

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16830 of 2013

=====

Mauje Mahto S/O Late Raudi Bhagat Resident Of Village - Madhopur Roshan, P.S.
Dumra, District - Sitamarhi

... .. Petitioner/s

Versus

1. The State Of Bihar through the Collector, Sitamarhi
2. The Addl. Collector, Incharge Of G.P.F. Account, Sitamarhi
3. The Enquiry Officer Namely Sri Prabhat Kumar

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar Tiwary, Adv.
For the State : None

=====

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

ORAL ORDER

2 17-01-2023

1. No one appears for the State in spite of notice.

2. Learned counsel for the petitioner submits that the petitioner had been suspended and an enquiry was conducted. The enquiry officer after conducting the enquiry did not find the charges proved against the petitioner. However, the disciplinary authority has without giving any notice of dis-agreement, proceeded to dis-agree with the enquiry report and has passed order of punishment on 27th July, 2007.

4. I have considered the submissions, in **Punjab National Bank & Ors. Vrs. Kunj Behari Misra, 1998 (7) SCC 84**, the Supreme Court has held as under:-

“17. These observations are clearly in tune with the observations in Bimal Kumar Pandit case [AIR 1963 SC 1612 : (1964) 2 SCR 1 : (1963) 1 LLJ 295] quoted earlier and would be applicable at



the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the enquiry officer had given an adverse finding, as per Karunakar case [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the enquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he



would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority.”

5. Taking into consideration that the petitioner was not given any opportunity to submit his objections as dis-agreement notice was never issued by the disciplinary authority. The petitioner could not have been held guilty of the charges by the disciplinary authority which had not been found proved by the Enquiry Officer. The order stands vitiated in law, keeping in view the law laid down by the Apex Court in **Punjab National Bank & Ors. Vrs. Kunj Behari Misra (supra)**. The petitioner has already attained superannuation on 31st July, 2016, this Court does not deem it appropriate to remand the matter to the disciplinary authority, after the petitioner has already retired.

6. In view of the above, the writ petition is allowed. The order dated 27th July, 2007 is quashed with all consequential benefits. The respondents shall release the benefits within three months.

(Sanjeev Prakash Sharma, J)

Pravinkumar/-

Item No. 30

U			
---	--	--	--

