

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14948 of 2018

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Arun Kumar Singh, Son of Late Laldeo Prasad, Resident of Village-
Chausanda, P.O.- Sonchari, P.S.- Parwalpur, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Land Reforms, Govt. of Bihar, Bailey Road, Patna
2. The Divisional Commissioner, Patna Division, Patna.
3. The District Magistrate, Nalanda.
4. The Additional Collector cum Departmental Enquiry Officer, Nalanda.
5. The Sub Divisional Magistrate, Hilsa, Nalanda.
6. The Circle Officer, Hilsa, Nalanda.
7. The Circle Officer, Ekangar Sarai, Nalanda.
8. The Circle Officer, Sarmera Nalanda.
9. The Circle Officer, Karai Parsurai, Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Akhilesh Dutta Verma, Advocate
For the Respondent/s	:	Mr.Md. Khurshid Alam, AAG-12

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 25-10-2021

The petitioner is seeking quashing of an order issued vide Memo No. 2330 dated 12.08.2013, passed by the Collector-cum-District Magistrate, Nalanda (Annexure-11), whereby and whereunder he has been dismissed from service. Petitioner's service appeal against the order dated 12.08.2013 has been dismissed by an order dated 28.01.2016, passed in Service Appeal No. 553 of 2013, which is under challenge in this case.

2. At the relevant point of time, the petitioner was



working as *Rajaswa Karmchari* at Sarmera Anchal in the district of Nalanda. A departmental proceeding was initiated against him with the issuance of charge-sheet dated 23.08.2011 under the signature of the Additional Collector, Nalanda. It was alleged against him that he prepared forged and fabricated Register-II, created wrong *Jamabandis* and issued rent receipts, fraudulently in the name of 23 persons. Allegedly, he committed the said misconduct in conspiracy with the beneficiaries on extraneous considerations. In addition, he created *Jamabandi* in respect of 28 acres of land in Salempur and 8 acres in revenue village Pakri in the name of a retired clerk and his family members. A copy of the charge-sheet has been brought on record by way of Annexure-1 to the writ application. Such conduct of the petitioner, in the opinion of the Disciplinary Authority, being in breach of Rule 3(1)(i), 3(1)(ii) and 3 (1)(iii) of Bihar Government Servant Conduct Rules, 1974, constituted misconduct warranting disciplinary action.

3. The petitioner submitted his written statement of defence denying the allegation made in the charge memo. He asserted that he had temporarily taken charge of *Rajaswa Karmchari* from one Suresh Prasad and had continued as such for only three months. He had not created any *Jamabandi* in favour of the said 23 persons rather on the basis of already existing



Jamabandi he had issued rent receipts in favour of 16 persons. He reiterated that no *Jamabandi* was created in favour of Suresh Prasad @ Suresh Kumar Mukherjee in villages Salempur and Pakri.

4. The Inquiring Authority submitted his report on 30.11.2012, recording his finding to the effect that the charge against the petitioner stood proved. It appears from the report of the Inquiring Authority that documentary evidence were produced before him by the Presenting Officer in support of the charge. The Presenting Officer produced before the Inquiring Authority documents to suggest that the petitioner created *Jamabandi* in respect of 14 persons on the basis of *Jamabandi* said to have been created in the names of the predecessors-in-interest of the said 14 persons and issued rent receipts. In respect of four other persons the petitioner issued rent receipts on the basis of rent receipts earlier issued. In respect of six persons the petitioner issued rent receipts in respect of the lands, though such persons did not possess the land as indicated in the rent receipts. The Inquiring Authority has recorded that before creation of a new demand of rent approval of a competent authority is essential. Register-II, which was produced before the Inquiring Authority, did not, however, contain any order passed by the competent authority in



the column of '*Pradhikar*'. By way of illustration, the Inquiring Authority has mentioned that if *Jamabandi* stands in the name of a person, names of his heirs cannot be entered unless the same is approved by the competent authority for mutation. The Inquiring Authority has recorded a finding that the petitioner created *Jamabandi* without order of the competent authority. The petitioner, in his defence, had relied on certain land receipts which were the basis for him to issue subsequent land receipts. The said defence has been rejected by the Inquiring Authority on the ground that there was no such entry in the concerned land records, which also substantiated the charge against the petitioner. The Inquiring Authority, thus, held on the basis of the comments of the Presenting Officer and inquiry report of the Incharge Circle Inspector that the petitioner, without approval of the competent authority, created *Jamabandi* in the names of the heirs of successors-in-interest and issued land receipts.

5. The report of the Inquiring Authority was supplied to the petitioner by the Disciplinary Authority through his letter dated 05.02.2013 asking him to submit his comments thereon. The petitioner responded to the said notice dated 05.02.2013 by filing his representation, a copy of which has been brought on record by way of Annexure-5.



6. During the pendency of the said departmental proceeding another departmental proceeding was initiated against the petitioner containing altogether four charges. It was firstly alleged against him that without order of the competent authority he created new *Jamabandi* and thus generated unnecessary land dispute. It was further alleged against him that he deliberately submitted misleading reports on various occasions though he was consistently asked in the weekly meetings to submit such report after local inquiry and land revenue records. By way of illustration, the land valuation certificate issued by the petitioner on an application made by a tenant was mentioned in respect of the said charge. It was thirdly alleged against him that he did not extend desired cooperation in preparations to meet flood situations in the concerned area. It was fourthly alleged against him that he had issued land possession certificate in respect of a female who was in fact landless. Another example was also given in respect of the fourth charge in the charge memo.

The petitioner was given an opportunity to submit his written statement of defence in respect of the second departmental proceeding. In relation to charge no. 1 he asserted that he had always created *Jamabandi* after obtaining necessary orders from the competent authority. In relation to charge no. 2, he asserted that



he never misled the officials and in relation to the illustration given in the said charge he asserted that because of work load and his engagements in other duties, he had carried out the land valuation on verification of documents in relation to the land, description of which was given in the application of the applicant. Denying the allegation in charge no. 3, he submitted before the Inquiring Authority that though he always took adequate interest in flood and rehabilitation work but at times, under the orders of the Circle Officer, he used to discharge his duties in areas other than the area assigned to him. He denied the allegation in charge no. 4 and took the defence of excessive work load and his engagement in other official works because of which he had issued the Land Possession Certificate on the basis of rent receipts earlier issued in favour of one Dahini Devi.

7. The Inquiring Authority submitted his report in respect of the second disciplinary proceeding on 31.12.2012. The report of the Inquiring Authority in respect of second departmental proceeding has been brought on record by way of Annexure-8 to the writ application. On perusal of the inquiry report it transpires that the Inquiring Authority, upon analysis of the evidence made available during the departmental inquiry charge-wise, held all the charges, except one charge against, the petitioner as proved. The



report of the Inquiring Authority was made available to the petitioner through letter dated 20.12.2012 issued by the District Magistrate, Nalanda asking him to submit his report. The petitioner submitted his reply on 25.03.2013.

8. Taking into account the findings recorded by the Inquiring Authority in two different departmental proceedings, a composite order dated 12.08.2013 has been passed which has been issued under the signature of the Collector-cum-District Magistrate, Nalanda imposing upon the petitioner punishment of dismissal from service. The petitioner had preferred an appeal against the order of dismissal dated 12.08.2013 which has been dismissed by an order dated 28.01.2016 by the Commissioner, Patna Division, Patna in Service Appeal No. 553 of 2013. The said order passed by the Appellate Authority dated 28.01.2016 is also under challenge in the present application.

9. Mr. Akhilesh Dutta Verma, learned counsel appearing on behalf of the petitioner has submitted that the impugned order of dismissal requires interference on various grounds. He has firstly submitted that the order of dismissal has been passed by one Mr. B. Kartikey under the seal of the Collector-cum-District Magistrate, Nalanda who was made only In-charge to see day-to-day affairs in the absence of the then District Magistrate, who was



on training from 29.04.2013 to 21.06.2013. He has further submitted that on the day when Mr. B. Kartikey passed the order of dismissal, he was posted as Deputy Development Commissioner, Nalanda which is a rank subordinate to the rank of the District Magistrate, Nalanda. He has accordingly submitted that the impugned order is in teeth of Article 311(1) of the Constitution of India and, therefore, unsustainable. According to Mr. Verma, the petitioner was appointed under the order of the District Magistrate and, therefore, no authority subordinate to the District Magistrate could have passed the order of dismissal. He has further submitted that in any case, since Mr. B. Kartikey was working as In-charge of the office of the District Magistrate, Nalanda on officiating basis because of temporary absence of the regular District Magistrate, he ought not to have exercised statutory powers of Disciplinary Authority vested in the District Magistrate. He has further argued that the findings of the Inquiring Authority in two departmental proceedings that the charges against the petitioner stood proved are based on no cogent evidence and for the said reason also the decision of the Disciplinary Authority rendered on such reports of the Inquiring Authority is unsustainable. He has also submitted that there has been no compliance of the provisions under Rule 17 of the Bihar Government Servants (Classification, Control and



Appeal) Rules, 2005 [for short BGS(CCA) Rules]. According to him, without examination of any witness, the charges framed against the petitioner cannot be said to have been proved. According to him, clubbing of the two departmental proceedings for the purpose of imposition of punishment is impermissible. He has also argued that the petitioner ought to have been given benefit of doubt as there was no adequate evidence to hold the petitioner guilty of the charges. He has urged that in the second departmental proceeding the Inquiring Authority had found one out of four charges as not proved and, therefore, the disciplinary Authority ought to have supplied to the petitioner tentative notes of disagreement if, according to him, even the said charge stood 'not proved' on the basis of the materials available in the departmental proceeding. He has questioned the appointment of the same Inquiring Authority in two different departmental inquiries by the Disciplinary Authority, as according to him, this raises a question of bias. He has contended that the Inquiring Authority has recorded his finding mechanically in both the proceedings.

10. It may be noted, at this stage, that though a plea has been taken that the departmental inquiry was conducted and the impugned order has been passed in violation of the provisions of Rules 17 and 18 of BGS(CCA) Rules, there is no pleading to



support the said stand, inasmuch as, there is no averment as to which procedure laid down in Rule 17 was breached by the Inquiring Authority and Rule 18 by the Disciplinary Authority which prejudiced the petitioner's case. Further, no plea of bias was raised against the appointment of the same Inquiring Authority in the second disciplinary proceeding.

He has further submitted that the orders passed by the Disciplinary Authority and the Appellate Authority cannot be said to be reasoned orders, dealing duly with the petitioner's representation/ appeal.

11. Mr. Khurshid Alam, learned AAG-12 appearing on behalf of the State of Bihar has, on the other hand, submitted that after due compliance of the principles of natural justice and the provisions under BGS(CCA) Rules, the Disciplinary Authority, after duly considering the findings recorded in the reports of the Inquiring Authority has passed the impugned order of dismissal. He has further submitted that considering the seriousness of the charge of misconduct levelled against the petitioner, consistently noticed by the Disciplinary Authority, imposition of punishment of dismissal from service cannot be said to be disproportionate. He has further argued that there was no bar for the In-charge Collector-cum-District Magistrate on exercising disciplinary



powers vested in the said post in the absence of the regular District Magistrate. He has contended that even otherwise, the petitioner's plea that the impugned order has been passed by an authority subordinate to the authority by which he was appointed, since the authority of Deputy Development Commissioner cannot be treated to be an authority subordinate to the District Magistrate. He has submitted that an officer holding the post of Deputy Development Commissioner is of the same rank/ grade as of the District Magistrate and, therefore, reliance placed on the provision under Article 311(1) of the Constitution of India by learned counsel for the petitioner to assail the impugned order is misplaced.

12. I have gone through the pleadings on record and have given my anxious consideration to the rival submissions made on behalf of the parties. On reading of the two sets of charges in the two departmental proceedings, I am of the view that the same were duly framed and imputation of misconduct was specific and duly disclosed in the charge memo. The petitioner was given due opportunity of submitting his written statement of defence, which he had availed. He did not raise any objection over non-supply of any document for the purpose of preparation of his defence, while submitting his written statement of defence or thereafter during departmental inquiry. The entire allegation



against the petitioner was based on documents available in the concerned office. The Presenting Officer presented the case of the department in the two disciplinary proceedings with reference to the documentary evidence. In my opinion, oral evidence is not essentially required to be adduced in a departmental proceeding when the charges are based on undisputed documentary evidence.

13. On careful examination of the reports of the Inquiring Authority it is easily seen that the Inquiring Authority did deal with the charges framed against the petitioner, the petitioner's defence and the materials/ evidence produced by the Presenting Officer during the departmental inquiry before recording his findings. The findings recorded by the Inquiring Authority, in the Court's opinion, cannot be said to be without any material or on the basis of irrelevant materials. Admittedly, the petitioner was supplied a copy of the report of the Inquiring Authority and was given an opportunity to make his representation against the findings recorded by the Inquiring Authority. He submitted his reply in response to the show cause notice along with which a copy of the inquiry report was supplied to him.

14. The order passed under the seal of the Collector-cum-District Magistrate cannot be said to be non-speaking, inasmuch as, the author of the order has discussed in his order the



charges levelled against the petitioner, materials available in the departmental inquiry, the defence of the petitioner and the findings recorded by the Inquiring Authority. He agreed with the findings recorded by the Inquiring Authority and accordingly decided to impose punishment of dismissal from service. In my opinion, the impugned action does not suffer from any procedural irregularity in violation of principles of natural justice, which could be said to have caused any prejudice to the petitioner. It is recorded here that no plea of prejudice caused to the petitioner because of any irregularity in the departmental proceeding has been pleaded in the writ application.

15. Let me now consider the contention of Mr. Verma, learned counsel for the petitioner that the impugned order has been passed by an officer subordinate to that by which he was appointed. In support of this plea a supplementary affidavit has been filed wherein it has been stated that appointing authority of the petitioner is the District Magistrate, Nalanda. On the basis of information received under the Right to Information Act one Kundan Kumar (IAS) was posted as the District Magistrate, Nalanda on 12.08.2013, when the impugned order of dismissal was passed. Accordingly, the District Magistrate was the appointing authority of the petitioner. In paragraph 7 of the supplementary



affidavit, it has been stated that Mr. B. Kartikey was not even the In-charge District Magistrate. Reliance is being placed on a notification dated 18.04.2013, issued by the General Administration Department, Government of Bihar (Annexure-12 to the writ application) under the orders of the Governor of Bihar whereby Mr. Budhbhatti, Deputy Development Commissioner, Nalanda was given the charge of the post of District Magistrate during the absence of Mr. Kundan Kumar, the regular District Magistrate, who was allowed to go for in-service training. It is the petitioner's case that this aspect has not been duly dealt with by the Appellate Authority.

16. On perusal of the order of the Appellate Authority, it is noticed that the petitioner was given an opportunity of personal hearing through a learned Advocate. The Appellate Authority has considered all the grounds taken by the petitioner in his memo of appeal and has passed a speaking and reasoned order. He has categorically recorded in his order that Mr. B. Kartikey, Deputy Development Commissioner, Nalanda was the In-charge District Magistrate as on 29.06.2013 who had heard the matter and subsequently passed the order.

17. Mr. Verma, learned counsel for the petitioner has submitted that when the impugned order was passed on



12.08.2013, there was no occasion for the Appellate Authority to have recorded a finding that Mr. B. Kartikey was the Incharge District Magistrate as on 29.06.2013.

18. Article 311(1) of the Constitution of India mandates that no member of a civil service of a State, who holds a civil post can be dismissed or removed by an authority subordinate to that by which he was appointed. The authority which had appointed a person on a civil post under the State is crucial for determination as to whether a person's dismissal or removal from service is hit by Article 311(1) of the Constitution. It has though been stated by the petitioner that the District Magistrate is the appointing authority of the post of *Rajaswa Karmchhari*, there is no assertion in the writ petition as to by which authority he was appointed on the said post.

19. A challenge to an order of dismissal from service by invoking Article 311(1) of the Constitution of India will be meaningless in the absence of the specific pleading as to by which authority a person holding a civil post was in fact appointed. Further, for invoking the said protection under Article 311(1) of the Constitution a person holding a civil post will have to establish that the authority, which passed the order of dismissal or removal from service, is subordinate to that by which he was in fact appointed. It is difficult for this Court to accept the contention on



behalf of the petitioner that the order has been passed by a person subordinate to the authority by which he was appointed, in the absence of pleadings.

20. However, in the supplementary affidavit, there is specific pleading that as on 12.08.2013, Mr. B. Kartikey was not even the In-charge Collector-cum-District Magistrate, Nalanda when the impugned order of dismissal was passed. The Appellate Authority in its order has recorded that Mr. B. Kartikey was in-charge Collector-cum-District Magistrate on 29.06.2013. There is no specific finding recorded by the Appellate Authority that as on 12.08.2013 Mr. B. Kartikey was the In-charge Collector-cum-District Magistrate. If he was not the In-charge Collector-cum-District Magistrate, which authority had the jurisdiction to impose punishment as Disciplinary Authority, he could not have passed the impugned order. For determining this limited point, the order of the Appellate Authority dated 28.01.2016 is set aside. The matter is remanded back to the Appellate Authority to pass an order afresh dealing with this limited issue, within a period of one month from the date of receipt/ production of a copy of this order. If the Appellate Authority reaches a conclusion that Mr. B. Kartikey was not the Incharge Collector-cum- District Magistrate of the district, he shall be required to pass appropriate orders in accordance with



law.

21. This application is allowed to the aforesaid limited extent.

22. There shall be no order as to costs.

Rajesh/-

(Chakradhari Sharan Singh, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.10.2021
Transmission Date	NA

