

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
Civil Writ Jurisdiction Case No.12588 of 2019**

Suresh Prasad, aged about 63 years, Gender – Male, Son of Late Satya Narayan Prasad, Resident of Village- Savali, P.S. Baikunthpur, District-Gopalganj.

... .. **Petitioner**

Versus

1. The State of Bihar through its Principal Secretary, Co- operative Department, Government of Bihar, Patna.
2. The Special Secretary, Co- operative Department, Government of Bihar, Patna.
3. The Joint Secretary, Department of Co-operative, Government of Bihar, Patna.
4. The Deputy Secretary cum Chief Vigilance Officer, Co-operative Department, Government of Bihar, Patna.
5. The Joint Registrar (Marketing) Co-operative Society, Bihar, Patna.
6. The Joint Registrar, Co-operative Society, Patna Division, Patna.

... .. **Respondents**

Appearance :

For the Petitioner/s : Mr.Akhilesh Dutta Verma, Advocate
For the Respondent/s : Mr.Uday Shankar Saran Singh (GP-19)

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
C.A.V. JUDGMENT**

Date : 25-06-2021

This application was initially filed for the following reliefs:

“(i) For issuance of an order, direction or writ including writ in the nature of mandamus commanding the respondents to make payment of entire salary with consequential benefits from 01.10.2008.

(ii) For issuance of an order, direction including writ in the nature of mandamus commanding the respondents to make payment of monthly pension regularly month to month on the 1st of every month.

(iii) For issuance of an order, direction or writ including writ in the nature of mandamus



commanding the respondents to payment of gratuity with interest from the date it was due i.e. 31.08.2016 till the date of payment is made.

(iv) For issuance of an order, direction or writ in the nature of mandamus commanding the respondents to make payment of leave encashment with interest at the market rate from the date it was due till the date payment would be made.

(v) For issuance of an order, direction or writ in the nature of mandamus commanding the respondents to make payment of provident fund with interest at the market rate from the date it was due till the date payment would be made.

(vi) For issuance of an order, direction or writ in the nature of mandamus commanding the respondents to make payment of Group Insurance with interest at the market rate from the date it was due till the date payment would be made.

(vii) For issuance of an appropriate declaration holding that the petitioner was entitled for grant of pension, gratuity, leave encashment amount immediately after quashing the order of major punishment passed in C.W.J.C. No. 19280 of 2015 dated 10.04.2018.

(viii) For issuance of an appropriate declaration holding that the petitioner is entitled for payment of interest as the delay has been caused due to the indifferent attitude of the respondents.

(ix) For any other relief/reliefs to which petitioner may be found entitled in the facts and circumstances of the present case.”

2. On 25.06.2019 when the writ application was taken up for consideration, the respondents were directed to file



their counter affidavit. On 09.01.2020, a learned Bench of this Court directed the respondents to file an affidavit explaining as to whether the pension of the petitioner has been fixed on the basis of his last pay scale on the date of superannuation. In fact, the court directed the authorities to ensure that the payment is made to the petitioner in the correct scale to which he was entitled. The court also observed that under the normal circumstances the pension is relatable to the last pay drawn on the date of superannuation.

3. As the hearing in the matter progressed, on 03.07.2020 learned A.C. to learned G.P. 19 informed this court that final order has been passed in the disciplinary proceeding and he undertook to file a supplementary affidavit in this regard. At this stage, the petitioner filed his fourth supplementary affidavit in which it was disclosed that the respondent authorities had issued memo no. 2832 dated 10.08.2020 (Annexure '11' to the supplementary affidavit) whereby the following punishments were imposed:-

- (i) From the date of issuance of notification 100% pension of the petitioner has been permanently stopped;
- (ii) The 10% of the withheld pension and gratuity



shall not be paid;

(iii) For the suspension period except the subsistence allowance no other benefit would be paid;

(iv) Since the petitioner has retired on 31.08.2016, his suspension is revoked with effect from the said date.

4. The petitioner, thereafter filed Interlocutory Application No. 01 of 2020 with a prayer to amend the writ application to challenge the memo no. 2832 dated 10.08.2020 (Annexure '12' to the I.A. No. 01/2020) by which major punishments were inflicted upon the petitioner.

5. The petitioner also prayed for a direction to pay the arrears of salary to the petitioner from 30.09.2008 till the date of his retirement i.e. 31.08.2016 in different level and lastly at level 11 as per pay scale matrix (Annexure '8' to the writ application) and also to fix the pension of the petitioner on the basis of his salary as applicable on the date of his retirement with full consequential benefits. He further prayed for payment of all the retiral dues such as arrears of pension, leave encashment, gratuity etc. on the basis of his salary applicable on the date of retirement.

6. On 05.10.2020, Interlocutory Application No. 01 of 2020 was taken up for consideration and the same was



allowed. The State respondents were given further time to file additional counter affidavit. Thereafter, the State respondents filed their supplementary counter affidavit dated 05.11.2019 and again on 10.03.2020. After completion of pleadings the writ application has been heard through virtual mode and the judgment was reserved. Since certain documents such as the Prapatra 'ka' and the enquiry report which are available with the records of C.W.J.C. No. 19280 of 2015 but are not available with this record, this Court requisitioned the records of Writ Petition No. 19280 of 2015.

Brief facts of the case

7. Petitioner happens to be an employee of Bihar Cooperative Service. In the year 2007 when he was serving as District Cooperative Officer cum Assistant Registrar, Cooperative Societies, East Champaran at Motihari, he was served with a charge-sheet. In respect of the charges contained in the charge-sheet dated 08.11.2007 the inquiry was held and it is the case of the petitioner that the inquiry officer exonerated the petitioner from charge no. 1 and 2 and other five charges. The disciplinary authority, however, directed the inquiry officer to review his finding relating to charge no. 1 & 2 and once again the inquiry officer categorically held that charge no. 1 & 2 were



not proved. The disciplinary authority, however, gave a notice of disagreement with respect to charge no. 1, 2, 5, 6 & 7 to which the petitioner had submitted his reply dated 24.07.2013. During pendency of this first proceeding, on 29.04.2009, another departmental proceeding vide memo no. 1101 dated 29.04.2009 was initiated on the basis of the letter of the S.P. Vigilance relating to a Vigilance Case of trap with a sum of Rs. 11,000/-.

8. On the complaint of one Sri Ram Rekha Prasad, the vigilance had led the trap and arrested the petitioner on 30.09.2008 alleging recovery of tainted G.C. Notes of Rs. 11,000/- from the left pocket of the shirt of the petitioner. Vigilance P.S. Case No. 75/2008 was lodged on 01.10.2008 under Section 7, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act (hereinafter referred to as the “PC Act”). The trial is still pending in the said case being Special Case No. 54/2008 in the court of learned Special Judge, Vigilance (Trap), Patna.

9. It is alleged that the petitioner had demanded a sum of Rs. 11,000/- to the said Sri Ram Rekha Prasad for nominating him on the post of Chairman, Barharwa Kala East Primary Agricultural Cooperative Society Limited (PACS) under Block Harsidhi, East Champaran. It is the case of the



petitioner that the departmental proceeding against him was not conducted in accordance with Rule 17 of the Bihar Government Service (Classification, Control and Appeal) Rules, 2005 (hereafter referred to as the “Service Rules”). The Inquiry Officer acted merely on the basis of the copy of the police report and the petitioner’s show cause. He came to a conclusion that for the present it was true that petitioner was caught while accepting bribe but recorded that the final opinion would depend upon the outcome of the criminal case.

First and Second enquiry dealt together

10. The petitioner raised a grievance that the procedures required to be followed under the Service Rules were not followed. Neither the list of documents and witnesses were given to him nor any witness was examined. Even the documents sought to be made available by the petitioner were not made available to him. No opportunity of filing of written arguments/defence were given at the end of the departmental inquiry and no hearing was provided to the petitioner. The disciplinary authority had amalgamated *suo motu* the charges of the first departmental proceeding as well as the charges of the subsequent departmental proceeding and on 07.10.2013 issued second show cause notice disagreeing with the report of the



Inquiry Officer relating to earlier charges no. 1, 2, 5, 6 & 7 and also with regard to the present charge.

Termination from Service

11. The petitioner submitted his second show cause on 17.01.2014. It is however his grievance that the then Principal Secretary, Department of Cooperative, who was the disciplinary authority, had made up his mind and decided to impose major penalty upon the petitioner by dismissing him from service. On 26.03.2014 the department issued an order imposing major penalties. Petitioner had been kept under suspension on 30.09.2008 till the date of his dismissal from service.

First Round of Litigation

12. The petitioner challenged the order of termination dated 26.03.2014 by filing a writ application being CWJC No. 19280/2015 which was finally heard by a learned Single Judge of this Court. This court had been pleased to quash the order of dismissal of the petitioner with liberty to the respondent authorities to proceed afresh from the stage of second show cause under Rule 18 of the "Service Rules". It is worth mentioning that during pendency of the writ application and much before disposal of the same, the petitioner had retired



from service on 31.08.2016. However, this Court while exercising its extraordinary writ jurisdiction left it open for the authorities to proceed afresh against the petitioner from the stage of Rule '18' of the "Service Rules" by complying with the procedures prescribed thereunder.

Submission on behalf of the Petitioner

13. Learned counsel for the petitioner has contended before this Court that while disposing of CWJC No. 19280/2015 this Hon'ble Court opined that the pre-trap memorandum and post trap memorandum cannot by itself be considered to be evidence in respect of the charges and those cannot be said to be the basis to conclude the petitioner's guilt arising out of his arrest. It is submitted that after passing of the order by the learned writ court (Annexure '1' to the writ application), the respondents came out with letter no. 3000 dated 10.09.2018 (Annexure '2' to the writ application) which was later on withdrawn and cancelled. It is said to be the second show cause notice and a bare reading of the same would show that the second show cause notice was nothing but a verbatim reproduction of the earlier second show cause notice dated 07.10.2013 (Annexure '4' to the writ application). It is his submission that in the name of second show cause the



disciplinary authority had done only an empty formality.

14. Learned counsel for the petitioner has vehemently submitted that the second show cause notice (Annexure '2') had been issued in complete disobedience and disregard to the order of this court passed in CWJC No. 19280/2015. It is pointed out from Annexure '2' that the respondents reiterated that the pre trap memorandum and post trap memorandum proves the guilt of the petitioner. It is submitted that once the learned coordinate Bench of this Court had expressly held that such documents could not form part of evidence and on that basis it cannot be concluded that the petitioner is guilty of the charges, by reiterating the same stand in the second show cause the disciplinary authority had only acted in haste with a pre-conceived mind to punish the petitioner.

15. It is further submitted that despite the liberty granted to the respondents to proceed under Rule '18' of the 'Service Rules', the respondents chose not to proceed under the said Rule and eight months after receiving the reply of the petitioner to the second show cause (Annexure - '2') they decided to covert the proceeding under the Bihar Pension Rules and finally passed the impugned order (Annexure '12' to the I.A.) during pendency of the writ without following the



established procedure of law.

16. Learned counsel submits that after the petitioner submitted his reply to the second show cause, after about eight months the respondent authorities came out with the letter as contained in memo no. 2685 dated 25.07.2019 (Annexure '10' to the Interlocutory Application) by which they converted the departmental proceeding under Rule 43(B) of Bihar Pension Rules. This was however done without following the procedure prescribed under rule 139 of the Bihar Pension Rules. The petitioner once again replied to the letter contained in Memo No. 2685 dated 25.07.2019, refuting all the charges. It is his submission that without giving opportunity of hearing, in complete haste the respondents came out with major punishment. Learned counsel has relied upon the judgments of the Hon'ble Supreme Court as well as this Court which are as under:

“(2005) 3 SCC 501 (Ram Dayal Rai Vs. Jharkhand State Electricity Board); 2017(1) PLJR 753 (Nandjee Mehta Vs. The State of Bihar & Others); 2008(4) PLJR 21 (Dr. Ramavtar Prasad Vs. The State of Bihar & Others); 2019(3) BLJ 233 (Jhakhari Ram Vs. The State of Bihar & Others) and unreported judgment passed in (1) CWJC No. 8338/2009 (Narmadeshwar Sharma Vs. The State of Bihar & Ors.) and (2) L.P.A. No. 131/2013 (The State of Bihar Vs. Narmadeshwar Sharma).”



17. Learned counsel has relied upon the Judgment of the Hon'ble Supreme Court in the case of Roop Singh Negi Vs. Punjab National Bank & Others reported in (2009) 2 SCC 570 to submit that the pre trap memorandum and post trap memorandum at the time of petitioner's arrest are yet to be examined in the pending criminal proceedings, therefore, those document per se cannot be taken to be an evidence to impose a finding of petitioner's guilt. What is the sanctity of such documents which are part of criminal investigation are to be tested in the light of the judgment of the Hon'ble Apex Court in the case of **Roop Singh Negi (supra)**.

18. Learned counsel has raised a jurisdictional issue against the disciplinary authority. It is his submission that in the second show cause dated 25.07.2019, the disciplinary authority admits at one stage that whether the money with which the petitioner was arrested was a bribe money would be decided in the criminal proceeding but in haste to punish the petitioner the disciplinary authority has in the garb of his/her 'notes of disagreement' framed the fresh charges. It is, thus his submission that there being issues of jurisdictional error and violation of principles of natural justice, the same may be examined by this Court in its' writ jurisdiction.



Stand of the Respondents

19. The respondents have come out with counter affidavit and supplementary counter affidavits. It is the stand of the respondents that in compliance of the order of this Court in the writ application, the second show cause notice was issued to the petitioner vide departmental memo no. 3000 dated 10.09.2018. Later on the said second show cause notice dated 10.09.2018 was rescinded and in the light of Hon'ble Court's order a fresh second show cause notice was again issued vide departmental memo no. 2685 dated 25.07.2019 by giving tentative notes of disagreement on the point of inquiry report under the provisions of Rule 18(2) of the Service Rules. Upon receipt of the second show cause the matter was examined and after seeking certain clarifications from the Registrar, Cooperative Societies, Bihar, Patna the matter has been examined thoroughly at the departmental level. It is the stand of the respondents that the petitioner has been found guilty of grave misconduct under Rule 43(B) of Bihar Pension Rules. In order to support the finding of grave misconduct it is stated that the petitioner has done illegal transaction of Rs. 11,000/- with one Sri Ram Rekha Prasad for which no justification has been given in the second show cause reply. Respondents submits that



there is absolutely no illegality in the impugned order.

20. While answering the queries of this Court, the respondents have further stated that the second show cause is not a mere reiteration of the similar facts rather it contains various different facts which were not the part of the earlier show cause sought from the petitioner. The respondents have further submitted that the basic difference in the present show cause is that since the petitioner has superannuated on 31.08.2016, the present second show cause was asked under Rule 43(B) of the Bihar Pension Rules, therefore, the present second show cause bearing memo no. 2685 dated 25.07.2019 was absolutely different from the second show cause which was earlier quashed vide judgment and order dated 10.04.2018 passed in CWJC No. 19280/2015.

21. As regards the fixation of pension, it is submitted that the petitioner had submitted his pension paper wherein the Last Pay Certificate (LPC) has been provided duly attested by the competent authority. In the said 'LPC' the last pay of the petitioner has been shown at Rs. 27,794/-. It is submitted that the same was forwarded to the office of Accountant General, Bihar, Patna vide letter no. 4015 dated 07.01.2019 for issuing authority letter of pension. On the basis of pension paper



submitted by the petitioner, the office of Accountant General has sanctioned pension vide authority letter dated 11.11.2019. It is thus submitted that the role of the respondents department is limited and the office of Accountant General is the competent authority to sanction the pension.

Consideration

22. This court has heard learned counsel for the petitioner and learned G.P.19 at length. In the writ application though the petitioner has discussed briefly about the first departmental proceeding initiated against him in the year 2007, but in view of the subsequent developments, it seems after the judgment of this court passed in CWJC No. 19280/2015, the respondents have proceeded against the petitioner in the matter of second departmental inquiry initiated in the matter of Vigilance P.S. Case No. 75/2008 in which it is alleged that the petitioner was arrested by the Vigilance Investigation Bureau while accepting the bribe of Rs. 11,000/- from one Sri Ram Rekha Prasad. In this respect vide departmental resolution no. 1101 dated 29.04.2009 the departmental proceeding was initiated against the petitioner. Initially the disciplinary authority passed the order of punishment dismissing the petitioner from service. The said order of punishment as well as the order



passed on the review petition filed by the petitioner before the State Government both were under challenge in CWJC No. 19280/2015. The learned writ court agreed with the contention of learned Senior Counsel for the petitioner that the two second show cause notices issued to the petitioner in respect of the two different departmental inquiries were in violation of the statutory procedure laid down by Rule 18 of Service Rules. It was found that the show cause notices do not communicate any reason showing disagreement with the inquiry officer and they were only reproducing the allegations which were enumerated in the two charge memos issued against the petitioner.

23. The learned writ court examined the impugned order of punishments and the order passed on review and at one stage inter alia held as under:-

“..... The conclusions of the Enquiry Officer in respect of the second charge memo arising out of the vigilance case was that the final decision in respect of petitioner’s guilt or innocence was not possible till conclusion of criminal proceedings against the petitioner. The review authorities has also placed reliance on the pre trap memorandum and post trap memorandum which contained the charge of illegal gratification. This Court would observe that the pre trap



memorandum and the post trap memorandum at the time of petitioner's arrest are issues which are yet to be examined in the pending criminal proceedings arising out of Vigilance P.S. Case No. 75/2008 dated 01.10.2008. The same per se cannot be taken to be the evidence to support the petitioner's guilt in respect of the charges regarding which the criminal proceedings are yet to be decided. Apart from this fact, this Court would also notice that there is no other evidence which has been relied upon by the review authorities."

24. While setting aside the impugned order dated 26.03.2014 and quashing the order of punishment notified under the said order the learned writ court in paragraph 22 of its judgment observed as under:-

"... .. It would be open to the authorities to proceed afresh against the petitioner from the stage of second show cause under Rule 18 of Bihar CCA Rules by complying with the procedures prescribed therein."

25. In the aforementioned background, this Court finds that after the decision of the learned writ court, initially the respondents issued memo no. 2998 dated 07.09.2018 by which the departmental notification as contained in memo no. 1379 dated 26.03.2014 was cancelled and decision was taken to



initiate the departmental proceeding, the respondents also issued departmental letter no. 3000 dated 10.09.2018 in the form of a second show cause notice. The petitioner replied to the said second show cause notice vide his letter no. 10 dated 28.11.2018, thereafter the disciplinary authority decided to recall/cancel the departmental letter no. 3000 dated 10.09.2018 and at this stage issued another letter bearing no. 2685 dated 25.07.2019. On the same date vide resolution contained in memo no. 2671 dated 25.07.2019 the department decided to convert the departmental proceeding against the petitioner as one under Rule 43(B) of the Bihar Pension Rules. A copy the letter bearing no. 2685 dated 25.07.2019 and the resolution bearing memo no. 2671 dated 25.07.2019 has been brought on record as Annexure 'A' and Annexure 'C' series with the supplementary counter affidavit dated 10.03.2021 filed on behalf of the respondents.

26. At this stage, having noticed that the learned writ court had granted liberty to the respondents to proceed under Rule 18 of the 'Service Rules', this court deems it just and proper to reproduce Rule 18 of the Service Rules hereunder :-

"18. Action on the inquiry report – (1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, may remit the case to the inquiring authority



for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 17 as far as may be.

(2) The disciplinary authority, after receipt of the enquiry report as per Rule 17 (23)(ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.

(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).

(5) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (v) of Rule 14 should be imposed on the Government Servant, it shall, notwithstanding anything contained in Rule 19, make an order imposing such penalty.

(6) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in clauses [(vi) to (xi)] of Rule 14 should be imposed on the Government Servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government Servant any opportunity of



making representation on the penalty proposed to be imposed.

(7) Notwithstanding anything contained in sub-rules (5) and (6), in every case where it is necessary to consult the Commission, the Commission shall be consulted any its advice shall be taken into consideration before making any order imposing any penalty on the Government Servant.”

27. At this stage, this Court would reproduce the

Prapatra ‘ka’ dated 16.04.2009 as under:-

“आरोप पत्र
प्रपत्र –क

1. आरोपित पदाधिकारी का नाम – श्री सुरेश प्रसाद
2. पदनाम – जिला सहकारिता पदाधिकारी सह सहायक निबंधक, पूर्वी चम्पारण, मोतिहारी सम्प्रति निलंबित।
3. वेतनमान रु 10,000–15200 /–

क्रमांक	आरोप का संक्षिप्त विवरण	आरोप का विवरण
1.	रु 11,000.00 (ग्यारह हजार) रुपये रिश्वत लेते हुए रंगे हाथों गिरफ्तार। <u>साक्ष्य तालिका</u> पुलिस अधीन निगरानी विभाग, बिहार, पटना का पत्रांक– 1240, दिनांक 01.10.08	1. आपके द्वारा जिला सहकारिता पदाधिकारी सह सहायक निबंधक, पूर्वी चम्पारण मोतिहारी के कार्य काल में, बडहरवा कला प्राथमिक कृषि साख सहयोग समिति लि0, हरसिद्धी प्रखण्ड, पूर्वी चम्पारण, मोतिहारी के अध्यक्ष पद पर मनोनयन करने के निमित्त श्री रामरेखा प्रसाद, ग्राम–कल्याणपुर, थाना– कोरबा, जिला–मोतिहारी से रुपये 11,000.00 (ग्यारह हजार) रुपये की मांग की गयी। इसकी लिखित शिकायत श्री प्रसाद के द्वारा दिनांक 26.09.08 को निगरानी अन्वेषण, बिहार, पटना को दी गयी। दिनांक 01.10.2008 को निगरानी धावा दल द्वारा परिवादी श्री राम रेखा प्रसाद से रु. 11,000.00 (ग्यारह हजार) रु रिश्वत लेते हुए आपको रंगे हाथ गिरफ्तार कर न्यायिक हिरासत में भेजा गया। इस सम्बन्ध में आपके विरुद्ध निगरानी अन्वेषण ब्यूरो द्वारा निगरानी थाना काण्ड संख्या 75/2008 दिनांक 01.10.2008 धारा–7/13 (2) सह पठित धारा 13(1) डी भ0नि0अधि0 1988 के तहत दर्ज किया गया है। आपका यह कृत्य सरकारी सेवक आचार नियमावली, 1976 के नियम 3 (I) (II) (III) के प्रतिकूल है जिसके लिए आप दोषी है।



ह0/-
(देवकान्त दिवाकर)
उप सचिव
सह
मुख्य निगरानी पदाधिकारी
सहकारिता विभाग, बिहार, पटना।”

28. The opinion of the Enquiry Officer reads as

under:-

“संचालन पदाधिकारी का मंतव्य

आरोपित पदाधिकारी श्री सुरेश प्रसाद, तत्कालीन जिला सहकारिता पदाधिकारी-सह-सहायक निबंधक, सहयोग समितिया, मोतीहारी (निलम्बित) द्वारा उनके विरुद्ध संचालित विभागीय कार्यवाही में आरोपों के संबंध में उत्तर सामग्री प्रस्तुत किया गया। आरोप के संदर्भ में उनके द्वारा विभिन्न साक्ष्य के मांग की गई थी तथा उनके द्वारा लिखा गया है कि आरोप के संबंध में उन्हें पूर्ण साक्ष्य प्राप्त नहीं हुआ है जिस कारण उन्हें उत्तर देने में कठिनाई हो रही है उनके उत्तर सामग्री की कण्डिका 04 को देखा जा सकता है आरोपित पदाधिकारी के अनुसार संबंधित अभिलेख के अभाव में नैसर्गिक न्याय से उन्हें वंचित होना पड़ेगा।

आरोपित पदाधिकारी द्वारा कहा गया है कि श्री राम रेखा प्रसाद द्वारा षडयंत्र पूर्वक पुलिस से मिली भगत कर ट्रेप कराकर जेल भेजा गया है जबकि श्री प्रसाद आरोप के समिति से भिन्न पंचायत के निवासी हैं श्री प्रसाद समिति सदस्य भी नहीं थे तथा उनके विरुद्ध बीसीयों आपराधिक मामले यथा मर्डर, लूट, अपहरण आदि के मामले चल रहे हैं। इस प्रकार से उनके साथ जोर जवर्जस्ती कर ही फँसाया गया है।

आरोपित पदाधिकारी के उत्तर सामग्री में यह कहा गया है कि निगरानी पदाधिकारी के द्वारा गिरफ्तार किये जाने के मुख्य श्रोत श्री रामरेखा प्रसाद है जिनके चरित्र आपराधी होने की बात कही गयी है इसके अतिरिक्त श्री प्रसाद द्वारा अभियोजन संबंधी साक्ष्यों की सूची उपलब्ध नहीं कराने की बात कही गयी है आरोपित पदाधिकारी द्वारा यह भी कहा गया है कि सुनवाई के क्रम में कथन से अलग बात रेकर्ड किया गया है उपर्युक्त सभी बात आरोपित पदाधिकारी द्वारा अपने बचाव में अथवा अधिगम समर्पित नहीं हो सके मात्र का प्रयास किया गया है। उन्हे नोटिस, तथ्यों को अंकित कर उत्तर देने का निदेश दिया जाता रहा है। मूल आरोप के संबंध में उनके उत्तर सामग्री में कहा गया है कि उन्हे निगरानी द्वारा ग्यारह हजार रुपये की राशि लिए बिना गिरफ्तार किया गया था। आरोप घूस लेते गिरफ्तारी का है तथा निगरानी थाना कांड संख्या 075/08 दिनांक 01.10.08 है जो माननीय विशेष न्यायाधीश निगरानी, मुजफ्फरपुर में न्यायदेश हेतु चल रहा है। चूंकि आरोपित पदाधिकारी रिश्वत लेते हुए गिरफ्तार हुए है तथा माननीय विशेष न्यायाधीश निगरानी, मुजफ्फरपुर द्वारा निर्णयदेश नहीं दिया गया है। माननीय विशेष न्यायाधीश निगरानी, मुजफ्फरपुर के निर्णयदेश के फलाफल के आधार पर आरोपित पदाधिकारी को दोषी या स्वच्छ करार दिया जा सकेगा, वर्तमान में यही सत्य है कि आरोपित पदाधिकारी रिश्वत लेते हुए रंगे हाथ गिरफ्तार किए गए है।”

29. The submission on behalf of the respondents is

that because the petitioner had retired from service, therefore, the departmental inquiry was converted in a proceeding under



the Bihar Pension Rules. While this Court finds that normally with the retirement of the government employee the pending departmental inquiry is liable to be converted in a proceeding under the Bihar Pension Rules, in the facts of the present case, the State respondents failed to understand that the petitioner had attained the age of superannuation from service on 31.08.2016 when CWJC No. 19280/2015 was still pending. The learned writ court had while disposing of the writ application left it open to the authorities to proceed afresh against the petitioner from the stage of second show cause under Rule 18 of Bihar CCA Rules by complying with the procedures prescribed thereunder. The liberty granted to the respondent authorities were to proceed under the Bihar CCA Rules, therefore, there was no impediment on the way of the respondent authorities in proceeding under the Bihar CCA Rules. Even though the petitioner had retired from service on 31.08.2016 by virtue of this Court's order for purpose of the departmental proceeding he could have been deemed to be in service. The learned writ court was exercising its power under Article 226 of the Constitution of India and in the pending proceeding if it was left open for the respondent authorities to proceed under the Bihar CCA Rules, there was no reason as to why the respondent authorities would



not have proceeded as per the order of learned writ court. Moreover, they had already issued second show cause notice contained in memo no. 3000 dated 10.09.2018, the same was replied by the petitioner but then the matter was kept pending for about another eight months and ultimately the said second show cause notice was withdrawn. The respondents did not move the learned writ court for modification of the order dated 10.04.2018 and on their own chose to proceed under the Bihar Pension Rules.

30. In the second show cause notice the disciplinary authority has briefly recorded the points of disagreement as under:-

“.....संचालन पदाधिकारी के जॉच प्रतिवेदन के अवलोकन से यह स्पष्ट है कि उनके द्वारा यह मानते हुए प्रपत्र-क के आरोप प्रमाणित अथवा अप्रमाणित किये जाने योग्य नहीं माना है, क्योंकि इस संबंध में निगरानी न्यायालय में वाद लंबित है। परन्तु संचालन पदाधिकारी द्वारा इस बिन्दु पर विचार नहीं किया गया कि आरोपित पदाधिकारी जिला सहकारिता पदाधिकारी सह-सहायक निबंधक, सहयोग समितियों पूर्वी चम्पारण, मोतिहारी के रूप में कार्यरत थे तथा दिनांक 01.10.2008 को निगरानी धावादल द्वारा श्री रामरेखा प्रसाद, ग्राम-कल्याणपुर, थाना-कोरवा, जिला-मोतिहारी से 11000/- (ग्यारह हजार) रुपये रिश्वत लेते हुए निगरानी धावादल द्वारा रंगे हाथ गिरफ्तार कर जेल भेजे गए एवं रुपये के साथ गिरफ्तार होकर जेल जाना अपने आप में सरकारी सेवक की मर्यादा के अनुरूप आचरण नहीं है तथा यह बिहार सरकारी सेवक आचार नियमावली, 1976 के नियम-3(1) (i), (ii),(iii) के प्रतिकूल है।

यह भी उल्लेखनीय है कि जिस रुपये के साथ आप गिरफ्तार कर जेल भेजे गये वो रुपया घूस का था अथवा नहीं इसकी जॉच के लिए निगरानी न्यायालय में आपराधिक वाद संख्या-75/2008 विचाराधीन है, परन्तु जिस रुपये को आप परिवादी श्री राम रेखा प्रसाद से लेते हुए गिरफ्तार हुए हैं उस व्यक्ति से रुपये के लेन-देन का कोई सरकारी संबंध आप दोनों के बीच नहीं था एवं गिरफ्तारी की तिथि तक मोतिहारी जिला के बडहरवा कला प्राथमिक कृषि साख सहयोग समिति लि0, हरसिद्धी प्रखण्ड, पूर्वी चम्पारण मोतिहारी के अध्यक्ष पद का मनोनयन कार्य आपके कार्यालय में लंबित था। साथ ही आपके द्वारा श्री राम रेखा प्रसाद से किसी व्यक्तिगत रुपये के लेन-देन का संबंध होने की पूर्व



सूचना अपने नियंत्रि प्राधिकार को नहीं दी गई थी। इस प्रकार श्री राम रेखा प्रसाद से 11000/- (ग्यारह हजार) रुपये की राशि लेना अपने आप में बिहार सरकारी सेवक आचार नियमावली, 1976 के नियम-17(5) एवं 17(6) के प्रतिकूल है साथ ही यह पद के दुरुपयोग एवं भयादोहन का धोतक है।

अतः उपर्युक्त के आलोक में कहना है कि संचालन पदाधिकारी के अभिमत से असहमति के उपरोक्त बिन्दुओं के संबंध में अपना लिखित अभिकथन पन्द्रह दिनों के अन्दर निश्चित रूप से विभाग को उपलब्ध कराये कि क्यों नहीं आपको दोषी मानते हुए शास्ति आधिरोपित किया जाय। ज्ञात रहे कि यदि निर्धारित तिथि के अन्दर आपका स्पष्टीकरण प्राप्त नहीं होता है तो यह समझा जायेगा कि इस संबंध में आपको कुछ नहीं कहना है, तत्पश्चात् विभाग द्वारा एकपक्षीय निर्णय लेने के लिये स्वतंत्र होगा। जिसकी सम्पूर्ण जवाबदेही आपकी होगी।”

31. It is evident from the materials on record that the charge against the petitioner was that of demanding of illegal gratification of Rs. 11,000/-, the Inquiry Officer has submitted in his report that till conclusion of the judicial proceedings pending in the vigilance case in respect of the same charges, it was not possible to arrive at a conclusion regarding the said allegation. In fact the learned writ court has also observed the same in the earlier writ petition. This Court has quoted the relevant part thereof hereinabove. In the notice of disagreement the disciplinary authority has taken a view that the Inquiry Officer has not considered that the petitioner was working as a District Cooperative Officer – cum – Assistant Registrar, Cooperative Societies and he was caught red-handed in the trap led by the Vigilance Investigation Bureau and was arrested with a sum of Rs. 11,000/- which he was accepting as a bribe. According to the disciplinary authority, the arrest of the



petitioner by the Vigilance Investigation Bureau while accepting a bribe and then his going to jail is not a good conduct befitting to the status of a government servant and this is against Rule 3(i)(ii)(iii) of Bihar Government Service Conduct Rules, 1976.

32. In the same notes of disagreement, the disciplinary authority writes that whether the money with which the petitioner was arrested was a bribe money or not is subject matter of trial in the vigilance court but the petitioner was arrested while accepting money from the complainant Sri Ram Rekha Prasad with whom the petitioner had no official relationship and till that time the work of nomination of the Chairman in the Primary Agricultural Credit Cooperative Societies Limited, Harsidhi Block in the East Champaran, Motihari was still pending.

33. According to the disciplinary authority the petitioner had not given any prior information about the personal transaction with said Sri Ram Rekha Prasad and his receiving of Rs. 11,000/- from Sri Ram Rekha Prasad was against rule 17(5) and Rule 17(6) of the Bihar Government Servant Conduct Rules.

34. From a bare reading of the notes of disagreement issued by the disciplinary authority, it is evident that the



disciplinary authority has not at all differed with the inquiry officer on his opinion that the delinquent employee/petitioner may be held guilty or be given a clean chit would depend upon the outcome of the criminal proceeding before the vigilance court.

35. What has been observed by the disciplinary authority raising her disagreement is something beyond the charge as per Prapatra 'ka'. In the notes of disagreement, it is stated that the petitioner was arrested by the Vigilance Investigation Bureau while accepting bribe and he was sent to jail which is not a good conduct and against the status of a government servant, but in the same notes of disagreement, the disciplinary authority states that the money with which the petitioner was arrested and sent to jail whether that money is bribe money or not is subject matter of trial in the vigilance court. Thus, the notes of agreement itself accepts that the charge of demanding illegal gratification was still not proved and there was no material otherwise in the hand of the disciplinary authority to differ with the opinion of the Inquiry Officer in this regard.

36. The disciplinary authority has, in fact, proceeded to frame a fresh charge in the garb of the notes of disagreement by saying that the petitioner has not provided any prior



information to his controlling authority about any personal kind of transaction between him and Sri Ram Rekha Prasad, therefore accepting a sum of Rs. 11,000/- from Sri Ram Rekha Prasad was against the Rule 17(5) & 17(6) of the Bihar Government Servant Conduct Rules and this amounts to misuse of the position and extortion.

37. It is not in dispute that these were not the charge levelled against the petitioner. This Court is afraid that the disciplinary authority in his/her zeal to punish the petitioner has given a go-bye to the established procedure of law and imposed the major punishment of forfeiture of 100% pension of the petitioner. The learned writ court while disposing of CWJC No. 19280/2015 had gone on to record that the pre trap memorandum and post trap memorandum at the time of petitioner's arrest were yet to be examined in the pending criminal proceeding and the same *per se* cannot be taken to be the evidence to support the petitioner's guilt. The learned writ court further observed that there is no other evidence which has been relied upon by the review authorities. In his/her notes of disagreement the disciplinary authority nowhere refers to any other material to take a view that the money with which the petitioner was allegedly arrested was a bribe money. In fact, the



disciplinary authority accepts that whether the money was a bribe money or not is subject matter of trial in the pending criminal proceeding before the learned vigilance court. If it is so, then in the opinion of this court, there was nothing before the disciplinary authority to take a different view from that of the Inquiry Officer. The Inquiry Officer has recorded a finding that till conclusion of the pending judicial proceeding, it was not possible to arrive at a conclusion regarding the petitioner's guilt or innocence.

38. In the opinion of this Court, the impugned order as contained in memo no. 2832 dated 10.08.2020 (Annexure '12' to the I.A.) cannot sustain the test of law and is liable to be set aside. The impugned order is hereby set-aside. The disciplinary authority shall await the decision of learned Special Judge, Vigilance in Special Case No. 54/2008. It will be open for the disciplinary authority to proceed to pass a fresh order in accordance with law based on the said decision.

39. In the meantime, the provisional pension of the petitioner shall be restored. Consequential order to this effect shall be issued by the respondent authorities within a period of six weeks from today.

40. Needless to say that the provisional pension shall



be fixed taking into consideration the last pay scale attached to the post of District Cooperative Officer applicable on the date of superannuation of the petitioner i.e. 31.08.2016. In order to give effect to this, if any correction is required in the last pay certificate of the petitioner the required correction shall be carried out simultaneously within the aforesaid period of six weeks.

41. The claim of the petitioner for arrear of salary etc. for the period of suspension shall be considered by the disciplinary authority while passing appropriate order after decision of the learned Special Judge, Vigilance Court, Patna in the pending criminal proceedings.

42. There will, however, be no order as to cost.

43. The Writ Application stands allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	06.04.2021
Uploading Date	25.06.2021
Transmission Date	

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

