

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13653 of 2018

=====

Surendra Prasad Singh S/o Late Dhanush Dhari Sharma, Resident of Village-
Surdaspur, P.O.- Modanganj, District- Jahanabad, at present, C/o B.K.
Sharma, Kautilya Nagar, Behind Nalkoop Bhawan, Nalkoop Path, P.O.-
Shashtri Nagar, District- Patna, Pin- 800023.

... .. Petitioner/s

Versus

1. The State Of Bihar, through the Principal Secretary, Planning & Development Department, Government of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Planning and Development Department, Govt. of Bihar, Old Secretariat, Patna
3. The Director, Directorate of Economics and Statistics), Planning and Development Department, Govt. of Bihar, Old Secretariat, Patna.
4. The Joint Director, (Directorate of Economics and Statistics), Planning and Development Department, Govt. of Bihar, Old Secretariat, Patna.
5. The Additional Collector (Naxal), Patna-cum-Enquiry (Conducting) Officer, Patna.
6. The District Statistics Officer, Patna-cum-Presenting Officer.
7. The Additional Collector, Departmental Enquiry, Patna-cum-Enquiry (Conducting) Officer, Patna.
8. The Sub Divisional Magistrate, Sadar, Patna-cum-Presenting Officer.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Purushottam Kumar Jha
For the Respondent/s	:	Mr.Vinay Kriti Singh- Ga2

=====

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
Date : 22-01-2024

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

2. The learned counsel for the petitioner submits
that the present writ petition has been filed for quashing of
Memo of Charge, Prapatra- 'Ka' dated 23.05.2008 (Annexure-
3/1), 2nd show cause contained in Memo No.1419 dated



20.07.2016 (Annexure-34), order of punishment passed by the Disciplinary Authority contained in Memo No.2047 dated 15.09.2017 (Annexure-36), quashing the order contained in Memo No.1007 dated 11.05.2018 and also for consequential relief for reinstatement of petitioner in his service with all consequential benefits including full salary for the period of suspension.

3. Learned counsel for the petitioner submits that there are two charge memos followed by two enquiry reports have been issued against the petitioner and one another person, namely, Bishwanath Gupta. Against the second charge, Bishwanath Gupta has preferred writ petition before this Hon'ble Court and this Court in CWJC No.5974 of 2014 in which vide order dated 19.08.2014, the writ petition was allowed in his favour and in the light of the observation made the department has decided not to proceed against the petitioner also on the basis of the second enquiry report. Counsel further submits that the present writ petition has arisen on the basis of the results of the first charge memo followed by first enquiry report, followed by second show cause, punishment order and appellate order. Counsel for the petitioner puts emphasis on the charge memo and the enquiry report. He submits that in the first



enquiry report nothing was proved against him. Counsel also submits that the memorandum of charge is also not issued by the competent authority and as the petitioner was working on the Class-III post and the competent authority for charge memo is appointing authority who is Director for the petitioner, whereas charge memo has been issued by the Joint Director and, therefore, the said charge memo is itself bad-in-law and in violation of CCA Rules, 2005. Counsel further submits that the second show-cause issued by the Director is of unique type. The initial three lines indicates that charge has been proved; whereas the later part of the said letter contained in Memo No.224 dated 28.01.2016, it appears that the Director has issued point of disagreement. Counsel for the petitioner submits that the appointing authority himself not reached on any conclusion that whether charge has been proved or not and under dilemma he has passed the order of punishment which has been approved by the appellate authority. With this argument, counsel for the petitioner concludes his argument on the following points: (a) Charge memo has not been issued by the competent authority; (b) The enquiry Officer has not proved any charge against the petitioner. The second show-cause is defective one. First part states charge proved and second part states not proved,



therefore, the point of disagreement has been mentioned. He submits that when the basis of the allegation itself is bad-in-law, then any further process shall also be bad and vitiate the entire proceeding.

4. Learned counsel for the petitioner has placed reliance on the judgment of Hon'ble Supreme Court in the case of **Union of India Vs. B.V. Gopinath** reported in (2014) 1 SCC 351. The said judgment of **Union of India Vs. B.V. Gopinath** (Supra) has been approved by the Hon'ble Supreme Court in subsequent judgment passed in the case of **State of Tamil Nadu Rep. by Secretary to Government (Home) Vs. Pramod Kumar IPS & Anr.** reported in (2018) 17 SCC 677: (2019) 2 SCC (L& S) 127:2018 SCC Online SC.

5. Learned counsel for the State, on the other hand, submits that in the counter affidavit detail explanation has been made which starts from paragraph 19. He submits that the petitioner was apprehended by the Vigilance and ransom was recovered from the possession of the petitioner and FIR has been lodged. He also submits that the bribe money has been recovered from the pocket of the petitioner. Therefore, the action taken by the authority is absolutely in accordance with law and this petition be dismissed.



6. Upon going through the pleadings, it transpires to this Court that charge memo has been issued, on the basis of which action has been taken against the petitioner by Joint Director, who is not the appointing authority of the petitioner and, therefore, it is in violation of Rule 17(3) of the CCA Rules, 2005.

7. The another point which is absolutely lawful according to this Court is that in the enquiry report the enquiry officer has not reached on the conclusive finding that charge has been proved and he tried to prove the charge negatively, which is apparent from the statement of the conclusive portion of the enquiry report. In law negative proof is not permissible. Similarly, in the second show cause the mind of creator of the second show-cause is also not conclusive. In some part it has been mentioned that charge proved whereas in the other part the creator of the charge memo contains the point of disagreement. It is also not permissible in law. The fundamental principles of evidence law applicable in the service jurisprudence is very clear that he who alleged has to prove. Here in the present case, this Court finds that the authority himself not in a position to give conclusive finding that charge is proved or not proved which is apparent from the second show cause, and, therefore,



any action taken on the basis of second show cause which resulted into punishment order dated 15.09.2017 and appellate order 11.05.2018 passed by the Disciplinary Authority and the Appellate Authority respectively are not sustainable in the eye of law and, therefore, set aside. This Court orders that second show-cause is not in its conclusive form, therefore, it shall also go. This Court is also of the firm opinion that the charge memo has been issued in gross violation of Rule 17(3) and in the light of the judgments mentioned above in the case of **Union of India Vs. B. V. Gopinath** (Supra) and **State of Tamil Nadu Rep. by Secretary to Government (Home)**(supra), the charge memo shall also go.

8. Learned counsel for the petitioner submits which has been accepted by the counsel for the State that petitioner is not presently in service, therefore, it is directed to the State-respondents to provide all its benefits within four months from the date of receipt/production of a copy of this order.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.01.2024
Transmission Date	NA

