

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.844 of 2023

Vinay Kumar son of Late Bhola Prasad Singh, resident of Olipur, P.O. Olipur,
P.S. Piparia, Lakhisarai, District - Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms, Government of Bihar, Patna.
2. The Divisional Commissioner, Munger.
3. The District Magistrate, Lakhisarai.
4. The Sub Divisional Magistrate, Lakhisarai.
5. The Circle Officer, District Lakhisarai.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sunil Kumar, Advocate

For the Respondent/s : Mr. Raj Kishore Roy, (GP 18)

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 28-11-2024

Heard Mr. Sunil Kumar, learned counsel appearing
on behalf of the petitioner and Mr. Raj Kishore Roy, learned GP
18 appearing on behalf of the State.

2. The petitioner in paragraph no. 1 of the present
writ petition has sought, *inter alia*, the following relief(s), which
is reproduced hereinafter:-

*“That, this is an application for
issuance of Writ/s, order/s, direction/s to the Respondents
to quash the Memo dated 01.05.2020 contained in Memo
No.172 issued under the signature of District Magistrate,
Lakhisarai by which the petitioner has been dismissed*



from the service in a Departmental proceeding initiated against him on the Charge Sheet submitted by Circle Office, Lakhisarai vide Letter No. 271 dated 20.06.2017 and further to quash the order dated 30.09.2022 by the learned Divisional Commissioner, Munger by which Service Appeal preferred by the petitioner against the order dated 01.05.2020 contained in Memo No. 172 has been rejected without considering and appreciating the facts and circumstances of the case and be further pleased to pay the salary and other consequential benefits to the petitioner from the date of dismissal with penal interest.

And/or

Pass such other order/ orders which may deem fit and proper.”

BRIEF FACTS

3. Brief facts of the case are that while the petitioner was posted as *Halka Karamchari* at Lakhisarai, a surprise visit was made by the District Magistrate and the Sub Divisional Magistrate, Lakhisarai, who found that the petitioner had illegally recommended to allow the Mutation Case no. 1872/16, 1873/16-17, 1874/16-17, 2093/16-17 and 2495/16-17 ignoring the facts that land in dispute are *Gair majarua* land. The petitioner had recommended for mutation to the Circle Officer without verifying the *Khatiyani*. It is also alleged that 127 applications for mutation of land, as well as, 177 applications for Land Possession Certificate were kept pending and were not disposed of within time as per the Bihar Land Mutation Act, 2011. The Sub Divisional Magistrate, for the alleged misconduct committed by the petitioner, vide letter no. 245 dated 11.05.2017, recommended for a disciplinary action



against the petitioner. The petitioner was served with the charge memo in 'Prapatra Ka' along with imputation of charges and evidences were also provided to him. Mrs. Shailja Sharma (I.A.S.) S.D.O., Lakhisarai was appointed as Conducting Officer and Sri Arun Kumar, Circle Officer, Lakhisarai, was appointed as Presenting Officer *vide* Letter No. 271 dated 20.06.2017 by the District Magistrate, for conducting the Departmental Proceeding against the petitioner. It appears from the enquiry report that sufficient time was granted to the petitioner on several dates and thereafter, the Disciplinary Authority, passed the order of penalty contained in Memo No.172 dated 01.05.2020, by which, the petitioner was dismissed from the service. Thereafter, against the order of penalty dated 01.05.2020 contained in Memo No. 172, the petitioner had preferred appeal *vide* Service Appeal No.35 of 2020 before the Appellate Authority (Divisional Commissioner, Munger), which was dismissed *vide* order dated 30.09.2022 without interfering with the order of penalty.

SUBMISSIONS ON BEHALF OF THE PARTIES

4. Learned counsel appearing on behalf of the petitioner submits that the basic requirement in conduct of Departmental Enquiry is to provide documents, inspite of the



fact that the petitioner, along with his show cause, has pleaded his innocence. In course of the enquiry, several adjournments were given by the Enquiry Officer and findings were given that all the four charges against the petitioner were established in a very mechanical manner. He further submits that as per the requirement of Rule 17 of the *Bihar Government Servants (Classification, Control & Appeal) Rules, 2005* (hereinafter referred to as the 'CCA Rules, 2005'), no opportunity of hearing was given to him nor he was provided second show cause along with the enquiry report in compliance of Rule 18(3) of CCA Rules, 2005 and as such, the entire disciplinary action against the petitioner and the order of penalty contained in Memo No.172 dated 01.05.2020 and Appellate order dated 30.09.2022 in Service Appeal No. 35 of 2020 are vitiated in the eye of law. He further submits that it is the requirement of Rule 18(3) of CCA Rules, 2005 to provide second show cause along with enquiry report to the petitioner and the same has not been given to the petitioner, which also calls for interference of this Court in light of law laid down in the case of ***Managing Director, ECL, Hyderabad and Ors. vs. B. Karunakar and Ors.*** reported in ***(1993) 4 SCC 727***.



5. Learned counsel further submits that the petitioner had preferred appeal before the Commissioner, Munger Division against the order of penalty, however, he admits that no statement has been made in the memo of appeal that the petitioner was denied second show cause and no enquiry report was provided to him, denying the proper opportunity of hearing and mandate of Article 311 of the Constitution of India.

6. *Per contra*, learned counsel appearing on behalf of the State submitted that the petitioner had appeared before the Enquiry Officer and in course of enquiry, he had not requested for any document. He was also given proper opportunity to defend his case and cross examine the witnesses. The counsel further submitted that there is no infirmity in conduct of enquiry and all the four charges against the petitioner were proved. The petitioner, for the first time, before this Court has alleged that the enquiry report was not provided to him. The Disciplinary Authority, passed a reasoned order dated 01.05.2020 contained in Memo No. 172 based on evidence having found all the charges proved. The petitioner preferred an appeal. Referring to the several paragraphs of the Memo Appeal filed by the petitioner, learned counsel further submitted that at



no point of time the petitioner has alleged that second show cause has not been provided to him nor he had demanded the same. He further made it clear that the reliance placed by the petitioner in the case of *Managing Director, ECL, Hyderabad (Supra)* is in different context. The delinquent, in the same case, specifically demanded an enquiry report and the same was denied to him and as such the said proposition of law is not applicable in the case of the petitioner.

ANALYSIS & CONCLUSION

7. Heard the parties.

8. Having considered the rival submissions made on behalf of the parties, as well as, from the perusal of records relating to the disciplinary proceeding of the petitioner, which was called for perusal by this Court vide order dated 17.04.2023 and subsequently, vide order dated 29.10.2024. On perusal of records, I don't find any reference with regard to the second show cause issued to the petitioner in accordance with Rule 18(3) of CCA Rules, 2005. I find that the records were present before the Disciplinary Authority, as well as, the Appellate Authority. In spite of sufficient opportunity given to the petitioner in course of enquiry by the Disciplinary Authority, the petitioner never demanded the copy of enquiry report and the



infirmity, which was ignored by the parties amount to waiver of right, even it is technical in nature. The petitioner in the writ petition has also not denied that he was not given any opportunity by the Disciplinary Authority to defend his case. It is only on the basis of the record, this Court found non-compliance of Rule 18(3) of CCA Rules, 2005.

9. In view of the above stated facts and circumstances, I find it apt to place reliance on the decisions of this Court in the case of ***Chairman, Life Insurance Corporation of India and Ors. Vs. A. Masilamani, (2013) 6 SCC 530***, as well as, in the case of ***State of Uttar Pradesh and Ors. Vs. Rajit Singh, 2022 SCC Online SC 341***, wherein it has been held that if the Hon'ble High Court found that the order of punishment, in breach of Natural Justice, have remanded back to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated. In case of ***A. Masilamani (supra)*** reliance is placed on paragraph no.15 and 16, wherein, it is observed and held as under:-

“15. It appears from the order passed by the Tribunal that the Tribunal also observed that the enquiry proceedings were against the principles of natural justice in as much as the documents mentioned in the charge sheet were not at all supplied to the delinquent officer. As per the allegation made in the FIR, the settled proposition of law, in a case where it is found that the enquiry is not conducted properly and/or the same is in



violation of the principles of natural justice, in that case, the Court cannot reinstate the employee as such and the matter is to be remanded to the Enquiry Officer/Disciplinary Authority to proceed further with the enquiry from the stage of violation of principles of natural justice is noticed and the enquiry has to be proceeded further after furnishing the necessary documents mentioned in the charge sheet, which are alleged to have not been given to the delinquent officer in the instant case. In the case of Chairman, Life Insurance Corporation of India v. A Masilamani, (2013) 6 SCC 530, which was also pressed into service on behalf of the appellants before the High Court, it is observed in paragraph 16 as under:-

16. It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide ECIL v. B. Karunakar [(1993) 4 SCC 727], Hiran Mayee Bhattacharyya v. S.M. School for Girls [(2002) 10 SCC 293], U.P. State Spg. Co. Ltd. v. R.S. Pandey [(2005) 8 SCC 264] and Union of India v. Y.S. Sadhu [(2008) 12 SCC 30]).”

10. I further find it apt to refer the case of ***The Inspector of Panchayats and District Collector, Salem v/s S. Arichandran & Ors., Civil Appeal No. 6776 of 2022***, wherein the apex court in para no. 2.3, 6.2, and 7 has held as under:-

“2.3 By the impugned judgment and order, the Division Bench of the High Court has dismissed the said appeal and has confirmed the judgment and order passed by the learned Single Judge to reinstate the respondent with full back wages. The impugned judgment and order passed by the Division Bench of the High Court is the subject matter of present appeal before this Court.



6.2 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and as the order of dismissal has been set aside on the ground that the same was in breach of principles of Natural Justice, the High Court ought to have remitted the case concerned to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated and to conclude the same after furnishing a copy of the Inquiry Report to the delinquent and to give opportunity to the delinquent to submit his comments on the Inquiry Officer's Report.

7. In view of the above and for the reasons stated above, present appeal succeeds in part. The impugned judgment(s) and order(s) passed by the Division Bench as well as learned Single Judge of the High Court ordering reinstatement with back wages are hereby quashed and set aside. The case concerned is remitted to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated and to conclude the same after furnishing a copy of the Inquiry Officer's Report and after giving an opportunity to the delinquent to submit his comments on the Inquiry Officer's Report. The aforesaid exercise be completed within a period of six months from today."

11. With the aforesaid direction/observation, the present writ petition stands disposed of and the order of penalty contained in Memo No. 172 dated 01.05.2020 is interfered to the above extent and the Appellate Authority having passed order dated 30.09.2022 in Service Appeal No. 35 of 2020, without giving the petitioner proper opportunity of hearing in respect of the imputation of the charges, which has been allegedly proved against the petitioner in violation of Rule 18 (3) of Bihar Government Servants (Classification, Control & Appeal) Rule, 2005, is hereby set-aside and quashed in the 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 749.

12 . Accordingly, I find it proper to set-aside the order passed by the Disciplinary Authority contained in Memo No. 172 dated 01.05.2020 to be in breach of principle of Natural Justice, is remitted back to the Disciplinary Authority to conduct the inquiry from the point it stood vitiated in view of the observation made hereinabove.

13. It is also made clear that the Disciplinary Authority must not be carried out by any observation made in Memo No. 172 dated 01.05.2020 and shall proceed with independent mind.

14. The writ petition stands disposed of.

15. There shall be no order as to cost.

(Purnendu Singh, J.)

Ashishsingh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.12.2024
Transmission Date	NA

