

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10533 of 2018

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Md. Kabir son of Md. Ayub, resident of Village- Barail, P.S.- Kamtaul,
District- Darbhanga.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, General Administration Department, Bihar, Patna.
2. The Principal Secretary, Rural Development Department, Government of Bihar, Patna.
3. The Divisional Commissioner, Magadh Division, Gaya- cum- Enquiry Officer.
4. The Deputy Development Commissioner, Gaya-cum- Presenting Officer.
5. The District Magistrate, Gaya.
6. The Additional Secretary, General Administration Department, Bihar, Patna.
7. The Joint Secretary, General Administration Department, Bihar, Patna.
8. The Deputy Secretary, General Administration Department, Bihar, Patna.
9. The Secretary, Bihar Public Service Commission, Patna. null null
10. The Accountant General (A and E), Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Sr. Adv. Mr. Indu Bhushan, Adv. Mr. Satyeshwar Prasad, Adv.
For the State	:	Mr. Manish Kumar (GP-4) Mr. Manoj Kumar (AC to GP-4)
For the BPSC	:	Mr. Sanjay Pandey, Adv. Mr. Nishant Kumar Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

2 27-08-2024 Heard learned senior counsel for the petitioner,

learned counsel for the State and learned counsel for the Bihar

Public Service Commission.

2. The present writ petition has been filed for
quashing the order of penalty contained in Memo No.9948 dated
13.07.2012 (annexed as Annexure-10) passed by the Joint



Secretary, General Administration Department, Bihar, Patna (respondent no.7) by which the penalty for withholding of five increments of salary with cumulative effect, withholding of promotion till five years and nothing shall be payable for the suspension period except subsistence allowance has been passed.

3. Learned senior counsel for the petitioner submits that the petitioner was in service of General Administration Department, Bihar and posted as Block Development Officer, Konch, Gaya, and *vide* Memo No.720 dated 21.01.2010 (annexed as Annexure-1) issued by Deputy Secretary, General Administration Department, Bihar, Patna, the petitioner was put under suspension. In compliance of letter no.271 dated 08.01.2010 issued by the Deputy Secretary, General Administration Department, Bihar, Patna, *Prapatra-K* has been served upon the petitioner on 24.05.2010. Counsel further submits that in the light of *Prapatra-K*, petitioner has submitted his explanation of the charges levelled against him and participated in the departmental proceeding. Counsel submits that during the departmental proceeding, the petitioner has demanded some relevant documents for his defence which has not been provided to him.



4. Learned senior counsel for the petitioner further submits that in the charge memo, there were in total seven charges imposed against the petitioner and the Enquiry Officer has held petitioner guilty in the enquiry proceeding in four charges i.e. charge no. 4, 5, 6 and 7 and in rest charges, the petitioner has been exonerated. Counsel submits that the petitioner has been served second show cause and on the basis of the second show cause which is Annexure-E to the counter affidavit, it become clear that the Disciplinary Authority has acknowledged and issued second show cause only on the basis of three charges i.e. charge no. 5, 6 and 7 and no acknowledgment about charge no.4 has been inserted. Counsel further submits that though there is a gross violation of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'CCA Rules, 2005') as charge memo has not been framed in accordance with Rule 17(3) of the CCA Rules, 2005, but his prime emphasis in the present writ petition is that the Enquiry Officer in the enquiry report has found the petitioner negligent in performance of his duties. Counsel submits that in the second show cause, the petitioner has categorically explained the circumstances under which no financial loss has been caused to the Government due to his



efficient action taken well within time. Counsel further submits that the punishment granted to the petitioner is exorbitant and not in accordance with the findings of the enquiry report.

5. Learned senior counsel for the petitioner relied on a judgment in case of *Union of India & Ors. Vs. J. Ahmed* reported in *(1979) 2 SCC 286* in which it has been held that “*misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct*”. Counsel relying on the above judgment and submits that the action of the petitioner as acknowledged by the Enquiry Officer in his report as negligent in nature and from the said findings, the Disciplinary Authority has not differ, but instead of that, has passed the order of punishment which is exorbitant in nature in comparison to the negligence made by the petitioner. As such, learned senior counsel for the petitioner submits that the punishment order imposed by the Disciplinary Authority be set aside.

6. Learned counsel for the State on the other hand submits that in the departmental proceeding, there is proper opportunity given to the petitioner and at every steps, due compliance of natural justice has been made. Counsel further submits that charge memo issued, opportunity was granted to



the petitioner to participate in the enquiry proceeding and subsequently, second show cause notice was issued and after going through the reply of the second show cause, a reasoned order has been passed. Counsel submits that there is no need of any interference in the said order and in result, the present writ petition may be directed to be dismissed.

7. Upon perusal of the documents on record, it transpires to this Court that though in the enquiry report, petitioner was found guilty in charge no. 4, 5, 6 and 7, but in the second show cause, the Disciplinary Authority has acknowledged to proceed only on the wrongs proved in charge no. 5, 6 and 7. It also transpires from the second show cause that no financial loss has been caused to the Government and it is due to the petitioner's efficiency and quick action, the Government did not suffered any financial loss. Similarly, it is due to non-preparation of the register of date and birth by the Panchayat Secretary, the problem has been created. Therefore, the Disciplinary Authority ought to accept the petitioner's reasons with regard to charge no.7.

8. Particularly, in the light of the judgment of *Union of India & Ors. Vs. J. Ahmed (supra)*, it transpires to this Court that act of negligence which is unintentional does not constitute



gross misconduct. In the opinion of the Court here, there is lacking of the act of intentional negligence. Though, this Court is not interfering in any findings, but only directing the Disciplinary Authority to pass order afresh and impose punishment in consonance with the negligence made by the petitioner and according to this Court, the present punishment is exorbitant with regard to the findings of the Enquiry Officer.

9. Hence, order contained in Memo No.9948 dated 13.07.2012 (annexed as Annexure-10) passed by the Joint Secretary, General Administration Department, Bihar, Patna (respondent no.7) is hereby set aside.

10. The Joint Secretary, General Administration Department, Bihar, Patna (respondent no.7) is hereby directed to pass fresh order within 90 days from the date of production of the order.

11. Accordingly, the present writ petition stands allowed.

(Dr. Anshuman, J)

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