

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2272 of 2018

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Brajendra Kumar Sahu S/o Late Ram Sagar Sahu, R/o At and P.O.- Thahara,
Gopalpur, P.S.- Pusa, District- Samastipur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director Primary Education, Govt. of Bihar, Patna.
4. The Regional Deputy Director of Education, Koshi Division, Saharsa.
5. The District Education Officer, Saharsa.
6. The District Programme Officer Estt. Saharsa.
7. The District Education Officer, Madhepura.
8. The District Programme Officer Estt., Madhepura.
9. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rajeev Kumar Singh Mr. Santosh Kumar
For the State	:	Mr. Sanjay Kumar, AC to GP 23
For Accountant General	:	Ms. Nivedita Nirvikar, Sr. Adv.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

11 05-05-2023 The petitioner is aggrieved by the order, dated 09.02.2017, passed by the Director, Primary Education, Government of Bihar, Patna, by which 10 per cent pension of the petitioner has been forfeited in an enquiry conducted against the petitioner under Rule 43 (b) of the Bihar Pension Rules.

2. The petitioner was appointed as Assistant Teacher and thereafter he was promoted and was posted as Block



Education Officer. The petitioner retired from the post of Block Education Officer in the year 2013. A departmental proceeding was initiated against the petitioner by the Director, Primary Education, vide memo no. 1753, dated 11.12.2013, and the Enquiry Officer as well as the Presenting Officer were also appointed by the said memo, dated 11.12.2013 (Annexure-9). The memo of charge was served upon the petitioner on 17.01.2014.

3. Learned Counsel for the petitioner submits that the departmental proceeding was not conducted as per the procedure prescribed under the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. Further submission is that the Presenting Officer, who was appointed to place the case of the department, despite having the notice issued by the Enquiry Officer, did not participate in the departmental proceeding, as would be evident from Annexure 14 series. He further submits that specific statement has been made in paragraph 41 of the writ application that the enquiry report was not furnished to the petitioner before issuance of letter, dated 26.10.2016, which is show cause issued under Rule 139 (b) of the Bihar Pension Rules. It has further been stated in paragraphs 42, 43 and 44 that non-supply of the enquiry report



has prejudiced the defence of the petitioner.

4. This Court, vide order, dated 20.03.2023, directed the respondent-State to file counter affidavit on the specific statement made on behalf of the petitioner in paragraph 41 of the writ application. In pursuance thereof, a supplementary counter affidavit has been filed by the respondent-State, stating, in paragraph 9, that copy of the enquiry report, dated 19.02.2015, along with the disagreement, contained in the letter no. 974, dated 26.10.2016, was not furnished to the petitioner.

5. Learned Counsel for the State submits that there is no evidence of serving the enquiry report, along with the point of disagreement, upon the petitioner. A copy of the enquiry report has been annexed at Annexure-A to the supplementary counter affidavit.

6. In reply, learned Counsel for the petitioner submits that from perusal of the enquiry report brought on record by way of supplementary counter affidavit, it is apparent that none of the charges against the petitioner has been proved. The Disciplinary Authority has not served upon the petitioner the point of difference along with the cogent material collected against the petitioner, but, on the contrary, has served a show cause on 26.10.2016 under Rule 139 (b) of the Bihar Pension



Rules, which cannot be said to be the point of difference served upon the petitioner by the Disciplinary Authority differing with the findings of the Enquiry Officer.

7. I have heard learned Counsel for the parties and have perused the materials on record, including the enquiry report, brought on record by the State.

8. It has been accepted by the respondent-State that a copy of the enquiry report has not been furnished to the petitioner. The petitioner has taken the plea that non-furnishing of the enquiry report has prejudiced the defence of the petitioner.

9. From perusal of the letter, dated 26.10.2016, I am satisfied that it cannot be said that the same is point of disagreement of the Disciplinary Authority differing with the findings of the Enquiry Officer.

10. The Supreme Court, in the case of **Punjab National Bank and Others v. Kunj Behari Misra**, reported in **(1998) 7 SCC 84**, has held that a delinquent is entitled to represent to the disciplinary authority where the findings in the enquiry report are against him. It will not therefore stand to reason that when the findings are in favour of the delinquent but they are proposed to be overturned by the disciplinary authority,



then no opportunity should be granted. When the enquiry report is in favour of the delinquent, but the disciplinary authority proposes to differ with such conclusions, then that authority, which is deciding against the delinquent, must give him an opportunity of being heard, for otherwise, he would be condemned unheard.

11. Paragraph 19 of **Kunj Behari Misra** (supra) is quoted herein below:

“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary



authority records its findings on the charges framed against the officer.”

12. In view of the above discussion, on the facts as well as on law, I come to the conclusion that non-furnishing the copy of the enquiry report and tentative reasons of the Disciplinary Authority on the point of disagreement and an opportunity to the petitioner to persuade the Disciplinary Authority to accept the favourable conclusion of the Enquiry Officer, violates the principles of natural justice. The principles of natural justice require the authority to give an opportunity to the officer charged of misconduct to file a representation, before the Disciplinary Authority records its findings on the charges framed against the delinquent/officer.

13. In the result, the impugned orders, dated 09.02.2017 as well as 05.06.2017, are hereby set aside. The petitioner is entitled to be paid all consequential monetary benefits. I order accordingly.

14. However, the respondents, if so advised, are given liberty to proceed with the departmental proceeding against the petitioner from the stage of service of a copy of the enquiry report upon him and points of disagreement in compliance with the principle of natural justice.



15. With the aforesaid observation and direction, this application is disposed.

AFR/
Prabhakar Anand/-

(Anil Kumar Sinha, J.)

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