

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.5581 of 2019**

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Dineshwar Prasad S/o Late Rambriksh Singh Resident of Village - Banauta,  
P.S.- Parsa, Distt.- Saran.

... .. Petitioner

Versus

1. The State of Bihar, through the principal Secretary, Panchayati Raj, Govt. of Bihar, Patna.
2. The Commissioner Saran Division, Chapra.
3. The District Magistrate Saran.
4. The District Panchayati Raj Officer Saran, Chapra.
5. The District Transport Officer- Cum- Enquiry Officer Saran Chapra.
6. The Deputy Collector Land Reform - Cum - Conducting Officer Sadar, Chapra.
7. The Block Development Officer Maker - Cum- presenting Officer.

... .. Respondents

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**Appearance :**

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|---------------------|---|-------------------------------------------------------------|
| For the Petitioner  | : | Mr.Prashant Sinha, Advocate<br>Mr.Ram Binod Singh, Advocate |
| For the Respondents | : | Mr. Pratik Kr. Sinha, AC to GA-5                            |

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**ORAL ORDER**

9      03-04-2023                      Heard learned counsel for the petitioner and learned  
counsel for the State.

2. Petitioner, in the present writ application, is questioning the order dated 07.02.2019 passed by the Commissioner-cum-Appellate Authority in Service Appeal No. 45/2017 whereby and whereunder the appellate authority has rejected the appeal preferred by the petitioner and refused to interfere with the order of dismissal of the petitioner from service as contained in Memo No. 2107 dated 04.11.2016 passed by the District Magistrate-cum-Disciplinary Authority,



Saran (Respondent no. 3).

3. Learned counsel for the petitioner submits that the petitioner was arrested by a team of Vigilance Investigation Bureau while allegedly accepting a bribe of Rs. 2000/- from the complainant Sri Madan Mahto. A case being Vigilance P.S. Case No. 68/2009 dated 12.06.2009 under Section 7/13(2) read with Section 13(1) of the Prevention of Corruption Act, 1988 was lodged against the petitioner.

4. Learned counsel submits that later on a charge-sheet in “Prapatra Ka” was served upon the petitioner. A copy of the same has been brought on record as Annexure ‘3’ to the writ application.

5. Learned counsel submits that on service of charge-sheet, the petitioner submitted his reply. After he was released on bail, his joining was accepted in the Department and the suspension order was revoked. The District Magistrate, Saran (respondent no.3), however, issued Memo No. 1969 on 18.11.2009, the same day, once again placing the petitioner under suspension under Rule 9(3)(2) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the “Rules of 2005”).

6. Learned counsel submits that the Deputy



Collector Land Reforms, Saran, Chapra was appointed as Inquiry Officer who submitted an inquiry report as contained in Annexure '7' to the writ application.

7. It is submitted that on perusal of the inquiry report dated 22.11.2011 as contained in Annexure '7' to the writ application, it would appear that the Inquiry Officer recorded his opinion as regards charge no. 3 that this charge is not proved. As regards charge no. 4, the Inquiry Officer reported that this charge is based on the report of the Superintendent of Police, Vigilance Investigation Bureau and it would not be proper to furnish any opinion on this charge. Similar view was taken by him regarding charge no. 5 which was based on a post-trap memorandum prepared by the raiding team. Inquiry Officer reported that the charge no. 6 was not proved.

8. Learned counsel submits that on receipt of the inquiry report as contained in Annexure '7' to the writ application, the then District Magistrate, Saran, Chapra decided to revoke the suspension of the petitioner and to keep the disciplinary proceeding pending till the decision of the court in the criminal case. The order of disciplinary authority is contained in memo no. 205 dated 13.02.2012 (Annexure '8'). Thereafter the petitioner was posted as Panchayat Sachiv.



**9.** Learned counsel submits that after about two years, the District Magistrate, Saran took a unilateral decision to place the petitioner once again under suspension and to appoint the District Transport Officer, Saran, Chapra as Inquiry Officer. This order is contained in Annexure '9' to the writ application.

**10.** At this stage, it is submitted that the District Transport Officer proceeded to conduct the inquiry without following the established procedure of law. He submitted the report in a hurry to the disciplinary authority. No evidence was led before him. It is submitted that before the Inquiry Officer save and except the post-trap memorandum and the papers relating to the criminal case and the reply to the show cause of the petitioner, there was no other material.

**11.** It is submitted that even the presenting officer was not there before the Inquiry Officer. Yet he proceeded to submit a report dated 28.03.2014 as contained in Annexure '10' to the writ application. Learned counsel has taken this court through Annexure '10' to the writ application to submit that the whole inquiry report is based on surmises and conjectures. Neither the complainant appeared before the Inquiry Officer nor the officers from the vigilance investigation bureau, who had prepared the post-trap memorandum, appeared and proved those



documents. There was no opportunity for the petitioner to cross-examine the persons who had authored or who were the makers of the post-trap memorandum.

**12.** It is further submitted that on receipt of the inquiry report as contained in Annexure '10', the District Magistrate sent the same to the Additional Collector, Saran, Chapra for his opinion. In his order dated 14.05.2015 (Annexure '11') the Additional Collector, Saran, Chapra took a view that in this matter the decision of the court would only be final.

**13.** It is submitted that during the period of suspension the petitioner had moved this Court challenging the order of suspension in CWJC No. 5410/2014 in which this Court has held that the action of the District Magistrate, Saran beginning from his letter dated 18.09.2014 in requiring a second round inquiry by the Additional Collector together with the third round inquiry vide letter dated 16.08.2016 is *per se* illegal and contrary to the statutory prescription. Having said so, this Court directed the District Magistrate, Saran to conclude the proceedings by passing final order within a maximum period of four weeks from the date of receipt /production of a copy of the order without taking note of the subsequent inquiry held by the Additional Collector.



**14.** Learned counsel submits that in the aforementioned background the District Magistrate passed the order of dismissal of the petitioner vide memo no. 2107 dated 04.11.2016 as contained in Annexure '2' to the writ application. It is submitted that in the order of punishment, the disciplinary authority has not at all considered the submissions made on behalf of the petitioner.

**15.** It is further submitted that the petitioner preferred an appeal before the Commissioner (respondent no. 2) but the Commissioner/appellate authority took a view that the findings of the inquiry officer is justified in view of the material facts available in the departmental proceeding. The appellate order has been assailed on the ground of non-consideration of the materials available on the record.

**16.** Mr. Pratik Kumar Sinha, learned AC to GA-5 has contested the writ application. It is submitted that the disciplinary authority is well within his power in the matter of placing the petitioner under suspension and initiation of the disciplinary proceeding against him. It is further submitted that the second inquiry report is based on the post-trap memorandum which is a clinching document to show that the petitioner was arrested by the Vigilance Team while accepting a bribe. Learned



counsel has, thus, defended the impugned order passed by the disciplinary authority. It is further submitted that the appellate authority has rightly come to a conclusion that the order under appeal is based on the materials available on the record of the departmental proceeding.

### **Consideration**

17. Having heard learned counsel for the petitioner and learned counsel for the State as also on perusal of the records, this Court is of the considered opinion that the impugned order as contained in Annexure '1' and '2' are liable to be quashed and cancelled on more than one grounds. At the first instance the action of the District Magistrate, Saran in placing the petitioner once again under suspension after two years and re-start the inquiry through a different Inquiry Officer does not speak of fair play in action. Earlier vide Annexure '8' to the writ application, the District Magistrate, Saran had after accepting the inquiry report of the Deputy Collector Land Reforms, as contained in Annexure '7', decided to keep the departmental proceeding pending awaiting the judgment of the court and in the meantime the petitioner's suspension was revoked. This was done in the background of the findings recorded in the inquiry report as regards most of the charges



which were based on either the report of the Superintendent of Police, Vigilance or the post-trap memorandum.

**18.** To this Court, it is crystal clear that the District Magistrate, Saran while passing the order as contained in memo no. 205 dated 13.02.2012 (Annexure '8' to the writ application) had duly applied his mind as the disciplinary authority and had taken a view in consonance with the views expressed by the Inquiry Officer. Under these circumstances, the issuance of memo no. 85 dated 23.01.2014 (Annexure '9') to re-start the inquiry and this time the District Transport Officer was asked to conduct the inquiry has no plausible reason. It lacks relevance and reasons both which are the twin principles of Article 14 of the Constitution of India.

**19.** This Court further finds that the District Transport Officer having been appointed as Inquiry Officer has only done a formality. A bare perusal of his report would show that he had proceeded to accept the report of the Superintendent of Police in which suspicion had been raised against the petitioner and then this Inquiry Officer has relied upon certain documents which are subject to scrutiny in the criminal case. The veracity of those documents including the report of the Superintendent of Police, Vigilance, is yet to be tested. Before the Inquiry Officer neither



the complainant appeared nor the makers of the documents on which reliance has been placed by the Inquiry Officer appeared. The petitioner had, therefore, no opportunity to put those makers of the documents on test.

**20.** The order of punishment as contained in Annexure '2' equally suffers from non-consideration of the materials on the record inasmuch as it may be found from the order that the reply of the petitioner to the second show cause has not at all been discussed. The appellate authority has done no good by rejecting the appeal preferred by the petitioner without advertng to the grounds raised therein.

**21.** In result, this Court finds that the order as contained in Annexure '1' and '2' are liable to be quashed. As a result thereof, both the impugned orders are hereby quashed/set-aside.

**22.** The matter is remitted to the competent authority for concluding the inquiry from the stage of memo no. 205 dated 13.02.2012 (Annexure '8' to the writ application). Since the petitioner has already attained the age of superannuation, the competent authority shall take a decision as regards converting the proceeding under the Bihar Pension Rules. This Court has been informed that the Vigilance case is still pending trial in the



district court.

**23.** During pendency of the proceeding, the petitioner may submit a representation to the competent authority for grant of provisional pension, however, any request for payment of salary and other emoluments would be subject to result of the disciplinary proceeding.

**24.** This Writ Application stands disposed of accordingly.

**(Rajeev Ranjan Prasad, J.)**

Rajeev/-

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