

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7563 of 2018

Ravindra Nath Chaubey S/o Sh. Raghubansh Chaubey, R/o Tilak Nagar Katira, Near VKS university, PO Nawada, P.S. Nawada, Arrah, Bihar.

... ... Petitioner/s
Versus

1. The State Of Bihar
2. Principal Secretary, General Administration Department, Government of Bihar old Secretariat, Patna-
3. The Member Board of Revenue, Main Secretariat, Patna- 800015 Bihar.

... ... Respondent/s

Appearance :

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| For the Petitioner/s | : | Mr. Chitranjan Sinha, Sr. Advocate Mr. Ashutosh Nath, Advocate Mr. Amritanshu Dangi, Advocate Mr. Md. Aatif Iqbal, Advocate |
| For the Respondent/s | : | Mr. Sheo Shankar Prasad (SC-8) |

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 31-01-2025

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

2. The present writ petition has been filed for quashing the order contained in Memo No.5628 dated 25.04.2014 issued by the General Administration Department, Government of Bihar (annexed as Annexure-P/12) by which the petitioner has been dismissed from service and further to set aside the order dated 06.11.2014 in Service Appeal Case No.26 of 2014 passed by the Member Board of Revenue, Patna, Bihar (annexed as Annexure-P/13) by which the petitioner's appeal



has also been dismissed.

3. Learned Senior Counsel for the petitioner submits that the petitioner was appointed as Secretariat Assistant at Patna in the Department of Labor. The Government of Bihar was subsequently, transferred him in Bihar Home Guards Headquarter, Patna and thereafter, petitioner was trapped by the raid party of the Vigilance Department, while taking bribe of Rs.1,000/- from a cook of Bihar Home Guards, Gaya on 13.09.2007 and on the basis of said allegation, charge memo (*Prapatra-K*) was framed and served upon the petitioner *vide* Memo No.708 dated 04.02.2008. Senior Counsel submits that reply was demanded from the petitioner and petitioner has submitted his reply which was denied and departmental proceeding has been initiated *vide* Letter No.3816 dated 29.07.2009. Senior Counsel further submits that petitioner appeared in the departmental proceeding and submitted his defence and ultimately after hearing the parties, Enquiry Officer submitted his enquiry report on 26.09.2011 declining to express opinion on the charges in view of the pendency of the criminal proceeding. The Departmental Authority, however, did not accept the report and *vide* order dated 18.10.2011, remitted the matter back to the Enquiry Officer to submit enquiry report in



accordance with law.

4. Learned Senior Counsel for the petitioner further submits that petitioner again appeared in the departmental proceeding reiterated his defence, denying the charges and ultimately, second enquiry report was submitted on 08.05.2012 expressing agreement with the opinion of the earlier Enquiry Officer and refusing to record any findings upon the charges levelled against the petitioner. Senior Counsel submits that the Disciplinary Authority again however, did not accept the second enquiry report also and *vide* order dated 02.07.2012, directed the Enquiry Officer to submit a fresh report on the charges levelled against the petitioner. Senior Counsel further submits that the Enquiry Officer again recorded the findings and except the factum of lodging the criminal case against the petitioner, there was no other charge and it was not proper to express opinion on the said charge as it would affect the judicial proceedings. Senior Counsel submits that even after repeated opinions of the Enquiry Officer, the Disciplinary Authority/Department decided to initiate a new departmental proceeding against the petitioner *vide* Memo No.12184 dated 31.08.2012 by which, fresh charge-sheet was issued to the petitioner directed him to submit a show-cause, and thereafter, petitioner has again submitted his show-



cause. Senior Counsel further submits that actually no further proceedings in-fact was ever conducted by the Enquiry Officer as no evidence was taken and no witnesses were examined and neither the Enquiry Officer granted any opportunity to the petitioner of rebuttal and subsequently, an enquiry report was submitted on 26.02.2014 with finding that charges alleged in *Prapatra-K* has been established against the petitioner.

5. Learned Senior Counsel for the petitioner further submits that from the enquiry report, it shall transpire that findings of the Enquiry Officer is not based on any evidence and petitioner was demanded second show-cause, which petitioner has submitted, but rejecting his second show-cause, the order of punishment has been passed imposing dismissal from service to him. Thereafter, petitioner filed his Service Appeal Case No.26 of 2014, but his appeal has also been dismissed on 06.11.2014. Senior Counsel submits that the final order is annexed as Annexure-P/12 of the writ petition in which it has been acknowledged that petitioner has submitted his application prior to punishment i.e. on 10.04.2014 and one line statement has been made in the said order that the application dated 10.04.2014 has been considered and neither any new fact nor any evidence has been found on which earlier consideration has



not been made. Thereafter, final order has been passed. Senior Counsel submits that such type of observation in the final order is basically a gross violation of Rule 18(3) and 18(4) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'CCA Rules, 2005'). Senior Counsel submits that it is categorically stated that the Disciplinary Authority shall consider the representation or submissions if any. But, here in the said order, there is neither any consideration nor any submissions have been recorded. And therefore, according to him, he submits that the said final order is absolutely passed in gross violation of the rules laid down under CCA Rules, 2005. Senior Counsel further submits that there are series of discrepancies in the said disciplinary proceeding about which he has already mentioned in the writ petition, but with a view to setting aside the said order, he is putting emphasis at present only on the final order contained in Memo No.5628 dated 25.04.2014.

6. Learned Senior Counsel for the petitioner further submits that the appellate order is annexed as Annexure-P/13 of the writ petition by which it is very much clear that the Appellate Authority has not considered the petitioner's case at all and merely in one line, petitioner's service appeal has been



dismissed, whereas, the appeal is basically a re-consideration of the entire case which is lacking in the order of appeal also. Therefore, Senior Counsel conclusively submits that it is the reasons mentioned above, the Original order as well as the Appellate order, both are not sustainable in the eye of law and fit to be set aside.

7. Learned Counsel for the State on the other hand vehemently opposes the arguments made by Learned Senior Counsel for the petitioner and submits that the said disciplinary proceeding has been conducted completely in accordance with law. Counsel submits that it is well within the domain of the Disciplinary Authority to accept the enquiry report and direct for further enquiry. Counsel further submits it is nowhere written that the Disciplinary Authority shall agree on the enquiry report and accept how many times. He submits that it is within the domain of the Disciplinary Authority that he may differ from the enquiry report as many times as he wants. But, for that he has only to assign reasons in compliance of the CCA Rules, 2005. Counsel further submits that the second show-cause has rightly been issued and the contention of Rule 18 of the CCA Rules, 2005 is the consideration which has been made according to him. And therefore, he submits that the punishment



order as well as the Appellate order, both are sustainable in the eye of law and there is no need of any interference in this matter and this writ petition is fit to be dismissed.

8. In the light of the submissions made by the parties, this Court finds that Government servant has been protected under the Constitution of India and CCA Rules, 2005 has been framed taking its power from Article 309 of the Constitution of India and it is basically a subordinate legislation which has to be conducted by a Quasi Judicial Authority and he has to follow the basic principles of law. Particularly under Rule 18 of the CCA Rules, 2005, it is indicated there that what action to be taken on the enquiry report by the Disciplinary Authority. It transpires to this Court that it is necessary to quote Rule 18(3) and 18(4) of the CCA Rules, 2005 which states as under:-

“(3). 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.

(4). The disciplinary authority shall



consider the representation or submission, if any, submitted by the Government Servant before proceeding further in the manner specified in sub rules (5) and (6)."

Here in the present case, two line statement has been made by the Disciplinary Authority *vide* order dated 25.04.2014 which states as follows:-

“श्री चौबे द्वारा अपना अभ्यावेदन दिनांक 10.04.14 समर्पित किया गया।

श्री चौबे के अभ्यावेदन दिनांक 10.04.14 की समीक्षा की गयी एवं इसमें कोई ऐसा नया तथ्य अथवा साक्ष्य नहीं पाया गया जिसपर पूर्व में विचार नहीं किया गया हो।”

9. The aforesaid observation of the Disciplinary Authority in view of the Court is absolute violation of Rule 18(3) and 18(4) of the CCA Rules, 2005 and hence, this Court is of the firm view that punishment order i.e. order contained in Memo No.5628 dated 25.04.2014 (annexed as Annexure-P/12) and appellate order i.e. order dated 06.11.2014 in Service Appeal Case No.26 of 2014 (annexed as Annexure-P/13) are passed in complete violation of CCA Rules, 2005 and therefore, these orders i.e. Original order as well as Appellate order are hereby set aside.



10. It is directed to the Disciplinary Authority to pass a fresh order with regard to the petitioner within 90 days starts from enquiry report. In the meantime, petitioner is directed to join his service and shall be entitled for benefits as mentioned in the CCA Rules, 2005. Petitioner shall be at liberty to file his representation before the concerned authority for the benefits which are mentioned for such type of situations under CCA Rules, 2005.

11. Accordingly, with the aforesaid observation and direction, this writ petition is hereby allowed.

(Dr. Anshuman, J)

Divyansh/-

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