

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20568 of 2019

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Nageshwar Prasad son of Late Jai Govind Prasad, resident of Village- bari Kewai, P.O.- Daniyawan, P.S- Shahjahanpur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Food and Consumer protection, Government of Bihar, Patna.
2. The Appellate authority under Bihar CCA Rules, 2005, the minister, Food and consumer protection Government of Bihar, Patna.
3. The Principal Secretary Department of Food and consumer protection Government of Bihar, Patna.
4. The Additional Secretary Department of Food and consumer protection Government of Bihar, Patna.
5. The Joint Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
6. The District Magistrate, Siwan.
7. The Sub-divisional officer, Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Nand Gopal Mishra, Adv.
For the State : None

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date:- 01-07-2024

Heard learned counsel for the petitioner. No one appears on behalf of the State.

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

I. For quashing the order contained in Memo No.6433 dated 18.12.2017 passed by the Additional Secretary,



Food and Consumer Protection Department, Government of Bihar (annexed as Annexure-9).

II. For directing the respondent to stay the operation of impugned order dated 15.12.2017 during the pendency of this writ petition so that the determination/calculation of the petitioner's post retiral dues may not adversely be effected.

III. For quashing the order contained in Memo No.562 dated 03.02.2021 passed by the Hon'ble Minister, Food and Consumer Protection, Government of Bihar-cum-The Appellate Authority (annexed as Annexure-11).

IV. For directing the respondent authorities to pay the amount deducted from the pension of the petitioner on the basis of his reduced salary giving effect to the impugned order even during the pendency of the said appeal and the instant writ petition.

3. Learned counsel for the petitioner submits that the petitioner was initially appointed as Supply Inspector and subsequently, promoted to the post of Assistant, District Supply Officer and superannuated from the service on 31.05.2019. Counsel submits that the petitioner was posted as Assistant District Supply Officer, Siwan and was also Incharge of Block Supply Officer, Hasanpura (Siwan) from December, 2012 to



April, 2013. Counsel further submits that during the posting as Incharge Block Supply Officer, Hasanpura, neither food grain for Below Poverty Line (in short 'BPL') category for February and March 2013 nor rice or wheat for *Antyodaya* scheme was lifted by Public Distribution System (in short 'PDS') dealers. Counsel also submits that the petitioner's duty as Block Supply Officer was limited to the extent of forwarding of pay-in-slip submitted by the PDS dealers before him, after depositing the amount by them in the Bank account of State Food Corporation (in short 'SFC'). Counsel further submits that the petitioner could not have any authority to get the bank statement from SFC bank account nor he was entrusted with the duty to verify the amount deposited by PDS dealers in the bank account of SFC.

4. Learned counsel for the petitioner further submits that the allegation in the form of show cause was issued by the District Magistrate, Siwan to the petitioner on 10.08.2013 against which the petitioner responded, but subsequently, the departmental proceeding was initiated against the petitioner *vide* Memo No.4355 dated 15.07.2014 (annexed as Annexure-2) and accordingly, '*Prapatra-K*' has been issued being the charge memo. Counsel submits that the petitioner has



participated in the departmental proceeding and the Enquiry Officer upon consideration of the documents and other materials on record, had exonerated the petitioner from both the charges as the charges against the petitioner were not proved due to lack of proper evidence. Counsel further submits that even after submission of enquiry report, The Joint Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna issued a show cause notice to the appellant to file show cause *vide* letter No.1817 dated 14.03.2016 (annexed as Annexure-7). Counsel submits that the said show cause has been issued in gross violation of Rule 18(2) and 18(3) of the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'CCA Rules, 2005') which mandates that the Disciplinary Authority is required to consider the enquiry report. It has been mentioned that upon consideration of the enquiry report, the Disciplinary Authority is not agree on inquiry report, then in that case, he shall have to assign the reasons for disagreement. Counsel further submits that *vide* letter No.1817 dated 14.03.2016 (annexed as Annexure-7), show cause was directed to be filed within 15 days, but the said show cause has been issued in gross violation of Rule 18(2) and 18(3) of the CCA Rules, 2005 and as such,



any subsequent decision in the form of final order or in the form of appellate order, shall automatically vitiate as those were issued in gross violation of the established procedure as mentioned in CCA Rules, 2005.

5. No one appears on behalf of the counsel for the State, but from the pleadings made in the counter affidavit, it transpires that the defence has been taken by the State that the petitioner was Incharge of Block Supply Officer, Hasanpura and it was found that the PDS dealers had submitted the forged pay-in-slip for lifting the food grains and the petitioner had recommended the said pay-in-slip as Incharge Block Supply Officer and prima-facie it has been found that the petitioner had committed misconduct. For the said misconduct, show cause notice was issued and subsequently, '*Prapatra-K*' has also been constituted against the petitioner under the provision of CCA Rules, 2005 contained in Memo No.4355 dated 15.07.2014 (annexed as Annexure-2). The department of the deponent had taken a decision to initiate the departmental proceeding against the petitioner, the Joint Commissioner, Saran Division, Saran had been appointed as Conducting Officer of enquiry and the District Supply Officer, Siwan had been appointed as Presenting Officer. It has been further mentioned in the



pleading that in the ‘*Prapatra-K*’, there were two charges levelled against the petitioner, but the Enquiry Officer upon consideration of the reply and explanation of the petitioner as well as materials on record has reached on the finding that the charges levelled against the petitioner has not been proved. Thereafter, the Disciplinary Authority has issued second show cause contained in Letter No.1817 dated 14.03.2016 (annexed as Annexure-7) followed by the punishment order contained in Memo No.6433 dated 18.12.2017 (annexed as Annexure-9) which was subsequently, challenged before the Appellate Authority and the Appellate Authority has dismissed the appeal contained in Memo No.562 dated 03.02.2021 (annexed as Annexure-11) which has also been challenged by virtue of filing interlocutory application by the counsel for the petitioner.

6. It has been mentioned in the pleading further that in the present case, case of ***B.C. Chaturvedi Vs. Union Of India & Ors.*** reported in ***(1995) 6 SCC 749*** has been applicable in the present case in which it has been decided that:-

“the power of judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that



the conclusion which the authority reaches is necessarily correct in the eyes of the Court. The Court/Tribunal in its power of judicial review does not act as an Appellate Authority to reappreciate the evidence and to arrive at its own independent findings on the evidence.”

7. After hearing the counsel for the petitioner and going through the pleadings filed by the respondents, it transpires to this Court that Rule 18 of the CCA Rules, 2005 categorically states about the action on the Inquiry report. It has been specifically mentioned in Rule 18(2) of the CCA Rules, 2005 that:-

“The disciplinary authority, after receipt of the enquiry report as per Rule 17(23)(ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.”

Rule 18(3) of the CCA Rules, 2005 states that:-

“The disciplinary authority shall forward or cause to be forwarded a copy of the inquiry report, together with its own findings, if any,



as provided in sub-rule (2), to the government servant who may submit, if he or she so desires, his or her written representation or submission to the disciplinary authority within fifteen days.”

8. Upon perusal of Annexure-7 which is the second show cause, this Court is of the firm view that there is a gross violation made by the Disciplinary Authority of the procedure laid down under Rule 18(2) and 18(3) of the CCA Rules, 2005. Therefore, due to this reason, this Court is of the firm view that Annexure-7 which is letter No.1817 dated 14.03.2016 is not sustainable in the eye of law as there is no reason of the Disciplinary Authority of such dis-agreement on the findings of the Enquiry Officer and hence, the said letter No.1817 dated 14.03.2016 is hereby declared illegal and in gross violation of Rule 18(2) and 18(3) of the CCA Rules, 2005.

9. Accordingly, the order contained in Memo No.6433 dated 18.12.2017 (annexed as Annexure-9) and the order contained in Memo No.562 dated 03.02.2021 (annexed as Annexure-11) are hereby set aside with liberty to the respondents that they may proceed further in accordance with law.

10. Hence, with the aforesaid observations, the



present writ petition stands allowed.

11. It is made clear that the petitioner has retired and therefore, in the light of the present decision, there must be no disturbance in his pension if State decides not to proceed following the law.

(Dr. Anshuman, J)

Divyansh/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	05.07.2024
Transmission Date	NA

