

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7364 of 2022

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Sudhir Kumar son of Harihar Prasad Resident of Mohalla- Milkianaith Bazar
Samiti Road, P.O.- Ara, Police Station- Nawada, District- Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Under Secretary to the Government, General Administration Department, Government of Bihar, Patna.
4. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
5. The Special Secretary to the Government, Urban Development and Housing Department, Government of Bihar, Patna.
6. The Director, Municipal Administration-cum-Additional Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
7. The Deputy Secretary, Urban Development and Housing Department, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Suraj Narain Yadav, Advocate Mr. Chandra Mohan, Advocate
For the Respondent/s	:	Mr.Yogendra Pd. Sinha (AAG-7) Mr. Shankar Kumar, AC to AAG-7

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 09-01-2024

The present writ petition has been filed for quashing the order dated 20.07.2021 passed by the Additional Secretary to the Government, General Administration Department, Government of Bihar, Patna, whereby and whereunder the petitioner has been awarded the punishment of



censure for the year 2015-16. The petitioner has also challenged the appellate order dated 10.12.2021 issued under the pen and signature of the Additional Secretary to the Government, General Administration Department, Government of Bihar, Patna, by which the appeal filed by the petitioner has been dismissed.

2. The brief facts of the case are that the petitioner was selected by the Bihar Public Service Commission and was appointed as Officer under the Bihar Administrative Service Cadre Class-II. It is submitted that while the petitioner was posted as Senior Deputy Collector, Khagaria, he was given additional charge of Town Executive Officer, Khagaria vide notification dated 04.02.2015 of the Urban Development and Housing Department, Government of Bihar, Patna and vide memo dated 06.02.2015 issued by the District Magistrate, Khagaria, the petitioner was given charge on 10.02.2015 by his predecessor and vide notification dated 30.03.2015 of the Urban Development and Housing Department, Government of Bihar, Patna



the petitioner was authorised to discharge the duties and function of Executive Officer, Khagaria Municipality, Khagaria till further orders in addition to his work. The petitioner had then continued to hold the charge of Executive Officer, Khagaria Municipality, Khagaria till 02.09.2015, whereafter he was relieved and charge was handed over to his successor. Supposedly, an enquiry was held by the Deputy Secretary, Urban Development and Housing Department, Government of Bihar, Patna and the Director, Municipality Administration-cum-Additional Secretary, Urban Development and Housing Department, Government of Bihar, Patna and a report dated 20.01.2017 and 22.09.2017 was submitted wherein it was found that in between the period 27.08.2016 to 21.07.2017, a sum of Rs. 85,45,130/- was not deposited by the then cashier Shri Chandan Kumar either in the bank or in the treasury and upon being asked about the reason for doing so no satisfactory answer could be given, hence by keeping such a huge amount as cash in hand, the said amount was misused. In the said



report itself, it has been mentioned that the petitioner was posted as Executive Officer, Khagaria Municipality, Khagaria in between the period 10.02.2015 to 02.09.2015.

3. As far as the petitioner and other Executive Officers are concerned, it had been mentioned in the said report dated 22.09.2017 that no concrete action was taken against the guilty personnel, hence appropriate action can also be taken against them. The learned counsel for the petitioner has further submitted that the aforesaid report dated 22.09.2017 was placed in the relevant file of the respondent-Department on 21.06.2019, whereafter the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna had endorsed the file to the Special Secretary, who vide a detailed note dated 04.07.2019 had found that the aforesaid allegations levelled in the report dated 22.09.2017 did not pertain to the tenure of the petitioner and thereafter, he had dealt with the complicity of the various personnel and had recommended for



initiation of departmental proceedings against Smt. Punam Kumari, Shri Chandan Kumar and the then Executive Officer Shri Binod Kumar, however, as far as the petitioner is concerned, it had been stated in the said note dated 04.07.2019 that though the explanation submitted by him has been accepted but recommendation can be made to warn him. The file was then endorsed to the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna who had endorsed the aforesaid views of the Special Secretary, Urban Development and Housing Department, Government of Bihar, Patna as contained in his note dated 04.07.2019 vide endorsement dated 16.07.2019, which was also then approved by the concerned Minister on 19.07.2019. Nonetheless, a charge sheet dated 05.01.2021 in प्रपत्र-क was framed qua the petitioner herein and allegation was levelled that as per the report of the enquiry team dated 22.09.2017, it has been found that the then cashier Shri Chandan Kumar had not deposited a sum of Rs. 85,45,130/-



with the treasury and such gross irregularity has been committed during the tenure of the Executive Officer, Khagaria Municipality, Khagaria. A show cause notice dated 17.03.2021 was also issued to the petitioner by the Additional Secretary to the Government, General Administration Department, Government of Bihar, Patna asking the petitioner to show cause that since upon enquiry it has been found that during the period 2014-15 to 2016-17, a sum of Rs. 85.45 lacs was not deposited by the then cashier with the treasury, which is an instance of gross irregularity, why he be not warned, in view of letter dated 18.10.2019 sent by the Urban Development and Housing Department, Government of Bihar, Patna requesting to communicate the punishment of warning to the petitioner. The petitioner had then filed his reply to the said show cause notice dated 17.03.2021 on 05.04.2021, specifically stating therein that the allegations levelled in the said show cause notice pertain to the period 27.08.2016 to 21.07.2017 whereas the petitioner was posted as the Executive



Officer, Nagar Parishad, Khagaria in between the period 10.02.2015 to 02.09.2015 and during his tenure whatever amount was received by the Nagar Palika, Khagaria the same was deposited in the bank/treasury regularly. The Additional Secretary to the Government, General Administration Department, Government of Bihar, Patna, by the impugned order dated 20.07.2021 has awarded the punishment of censure qua the petitioner herein which was challenged by the petitioner by filing an appeal, however, the same has also stood rejected, as communicated by the impugned order dated 10.12.2021. The learned counsel for the petitioner has submitted that a bare perusal of the factual aspect of the matter stands substantiated by the enquiry report dated 22.07.2017 and the note of the Special Secretary, Urban Development and Housing Department, Government of Bihar, Patna dated 04.07.2019, which would show that the then cashier Shri Chandan Kumar had not deposited a sum of Rs. 85,45,130/- with the bank/treasury during the



period 27.08.2016 to 21.07.2017, whereas the petitioner was posted as Executive Officer, Khagaria Municipality, Khagaria in between the period 10.02.2015 to 02.09.2015, hence the petitioner is not having any complicity, however, the said aspect of the matter has not been considered while passing the impugned orders dated 20.07.2021 and 10.12.2021, thus the same are perverse and fit to be set aside. It is also submitted that without the petitioner having any complicity in the alleged occurrence, punishment of censure has been awarded against him in a mechanical manner, hence the impugned orders dated 20.07.2021 and 10.12.2021 are fit to be set aside.

4. *Per contra*, the learned counsel for the respondent-State has though vehemently opposed the present writ petition, however, he has not been able to deny the fact that the allegation of the then cashier Shri Chandan Kumar having not deposited the aforesaid sum of Rs. 85,45,130/- with the bank/treasury pertains to the period 27.08.2016 to



21.07.2017, whereas the petitioner was posted as Executive Officer, Khagaria Municipality, Khagaria in between the period 10.02.2015 to 02.09.2015.

5. I have heard the learned counsel for the parties and perused the materials on record. A bare perusal of the enquiry report dated 22.09.2017 would show that the then cashier Shri Chandan Kumar had not deposited a sum of Rs. 85,45,130/- either with the bank or treasury and had kept it as cash in hand during the period 27.08.2016 to 21.07.2017, whereas the petitioner was posted as Executive Officer, Khagaria Municipality, Khagaria during the period 10.02.2015 to 02.09.2015. Thus, apparently the petitioner cannot have any complicity in the alleged occurrence and it cannot be even said that he had failed to prevent the said cashier from committing the said gross irregularity, inasmuch as he was not posted as the Executive Officer, Khagaria Municipality, Khagaria during the period when the said cashier had engaged in the said irregularity of not depositing huge sums of money



either with the bank or with the treasury. Now, coming to the impugned order of punishment dated 20.07.2021 passed by the Additional Secretary to the Government, General Administration Department, Government of Bihar, Patna, this Court finds that firstly; the same does not depict the role played by the petitioner in the alleged irregularity committed by the then cashier and secondly; the same is not only cryptic and an unreasoned order but also depicts complete non-application of mind inasmuch as the same has not taken into account the defence put forth by the petitioner, apart from no clear, cogent and succinct reasons having been furnished for coming to a decision warranting infliction of punishment of censure upon the petitioner. It is a trite law that furnishing of clear, cogent and succinct reason in support of the impugned order is an indispensable component of a decision making process. Reference in this connection be had to a judgment rendered by the Hon'ble Apex Court in the case of **ORYX Fisheries Private Limited vs. Union of**



India & Ors, reported in **(2010) 13 SCC 427**.

This Court also finds that the disciplinary authority while exercising quasi judicial power is bound to mention the defence raised by the petitioner in his show cause which is also required to be considered by the authority and the same should be rejected by a reasoned order, however, no such consideration has been made by the disciplinary authority, hence in absence of any reason the impugned order dated 20.07.2021 suffers from non-application of mind and arbitrariness as such is not sustainable in the eyes of law apart from the same being based on no evidence. Reference in this connection be had to the judgments rendered by this Court in the case of ***Janeshwar Sinha vs. State of Bihar & Ors***. reported in **2022(1) PLJR 169**; the one rendered in the case of ***Dr. Kamla Singh vs. The State of Bihar & Ors.***, reported in **2023(1) PLJR 803** and the one rendered by this Court on 21.09.2023 in the case of ***Smt. Abha Kumari vs. The State of Bihar & Ors (CWJC No. 17189 of 2015)***.



6. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, I deem it fit and proper to quash the impugned order dated 20.07.2021 passed by the Additional Secretary to the Government, General Administration Department, Government of Bihar, Patna. Consequently, the appellate order dated 10.12.2021 has got no legs to stand, hence is also set aside.

7. The writ petition stands allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
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