

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6568 of 2018

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Arun Kumar Srivastava, Son of Late Bachchu Prasad, Resident of 204, Raj Apartments, Ashiana Road, P.S.- Shastri Nagar, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Bihar, Patna.
2. Principal Secretary, Water Resources Department, Bihar, Patna.
3. Bihar Public Service Commission, Patna through its Secretary.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava, Adv. Mr. Arpit Anand, Adv.
For the State	:	Mr. Sriram Krishna (AC to SC-11)
For the BPSC	:	Mr. Nishant Kumar Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 06-03-2024

Heard learned 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 dated 10.08.2015 contained in Memo no.1770 (annexed as Annexure-9), order dated 12.01.2016 contained in Memo No.75 (annexed as Annexure-11) and order dated 10.08.2016 contained in Memo no.1727 (annexed as Annexure-12); all the orders issued by the concerned authorities under the Water Resources Department of the State Government.



3. Learned counsel for the petitioner submits that the punishment order has been passed against the petitioner is absolutely in violation of law due to the reason that there are gross irregularity made reaching on the conclusion by the Disciplinary Authority. Counsel also submits that in the second show cause which is annexed as Annexure-6 is absolutely defective due to the reason that the Disciplinary Authority has found the charges proved against the petitioner, whereas, the Enquiry Officer has categorically given its finding that charge has not been proved. Counsel further submits that the said finding on the second show cause has been issued in complete violation of Rule 18(2) of the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'CCA Rules, 2005').

4. Learned counsel for the petitioner submits that upon the finding of the enquiry report, it transpires that the Enquiry Officer has given his categorical finding which states as follows:-

"कमांक 02 को छोड़कर अन्य बिंदुओं पर आरोप प्रमाणित नहीं पाया गया।"

5. Learned counsel for the petitioner submits that this disciplinary proceeding suffers from absolute procedural



lapse. Counsel further submits that in the light of compliance of order dated 28.02.2024 passed by this Court, he has placed judgment of ***State Bank of India & Ors. Vs. K.P. Narayan Kutty*** reported in ***(2003) 2 SCC 449*** in which it has been held that:-

“The Disciplinary Authority, while accepting the findings of the enquiry officer to the extent that some charges were proved and some of the charges were not proved, however, did not agree with the report of the enquiry officer as regards the finding that the charges were partly proved. The Disciplinary Authority has to provide opportunity which is necessary to satisfy the principles of natural justice (as mentioned in paragraph no.4 of the said judgment).”

6. Learned counsel for the State on the other hand vehemently opposes the writ petition of the petitioner and submits that it is the categorical finding of the Enquiry Officer that for the charges alleged in the charge memo, the petitioner has been found partially responsible and the counsel for the petitioner has taking undue benefit and try to place this case of



partial responsible into partial proved only with a view to create confusion before this Court and to take undue benefits. Counsel further submits that in the second show cause, the statement categorically indicates that the reason for disagreement has been assigned and therefore, it has to be assumed that compliance of Rule 18(2) of the CCA Rules, 2005 has been made and there is no violation of Rule 18(2) of the CCA Rules, 2005. As such, he submits that there is no violation of Rule 18(2) of the CCA Rules, 2005, second show cause has rightly been issued and findings of the Original Court and subsequently, Appellate Court has correctly been made.

7. After going through the arguments as well as pleadings of the parties, it transpires to this Court that in the enquiry report, upon discussion of the charge memo, there are conclusions on each imputation of the charge which has categorically been made in the third column and in the conclusive portion of the enquiry report, the finding given which states as follows:-

“जाँच पदाधिकारी का मतव्य / निष्कर्ष
कमांक 02 को छोड़कर अन्य बिंदुओं पर
आरोप प्रमाणित नहीं पाया गया।”

But, on the point of imputation no.8, this Court



finds that the findings given in column has not been made with regard to imputation no.8 and entries were mentioned about other imputations and on imputation no.8, there is no finding come. But, later on, punishment has been given treating this finding against the petitioner as the Enquiry Officer has written the word in third column of imputation no.8 which states as follows:-

“अतः अन्य आरोप प्रमाणित नहीं पाया गया।”

But, Enquiry Officer has not given any finding on imputation no.8 which is necessary to be made.

8. In the light of the above discussions, this Court finds that the finding of the enquiry report is defective and accordingly, the second show cause is also defective. Hence, order dated 10.08.2015 contained in Memo no.1770 (annexed as Annexure-9), order dated 12.01.2016 contained in Memo No.75 (annexed as Annexure-11) and order dated 10.08.2016 contained in Memo no.1727 (annexed as Annexure-12), all are hereby set aside.

9. The Disciplinary Authority is hereby directed to go through the enquiry report again and take decision in accordance with law mentioned in CCA Rules, 2005 and



proceeding shall be concluded within six months from the date of production of the order.

10. So far as the question of decisions with regard to his services and retiral benefits are concerned, the provisions are already present in CCA Rules, 2005. The authorities shall take decision with regard to the services and benefits of the petitioner within the said period.

11. With the aforesaid observations and directions, this writ petition is hereby allowed.

(Dr. Anshuman, J.)

Divyansh/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	07.03.2024
Transmission Date	NA

