

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10322 of 2017

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Dinesh Kumar Mani Son of Late Arun Kumar Nirala, residence of Village-
Prasadi English, P.O. Prasadi English, P.S. Arwal, District Arwal.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, G.A.D. of Bihar Govt.
2. District Magistrate, Gaya.
3. Commissioner, Magadh Division, Gaya.
4. Deputy Collector, Establishment, Collectorate, Gaya, District- Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Basant Kumar Chaudhary, Sr. Advocate.
Mr. Shashi Bhushan Kumar, Advocate.
For the Respondent/s : Mr. Manoj Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 15-07-2024

Heard Mr. Basant Kumar Chaudhary, learned senior counsel along with Mr. Shashi Bhushan Kumar, learned counsel appearing on behalf of the petitioner and Mr. Manoj Kumar, learned counsel appearing on behalf of the State.

2. The petitioner has sought for the following reliefs as prayed for in Para-1 of the writ petition, which are, inter alia, reproduced hereinafter:

“ That this is an application for issuance of a writ in the nature of Mandamus, for directing the Respondent No.2 and 4 for the compliance / implement of the order of respondent no.3 which passed in Service Appeal No. 03 of 2017 on dated 20.04.2017 which contained in Annexure-1. Above said matter is still pending before the Respondent No.2, by which already submitted application of the petitioner on dated 03.05.2017 however respondent no.2 has not considered on the order of the respondent no.3 since 20.04.2017 till today.”

3. Learned senior counsel appearing on behalf of the petitioner, at the outset, submitted that fresh initiation of the



departmental proceeding against the petitioner is not sustainable, as it would reflect from the charge memo which was served to the petitioner in Prapatra 'ka' as contained in Memo No. 1103 dated 08.06.2012 to be against the principle of *res judicata*, because the petitioner has been penalized for the same charges in respect of charge nos. 1 to 5 twice by the order passed by the District Magistrate by holding a fresh disciplinary proceeding for which the petitioner has already suffered in respect of charge numbers 1 to 5 in earlier departmental proceeding as contained in Memo No. 1479 dated 08.08.2011. Learned counsel submitted that even taking into consideration the two charges i.e. charge nos. 6 & 7, the District Magistrate who has served the petitioner with a consolidated charge memo in respect of all the charges for which the petitioner has already suffered penalty order, the same is not in accordance with Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as "Bihar CCA Rules, 2005") and on these basis he has sought for quashing of the entire proceeding initiated against him to be without jurisdiction.

4. *Per contra*, Mr. Manoj Kumar, learned counsel appearing on behalf of the State submitted that the petitioner's conduct calls for fresh disciplinary proceeding and charge nos. 1 to 5 is only in relation to his past conduct that he has repeated



misconduct in discharge of his service and as such same can be ignored taking into consideration the charge nos. 6 & 7 which relates to financial misappropriation of huge amount during his service period which is certainly a misconduct defined under the Bihar CCA Rules.

5. Having considered the rival submissions made on behalf of the parties, the procedural lapses has been pointed out by the learned senior counsel and the prescribed procedure as laid down in Bihar CCA Rules 2005 for issuance of charge memo which is the very initiation of a disciplinary proceeding is to be served in Prapatra 'ka'. I find that the Prapatra 'ka' contains all those charges which were the subject matter of previous disciplinary proceeding and as such, the petitioner cannot be penalized for the same charges twice. The very initiation of the disciplinary proceeding against the petitioner being without authority of law, the charge memo as contained in Memo No. 1103 dated 08.06.2012, consequential order passed by the disciplinary authority contained in Memo No. 431 dated 04.03.2014 and the Service Revision No. 09 of 2018 passed by the Chairman-cum-Member, Board of Revenue, Bihar are hereby set aside and quashed.

6. In light of the law laid down by the Apex Court in the case of **B. C. Chaturvedi Vs. Union of India & Ors.**



reported in (1995) 6 SCC 746, the authority concerned may
take steps in accordance with law.

7. The writ petition stands disposed of.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	18.07.2024
Transmission Date	N.A.

