

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1118 of 2020

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Shayamal Kant Son of Sri Sudama Prasad Rai Resident of B/4, S.F.C. Colony,
Opposite Ganga Patrol Pump, Jakariyapur, P.O.- Bari Pahari, Sampatchak,
P.S.- Ramakrishana Nagar, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Co-operative Department, Government of Bihar, Second Floor, Vikas Bhawan, New Secretariat, Patna- 800015.
3. The Principal Secretary, Rural Development Department, Government of Bihar, Patna.
4. The Registrar, Co-operative Societies, Government of Bihar, Second Floor, Vikas Bhawan, New Secretariat, Patna- 800015.
5. The Joint Secretary, Co-operative Societies, Patna Division, Patna.
6. The Additional Secretary, Co-operative Societies, Patna.
7. The District Magistrate, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kumar Kaushik, Advocate Mr. Jay Prakash Sharma, Advocate
For the Respondent/s	:	Mr. Sushil Kumar, (Gp22) Mr. Rakesh Ranjan, AC to GP-22

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
Date : 02-11-2023

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

2. The present writ petition has been filed for
setting aside the order contained in Memo No.3839 dated
30.04.2019 passed by respondent No.4, by which minor



punishment has been inflicted upon the petitioner relating to (i) Censor and (ii) reduction to the lowest stage in the time scale of pay for a period of two years without cumulative effect. The further prayer made in the present writ petition is also for setting aside the appellate order contained in Memo No.3405 dated 19.09.2019 issued by respondent No.2 by which the original punishment order dated 30.04.2019 has been affirmed.

3. Learned counsel for the petitioner submits that the petitioner was appointed as Co-operative Extension Officer and submitted his joining on 08.11.1989 being his first posting at Motihari. Counsel submits that during the relevant period in the year 2010 he was posted as Block Development Officer and his services was deputed to the Rural Development Department. Counsel further submits that when he was posted at Naubatpur then a show-cause notice was issued vide letter No.8119 dated 23.09.2016 by respondent No.6 and he was directed to file a show cause against the charges framed by the District Magistrate. Counsel submits that in compliance of the said letter, the petitioner has filed his show cause on 03.10.2016 denying the charges and a categorical pleading has been taken by him that inquiry was conducted by District Statistics Officer behind his back and he has denied all the charges alleged against



him contained in Annexure-P/2 of the present writ petition.

4. Learned counsel for the petitioner further submits that disciplinary authority has issued an order contained in Memo No.9338 dated 09.11.2016, by which it was decided to conduct the disciplinary proceeding against him under the CCA Rules, 2005. It was categorical direction of the disciplinary authority that inquiry officer has to conduct the inquiry and submit a report under Rule 17(23) of the C.C.A. Rules, 2005, which is annexed as Annexure-P/3. Counsel for the petitioner further submits that in the light of the said Memo No.9338 dated 09.11.2016, the proceeding has to be initiated in accordance with law as laid down in the C.C.A. Rules, 2005, but in complete violation of the said Rule punishment order was passed and communicated to him vide Memo No.3839 dated 30.04.2019. Counsel further submits that in the order passed by the disciplinary authority it has been categorically held that the petitioner has accepted that there is discrepancy took place in distribution of diesel and, secondly it has been found by the disciplinary authority that the delinquent has not submitted his explanation showing non-providing of evidence and trying to delay the matter. It has been opined by the disciplinary authority that all such evidences could be obtained by the delinquent



under R.T.I. immediately. In result, the explanation could not be submitted well within time. Counsel further submits that both points may not be accepted as on no occasion the petitioner has accepted his guilt. Counsel also submits that in the departmental proceeding, the evidence and the materials has to be provided by the inquiry officer or by the department. There is no legislative rule that the delinquent shall obtain the document under R.T.I. and then reply. According to him, the reasons assigned by the disciplinary authority is contrary to law. Counsel further submits that against the order of the disciplinary authority he has preferred appeal and in the appeal he has taken both the points. He has also placed ruling relating to case of **Radhey Shyam Gupta Vs. U.P. State Agro Industries Corporation Ltd. and Another** reported in 1999(2) SCC 21, case of **Uttar Pradesh Government Vs. Sabir Hussain** reported in (1975) 4 Supreme Court Cases 703 as well as in the case of **Union of India and others Vs. Md. Ramzan Khan** reported in (1991) 1 SCC 588.

5. Counsel for the petitioner submits that the appellate authority has not considered any of the points which he has raised in the memo of appeal and without lack of any document it has been accepted by the appellate authority that the



delinquent has admitted that there is illegality in distribution of diesel. This plea has also been taken that without providing the documents, which the petitioner was repeatedly demanding from the inquiry officer, this disciplinary proceeding has been conducted, which itself is bad-in-law. Counsel for the petitioner raised technical point before this Court and submits that by virtue of P/3, i.e., order issued under Memo No.9338 dated 09.11.2016, the disciplinary authority have decided to take action against the petitioner following the rules laid down in 17(3) of the C.C.A. Rules, 2005, meaning thereby the procedure laid down under Rule 19(b) of C.C.A. Rules, 2005 has to be followed. Counsel submits that once the authority have taken decision to take action against the delinquent following the rule laid down under Rule 19(b) of C.C.A. Rules, 2005, which is subject to the provisions of Rule 18(3) of the C.C.A. Rules, 2005, then in that case all procedure applicable to the major penalty has to be followed. But here in the present case no such procedure has been followed and, hence, the entire departmental proceeding as well as its finding are bad-in-law.

6. Counsel for the State in reply submits that the final order has been passed which is annexed as Annexure-p/12 i.e., Memo No.3893 dated 30.04.2019. He submits that there is



a categorical finding of the disciplinary authority that the delinquent has accepted that irregularity has taken place in the distribution of diesel. But he has thrown responsibility on the deficiency of Supervisor and requested that the Panchayat Secretary should be held guilty. Counsel also submits that the delinquent had also tried to delay this matter on the ground of non-production of the demanded documents, but the said documents/evidences can be obtained under R.T.I. immediately and due to these two reasons the disciplinary authority holds the charges to be true and correct and had imposed punishment. In the appellate order also, the order passed by the disciplinary authority has been approved on the same ground. Counsel for the State submits that the delinquent has been punished by the disciplinary authority, in appeal the appellate authority has tested it and found the order passed by the disciplinary authority is in accordance with law.

7. Upon specific query of the Court that on what documents this conclusion has been drawn by the disciplinary authority that petitioner has accepted that there is illegality took place in the distribution of diesel. The counsel for the State is not in a position to explain. There is one document on record in which the petitioner has filed its reply to the show-cause which



is Annexure-P/2. Upon going through Annexure-P/2 it transpires to this Court that there is no acceptance by the petitioner that illegality has been made in distribution of diesel. So far as the second point that if document has not been provided either by the inquiry officer or by the disciplinary authority even upon repeated demand, in that case the delinquent is supposed to obtain under R.T.I. is also not correct position of law. The C.C.A. Rules, 2005 is very clear on this point that it is the duty of the disciplinary authority to provide all the documents, which is going to be proved or which is the base of the charge to the delinquent as per Rule 17(3) of C.C.A. Rules, 2005. In absence of those documents even after repeated demand, the fault shall be of the disciplinary authority or inquiry officer. The role which has been done by the inquiry officer has to be ratified in the opinion of the Court. Similarly, Court finds that there is violation of Rule 19(1)(b), Rule 18(3), Rule 17(2) and Rule 17(3) of the C.C.A. Rules, 2005.

8. In this view of the matter, this Court is of the firm view that the order passed by the disciplinary authority as well as the appellate authority have to be set aside and, hence, the orders contained in Memo No.3893 dated 30.04.2019 and Memo No.3405 dated 19.09.2019 are hereby set aside. The



disciplinary authority is free to take steps to follow proper steps against delinquent after the stage of submission of inquiry report.

9. Accordingly, this writ petition stands allowed.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	04.11.2023
Transmission Date	

