

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4903 of 2023

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Din Bandhu Pandey, Son of Late Bidya Pandey, resident of Village- Parsauni,
P.S.- Nautan, District- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Revenue, Old Secretariat, Bihar, Patna.
2. The District Magistrate-cum- Collector, East Champaran at Motihari.
3. The Additional Collector, East Champaran at Motihari.
4. The Sub Divisional Officer, Sikrahana at Dhaka, District- East Champaran.
5. The Deputy Collector Land Reforms, District- East Champaran at Motihari.
6. The Anchaladhikari of Ghorasahan Anchal, East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vikalp

For the Respondent/s : Mr. Md. Khurshid Alam (AAG 12)

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 16-07-2024

1. In the instant writ petition, the Petitioner has challenged the final order of dismissal from service, dated 18th January, 2023, passed by the Commissioner, in Service Appeal No. 91 of 2020, by virtue of which the Petitioner was dismissed from the post of Revenue Clerk, Ghorasahan, Motihari.

2. It is alleged by the Petitioner that the order passed by the Inquiry Officer and affirmed by the Disciplinary Authority as well as the Appellate Authority suffered from manifest arbitrariness, patent illegality and violation of the principles of natural justice.



3. The Petitioner has brought on record that previously, he filed a writ petition which was registered as C.W.J.C. No. 5388 of 2021 and the writ petition was disposed of reserving liberty to the Petitioner to prefer an appeal before the Appellate Authority within a stipulated period of time from the date of receipt of the said order. Accordingly, the Petitioner preferred a statutory appeal. The Appellate Authority affirmed the order of dismissal passed against the Petitioner.

4. In the instant writ petition, the Petitioner has challenged the order passed by the Appellate Authority on 18th January, 2023.

5. The Petitioner was a Revenue Clerk. It came to the notice of the Petitioner that the Circle Officer, Ghorasahan, Motihari had mutated a Government land in favour of some private persons. The Petitioner lodged a complaint on 6th October, 2017 before the District Magistrate, Motihari against the Circle Officer, Ghorasahan (Respondent No. 2) and Additional Collector, Motihari alleging, *inter alia*, that by mutating the names of private persons in respect of the Government land, the Government has incurred financial loss to the tune of Rs. 38,60,000/-. As the Petitioner dared to lodge such complaint against his immediate superior officers, he was



placed under suspicion. After his suspension, he was served with a memorandum of charge which are as follows:-

“1/A. Shri Dinbandhu Pandey, revenue staff during the tenure of his charge of Halka 06-Ghorasahan, knowingly filed the Mutation Application No. 050111022081501254, Khata No. 08, Khesara No. 2063 area, 04 Dhur under Gairmajarua, contrary to the provisions prescribed in the Bihar Mutation Act, 2011 and Regulations made thereunder. By making report, the registration of Ghorasahan, Motihari, common land (Government land) has been approved and an attempt has been made to cause loss to the Government by this act.

1/B. In the Mutation Application No. 050111022081600218, the recommendation for approval of Namankaran (mutation) of land of Kabir Panthi Math, Ghorasahan, affiliated to Bihar State Religious Trust Board, has been given deliberately by Shri Pandey, whereas the concerned monastery is a public trust and despite knowing the full information, such mistake has been committed by him.

1/C. In Mutation Application No. 050111022081600347, recommendation for approval of transfer of name (mutation) of Gairmajarua owner (land) has been made by Mr. Pandey. The above act is an act of



intentionally causing harm to the Government in violation of the interest of the Government. Therefore, the act of Mr. Pandey Office offends Bihar Government Employees Rules.

2. Office order with a Letter No. 877, dated 31.12.2016 by Shri Dinbandhu Pandey was illegally made by him, due to which the charge of Halka has not been complied with till now. By Letter No. 08 dated 09.01.2017, Letter No. 25 dated 16.01.2016, Letter No. 780 dated 25.09.2017, Letter No. 844 dated 16.10.2017 and Letter No. 70 dated 30.01.2018, Shri Pandey was directed to handover the charge, but he did not handover the charge which is indicative of arbitrariness, indiscipline and dereliction of duty.

3. Shri Pandey was absent without any permission after the order of Halka transfer. Due to his absence, all the important revenue works related to Halka-06 Khatiyani, computerized, public grievance redressal work, revenue recovery, mutation under RTPS and the LPC work were affected. His conduct is indicative of arbitrariness, serious indiscipline and dereliction of duty and violation of Bihar Government Servant Conduct Rules.

4. Shri Pandey had suppressed the fact of not having the jamabandi register of Thana No. 05 for two years during his service tenure, which came to light through DLRMP. This type



of conduct by him is an instance of dereliction of duty.

5. The incident of only entering the name in mutation but not cancelling the name in jamabandi register of the cases received for mutation during Halka inspection by Shri Pandey was discovered by the Additional Collector, East Champaran on 04.02.2017 and such conduct is clearly a dereliction of duty and gross violation of the provisions of the conduct rules.

6. Shri Pandey did not produce the jamabandi register for investigation despite oral instruction given by the Additional Collector, East Champaran in course of inspection on 04.02.2017 and remained absent from duty. His conduct is indicative of gross indiscipline and dereliction of duty.”

6. The Petitioner was directed to submit a written explanation on the charges levelled against him. He submitted his explanation, but his explanation was not considered and the Inquiry Officer found guilty on the charges levelled against him. The Petitioner then was directed to submit a second show-cause, but the District Magistrate, who is the Disciplinary Authority, without following the procedure and without assigning any reason, rejected the reply to the second show-cause filed by the Petitioner. The Disciplinary Authority did not give him any



opportunity of hearing before acceptance of second show-cause. The entire process of inquiry, disciplinary proceeding and the order of the Appellate Authority are violative of the principles of natural justice and passed in violation of Rule 17(14) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005.

7. It is on record that against the order of suspension passed on 19th January, 2018 by the District Magistrate, East Champaran at Motihari in contemplation of initiation of departmental proceeding, the Petitioner moved this Court in C.W.J.C. No. 3961 of 2018. The said writ petition was disposed of with a direction to conclude the departmental proceeding, if not already concluded, within a period of three months from the date of receipt/production of this order. If the disciplinary proceeding was not concluded within the aforesaid period of three months, the order of suspension would be revoked.

8. With regard to the charge that the Petitioner did not hand over charge to his successor as per Office No. 877, dated 31st of December, 2016, it is pleaded by the Petitioner that he went to deliver charge to his successor but nobody was present to take charge from him. Even the Circle Officer was not



ready to take charge of the office of the Petitioner. The Petitioner thereafter has filed writ petition being C.W.J.C. No. 54364 of 2017 for a direction upon the Respondents/his superior officers so that he might deliver charge to his successor.

9. It is further contended by the Petitioner that he was not willfully absent from the office, he was suffering from eye and kidney disease and had undergone medical treatment. He also deposited a sum of Rs. 75,000/- with the Nazir of the Circle Officer but the Nazir did not issue any receipt to him. Further case of the Petitioner is that the Additional Collector against whom he lodged a complaint of illegal gratification to the District Magistrate was Inquiry Officer in the departmental proceeding against him and, therefore, the departmental proceeding suffers from manifest bias. The Petitioner was not supplied copy of the inquiry report before being directed to file second show cause. Therefore, the order passed by the Inquiry Officer holding that the charges framed against the Petitioner were not proved; order of the Disciplinary Authority holding him guilty of the charges; and the order of punishment of dismissal of the Petitioner from service as well as the appellate order affirming the punishment, are illegal, unfair, unjust and violative of the principle of natural justice.



10. By filing a counter affidavit on behalf of the Respondent Nos. 2 to 6, the allegations made by the Petitioner have been categorically denied. As a revenue employee, it was the duty of the Petitioner to record names of the Raiyats in respect of the land within the jurisdiction of his circle. The Petitioner illegally and surreptitiously recorded names of private persons as Raiyats in respect of the land owned by the State Government. By such specific act, he, being a Government employee, acted against the interest of the State Government, resulting in pecuniary loss to the Government. He also mutated the names of private persons in respect of a portion of land owned by Public Charitable Trust. The said fact has been proved during the departmental inquiry on due examination of the relevant registers maintained in course of Halka. Other charges are also matter of record. Therefore, the Petitioner was rightly dismissed from service and there is no ground for interference over the order passed by the Disciplinary Authority and affirmed by the Appellate Authority against the Petitioner.

11. The learned Advocate appearing on behalf of the Petitioner has made two-fold submissions to establish that the purported inquiry and the order passed in the disciplinary proceeding as well as affirmed by the Appellate Authority were



invalidly conducted and improperly passed:-

(i) It is submitted by the learned Advocate for the Petitioner that the Inquiry Officer did not examine any document or register, and the relevant documents were not brought in evidence, but the inquiry report simply proceeds to uphold the guilt on the basis of allegations without reference to any evidence whatsoever;

(ii) The Petitioner raised specific issues relating to the measurement of plots which has been mutated in the names of the private persons and the relevant record of rights showing extent of plots recorded in the name of the Government and under what circumstances, he mutated names of some Raiyats in respect of 5 Dhurs of property but the Inquiry Officer did not consider the plea of the Petitioner with the record of the case. The Petitioner also raised a preliminary objection against appointment of Additional Collector, East Champaran to be Inquiry Officer in the case, because of the fact that against the said Additional Collector, he lodged a complaint previously of taking illegal gratification for false and concocted recording of the names of fictitious persons as Raiyats in respect of the land situated within Ghorasahan Circle. Therefore, the Additional Collector have had bias against the Petitioner.



12. The learned Advocate on behalf of the Petitioner contends that an Inquiry Officer acting in a judicial authority is in the position of an independent adjudicator. He is not supposed to be the representative of the department/Disciplinary Authority/Government and his function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the un-rebutted evidence is sufficient to hold that the charges are proved. Thus, the Inquiry Officer also has a duty to demonstrate that justice has not only been done but it appeared to have been done. Where the charged employee lodged complaint against the Additional Collector for accepting bribe in lieu of false recording of land, can he be an impartial adjudicator in an inquiry proceeding?

13. In support of his contention, the learned Counsel for the Petitioner refers a decision of this Court in the case of *Girish Parsad Sah v. State of Bihar & Ors.*, reported in **2018 (1) PLJR 144**.

14. The learned counsel for the State-Respondents, on the other hand, has refuted the submissions made by the learned Advocate for the Petitioner and submits that departmental inquiry was conducted with all impartiality and



integrity. The Petitioner participated in the inquiry proceeding. He never alleged during inquiry about the bias of the Inquiry Officer. Now, he cannot raise such grievance after punishment order having been passed against him. The inquiry report is marked as Annexure- 6 to the writ petition.

15. With regard to Charge 1A, the explanation of the Petitioner was that Khata No. 08, Khesra No. 2063, Area 0-0-4 Dhur was wrongly mentioned. Actually the area of the said land was 0-5-2 Dhur as per the relevant document, in which only 0-0-14 Dhur land was recorded as Gairmajarua (Government Land). Rest of the land is Raiyati land.

16. The Petitioner also pleaded before the Inquiry Officer is that he did not get the list of details of Gairmajarua Aam land in spite of his request to the Circle Officer. As he could not examine the list of Gairmajarua land, he gave a proposal of mutation of 0-5-2 Dhur land out of 0-0-14 Dhur land for mutation. In course of survey as soon as he get the Government Map, he identified the said land and informed and requested the Circle Officer for correction. The Circle Officer, Ghorasahan made necessary correction and informed the matter to the Land Reforms Deputy Collector, Sikrahana by a letter dated 8th of December, 2016. The Inquiry Officer consulted the



relevant register supplied by the Circle Officer, Ghorasahan. It was opined by the Inquiry Officer that it was the responsibility of the accused that since he received the charge, he should have given a proposal for mutation after getting information regarding the Government land. This mistake does not fall in the category of mutation error. This shows negligence towards work and misuse of position. Before submitting the proposal of mutation, the charged Officer ought to have thoroughly investigated into all aspects of mutation. It is the sole responsibility of the Revenue employee to conserve Gairmajarua Common and Gairmajarua Special land. Therefore, the plea taken by the Petitioner that due to non-availability of the list of Government land and concerned register, he proposed mutation of Gairmajarua land in the names of some Raiyats was not accepted. The list of Government land is kept not only in the Circle Office but also in the district archives. The Petitioner could have obtained it easily but he did not take any attempt to consider as to whether 5.2 Dhurs of land which were illegally mutated in the name of private persons are Gairmajarua land or not.

17. Charge No. 1/B contains as illegal recommendation for approval of mutation of land of Kabir



Panthi Math, Ghorasahan affiliated to Bihar State Religious Trust Board by the Petitioner in spite of knowledge of the Petitioner that the land of Public Trust cannot be mutated in the name of any other person. The Inquiry Officer found that the transfer of land of Kabir Panthi Math affiliated to the Religious Trust Board was mutated (Dakhil Kharij) by deleting the name of the Math in the register. Mutation proposal was rejected by the then Circle Officer. The names of Raiyats mentioned in the explanation of the accused relate to Khata 43, Khesra 2084, whereas mutation proposal by the accused was given for Khata 43, Khesra 1462. Thus, it was held that the Petitioner deliberately misplaced the Khesra number for illegal mutation.

18. On careful perusal of the report of the Inquiry Officer, I find that Inquiry Officer held that the accused was not only negligent, but purposefully made wrong records (mutation) in respect of different lands which are not capable to be mutated in the names of private persons.

19. The Inquiry Officer took great pain to come to his finding on due examination and consultation of relevant records and registers. Therefore, Petitioner's allegation that the Inquiry Officer was biased has no leg to stand.

20. The charge against the Petitioner was held to be



proved by the Inquiry Officer. The District Magistrate, being the Disciplinary Authority, imposed penalty of dismissal from service. The order of the Appellate Authority also shows application of mind.

21. It is pertinent to mention here that while exercising the power of judicial review under Article 226 of the Constitution of India, this Court does not sit in appeal. It is for the Court to consider as to whether the relevant provisions of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 have been complied with or not. There is no procedural error as alleged by the learned Advocate for the Petitioner. When a fact is proved on the basis of documentary evidence, document speaks for itself and no amount of oral evidence is necessary in a departmental proceeding. So far as placing evidence before the Inquiry Officer is concerned, there is a mark difference between a judicial proceeding and a departmental enquiry. In a judicial proceeding, a document cannot be marked exhibit without the contents thereto being proved by its maker or custodian. The rule with regard to admissibility of electronic and digital records are specifically delineated in the Bhartiya Sakshya Adhiniyam, 2023.

22. In the instant case, however, no electronic or



digital record was placed and considered before the Inquiry Officer.

23. Therefore, on due consideration of entire materials on record, I find that the Petitioner was rightly punished in the departmental enquiry. I do not find any scope to spill ink over the findings of the Inquiry Authority, Disciplinary Authority and the Appellate Authority. From the enquiry report, I also do not find any semblance of bias of the Inquiry Officer reflected in course of enquiry.

24. The instant writ petition is accordingly dismissed on contest.

25. However, there shall be no order as to costs.

(Bibek ChauDhuri, J)

skm/-

AFR/NAFR	NAFR
CAV DATE	24.06.2024
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