

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22439 of 2019

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Pinki Kumari W/o Pritam Kumar, Resident of - Chota Govindpur, P.S. - Chota Govindpur, Dist.East Singhbhum, Jharkhand.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
3. The Director, Social Welfare Department, Government of Bihar, Patna.
4. The Joint Secretary, Social Welfare Department, Government of Bihar, Patna.
5. The District Magistrate, Banka.
6. The District Magistrate, East Champaran.
7. The District Programme Officer, I.C.D.S., Banka.
8. The District Programme Officer, I.C.D.S., East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Gyan Shankar, Adv.
For the Respondent/s : Mr.Md. Obaidullah, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 25-06-2025

Heard Mr. Gyan Shankar, learned Advocate for the petitioner and Mr. Md. Obaidullah, learned Advocate for the State.

2. By filing the present writ petition, the challenge is made to an order contained in memo no. 524 dated 24.01.2018 passed under the signature of the Joint Secretary, Social Welfare Department, Bihar whereby the petitioner has been inflicted with the punishment of stoppage of four increment of salary with cumulative effect as also recovery of Rs. 2,48,517/- from



the salary of the petitioner. It is further directed that for suspension period, except subsistence allowance, the petitioner shall not be entitled to any benefit.

3. Before proceeding in the matter a preliminary objection has been raised on behalf of the counsel for the State that the petitioner has alternative efficacious remedy under Rule 28 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 hereinafter referred to as Rules, 2005. However, the petitioner instead of availing that remedy, has approached this Court.

4. In response to the aforesaid contention learned Advocate for the petitioner submits that since the order impugned is in disregard to the principles of natural justice, hence the present writ application may be entertained and effective order can be passed. On this premise, this Court proceeded to hear the matter.

5. The short facts which led to the filing of the present writ petition is that while the petitioner was working as a Child Development Project Officer, Rajoun, Banka, a complaint was made at the behest of local MLA with respect to certain irregularities in relation to repairing work of a Government vehicle and defalcation of Government money. Based upon such



complaint, the petitioner was placed under suspension in contemplation of a departmental proceeding under Rule 9 (1) (क) of Rules, 2005 vide Annexure 6 to the writ petition dated 22.12.2014. A memo of charge was duly served upon the petitioner with an imputation that an amount of Rs. 2,48,517/- has been defalcated on the basis of false bills against repairing and oil expenses, whereas the second charge was relating to dereliction in duty primarily, based upon first charge. The copy of memo of charge is placed as Annexure 7 to the writ petition. The Joint Secretary, Social Welfare Department was appointed as Enquiry Officer whereas the District Programme Officer, Lakhisarai was made Presenting Officer.

6. On direction, the petitioner submitted her appearance before the Enquiry Officer and filed her comprehensive show cause reply annexing all the documents in support of her defence. While the disciplinary proceeding was going on, the petitioner had further been served with a supplementary memo of charge with an imputation that the petitioner has not handed over the charge of official vehicle and mobile within time, besides the charge of tampering with the documents. The petitioner effectively responded to the supplementary charges too by filing a detailed reply, the copy of



which is marked as Annexure 10 to the writ petition. The enquiry was concluded and the Enquiry Officer has returned the finding, whereas the two charges contained in the first memo of charge stood proved.

7. So far as the supplementary memo of charge is concerned, out of three charges, two of them have been partially proved and with respect to charge no. 3, the petitioner has been exonerated. On receipt of the enquiry report, the petitioner was served with the second show cause notice, which was duly responded by the petitioner; however, the same did not find favour and the impugned order as contained in memo no. 524 dated 24.01.2018 came to be passed, which is under challenge.

8. Learned Advocate for the petitioner taking this Court through the memo of charge and the enquiry report has submitted that the Enquiry Officer has proceeded beyond the imputation as levelled in the memo of charge and gave finding on the charges, which was not even the imputation and part of the memo of charge.

9. It is further contended that the detailed explanation of the petitioner, wherein she has narrated all the facts of her innocence, but the same had not at all considered and in fact, the entire finding of the Enquiry Officer is based on no evidence.



Entire effort has been made to demonstrate that the Enquiry Officer has failed to consider the written defence of the petitioner. It is also the contention of the petitioner that Rule 17, which deals with the procedure for imposing major punishment, clearly prescribed that the charges were definite and distinct and the finding of the Enquiry Officer must be confined to the charges, however the same has not been done.

10. Referring to the reply to the second show cause, it is further contended that an exhaustive reply has been submitted before the Disciplinary Authority pointing all the defects in the enquiry. But, the Disciplinary Officer failed to deliberate and discuss any of the grounds taken by the petitioner, and for this reason alone the impugned order is said to be a non-speaking and cryptic order, hence in complete violation of the principles of natural justice.

11. On the other hand, Mr. Md. Obaidullah, learned Advocate for the State dispelling the aforementioned contention has submitted that there is no infirmity in the enquiry conducted by the Enquiry Officer, as all the defence of the petitioner was considered and only thereupon finding of guilt has been returned, based upon which the impugned order of punishment came to be passed.



12. Referring to the impugned order dated 24.01.2018 he further contended that the Disciplinary Authority has considered the enquiry report, which clearly speaks that all the charges levelled in first memo of charge, stood proved. So far the supplementary charges are concerned, out of three charges, two of them partially proved; and with respect to one, the petitioner exonerated. The punishment inflicted upon the petitioner is proportionate to the charges proved; hence no interference is required, is the submission of learned Advocate for the State.

13. This Court having considered the submissions set forth by the learned Advocates for the respective parties, *prima facie*, finds that the impugned order inflicting the punishment, which is obviously a major punishment, is wholly non speaking and cryptic without there being any deliberation and discussion to the reply filed by the petitioner in response to the second show cause notice.

14. It need not to be emphasized that the second show cause notice is crucial in disciplinary proceeding because it ensures the principles of natural justice are upheld, specifically by allowing the affected employee an opportunity to respond to the disciplinary authorities of proposed punishment.



Undoubtedly, the second show cause notice prevents the disciplinary authority from acting arbitrarily and ensures the employees not punished based on undisclosed or unexplained reasons. The Hon'ble Supreme Court summarized in essence, the second show cause notice is a safeguard to protect the employees' rights and ensure fairness in the disciplinary proceeding. Non consideration to the reply to the second show cause notice would nothing but a futile exercise and in complete disregard to the principles of natural justice violating the Article 311(2) of the Constitution of India.

15. The Court time and again reminded that the order having punitive in nature should be passed only after following the principles of natural justice. It cannot mean only fulfillment of the formality for giving of a show cause notice and acceptance of a reply. The final order must display complete application of mind to the grounds mentioned in the show cause notice, the defence taken in reply, followed by at least a brief analysis of the defence supported by reasons why it was not acceptable. To hold that the cause shown can be cursorily rejected in one line by saying that it was not satisfactory or acceptable, in the opinion of the learned Division Bench of this Court in the case of ***Kems Services Private Ltd. vs. The State***



of Bihar & Ors [(2014) 1 PLJR 622] held to be vesting completely arbitrary and uncanalised powers in the authority. The Court observed that in a given situation, the authority concerned finds the cause shown to be difficult to deal and reject, it shall be very convenient for him not to discuss the matter and reject it by simply stating that it was not acceptable. The giving of reasons in such a situation is an absolute imperative and a facet of natural justice.

16. Importance of giving reasons even in administrative or quasi judicial proceeding has been underscore by the Apex Court in *M/S Kranti Associates Pvt. Ltd. & Anr vs Masood Ahmed Khan & Ors [(2010) 9 SCC 496]*, wherein the Court while summarizing the discussion has inter alia held that a quasi judicial authority must record reasons in support of its conclusions; insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well. In fact, recording of reasons operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power. It is the reasons which facilitate the process of judicial review by superior Courts.

17. In the light of the afore noted settled legal



position, now coming to the impugned order, this Court has no hesitation to hold that the impugned order is wholly non speaking, cryptic and without any reason. Before setting aside the impugned order, this Court also finds that the same is further bad in law for the simple reason that the salary of the petitioner for the suspension period has been forfeited and the petitioner has been allowed only subsistence allowance for the period of suspension without there being any separate show cause notice before passing the said order. It is well settled that the salary for the suspension period cannot be withheld without issuance of separate show cause notice in this regard. Reference may be taken to a decision rendered by the learned Division Bench of this Court in ***Shri Mahabir Prasad vs. The State of Bihar & Ors. [1988 PLJR 82]***. It would also be worth benefiting here to refer a decision in ***Dinesh Prasad vs. State of Bihar & Ors. [2006(4) PLJR 541]***, where the learned Division Bench, while interpreting rule 97(1) and 3 noticed as follows:

“9. Apart from these questions, so far the main question for which this matter has been referred, is concerned, it appears that for imposing the punishment no. (iii) that the petitioner shall not get anything for the period of suspension save and except the subsistence allowance, the disciplinary authority was required to give separate show cause notice to the delinquent in terms of



Rule 97(3) of the Code. This part of the order, therefore, is not permissible in absence of any such notice to the delinquent employee.”

18. In view of the discussions made hereinabove, this Court, *prima facie*, is of the view that the impugned order as contained in Memo No. 524 dated 24.01.2018 is in complete disregard to the principles of natural justice and thus wholly unsustainable and untenable in the eyes of law. Accordingly, the same stands set aside. The matter is relegated to the Disciplinary Authority to proceed further in accordance with law, after giving proper opportunity of hearing to the petitioner.

19. The writ petition stands allowed to the extent indicated hereinabove.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	01.07.2025
Transmission Date	

