

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21659 of 2013

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Dilip Rajak S/O Late Chhatradhari Rajak Resident Of Village- Hardiya, Post-
Singar, Police Station- Rajauli In The District Of Nawada ... Petitioner
Versus

1. The State Of Bihar
2. The Secretary, Department Of Agriculture, Government Of Bihar, Patna.
3. The Director, Department Of Agriculture, Government Of Bihar, Patna.
4. The Joint Agriculture Director- Cum- Conducting Officer, Magadh Division,
Gaya.
5. The District Agriculture Officer, Aurangabad ... Respondents

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Appearance :

For the Petitioner/s : Mr.Sunil Kumar, Adv.
For the Respondent/s : Mr.Nawal Kishor Singh, SC II

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**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL JUDGMENT

Date : 06-02-2023

Heard the parties.

2. The petitioner prays for quashing of the order dated 24.05.2013 whereby he has been punished by stopping two annual increments with non-cumulative effect and censure with forfeiture of salary apart from the subsistence allowance for the suspension period. The petitioner impugns the order dated 10.09.2013 whereby his appeal was rejected.

3. Learned counsel submits that in enquiry none of the charges were found to be proved by the enquiry officer. The disciplinary authority gave a second show cause to the petitioner mentioning of allegations relating to charges no. 1(I), 2(II) and



2(III) alleging that certain aspects were not dealt enquiry officer with directions to petitioner to submit his representation along with supporting evidence with regard to the three points vide dated 7th January, 2013. Learned counsel submits that the facts mentioned in the show cause notice are his personal opinion whereas per law he was required to give his points of disagreement with regard to the each conclusion drawn by the enquiry officer as held by the Supreme Court in the judgment passed in **Punjab National Bank & Ors. Vrs. Kunj Behari Misra** reported in (1987) 7 SCC 84.

4. Counsel appearing for the State supports the order and submits that the disciplinary authority has given a fair opportunity to the petitioner and has pointed out the discrepancies relating to charges no. 1(I), 2(II) and 2(III) of the charge sheet which essentially is required to be considered as his disagreement to the enquiry report. The tenor of the notice is also required to be taken into consideration by the Court.

5. Learned counsel submits that the disciplinary authority after having received the reply of the petitioner only punished him in relation to two of the charges, namely, charges no. 1(I) and 2(II) and stopped his two increments with non-cumulative effect which is a minor penalty and no interference is warranted.



6. I have considered the submissions.

7. Question which this Court is required to examine as to whether the letter dated 07.01.2013 sent by the Director can be said to be disagreement notice as he has asked for explanation relating to three points from the petitioner along with evidence. In **Punjab National Bank & Ors. Vrs. Kunj Behari Misra** reported in **(1987) 7 SCC 84** the same issue arose before the Apex Court and the Apex Court held as under :

“19 :The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority



records its findings on the charges framed against the officer.

8. In **(2013) 7 SCC 251 (S.P. Malhotra Vrs. Punjab National Bank & Ors.)** the Apex Court followed the judgment reported in **(1987) 7 SCC 84** (supra) and observed as under :

“18 : In fact, not furnishing the copy of the recorded reasons for disagreement from the enquiry report itself causes the prejudice to the delinquent and therefore, it has to be understood in an entirely different context than that of the issue involved in ECIL (supra)”.

9. Keeping in view above this Court is satisfied that the disciplinary authority has not furnished copy of the recorded reasons for disagreement with the enquiry report. Merely asking explanation relating to some points of the charge sheet would not convey to the delinquent that the disciplinary authority is in disagreement with the report of the enquiry officer. Having not mentioned about the points on which he disagrees, the order passed by the disciplinary authority would stand vitiated in law.

10. The order, dated 24.05.2013, passed by the Director, Department of Agriculture, Government of Bihar, Patna, whereby the petitioner has been punished is accordingly quashed and set aside. As the appellate authority has also failed to take into



consideration the settled law laid down by the Apex Court, the appellate order is also not sustainable and is accordingly quashed.

11. It is informed that the petitioner has already attained superannuation. Keeping in view thereto no purpose would be served to remand the matter to the disciplinary authority for giving his disagreement and opportunity of hearing to the petitioner.

12. The order passed by the disciplinary authority having been quashed, the necessary consequences will follow and the same shall be released in favour of the petitioner within a period of three months.

13. The writ petition is allowed. No costs.

(Sanjeev Prakash Sharma, J)

Shamshad/-
Item No. 47

AFR/NAFR	NAFR
CAV DATE	NA
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