

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1852 of 2018

Ashok Kumar Son of Late Dinanath Prasad, Resident of Village Post- Bardih,
P.S.- Islampur, District- Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Commissioner, Patna Division, Patna.
3. The District Magistrate, Nalanda.
4. The Additional District Magistrate, cum Incharge Senior Officer, District Establishment Section, Nalanda.
5. The Block Development Officer Karaipursurai, Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ajey Kumar, Adv.

For the Respondent/s : Mr. Saroj Kumar Sharma, AC to AAG3

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 06-11-2023

Heard learned counsel for the petitioner and learned
counsel for the State.

2. The present writ petition has been filed for
quashing the order contained in Memo No. 318 dated
13.03.2015 (Annexure-14) as well as the order passed by the
appellate authority dated 01.08.2017 contained in Annexure-16
by which the petitioner who was working as a Clerk in Block
Office, Karaipursurai, District- Nalanda has been dismissed
from the service.

3. Counsel for the petitioner submits that the
petitioner was initially appointed as an Assistant in the District
Establishment Section, Collectorate, Nalanda and, subsequently,
his service was transferred in the said block. Counsel further
submits that vide Letter no. 1351 dated 06.09.2011, a charge



memo under (प्रपत्र- क) has been served upon him and he was directed to appear before the Enquiry Officer to deny the charges. The petitioner has filed his show-cause on 22.10.2011. The Presenting Officer has submitted his opinion dated 25.11.2011 before the Enquiry Officer and the Enquiry Officer has submitted his enquiry report on 28.03.2012 with a finding that none of charges proved. The Enquiry Officer was directed to further enquiry and matter was remitted back. Counsel submits that in the further enquiry report, petitioner was held not guilty. As such his suspension was revoked on 21.12.2013.

4. Subsequently, vide Letter No. 496 dated 01.04.2013, another departmental proceeding was initiated against the petitioner and (प्रपत्र- क) has been served. It is stated that with the same allegation, a police case bearing Rajgir P.S.Case no. 194 of 2012 dated 10.10.2012 was also initiated in which 7 persons including the petitioner were made accused. Counsel submits that till date, no development has taken place in the said F.I.R. and even charge sheet has not been submitted.

5. Counsel further submits that in the second charge memo, the petitioner has filed his explanation and presented himself before Enquiry Officer. The enquiry was proceeded in presence of the Presenting Officer. There were 2 charges made



against the petitioner and served vide Memo No. 496 dated 01.04.2013. On the basis of the enquiry report submitted on 27.08.2014, he was found guilty for one charge and not found guilty in another charge. A second show cause notice was issued to the petitioner. The reply filed by him to the second show cause, but instead of considering the same, the punishment order has been passed and it has been served upon the petitioner vide Memo No. 318 dated 13.03.2015. Thereafter, petitioner has preferred appeal before the appellate authority, but his appeal was also rejected vide order dated 01.08.2017. Thereafter, petitioner filed writ petition challenging both the orders dated 13.03.2015 and 01.08.2017 before this Hon'ble Court.

6. Counsel for the petitioner submits that in the second departmental proceeding, there is gross violation of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, particularly Rules 17(4), 17(11), 17(14), 17(15) and 17(19). Counsel submits that the departmental proceeding is a quasi judicial proceeding and without reaching on the conclusion and without material facts, the case has been found true against the petitioner absolutely ignoring the provision of law laid down under C.C.A. Rules, 2005.

7. Counsel for the State on the other hand has taken



the plea that petitioner was suspended on 12.10.2012 on the allegation that he has purchased the piece of land Khesra No. 5696 in the name of his wife Gita Devi and got mutated in illegal manner misusing his post and later on vide memo no. 1978 dated 21.12.2013 issued by the senior-in-charge officer, District Establishment Cell, Nalanda as he was released from suspension, but departmental proceeding was initiated against him in which the allegation in crux is that the petitioner has purchased the acquired land of the Block-cum-Circle Office, Rajgir in the name of his wife and got the said land mutated taking benefit of holding his post. In the departmental proceeding, the charges were proved against him. The allegation has also come that he has opened mutation record through Mutation Case No. 19/2009-10 on the basis of forged Jamabandi of Md. Akbar Sah ignoring the revenue rules and also removed the record of mutation case no. 19/09-10 to conceal the evidence which has been proved against him in the departmental proceeding. Counsel submits that upon proving the charges by the Enquiry Officer against him in the Enquiry report, the petitioner was issued second show cause notice and upon consideration of his second show cause, final order of punishment has been passed vide order dated 13.03.2015 issued



under Memo No. 318. Against the said dismissal, the petitioner has preferred service appeal no. 213 of 2016 and upon consideration, the appeal was rejected vide order dated 01.08.2017.

8. Upon going through the final order under challenge which is Annexure-14 annexed by the petitioner in the writ petition and Annexure-A annexed by the respondent, it transpires to this Court that petitioner was a Clerk in the Circle Office and he was custodian of the record. The entire finding of the enquiry officer is based on the basis of public documents and one record i.e., Record No. 19 of 2009-10 has been removed in which manipulation has been made. The entire situation has been discussed by the Enquiry Officer minutely and subsequently, in the second show cause filed by the disciplinary authority, the reply made before the disciplinary authority has also been discussed and it has been concluded that the petitioner by using illegal means has acquired land of block office and got registered in the name of his wife as well as mutated the said land in his wife's name and obtained the rent receipts.

9. Plea has been taken by the petitioner in the second show cause that the petitioner is in no way related with the land



of plot no. 5696 as in the registered sale deed and due to mistake plot no. 5696 has been recorded in place of 5596, but the disciplinary authority has considered those points and found that it is not a matter of slip of pen, due to the reason that the surroundings of plot no. 5696 has also mentioned in the said registered document and this plea that wrong insertion of plot no. 5596 has wrongly been taken, with a view to save his skin. So far as the appellate order passed in service appeal is concerned, this Court finds that appellate order has also been discussed and assigned reasons that surrounding of Plot No. 5696 is correct, which is basically a government property. The points mentioned by the petitioner and also granting opportunity to the petitioner so far as the question of non-applicability of Rule 17 the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 is concerned with which the petitioner has taken specific plea that Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 has been violated, this Court is of the opinion that all the documents are basically the public documents on the basis of which Enquiry Officer has made analysis and therefore, the plea taken by the petitioner that those public documents are necessary to be proved, is not correct position of law.



10. Counsel for the petitioner relied on a judgment rendered in the case of **Aswini Kumar vs. the State of Bihar & Ors.** in **C.W.J.C. No. 610 of 2017** dated 09.05.2017 reported in **2017 (3) PLJR 500** in which this Court has set aside the order passed by the Disciplinary Authority on the ground that charge framed has not been proved by evidence.

11. Upon perusal of the said judgment, it transpires to this Court that the said departmental proceeding has been initiated for violation of the delinquent in which allegation against the petitioner was to do acts in violation of the prohibition of Excise Act. As such, this Court finds that the case of **Aswini Kumar (Supra)** and the present petitioner are different and the order has been passed in different background.

12. In this view of the matter, this Court is of the view that there is no need of any interference in the said orders and the present writ application is hereby dismissed.

(Dr. Anshuman, J.)

Prakashmani/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.11.2023
Transmission Date	NA

