

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13854 of 2016

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Shailendra Kumar Pandey, son of Mr. Harendra Nath Pandey, at present residing at Road No.1, Rajiv Nagar, P.O.- Keshari Nagar, Patna- 24.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of General Administration, Government of Bihar, Patna.
2. The Joint Secretary, Department of General Administration, Government of Bihar, Patna.
3. The Additional Secretary, Department of General Administration, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Jitendra Kumar Roy, Advocate
For the Respondent/s	:	Mr.Md. Nadim Seraj-GP5
		Mrs. Shalini, AC to GP-5

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 12-07-2019

Heard learned counsel for the petitioner and learned counsel for the State.

In this case, the petitioner is challenging the order of punishment dated 18.09.2014 contained in vide Memo No.13026 whereby and whereunder the Additional Secretary to the Government has inflicted the following punishments, such as, stoppage of one increment with cumulative effect, stoppage of promotion till the date of superannuation, censor and not giving anything during the period of suspension except the subsistence allowance.



The fact of this case is that the petitioner was posted as Deputy Development Commissioner, East Champaran at Motihari, he was found indulged in serious misconduct as the Commissioner has received a CD from an important person and he has referred the matter vide Memo No.55 dated 19.02.2010 to the Chief Secretary for holding an inquiry and his transfer from there, whereupon the Government vide Memo No.2762 dated 26.03.2010 (Annexure-3) placed the petitioner under suspension and decided to hold an enquiry against the petitioner, whereafter the Authority has served the charge sheet vide Memo No.1973 dated 4.02.2011 (Annexure-4). The charges, which have been levelled against the petitioner, are as follows :

(I) The CD, which was handed over by the Divisional Commissioner, Tirhut Division, Muzaffarpur, shows his involvement in the sexual activities, which is contrary to the provision of Bihar Government Servant Conduct Rules, 1976.

(II) In his office, he has tortured Vriksha Ram, Head Clerk-cum-Accountant and for such misbehaved, a criminal case was lodged vide Case No.632/2009 under the provisions of Scheduled Castes and Scheduled Tribes Act. He has also tortured another Scheduled Caste employee, namely, Muneshwar Manjhi



by not releasing his salary and for that a criminal case vide Case No.600/09 was also instituted against the petitioner.

(III) Without any information and permission, he always used to remain absent from headquarter and he does not report in the meeting nor informed the authority.

(IV) Under the NAREGA Scheme from the fund of BRGF one computer was purchased and in that purchase he has not followed the guidelines.

The enquiry was conducted, the Charge No. 1 has not been found to be proved, as because the CD, which was the sole evidence against the petitioner of his sexual involvement, was not produced during the proceeding and out of four charges, charge nos. 2 and 3 were not proved and Charge No.4 was partly proved. While passing the order of punishment, what wrong has been committed by the Disciplinary Authority that by that time the report of Forensic Science Laboratory was received and without giving him show cause and without informing the material which the Authority was going to take into consideration, passed the order of punishment mentioning about the CD in which he was found involved in sexual activity with two other women, which is very serious charge.



Counsel for the petitioner submits that the Authority could not have taken into account the report of CD as the same was not produced during inquiry as he was not given any opportunity to confront and contradict the genuineness of the CD itself. He has further submitted that at the eleventh hour, he was to be promoted to the next grade, but they have hatched conspiracy and made a wrong allegation against the petitioner so that he could not get an opportunity of being promoted in the next grade. He has further submitted that the District Magistrate at the relevant time was not in good relation with the petitioner, and he was the person behind the scene and he has made concocted story against the petitioner. So far as first charge with regard to sexual involvement of the petitioner is concerned, it appears that the Authority while passing the order taken into consideration the report of the Forensic Science Laboratory without giving an opportunity to the petitioner to confront and contradict about the genuineness of the material and without giving any chance that has been taken into consideration is only basis for inflicting the punishment to the petitioner.

The State has not denied this fact that before taking into consideration the report of the Forensic Science Laboratory, the



Disciplinary Authority has passed the order punishing the petitioner.

Having considered the rival submissions of the parties. So far as four charges is concerned, out of them, two have been found to be not proved, the charge no. 4 has been partly proved. So far as Charge No.1 is concerned, the Disciplinary Authority has recorded a finding adverse to the petitioner having stated that the charge was proved against the petitioner, but the fact remains that after receipt of the Forensic Science Laboratory report, he was not confronted with the same as it was obligation on the part of the Disciplinary Authority on receipt of the report it could have been referred to the inquiry officer and he could have proceeded to drawing his attention with regard to the genuineness of the report, though a finding has been recorded against the petitioner is of a serious nature, as when he has gone to Delhi for certain official work, he indulged in sexual activity. As because of the report of the Forensic Science Laboratory was not there on that account without giving any opportunity to contradict or confront, the same has been taken into consideration which cannot be permitted to be taken into consideration without giving any opportunity to the petitioner.

In such view of the matter, the impugned order of punishment is set aside for the present and the matter is remanded



back to the enquiry officer to hold an inquiry with regard to charge no.1 only after giving a report of Forensic Science Laboratory to the petitioner and whatever the plea has been taken by him will be considered in accordance with law.

However, it is made clear that the petitioner has already been superannuated from service, so only the proceeding may be initiated under Section 43 (b) of the Bihar Pension Rules.

With the aforesaid observations and directions, this writ application stands allowed.

(Shivaji Pandey, J)

V.K.Pandey/-

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