IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17133 of 2011

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Baidya Nath Gupta S/O Late Kedar Nath Gupta R/O Village and P.O.- Bakharpur, P.S.- Pirpainty, District- Bhagalpur

... ... Petitioner/s

Versus

1. The State Of Bihar through the Commissioner-cum-Secretary, Department Of Revenue And Land Reforms, Government Of Bihar, Old Secretariat, Patna
2. The Divisional Commissioner-Cum-Appellate Authority, Bhagalpur
3. The District Magistrate-Cum-Disciplinary Authority, Bhagalpur
4. The Enquiry Officer-Cum-Director Accounts Administration and Self Employment, Bhagalpur
5. The Additional Collector, Bhagalpur
6. The Establishment Deputy Collector, Bhagalpur Collectorate, Bhagalpur
7. The Circle Officer, Jagdishpur, District- Bhagalpur
8. The Circle Officer, Pirpainty, District- Bhagalpur

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Purushottam Kumar Jha, Advocate Mr. Avanindra Kumar Jha, Advocate Mr. Jitendra Acharya, Advocate Mr. Narendra Kumar Sinha, Advocate Mr. Anand Kumar Tiwari, Advocate Mr. Bishash Vijeta, Advocate
For the Respondent/s	:	Mr. Awdhesh Kumar Pandey Ga9

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT
Date : 29-09-2022

In the instant petition, petitioner has prayed for the following relief/reliefs:

> "I. For issuance of an order, direction or writ in the nature of certiorari quashing memo of charges framed by respondent no. 3 on 17.07.2007 (Annexure – 6) communicated by the then respondent no. 4 vide memo no. 1543 dated 03.08.2007 (Annexure – 5) whereby three charges have been leveled against the petitioner.

II. Issuance of an order, direction or writ in the nature of certiorari quashing the enquiry report dated 02-04-2008 (Annexure 10/1) submitted by respondent no. 4 to the disciplinary authority proving all the charges so leveled against the petitioner vide memo of charges dated 17.07.2007.

III. Issuance of an order, direction or writ in the nature of certiorari quashing Memo No. 216 dated 21.10.20096 (Annexure – 12) whereby respondent no. 3 has dismissed the petitioner from his service.

IV. Issuance of an order, direction or writ in the nature of certiorari quashing the order dated 30.03.2011 passed by respondent no. 2 in Bhagalpur Misc. (Service Appeal) Case No. 22/2009-10 (Annexure – 17) whereby the service appeal preferred by the petitioner has been dismissed by the Appellate Authority, i.e. respondent no. 2.

V. Issuance of an appropriate declaration that the departmental proceeding in question has been conducted and concluded by the respondents concerned in complete disregard to the settled principles of departmental enquiry and the Principles of Natural Justice, Hence, the entire departmental enquiry stands vitiated in the eye of law and on facts both.

VI. For issuance of an appropriate order, direction or writ in the nature of mandamus commanding the respondent authorities to reinstate the petitioner in the service of Bhagalpur Collectorate with all consequential benefits.

VII. For grant of any other relief or reliefs to which the petitioner may be found entitled to in the facts and circumstances of this case.”

2. The petitioner while working as Amin, he was subjected to disciplinary proceedings in framing of article of charges on 14.01.2004 and it was concluded in imposition of penalty of

dismissal from service on 29.11.2005. Dismissal order was a subject matter of litigation in C.W.J.C. No. 15662 of 2006. This Court set aside the order of dismissal and remanded the matter to the disciplinary authority to proceed afresh within one year. The disciplinary authority proceeded to frame afresh charges on 17.07.2007 *vide* Annexure - 6. Thereafter, it was concluded in imposition of penalty of dismissal from service on 21.10.2009. Feeling aggrieved and dissatisfied with the order of dismissal, petitioner has exhausted the remedy of appeal before the appellate authority in which petitioner suffered an order on 30.03.2011. Hence the present petition.

3. Learned counsel for the petitioner vehemently contended that the initiation of disciplinary proceedings is highly belated having regard to the alleged dates of alleged incident relate back to 1995 and 1983 respectively with reference to the charges framed. It is further submitted that in support of the alleged charge, list of witnesses have not been provided along with charge memo dated 17.07.2007. During pendency of the inquiry, inquiring authority stated to have summoned some of the persons as a witnesses and it is contrary to sub-Rule (3) of Rule 17 of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for short 'Rules 2005')

Underline supplied

4. *Per contra*, learned counsel for the respondents resisted the aforesaid contention and submitted that manipulating revenue records is a serious misconduct. The officials of the department have noticed that the alleged incident is of the year 1995 and 1983 only in the year 2004, therefore, delay would not be a hurdle. It is further submitted that even though list of witnesses was not accompanied by article of charges which was issued on 17.07.2007. However, the inquiring officer has examined some of the witnesses. Therefore, there is no infirmity and further it is submitted that appellate authority has also affirmed the order of dismissal. Hence no interference in called for.

5. Heard learned counsel for the respective parties.

6. Perusal of the records, it is evident that alleged charges relate back to of the year 1995 – 1983 whereas the charge memo for the first time was issued on 14.01.2004 and thereafter once again charges were framed on 17.07.2007 by virtue of judicial pronouncement. Apex Court in the case of ***State of Andhra Pradesh vs. N. Radhakishan*** reported in **1998 (4) SCC 154** held that delay in initiation of inquiry vitiate the inquiry proceedings. The other contention is relating to violation sub-Rule (3) of Rule 17 of Rules 2005. It is to be noted that along with the charge

memo, disciplinary authority is required to comply sub Rule (3) of Rule 17 of Rules 2005. Sub Rule 3 reads as under:

> "**(3)** Where it is proposed to hold an inquiry against a government servant under this Rule, the disciplinary authority shall draw up or cause to be drawn up-
>
> (i) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge
>
> (ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-
>
> (a) a statement of all relevant facts including any admission or confession made by the Government Servant;
>
> <u>(b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained."</u>

7. In other words, disciplinary authority was required to adopt procedure for imposition of major penalties under Rule 17 in framing of article of charges, statement of imputation, list of documents and list of witnesses. Perusal of charge memo dated 17.07.2007, it is evident that it is not supported by list of witnesses. In the result, there is a violation of sub Rule (3) of Rule 17 of Rules 2005.

8. It is further submitted that the petitioner was only Amin. He has no access to the revenue records. The custodian of the revenue records is Revenue Clerk. If the petitioner had

Underline supplied

manipulated any records, in that event there should have been a joint inquiry against the Clerk and petitioner - Amin. On these counts impugned action of the disciplinary authority and appellate authority are required to be set aside. In the light of the aforesaid factual aspect and legal issues, the petitioner has made out *prima facie* case so as to interfere with the impugned orders dated 17.07.2007 (Annexure – 6), 02.04.2008 (Annexure 10/1), 21.10.2009 (Annexure – 12), 30.03.2011 (Annexure 17). Accordingly, they are set aside.

9. During pendency of the present petition, petitioner is stated to have attained age of superannuation and retired from service in the year 2019. The aforesaid material information shall be taken into consideration for the purpose of extending all service and consequential monetary benefits to the petitioner, the same shall be calculated and disbursed within a period of four months from the date of receipt of this order.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	30.09.2022
Transmission Date	