

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6614 of 2018

Amresh Kumar Hansh son of late Ram Nandan Prasad resident of village Chandrabigha Mnar, P.O. Mari, P.S. Nursarai, District Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Revenue Department, Government of Bihar, Patna.
2. The Commissioner, Patna Division, Patna.
3. The District Magistrate Nalanda.
4. The Block Development Officer, Rahui, Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Mohan Kumar Singh, Adv.
For the Respondent/s : Mr. Rishi Raj Sinha (SC-19)

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 23-04-2024

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

2. The present writ petition has been filed for following reliefs:-

I. For direction to quash and set aside the order dated 26.05.2015/13.07.2015 issued by The Divisional Commissioner, Patna in Service Appeal No. 655/2014 (annexed as Annexure-10) by which the respondent has been pleased to modify the order dated 21.05.2014 passed by District



Magistrate, Nalanda and ordered for punishment of withholding of two increments for two years without cumulative effect.

II. For direction to quash and set aside the order dated 22.05.2014 passed by District Magistrate, Nalanda issued *vide* Memo No. 6-48/13-656 (annexed as Annexure-9) by which in a Departmental Proceeding awarded major punishment of demotion for indefinite period.

III. Further to quash the order dated 18.01.2016 contained in Memo no. 6-13/13-46 passed by the District Magistrate, Nalanda (annexed as Annexure-11) by which order has been passed for stoppage of two increments of petitioner.

3. Learned counsel for the petitioner submits that the order passed by the Divisional Commissioner, Patna is bad in law due to the reason that the Commissioner has not whisper anything on the points raised by the petitioner before the Appellate Authority that there is a violation of Rule 9(7) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'CCA Rules, 2005). Counsel further submits that the petitioner has joined his service as Clerk in the year 1985 and posted in the office of Circle Officer Giryak, Nalanda and worked at different office. Counsel also submits that in the year 2011, he was transferred



from Disaster Management Department to the office of Block Development Officer, Rahui, Nalanda. Counsel submits that from the date of his joining, he has been performing his duty with full satisfaction. Counsel further submits that he was directed to take over charge of Indira Awas Yojana apart from the work and accordingly, he accepted the said charge.

4. Learned counsel for the petitioner submits that on 29.05.2012 and 30.05.2012, the petitioner had to go to the District office at Bihar Sharif for entering year wise list and after returning from the District office, he put his signature on the attendance register after obtaining oral permission. Counsel further submits that on 31.05.2012, Bharat Band was organized by some political party and as such in spite of all possible efforts, the petitioner could not attend his duty on 31.05.2012 though he had informed in this regard to the Head Clerk on phone. Counsel also submits that on the next day, the petitioner came on duty but he went to the hospital for treatment. Counsel further submits that on 01.06.2012, the Block Development Officer, Rahui in letter No.867 has asked for explanation from the petitioner for his absence from the duty on 31.05.2012 and on 01.06.2012. Counsel submits that the petitioner has replied and also submitted an application for grant of casual leave for



one day, but the B.D.O. has decided to punish the petitioner and it is due to this reason, he has taken step further and rejected the representation of the petitioner and stoppage of the salary for one day.

5. Learned counsel for the petitioner further submits that on 13.06.2012 *vide* letter No.947, B.D.O., Rahui has ordered for putting signature on biometric method and further asked explanation for the petitioner to do so and in response, the petitioner has submitted his reply but all of a sudden without prior notice the petitioner was again issued show cause relating to his biometric signature. In this regard, the petitioner has further filed representation dated 15.06.2012 but instead of reply, the B.D.O., Rahui has reported the matter to the District Magistrate, Nalanda and on his report, the petitioner was suspended and the departmental proceeding was initiated. Counsel further submits that the petitioner remain under suspension for more than 7 months and lastly on 16.04.2013, a memo of charge was served and finally he was imposed punishment of demotion for indefinite period *vide* letter No.656 dated 22.05.2014. Counsel also submits that the petitioner has preferred Service Appeal No.655/2014 before the Divisional Commissioner and his appeal was allowed and the order of



punishment was modified and ordered for withholding of two increments for two years without cumulative effect. As such, the petitioner has challenged only order passed by the Divisional Commissioner as the petitioner is entitled for complete exoneration and a decision ought to be taken in violation of Rule 9(7) of the CCA Rules, 2005.

6. Learned counsel for the State on the other hand submits that for the case of the petitioner, CCA Rules, 2005 is not applicable. Counsel further submits that by the order passed by the Divisional Commissioner, it becomes clear that the major punishment is now minor. Counsel further submits that there is no no need of any interference in the said order.

7. In the light of the submissions made by the parties, it becomes crystal clear that the order of major punishment has been passed against the petitioner by the District Magistrate, but subsequently, in appeal, the said major punishment has been lowered down in a minor punishment. The specific allegation was against the petitioner that he was making delay in coming to the office and not using the biometric attendance as well as repeatedly disobedience of his superiors were made. The District Magistrate has acknowledged the entire materials in the order and process of law has been followed



prior to imposing the punishment which has been tested by the Commissioner also. In the Appellate order, the learned Divisional Commissioner has only interfere due to the reason that he found the punishment exonerated and as such, he has lowered down the punishment and converted into minor punishment.

8. It transpires to this Court that the Appellate Authority has not given his finding on the point mentioned in his own order i.e. non-compliance of Rule 9(7) of the CCA Rules, 2005. Rule 9(7) of the CCA Rules, 2005 states as follows:-

*“Charge-sheet must be framed within three months from the date of issue of suspension order failing which on expiry of three months, the suspension order shall be revoked unless the authority, which issued the suspension order, passes the order renewing the suspension alongwith reasons to be recorded in writing for the delay in framing of charge-sheet for a further period of four months :
Provided that after the expiry of extended period of four months the suspension order shall stand revoked if the charge-sheet is not framed.”*



9. It transpires to this Court that upon bare reading of the Rule 9(7) of the CCA Rules, 2005, delay in framing of charge shall not be a defect, rather, continuation of suspension shall be the defect and if, the continuation of suspension shall extended more than four months without framing of charge, then in that case, the said suspension after four months shall deemed to be withdrawl of suspension.

10. In this view of the matter, this Court hereby directs to the Commissioner to pass order on Rule 9(7) of the CCA Rules, 2005.

11. So far as the rest part of the order in which punishment is lowered down is concerned, this Court is not inclined to interfere.

12. In case, it has been found by the Commissioner that the petitioner is entitled under Rule 9(7) of the CCA Rules, 2005 for his salary, then the payment of salary is directed to be made within 90 days from the date of production of the order.

13. Since, the general elections of Lok Sabha, 2024 has been notified, the counting of the said 90 days shall be started from the end of the general elections of Lok Sabha, 2024.

14. Hence, with the aforesaid observations and



directions, this writ petition is partly allowed.

(Dr. Anshuman, J.)

Divyansh/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	27.04.2024
Transmission Date	NA

