

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3820 of 2018

=====

Durgeshwar Mishra son of Late Muneshwar Prasad Mishra, Resident of Sadhu Seva Ashram, Moti Mishra Lane, Near Durga Asthan, Gumtee No. 2, Bhikhanpur Bhagalpur, P.S. Ishachak, District Bhagalpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Commissioner, Bhagalpur Division, Bhagalpur.
3. Collector cum District Magistrate, Banka.
4. Additional Collector, Banka.
5. Establishment Deputy Collector, Banka.
6. Conducting Officer cum Sub Divisional Officer, Banka.
7. Circle Officer, Rajaun, Banka.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Rajiv Kumar Singh, Adv.
For the Respondent/s : Mr. Partha Sarthi -GA4

=====

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 04-12-2023

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

2. The present writ petition has been filed for quashing the order dated 07.12.2017/ 12.12.2017 passed by the Commissioner, Bhagalpur in Service Appeal Case No. 06 of 2017-18 (Annexure-7) and also filed to quash the order vide Memo No. 01 of 12/13- 17268/ dated 24.06.2017 passed by District Magistrate, Banka (Annexure-6) by which the punishment of compulsory retirement has been imposed upon the petitioner.

3. Counsel for the petitioner submits that petitioner was in service since 1998 and was working as clerk in Banka Collectorate, Banka, thereafter, he was transferred to Katoria Block, District-Banka, and subsequently, following the different



transfers, he was lastly posted as Upper Division Clerk at Circle Office, Rajaun, Banka. Counsel submits that the petitioner was received the suspension letter issued vide Memo No. 520 dated 05.10.2016 by which he was suspended on the ground of indiscipline and directed to be deputed in Circle Officer, Fullidumer during his suspension. Vide Letter No. 225 dated 14.10.2016, charge memo has been served upon the petitioner and he was asked to present before the Enquiry Officer for hearing on 29.10.2016.

4. Counsel further submits that the petitioner has submitted his explanation before the Enquiry Officer in which he was taken the specific plea that he is a patient of diabetics, gastric and other deceases and whenever he leave Circle Office, he has filed his leave application to Circle Officer, Rajaun, Banka, but the Circle Officer was completely biased against him and used unparliamentary words as well as cut his attendance register on many dates, when the petitioner remained present in office.

5. Counsel submits that he has also taken this plea that there was a continuous threat from the Circle Officer, Rajaun, Banka to end his service. Counsel submits that in the said departmental proceedings, the Circle Officer against whom, he



has made allegation, has been appointed as Presenting Officer. Counsel submits that in the departmental proceedings, neither any documents were produced nor any witnesses were examined, but even then charge was alleged to be proved against him and second show cause was issued.

6. Counsel submits that the second show cause was also answered by him, but without considering single point mentioned in the reply of 2nd show-cause, the punishment order has been passed *i.e.*, about his compulsory retirement for his service on the ground of continuous absence from his duty. Counsel submits that the petitioner has preferred appeal before the Commissioner, but service appeal bearing Appeal No.06 of 2017-18 was also dismissed dated 07.12.2017 / 12.12.2017. Counsel submits that in the entire judicial proceedings, there are gross violation of procedure laid down in the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as “the Rules of 2005”) as charge memo has not been served by the disciplinary authority, no W.S. has been demanded from him. Neither any document nor any list of witnesses were provided nor his show cause nor his W.S. considering probable witness of this case was examined as Presenting Officer against whom there is a direct allegation



made by the petitioner that on his instance, the entire problem has been created.

7. Counsel further submits that charge memo itself is completely defective as neither any list of document mentioned nor any list of witnesses mentioned which is in gross violation of Rule 17 (3) and Rule 17(4) of the Rules of 2005. Counsel also submits that on 14.10.2016, charge memo has been served and on 15.10.2016 where in next day, he was directed to appear before the Enquiry Officer.

8. Counsel for the petitioner also submits that he has filed the show cause before the Enquiry Officer in which he has annexed the 15 documents, but there is no consideration on those documents at all. He also submits that a specific reply was made on Letter No. 526 dated 22.07.2014 and Letter No. 598 dated 16.07.2014 on which reply was filed and served before the Circle Officer by the petitioner himself, but the Circle Officer has not acknowledged the reply, in result everywhere it has come that reply has not been made.

9. Counsel for the State submits that in the departmental proceedings, there is specific allegation of continuous absence of the petitioner and due opportunity of issuing show cause, charge memo, opportunity to appear before



the Enquiry Officer and second show causes were issued and upon considering the entire materials, the original order has been passed by which he was directed to be compulsory retired. The order was challenged in appeal by the petitioner, but the appellate authority has confirmed the order and as such, there is no scope for the petitioner to file the writ petition.

10. Upon considering the documents and hearing the parties, the charge memo issued by the petitioner was not issued by the Disciplinary Authority rather it has been issued by the Enquiry Officer as contained in Annexure-2 *i.e.*, Memo No. 225 dated 14.10.2016 which is in violation of Rule 17(4) of the Rules of 2005.

11. Upon going through the (प्रपत्र -क), it also transpires to this Court that there is no list of witnesses mentioned with a view to prove the charge. The most interesting aspect is that in the final order, it has come that show cause has been filed bearing Letter No. 526 dated 22.07.2014 and Letter No. 598 dated 16.07.2014 have been served upon Shri Jha.

12. It transpires to this Court that there is no delinquent namely Shri Jha is related in the present case. Similarly, it also transpires that the allegation of absentia and indiscipline has also been made against Shri Jha, the name of



delinquent is Durgeshwar Mishra, but authority has acknowledged that Shri Jha has committed the wrong. The show cause and second show cause as mentioned in the writ petition (Annexure-3) as well as Annexure-5 have not been considered at all. The one other matter which is most interesting in this case is that the most competent witnesses of this case is the Circle Officer, Rajaun, Banka himself under whose possession, the attendance register, Register Letter and other documents were alleged to be kept, but he was appointed as Presenting Officer who has neither adduced his evidence nor produced any documents or those letters alleged to be said as show cause notice.

13. It is due to this reason, this Court is of the view that there is a gross violation of the the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 since from the issuance of charge or on every steps onwards. Though the petitioner has not challenged the charge memo before this Court and has challenged only the disciplinary order and the appellate order, but this Court is of the view that there is gross irregularity as well as illegality in passing the order even the name of delinquent has not been properly considered, therefore, this Court is hereby set aside not only the order passed by the



Disciplinary Authority as well as the Appellate Authority i.e., the order dated 07.12.2017/ 12.12.2017 passed by the Commissioner, Bhagalpur and the order vide Memo No. 01 of 12/13- 17268/ dated 24.06.2017 passed by District Magistrate, Banka, but also the charge memo.

14. The respondent authorities are directed to accept the joining of the petitioner in the Circle Office, Rajoun, Banka from the date of production of the order. But the authorities are free to initiate proceedings by issuing fresh memo in accordance with the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 to the petitioner, but complete it within 6 months from the date of production of this order to the Collector, Banka. The petitioner is also entitled to get entire payment for the said period.

15. With the aforesaid direction, the present writ application is hereby allowed.

(Dr. Anshuman, J.)

Prakashmani/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.12.2023
Transmission Date	NA

