

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8801 of 2018

Prakash Kumar son of Late Sridama Prasad Srivastava resident of Dama Kutir, Katra Chowk, Bhagwan Bazar Chapra, P.O. Bhagwan Bazar, P.S. Bhagwan Bazar, District Saran at Chapra.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary-cum-Appellate Authority, Water Resources Department, Government of Bihar, Patna.
3. The Additional Secretary-cum-Director, Department of Land Acquisition and Rehabilitation, Government
4. The Director, Department of Land Acquisition and Rehabilitation, Government of Bihar, Patna.
5. The Conducting Officer-cum-Special Land Acquisition Officer, Sone Project, Aurangabad.
6. The Special Land Acquisition Officer, Gandak Project, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Anita Kumari, Adv.
For the Respondent/s	:	Mr. Vikash Kumar- SC11
		Mr. Piyush Kumar Pandey, AC to SC11

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 21-03-2025

Heard Learned Counsel for the petitioner and
Learned Counsel for the State.

2. Learned Counsel for the petitioner submits
that the present writ application has been filed with the
following reliefs:-

*(i) For issuance of an appropriate
writ in the nature of Certiorari for quashing the
order dated 27.06.2017 passed by the Respondent
no.3 and contained in his memo no.983 dated*



27.06.2017, whereby and where under the petitioner was dismissed from services in exercise of power under Rule-14 of the Bihar Government Servant (Classification Control and Appeal) Rules, 2005 (hereinafter Bihar CCA Rules, 2005).

(II) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the appellate order passed by the Respondent no.2 and issued by the Respondent no.3 vide his memo no.160 dated 02.02.2018, whereby and where under the Respondent no.2 has been pleased to reject the appeal filed by the petitioner against the order of Respondent no.3 issued under his memo no.983 dated 27.06.2017.

(III) For issuance of an appropriate writ in the nature of MANDAMUS commanding and directing the Respondent Authorities to reinstate the petitioner in service with all consequential benefits for which the writ petitioner would have been entitled had he not been illegally dismissed from his service including arrears of salary etc.

3. Counsel for the petitioner submits that the petitioner was appointed as a Chairman on 12.11.1981 and subsequently, he was promoted to the post of typist -cum- Clerk in the office of the Special Land Acquisition Officer, Gandak Project, Muzaffarpur. He further submits that the date of initial appointment is in the year 1981 and upto 14.06.2016, his service



record was unblemished. He further submits that the petitioner was given additional charge of cashier in the office of Special Land Acquisition Officer (respondent No.6). He further submits that vide Annexure-1, Letter dated 13.10.2015, a show cause notice was issued to the petitioner from the office of the Director, Department of Land Acquisition and Rehabilitation, Government of Bihar (respondent No.4). In response thereof, he has submitted his show cause. He further submits that Prapatra 'k' has been issued to him on 14.06.2016 in which there were in total 7 charges alleged, with specific allegation that due to his action/ inaction, loss of Rs.7,95,21,644/- has been occurred to the Government Exchequer.

4. Counsel further submits that the decision has been taken to conduct the departmental proceedings upon him vide letter dated 03.08.2016. He further submits that the petitioner has filed his reply before the Enquiry Officer on 16.08.2016 and the Enquiry Officer thereafter conducted the enquiry and submitted his report dated 13.04.2017 in which he found all charges proved against petitioner. Thereafter, the second show cause has been issued to the petitioner. The petitioner has responded against the second show cause, thereafter, final order has been passed by the Disciplinary



Authority. Vide office order dated 27.06.2017. He was dismissed from service vide order contained in Memo No.983 dated 27.06.2017.

5. Counsel further submits that the petitioner thereafter, preferred an appeal, the memo of appeal is attached as Annexure-P/18 and the Appellate Authority has passed final order rejecting the appeal vide order contained in Memo No.160 dated 02.02.2018. He further submits that thereafter, he has filed the present writ petition challenging the original order, appellate order as well as enquiry report.

6. Counsel further submits that counter-affidavit has been filed and in the counter-affidavit, it has been alleged that prior to institution of the disciplinary proceeding, an enquiry was conducted by 3-Men Committee and submitted its report on 18.05.2015, in which the petitioner has been found involved in the said wrong. Thereafter, proceeding has been initiated in which he has been punished. He further submits that the enquiry report, prior to initiation of the proceeding, has been submitted about which the State has acknowledged in its counter-affidavit vide Annexure-13 attached to the rejoinder to the counter-affidavit.

7. Counsel further submits that 3-Men



Committee after enquiry has submitted its report. In the said report, it has been found that there are in total 14 persons were held responsible including the then Special Land Acquisition Officer, Muzaffarpur. He further submits that the enquiry report has been typed, but in the last, two line has been inserted manually indicating that the then Accountant i.e., petitioner is involved in entire matter though he has helped a lot in enquiry. He further submits that after framing of charge memo, the matter was placed before the Enquiry Authority, who has submitted the enquiry report in which all 7 charges were found proved against the present petitioner which is Annexure-P/7.

8. Counsel further submits that in the said enquiry report, the earlier enquiry dated 18.05.2015 has nowhere discussed or it was placed before the Enquiry Authority appointed after charge. He further submits that the enquiry report is absolutely defective and the enquiry has not been conducted in consonance with Rule 17 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as “ CCA Rules, 2005”). He further submits that the second show cause has also been issued to the petitioner which is in gross violation of Rule 18 of the CCA Rules, 2005. He further submits that the final order is of



27.06.2017 in which only one line reasoning has been mentioned that the petitioner has accepted his involvement in making payment wrongly, which is not correct finding. Counsel further submits that vide Annexure-P/9, the petitioner has submitted reply to the second show cause. The left hand side of the reply indicates the allegation and contents of memo of charge whereas right hand side indicates the answer/defence of the petitioner.

9. Counsel further submits that Disciplinary Authority has passed order that the petitioner has accepted his involvement in the said work whereas in reply of the second show cause, the petitioner has categorically stated that in the said wrong, there is no involvement of the petitioner. He further submits that about disagreement on his involvement, the petitioner has categorically stated 7 times in the reply to 2nd show cause.

10. Counsel further submits that in this view of the matter, the said order has been passed in gross violation of rules laid down under CCA Rules, 2005, where the Disciplinary Authority has to reach on its own conclusion which is lacking in the present case.

11. Counsel further submits that against the order



passed by the Disciplinary Authority, the petitioner has preferred appeal. The appellate order has also been passed in cryptic manner, where none of the points raised by the petitioner at all nor any reason has been assigned, as to why the Appellate Authority, the points taken in the Disciplinary Authority has not been considered by the Appellate Authority.

12. Learned Counsel thereafter concludes his argument submitting that the Enquiry Report submitted after framing of charge are lacking with the procedure laid down under Rule 17 of the CCA Rules, 2005. The order passed by the Disciplinary Authority is lacking, the applicability of Rule 18 of the CCA Rules, 2005. The Appellate Authority has also not been passed order being an Appellate Authority, where he has to consider all the aspect of the matter in detail. Therefore, he submits that the present Disciplinary Authority has passed order without application of judicial mind and in gross violation of procedure established, and hence, fit to be set aside. He submits that the enquiry report, the order passed by the Disciplinary Authority and the Appellate Authority, all are not sustainable in the eyes of law.

13. Counsel for the State on the other hand submits that the writ petition is fit to be dismissed as prior to



framing of charge, enquiry has been conducted whose report has been submitted dated 18.08.2015, followed by the framing of charge. He submits that the Enquiry Officer has granted full opportunity to the petitioner to defend him. The Enquiry Authority appointed after framing of charge has found all charges proved against the petitioner. Thereafter, the second show cause has been issued to him. He further submits that the petitioner filed his reply to the second show cause and upon considering both, final order has been passed by the Disciplinary Authority which has been duly approved by the Appellate Authority. Therefore, according to him, it is neither case of violation of natural justice nor the case of violation of any procedure nor case of exorbitant punishment.

14. After hearing arguments and upon going through the documents as well as the pleadings, it transpires that a preliminary enquiry has been conducted 3-Men Committee which has admitted from both the parties. The respondent relied on the said report by way of specific pleading in different paragraphs of the counter-affidavit. On the same preliminary enquiry, the petitioner is also relying i.e., dated 18.08.2015 which is Annexure-13 of the present writ petition.

15. Upon perusal of the said preliminary enquiry



report, it transpires to this Court that the 3-Men Committee has found 14 named persons involved in the said wrongs whose name has been duly printed in internal page 12 of the counter-affidavit. It also transpires to this Court that name of total 14 persons has been figured, but there is no name of present petitioner. But subsequently, in the last 2 lines, statement has been added by pen that the then Accountant, namely, Prakash Kumar (petitioner) is also involved in the said wrong though he has provided his help in enquiry. It also transpires to this Court that the said enquiry report dated 18.08.2015 has nowhere acknowledged by the Enquiry Officer appointed after framing of charge. In crux of the matter, the specific allegation is that the petitioner has prepared cheque amount for making payment to the land owner fraudulently. The petitioner is a Clerk and he is in role of accountant as such he had prepared the cheque. Under the Land Acquisition Act, it is not the Accountant/Clerk who is responsible for preparation of award. They are responsible for preparation of cheque, but the person responsible for preparation of award, is the Special Land Acquisition Officer. Without order passed in the record and without preparation of award duly signed by the Land Acquisition Officer/Special Land Acquisition Officer, the payment is not possible. On this aspect



of the matter, the Enquiry Officer has completely kept mum in his enquiry report.

16. Counsel for the State in response requests to this Court to call for the entire record of the disciplinary proceeding. As such, this Court is not inclined to go through the entire proceeding rather wants to confine only the enquiry and material which has been placed before this Court by the parties. It transpires to this Court that finding of the Enquiry Officer after framing of charge, is not in consonance with the finding of the preliminary enquiry based on the report of 3-Men Committee, but in the counter-affidavit, the State relied on the report of 3-Men Committee dated 18.08.2015. There is gross violation of application of proceedings laid down under Rules 13 and 18 of the CCA Rules, 2005, and therefore, the said order shall not sustainable in the eye of law. Enquiry report is also lacking of the processes which are being mentioned in Rule 17 of the CCA Rules, 2005, and therefore, the enquiry report prepared after framing of charge (prapatra 'k') (annexure-3), the order passed by the Disciplinary Authority i.e., *order dated 27.06.2017* contained in his memo no.983 passed by the Respondent no.3 and Appellate Authority vide his memo no.160 dated 02.02.2018 issued by the Respondent no.2 are hereby set



aside.

17. Liberty is hereby granted to the State to proceed against the petitioner on the basis of charge memo afresh in accordance with law within the specified period of 90 days from the date of production of the order.

18. With the aforesaid observations and directions, the present writ application stands allowed.

(Dr. Anshuman, J.)

Prakashmani/-

AFR/NAFR	N/A
CAV DATE	N/A
Uploading Date	28.03.2025.
Transmission Date	N/A

