

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11695 of 2018

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Hargun Prasad Singh, S/o Late Shankar Prasad Singh, R/o Village- Rasulpur,
P.O. Karnoul, P.S. Sahebganj, District- Muzaffarpur

... .. Petitioner/s

Versus

1. The State Of Bihar, through the Principal Secretary-cum-the Appellate Authority, Department of Co-operative, Govt. of Bihar, Patna.
2. The Registrar, Co-Operative Societies-cum-the Disciplinary Authority, Department of Co-operative, Govt. of Bihar, Patna.
3. The Enquiry Officer-Cum-The Assistant Registrar, Co-Operative Societies, Tirhut Division, Muzaffarpur.
4. The Presenting Officer-cum-The Assistant Registrar, Co-Operative Societies, Sikrahana Anchal, Motihari.
5. The Superintendent of Police, Vigilance Investigation Bureau, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr. Purushottam Kumar Jha, Advocate
For the State	:	Mr. Ashok Kumar Dubey, AC to SC-11
For the Vigilance	:	Mr. Arvind Kumar, Special P.P.(Vigilance)

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 12-07-2022

Heard learned counsel for the petitioner and learned
State Counsel.

2. The petitioner was posted as Lower Division Clerk in the office of Assistant Registrar, Co-operative Societies at Sikrahna Circle in Motihari. One complainant, namely, Surendra Sahni, made a complaint before the Vigilance Department regarding demand of illegal gratification by the petitioner and one Ravi Kumar, who was also posted in the office; for facilitating election of the said Surendra Sahni as



Chairman of one Fisheries Cooperative Society. As a result of such allegation, the petitioner on 30.06.2011 was arrested on the allegation of having accepted illegal gratification. His arrest led to lodging of Vigilance P.S. Case No. 41 of 2011. Based thereon, the petitioner has been served with a charge memo in Prapatra-(क). Charge memo is dated 18.08.2012. The charges in the charge memo are one and the same of accepting illegal gratification from the complainant Surendra Sahni and ancillary charges of abusing his official position and influencing election of the Co-Operative Society in question. The petitioner was thereafter informed about the appointment of the enquiry officer and required to submit his written statement of defence. The petitioner has demanded for various documents with a plea that it is only after the documents are available, that he would be in a position to make out his defence or meet the charges effectively, so as to realize the opportunity being granted by the charge memo.

3. The petitioner's request for documents has been dealt with by a communication dated 09.07.2013, wherein the petitioner has been told that various documents are not in the custody of the enquiring authority and that some form the part of the criminal investigation being carried on by the



Investigation Bureau.

4. In so far as the petitioner's specific request for copy of the file, from which it can be inferred that the petitioner was not dealing any matter with respect to the complainant, specific response of the authority is that no such file of the complainant was pending before the petitioner. The petitioner thereafter reiterated his demand for certain documents which were not supplied to the petitioner.

5. Admitted position that emerges from the pleadings is that petitioner for whatever reasons did not file a written statement of defence. In absence of any written statement of defence, it was open to the enquiry officer to conclude the proceedings by relying upon the materials and documents available, in accordance with law. The enquiry officer has thus submitted an enquiry report, which is dated 17.02.2014.

6. The enquiry officer has written clear findings in respect of all the charges that the charges could not be proved. The disciplinary authority thereafter has issued a communication dated 14.03.2014 communicating the proposed punishment to the petitioner and asking him to respond to the proposed punishment. The petitioner thereafter has responded



by a detailed and elaborate response reiterating his stand that for want of requisite documents he was incapacitated from filing his written statement of defence. Since none had been examined in the enquiry in support of the charges nor any material was produced in support of the charges, the findings arrived at by the enquiry officer holding the charges not proved was correct.

7. The disciplinary authority thereafter has passed the impugned order of punishment dated 13.05.2014 dismissing the petitioner from service.

8. An appeal has been preferred thereafter, which too has been rejected by the appellate authority under a communication dated 28.05.2015.

9. The petitioner by way of the instant proceedings has assailed the entire proceedings, including the orders passed by the disciplinary authority and the appellate authority.

10. The learned counsel for the petitioner submits that the report of the enquiry officer absolved the petitioner of all the charges. If the disciplinary authority proposed to disagree with the findings contained in the enquiry report, Rule 18(2) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the Rules') mandates recording of reasons for such a disagreement and



recording of own findings on such charge, provided there was sufficient material for the said purpose. The Rules also mandates grant of an opportunity to the delinquent to submit his comments/representation, which needless to say are required to be considered. Rule 18(2) of the Rules reads as follows:

“18(2): The disciplinary authority, after receipt of the enquiry report as per Rule 17 (23)(ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.”

Submission is that this procedure has not been followed.

11. The learned State Counsel, however, submits that everything has been done according to procedure and after issuing a second show cause notice to the petitioner, the punishment has been imposed.

12. While making these rival submissions, the parties have drawn the attention of the Court to the communication dated 14.03.2014, being the second show cause notice. From bare perusal of the same, it is more than obvious that there is no basis or no reasons assigned for differing with the findings of the enquiring officer. No material whatsoever as



contemplated under Rule 18(2) of the Rules has been referred to in the order.

13. The second show cause notice issued to the petitioner therefore was in gross violation of the procedure prescribed. The order of punishment also does not take into consideration any material or evidence, based on which the petitioner has been visited with the extreme consequence of dismissal. It records that the petitioner has not responded to the charge memo and therefore merely on basis of such consideration, the punishment has been inflicted, ignoring the fact that enquiry officer has held the charges not to be proved. Without taking into consideration any material, to even suggest otherwise, the disciplinary authority has held the charges proved and proceeded to punish the petitioner.

14. The order of the disciplinary authority dated 13.05.2014 is clearly unsustainable for the reasons, indicated above.

15. The petitioner's detailed and elaborate appeal has also been rejected by a cryptic order, which does not show any consideration of various issues raised in the elaborate appeal (Annexure-21). The findings are baseless and render nugatory the entire opportunity of appeal granted to the



petitioner under the Rules. The order is clearly unsustainable for non-assigning of reasons and shows total non-application of mind.

16. Law is very clear that when the rule or statute provides an opportunity or right to appeal, the same cannot be rendered meaningless due to non-consideration of the show cause.

17. The order of the disciplinary authority inflicting the petitioner with severe punishment of dismissal dated 13.05.2014 as well as the appellate order dated 28.05.2015 are unsustainable. These two orders are hereby quashed. As a result, the petitioner would be entitled to all consequential benefits, which shall be paid within three months from the date of receipt/production of a copy of this judgment.

18. The writ application is allowed.

PNM/Shashank

(Madhuresh Prasad, J)

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

