

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.356 of 2023

Vikash Kumar Rai @ Vikash Kumar Ray Son of Sri Shivrath Rai, a resident of Village- Siswan, P.S.- Isuapur, District Saran, presently working as Warder (Kakshpal) at Sub- Jail, Bikramganj, Rohtas.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Home Department (Jail), Bihar, Patna.
2. The Secretary, Home Department (Jail), Patna.
3. The Inspector General, Jail and Reforms Services, Bihar, Patna.
4. The Jail Superintendent Divisional Jail, Ara-cum- Inquiry Officer.
5. Lower Division Clerk (Entry Branch), Divisional Jail, Ara-cum- Presenting Officer.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Harish Kumar, Advocate
For the Respondent/s : Mr. Bipin Kumar, AC to AG

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 21-04-2023 Heard learned counsel for the petitioner and learned counsel for the State.

2. Petitioner, in the present case, is seeking quashing of the order as contained in memo no. 4060 dated 04.04.2022 issued by the respondent no. 2 and also the order as contained in memo no. 9149 dated 27.10.2021 issued by the respondent no. 3 by which the petitioner has been awarded a major punishment of withholding two increments with cumulative effect and also withholding promotion for five years.

3. Learned counsel for the petitioner submits that the petitioner was posted as Jail-Warder on 09.12.2017 in the



Divisional Jail, Ara. Charge-sheet dated 19.06.2020 was served upon the petitioner whereby a departmental proceeding was initiated leveling altogether ten charges.

4. Learned counsel submits that in the disciplinary proceeding, the Enquiry Officer submitted an enquiry report dated 15.06.2021 in which he held that charge no. 2 to 10 were not proved whereas charge no. 1 was partly proved with an observation that the charger belongs to the petitioner and not to the prisoners.

5. Learned counsel submits that a copy of the enquiry report was served upon the petitioner and the petitioner submitted his show cause controverting the finding of the Enquiry Officer as to his holding that his first charge was partially proved.

6. It is submitted that on receipt of the second show cause, the disciplinary authority passed the impugned order of punishment. It is submitted that while passing the impugned order the disciplinary authority has committed jurisdictional error inasmuch as he differed with the enquiry report in respect of some of the charges, took a view that those charges are proved and went on to extent of saying that the petitioner in his second show cause had not duly explained the charges leveled



against him.

7. Learned counsel submits that the disciplinary authority failed to comply with sub-rule (2) of Rule 18 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereafter referred to as the “Rules of 2005”) and at the same time the he failed to appreciate that in his second show cause the petitioner was not supposed to submit his explanation to the charges leveled against him.

8. Learned counsel has relied upon the judgment of the Hon’ble Supreme Court in the case of **Punjab National Bank and others Vs. Kunj Behari Misra reported in (1998) 7 SCC 84.**

9. Mr. Bipin Kumar, learned AC to AG has filed a counter affidavit and opposed this writ application. In his counter affidavit, it is stated that not being satisfied with the reply of the second show cause submitted by the petitioner and after perusing the memo of charge, enquiry report and other materials available on the record, the disciplinary authority has passed the punishment order as contained in memo no. 9149 dated 27.10.2021.

10. In course of argument, however, learned counsel for the State is unable to satisfy this Court as to why the



disciplinary authority has failed to comply with the mandate of sub-rule (2) of Rule 18 and went on to record that the second show cause does not explain the charges leveled against the petitioner.

11. Having heard learned counsel for the petitioner and the State and on perusal of the records, this Court is of the considered opinion that the disciplinary authority has committed a jurisdictional error. Rule 18 of the Rules of 2005 is quoted hereunder for a ready reference:-

“18. Action on the inquiry report. - (1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, may remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 17 as far as may be.

(2) The disciplinary authority, after receipt of the enquiry report as per Rule 17 (23)(ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.

(3) The disciplinary authority shall forward or cause to be forwarded a copy of the inquiry report, together with its own findings, if any, as provided in sub-rule (2), to the government servant who may submit, if he or she so desires, his or her written representation or submission to the disciplinary



authority within fifteen days.

(4) The disciplinary authority shall consider the representation or submission, if any, submitted by the Government Servant before proceeding further in the manner specified in sub rules (5) and (6).

(5) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (v) of Rule 14 should be imposed on the Government Servant, it shall, notwithstanding anything contained in Rule 19, make an order imposing such penalty.

(6) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in clauses [(vi) to (xi)] of Rule 14 should be imposed on the Government Servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government Servant any opportunity of making representation on the penalty proposed to be imposed.

(7) Notwithstanding anything contained in sub-rules (5) and (6), in every case where it is necessary to consult the Commission, the Commission shall be consulted and its advice shall be taken into consideration before making any order imposing any penalty on the Government Servant.”

12. On perusal of the impugned order of punishment it appears that the disciplinary authority has himself differed with the enquiry report, in such circumstance following the mandate of sub-rule (2) of Rule 18 of the Rules of 2005 he was



obliged to record a tentative finding and serve the same upon the petitioner inviting his response to the same but he has not done so and that has definitely caused prejudice to the petitioner. This Court further finds that the disciplinary authority has proved some of the charges which according to the enquiry officer were not proved. The disciplinary authority has went on to observe that the petitioner in his second show cause has not explained the charges leveled against him.

13. To this Court, it appears that the disciplinary authority has not taken care to follow the rules prescribed on this behalf and has committed grave error in passing of the impugned orders. The appellate authority has done no better. The appellate authority has failed to deal with the grounds raised before him by the petitioner and passed a routine order rejecting the appeal.

14. In such circumstance, this Court is of the considered opinion that the impugned orders as contained in Annexure '1' and '2' cannot sustain the test of law on the ground of those having been passed in violation of principles of natural justice and *de-hors* to the provisions of the Rules of 2005. Both the orders are accordingly set-aside. The matter is remitted to the disciplinary authority for taking steps from the



stage of submission of enquiry report and shall proceed to pass an order in accordance with law by following the procedures established on this behalf within a period of six months from the date of receipt/production of a copy of this order.

15. This Writ Application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J.)

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