department has been laid down in the case of **State of Uttar Pradesh and others Vs. Saroj Kuamr Sinha**, reported in **(2010) 2 SCC 772**. Petitioner's assertion that the said procedure has been violated was required to be looked into by the Appellate Authority. Appellate Authority has not



considered the said objection by assigning a reason that non-compliance of the procedure under Rule 17(14) of the Bihar CCA Rules, 2005 was not objected to by the petitioner before the Enquiry Officer himself.

Since the petitioner with reference to the dates of the enquiry has raised specific plea regarding non compliance of the procedure under Rule 17(14) of the Bihar CCA Rules, 2005 the same should have been looked by the Appellate Authority with reference to the records of the enquiry. The same has not been done. The Appellate Authority has also brushed aside and failed to consider the specific plea raised by the petitioner on extraneous consideration.

The Appellate Authority's order without taking into consideration the specific plea of the petitioner amounts to rendering the forum of appeal as a mere formality. Order passed by the Appellate Authority dated 24.4.2015 is therefore unsustainable inasmuch as the Appellate Authority has not considered the specific plea raised by the petitioner regarding proceedings being conducted in violation of Rule 17(14) of the Bihar CCA Rules, 2005 as also being violative of the law laid down by the Apex Court in the case of **Saroj Kumar Sinha (Supra)**.



Consideration of appeal has also been provided in the Bihar CCA Rules, 2005. Rule 27 thereof provides manner and procedure of consideration of appeal by the Appellate Authority. In the instant case, there has been total abdication of duty enjoined upon the Appellate Authority to consider the points noted hereinabove in his appeal. The cryptic manner in which Appellate Authority has rejected the appeal is also arbitrary and unsustainable on the touchstone of fairness.

Order dated 24.4.2015 is set aside and the matter is remanded to the Appellate Authority with specific direction that the petitioner's specific plea raised in the appeal regarding non compliance of the procedure provided under Rule 17(14) of the Bihar CCA Rules, 2005 as well as other pleas raised by the petitioner in the writ petition, be decided by reasoned and speaking order with reference to the records of enquiry within a period of three months from the date of receipt/production of a copy of this order.

Writ petition is allowed to the aforesaid extent.

(Madhuresh Prasad, J)

Shashi

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.02.2019.
Transmission Date	NA

