

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7050 of 2016

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Vijay Kumar Sinha, Son of Late Baijnath Sahay, Resident of Road No. 8 C,
Ashok Nagar, Kankarbagh, P.O. Kankarbagh, P.S. Kankarbagh, District-
Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Agriculture Production Commissioner, New Secretariat, Patna, Bihar.
3. The Principal Secretary, New Secretariat, Patna, Bihar.
4. The Secretary, Department of Agriculture, Government of Bihar, New Secretariat, Patna.
5. The Director Agriculture, Bihar, Patna.
6. The Joint Agriculture Director Agronomy, Saran Division, Chapra.
7. The District Agriculture Officer, Saran, Chapra.
8. The Sub Divisional Agriculture Officer, Saran, Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar Mishra, Advocate Mrs. Manini Jaiswal, Advocate Ms. Ankita Kumari, Advocate Ms. Ashmita, Advocate
For the Respondent/s	:	Mr. Virendra Kumar, AC to GP10

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

3 19-01-2023 By this writ petition the petitioner seeks following
reliefs:-

(i) For quashing the order contained in Memo No. 297
dated 18.03.2016 issued under the signature of respondent Joint
Director, whereby and where under the suspension of the
petitioner has been revoked and three punishments has been
awarded which are as follows:-

a. Rs. 19650/- would be recovered from the



salary of the petitioner because of the revenue loss.

b. One increment would be withheld with cumulative effect.

c. The petitioner would not get any salary except the subsistence allowance during the suspension period from 31.01.2014 to 18.03.2016.

Short facts of the case are as follows:

While the petitioner was posted as Farm Assistant, Ekma vide contained in memo No. 8 dated 31.01.2014 in the office of respondent No. 8, the petitioner was put under suspension vide letter dated 28.01.2014, issued under the signature of respondent Director, on the ground of negligence done by the petitioner for production of foodgrains for the period of 2013-14. Thereafter, a proceeding was initiated against him and after considering the show-cause filed by the petitioner, enquiry officer cum conducting officer submitted enquiry report exonerating the petitioner from all the charges leveled against him.

It is submitted on behalf of the petitioner that without serving a copy of enquiry report to the petitioner, a second show-cause was issued and after considering the same order of



punishment was passed (Annexure-12).

It is the contention of the petitioner that the impugned order of punishment suffers from violation of statutory provisions contained in Rule 18(2) of Bihar CCA Rules, 2005 and also in teeth of law laid down by the Apex Court in the case of **Punjab National Bank v. Kunj Bihari Mishra, AIR 1998 SC 2173** that when the petitioner was exonerated by the enquiry officer during the proceeding, it was mandatory and incumbent upon the disciplinary authority to issue notice of disagreement along with the show-cause. But in this case, no point of disagreement was served to the petitioner. He next submits Rule 18(2) of the Bihar CCA Rules, 2005 which says as follows:

“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.”

In this case, without service of point of disagreement order of punishment was passed.



However, learned counsel for the State, in reply, supports the impugned order and submits that the negligent act of the petitioner was duly considered by the department and after considering the enquiry report and reply to the second show-cause submitted by the petitioner, respondent No. 6 passed the impugned order of punishment contained in memo No. 297 dated 18.03.2016.

Admittedly, in this case, enquiry officer has submitted a report in favour of petitioner in the sense that he did not find the charges proved against him. As per Rule 18(2) of the Bihar CCA Rules, 2005, it was mandatory for the disciplinary authority that in case of disagreement with the enquiry officer he was required to issue a notice the petitioner on the point of disagreement. It is settled principle of law that - when an enquiry report is submitted in favour of the delinquent employee and the disciplinary authority intends to differ with the same, it has to record the proposed grounds for difference with the enquiry report and after affording an opportunity of hearing to the delinquent employee the disciplinary authority should record the final conclusion and then punishments are imposed. But in the present case, the grounds for differences with the enquiry report was never served to the petitioner which is in complete



violation of Rule 18(2) of the Bihar CCA Rules, 2005 and law laid down by the Apex Court in the case of Punjab National Bank v. Kunj Bihari Mishra, AIR 1998 SC 2173.

Admittedly, in this case, the said procedure has not been followed and punishment has been imposed.

Accordingly, impugned order contained in Memo No. 297 dated 18.03.2016 is set aside. The case is quashed and remitted to the disciplinary authority. In case, the disciplinary authority agrees with the findings of the enquiry officer then this case will come to an end and in case he intends to differ then he will proceed in accordance with law as indicated above.

The writ petition stands allowed.

(Prabhat Kumar Singh, J)

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