

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2591 of 2021

=====

Jitendra Thakur, Son of Late Dhaneshwar Prasad Thakur, Resident of Village and P.O. Kanta Pirauchha, P.S. Gaighat, District- Muzaffarpur, Presently working as Panchayat Secretary, Gram Panchayat Raj Ali Neura, Block-Minapur, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
3. The Divisional Commissioner, Tirhut Division, Muzaffarpur.
4. The District Magistrate, Muzaffarpur, District- Muzaffarpur.
5. The Additional Collector, Departmental Enquiry, Muzaffarpur, District- Muzaffarpur.
6. The Block Development Officer, Marwan, District- Muzaffarpur.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Shashi Bhushan Kumar Manglam, Advocate Mr.Awnish Kumar, Advocate Mr.Kumar Gaurav, Advocate
For the Respondent/s	:	Mr.Kameshwar Prasad Gupta, GP10

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

5 13-10-2022 While the petitioner was posted as a ‘Panchayat Secretary’, he was served with a charge memo dated 07.12.2015. The allegation in the charge memo was that the petitioner has inserted name of four persons who were ineligible for benefits under the Indira Awas Yojana. However, by virtue of their insertion in the list of beneficiaries, he has shown them to be eligible, therefore, it is alleged that he is liable for gross irregularities in the selection of beneficiaries under the Yojana.



The petitioner has responded to the charge memo by raising a plea that in the list that he had forwarded he had clearly stated that these four persons were ineligible for benefits and while forwarding such report he had put a note that the Block Development Officer, Marwan (BDO for brevity), may get this fact enquired at his own level. After looking into the issue at his own level the then BDO has included the name of these four persons as beneficiaries.

Referring to the submissions of the presenting officer in the enquiry proceedings, learned counsel for the petitioner submits that the presenting officer has supported the petitioner's above noted stand in so many words, which are being reproduced:-

"अतः स्पष्ट है कि लाभुकों का चयन प्रखंड स्तर से किया गया। इस प्रकार संचिका के अवलोकन उपरान्त श्री ठाकुर द्वारा प्रखंड को उपलब्ध कराये गये प्रतीक्षा सूची के अन्तर्गत लाभुको के चयन में प्रखण्ड स्तर से इन्दिरा आवासों नियमों का पालन प्रखंड स्तर से नहीं किया गया एवं अयोग्य लाभुकों को लाभ दिया गया तथा प्रतीक्षा सूची में वरीयता क्रम भी तोड़ा गया जिसके लिए तत्कालीन प्रखंड विकास पदाधिकारी एवं तत्कालीन सख्खिकी पर्यवेक्षक दोषी प्रतीत हो



रहे हैं। (संचिका के अवलोकन के आधार पर)

अतः श्री ठाकुर द्वारा वित्तीय वर्ष 13-14 में लाभुकों के चयन में कोई प्रत्यक्ष भूमिका नहीं है। अतः श्री जितेन्द्र ठाकुर (पंचायत सचिव, पकड़ी) निर्दोष प्रतीत हो रहे हैं एवं उनके उपर लगाये गये आरोप पर सहानभूति पूर्वक विचार करते हुये उन्हें आरोप से मुक्त किया जा सकता है।"

The enquiry officer has, however, surmised the charges to be proved by saying that to some extent it appears the petitioner is also liable for the inclusion of ineligible persons in the list of beneficiaries for the Yojana in question. The opinion of the enquiry officer is as follows:-

"निष्कर्ष:- • आरोपी पदाधिकारी से प्राप्त स्पष्टीकरण एवं साक्ष्य उपस्थापन पदाधिकारी के मंतव्य से स्पष्ट है कि श्री जितेन्द्र ठाकुर , पंचायत सचिव द्वारा प्रारंभिक तौर पर इन्दिरा आवास योजना का लाभ मुहाया कराने के लिए पंचायत स्तर पर सूची तैयार किया गया था। पंचायत सचिव का यह दायित्व था कि पंचायत स्तर पर सूची तैयार करने के पूर्व भौतिक एवं आर्थिक रूप से लाभार्थियों का सर्वेक्षण किये जाने के पश्चात ही सूची प्रखंड मे जमा करना चाहिए था , परन्तु सूची में द्वंद की स्थिति एवं उच्च स्तर पर जाँच की आवश्यकता



लाभुको को सूची मे गड़बड़ी के फलस्वरूप ही
संभव हुआ इसलिए हद तक आरोपी के विरुद्ध
गलत सूची तयार करने का आरोप प्रमाणित है।"

The disciplinary authority has proceeded to hold the charges proved in the above noted circumstances by order dated 17.04.2018.

It is submitted by Mr. S. B. K. Manglam, learned counsel appearing for the petitioner, that there was no material in support of the charges against the petitioner. In fact there was a written submission by the presenting officer explicitly fastening the responsibility of insertion of ineligible persons in the list of beneficiaries, against the then BDO as well as the Statistical Officer, however, the charges have been held to be proved by the Disciplinary Authority. Such conclusion of the Disciplinary Authority is not based on any material in the course of enquiry whatsoever. The decision of the Disciplinary Authority, District Magistrate, Muzzafarpur, dated 17.04.2018 is, therefore, the product of an exercise which is in violation of Rule 17(14) of the CCA Rules as well as Rule 18(4) of the CCA Rules. On account of such procedural infirmity the Order of punishment is unsustainable. The petitioner has also preferred an appeal bearing Service Appeal No.92 of 2018. The appeal also has been rejected. Such affirmation of an illegal order is of



no consequence for the simple reason that the Appellate Authority also has not relied upon any material whatsoever to hold the petitioner liable for the charges.

This Court would also take into consideration the effort to sustain the illegal decisions in Paragraph-32 of the counter affidavit, which has been filed by the respondent-Authorities. They have taken a stand that the petitioner has failed to prove his case before the conducting officer. The law is settled. It is for the allegation maker to bring home the charges in a departmental proceeding, though on the preponderance of probabilities. By no stretch of imagination onus can be cast upon the government servant to prove his innocence, as has been done in the instant case.

The decision of the Authorities, being based on no material whatsoever and ignoring the submissions of the presenting officer favorable to the petitioner, is thus illegal and unsustainable. Thus, both the orders dated 17.04.2018 passed by the District Magistrate; as well as the order dated 12.02.2019 passed in Service Appeal Case No. 92 of 2018 are hereby quashed. Petitioner would be entitled to his consequential benefits. Let the due and admissible benefits be paid to the petitioner within three months from the date of



receipt/production of a copy of this order.

Writ application is allowed.

(Madhuresh Prasad, J)

shashank/-

U			
---	--	--	--

