

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5113 of 2017

Umesh Chandra Upadhyay son of Late Ayodhya Nath Upadhyay resident of Sai Nilyam Apartment, Police Colony, Anisabad, Police Station - Gardanibagh, District - Patna.

... .. Petitioner

Versus

1. The State Of Bihar
2. The Joint Secretary, Food and Consumer Protection Department, Bihar, Patna.
3. The District Magistrate, Patna.
4. The Addl. District Magistrate Supply, Patna.
5. The Sub Divisional Officer, Danapur, Patna.
6. The Officer in charge, Danapur Police Station , Danapur, Patna.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Rajeeva Roy, Advocate Mr. Makardhwaj Upadhyay, Advocate
For the Respondents	:	Mr. Arvind Ujjwal, SC-4

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 03-09-2019 Heard Mr. Rajeeva Roy, learned counsel appearing on behalf of the petitioner and Mr. Arvind Ujjawal, learned S.C.-4 on behalf of the State of Bihar.

2. This writ application was filed seeking quashing of an order dated 22.02.2016, whereby the petitioner was put under suspension. The petitioner, at the relevant point of time, was posted as Marketing Officer, Danapur Urban Area, Patna. During the pendency of the writ application, the departmental proceeding, which was initiated against him has culminated into passing of a final order, issued vide Memo No.5122 dated



09.10.2017.

3. An application, filed on behalf of the petitioner for amendment in relief through I.A. No. 8383 of 2017, has been allowed by an order dated 26.02.2018, which reads thus : -

“I.A. No. 8383 of 2017, by which the petitioner seeks to amend the present writ petition is allowed. The prayer mentioned in paragraph no. 23 are directed to be added to the main writ petition as paragraph no. 1(vii & viii).

The respondents may file the counter affidavit to the amended writ petition within a period of four weeks from today.

List after four weeks.”

4. A counter affidavit has been filed on behalf of the State respondents. There were three charges framed against the petitioner in the departmental proceeding, the gist of which is as under : -

- (I) Complicity of the petitioner in black marketing of food grains.
- (II) Failure on the part of the petitioner to monitor transportation of the food grains from Food Corporation of India Godown to State Food Corporation Godown, Danapur.
- (III) Supply of inferior quality of rice from State Food Corporation Godown.



5. The petitioner had submitted his written statement of defence. The enquiry was thereafter held by the Enquiry Officer and based on evidence adduced by the department, the Enquiry Officer submitted his report on 22.08.2017 holding that the department could not prove either of the charges framed against the petitioner. A copy of the said enquiry report has been brought on record by way of Annexure-7 of I.A. No. 8383 of 2017. Despite the fact that the Enquiry Officer had found the charges not to have been proved, the petitioner was put to second show cause notice issued by the State Government, through Memo No.4173 dated 22.08.2017, under the signature of the Under Secretary Food and Consumer Protection Department, Government of Bihar. Referring to the report of the Enquiry Officer, it was mentioned in the said letter dated 22.08.2017 that the charges framed against the petitioner stood proved, apparently contrary to the findings recorded by the Enquiry Officer.

6. The petitioner responded to the said letter dated 22.08.2017 and, relying on the report of the Enquiry Officer, took a plea that none of the charges framed against the petitioner in the departmental proceeding could be said to have been proved. Thereafter, the impugned order dated 09.10.2017 has



been passed imposing upon the petitioner punishment of reduction to lower stage in time scale of pay, as contemplated under Rule 14(viii) of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005.

7. A short submission had been made by Mr. Rajeeva Roy, learned Counsel appearing on behalf of the petitioner to the effect that the disciplinary authority has mindlessly held the charges framed against the petitioner to have been proved in the departmental enquiry contrary to the report of the Enquiry Officer. He has submitted that the second show cause notice does not record tentative notes/notes of disagreement of the disciplinary authority with the report of the Enquiry Officer, rather it discloses agreement with the report of the Enquiry Officer before reaching a conclusion that the petitioner was guilty of the charges framed against him in the departmental enquiry. He has submitted that the impugned order, imposing punishment on the petitioner, is wholly arbitrary, illegal and has been passed without any application of mind at all.

8. On perusal of the materials on record, I find substance in submission made on behalf of the petitioner. It is evident from the enquiry report that the Enquiry Officer recorded a categorical finding that the charges against the



petitioner could not be proved. I fail to understand the circumstance, in which the disciplinary authority treated the charges against the petitioner to have been proved in the departmental enquiry. There is no disagreement recorded by the disciplinary authority with the report of the Enquiry Officer.

9. In such circumstance, this Court does not have any other option than to interfere with the impugned order, dated 09.10.2017 (Annexure-9), which is accordingly set aside.

10. It will, however, be open to the disciplinary authority to pass appropriate order on the report of Enquiry Officer in accordance with law.

11. This application is allowed with the observations as noted above.

(Chakradhari Sharan Singh, J)

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