

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5839 of 2015

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Maharshi Ram aged about 57 years, Son of :- Sri Ram Naresh Ram
Resident of Village- Sareya-Rampur P.S. :- Darauli, District:- Siwan at
present posted as Additional Collector Nawada.

.... Petitioner/s

Versus

1. The State of Bihar
2. Principal, Secretary Department of General Administration Govt. of Bihar, Old Secretariat Bailey Road , Patna.
3. Principal Secretary Rural Development (Rural Works Organization and Panchayati Rai) Government of Bihar , old Secretariat Bailey Road, Patna.
4. Under Secretary General and Administration, Government of Bihar, Old Secretariat Bailey Road, Patna
5. Commissioner Darbhanga Division, Darbhanga, Bihar.
6. District Magistrate, Madhubani, Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chitranjan Sinha, Sr. Adv & Mr.
Akhilesh Dutta Verma, Adv

For the Respondent/s : Mr. Ashok Kumar Keshri AAG-11

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

4 27-08-2015 Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ
application reads as follows:-

“That the application is for issuance of writ in the nature of certiorari for quashing the resolution vide memo no. 3311 dated 2.3.2015 issued by Department of General Administration Government of Bihar (Vide annexure:-6 & 8) whereby departmental enquiry has been initiated against the petitioner and enquiring officer as well as presenting officer has been appointed and petitioner was directed to appear in the said departmental proceeding and also for quashing “Praptra K” date 2.12.2006 whereby four departmental charges were framed against the petitioner.”

3. Mr. Chitranajan Sinha, learned senior counsel
appearing on behalf of the petitioner in support of the



aforementioned prayer has submitted that there is a delay of almost 8 to 9 years in initiating departmental proceeding against the petitioner and as such the delay itself will be fatal for continuation of the departmental proceeding. In this regard, he relies on the judgment of the Apex Court reported in the case of **State of Madhya Pradesh vs Bani Singh and another**, reported in **AIR 1990 SC 1308**.

4. Learned counsel for the State having filed the counter affidavit has submitted that it will not be correct to say that the departmental proceeding was initiated against the petitioner in the year 2006, inasmuch as, such proceeding had been initiated only in the year 2015 by him by resolution no. 3311 dated 02.03.2015. In this regard, he having produced the earlier letter date 14.12.2006, as contained in Annexure-B, has sought to explain that the petitioner was sent to draft the memo of charge for submitting his explanation and after his explanation was received since the petitioner was posted



in a district, the same was sent for obtaining necessary comments in order to enable the Government to take final decision. In this regard, he has also referred to the communication made by the Government on 09.04.2007 (Annexure-D), 06.07.2009 (Annexure-C), 18.09.2009 (Annexure-F), 09.11.2010 (Annexure-G), 02.02.2011 (Annexure-I), 29.06.2011 (Annexure-J) and 26.12.2012 (Annexure-J/1), to show that somehow the District Administration had not been responded to the comment sought for by the Government on the explanation furnished by the petitioner, and as such, a decision in the matter could not be taken.

5. He has also highlighted the aspect that when the Collector of the district by letter dated 02.12.2010 (Annexure-H), informed the State Government that the earlier letter referred to dated 14.12.2006 was not available. It was difficult for the Collector to give his comments and in fact thereafter the Government had sent on 02.02.2011, copy of the aforementioned letter



dated 14.12.2006, alongwith enclosures and ultimately the Collector of the district dated 19.07.2011, with reference to his earlier letter dated 20.04.2011, had furnished the comments upon which the decision to initiate a departmental proceeding against the petitioner had been taken. Strong reliance in this regard has also been placed that the Government was under the constant watch of the office of Chief Election Officer, who had been making correspondence as against initiation of the departmental proceeding against the petitioner and in this regard reference has also been made to the letter of the Chief Election officer dated 02.04.2014, which is the reply to the letter sent by the Additional Secretary on 29.04.2014, wherein, a decision to initiate the departmental proceeding against the petitioner had been communicated to the office of Chief Electoral Officer.

6. Learned counsel for the State therefore has submitted that the memo of charge now issued by the resolution dated 02.03.2015, and consequently the

departmental proceeding should not be interfered by this Court keeping in view the gravity of the charge against the petitioner.

7. This court in order to answer the aforementioned question will firstly go to the provisions made in the Bihar Government Servant (Classification, Control & Appeal) Rules-2005 (hereinafter referred to as the Rules), which lays down the manner of procedure for imposing penalties. From a bare reading of Rule-17 , it would be absolutely clear that first of all the disciplinary authority has to form an opinion as with regard to existence of any ground of inquiry about the truth or any import of misconduct or misbehaviour i.e. import of Rule-17(2) which reads as follows:-

“Wherever the disciplinary authority is of the opinion that that there are grounds for inquiring about the truth of any imputation of misconduct or misbehaviour against a government servant, he may himself inquire into it, or appoint under these Rules an authority to inquire about the truth thereof.

Explanantion- Where the disciplinary authority himself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) of this Rule to the inquiring authority shall be construed as a reference to the disciplinary authority.”

8. As would be also evident from reading of

Rule-17 (3) (4) (5):-

“Where it is proposed to hold an inquiry against a Government servant under this Rule, the disciplinary authority shall draw or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge;

(ii) a statement of the imputations of misconduct, or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, such statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government Servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(5)(a) On receipt of the written statement of defence, the disciplinary authority may himself inquire into such of the articles of charge which are not admitted, or, if it thinks necessary to appoint, under sub-rule (2) of this Rule, an inquiry authority for the purpose he may do so and where all the articles of charges have been admitted by the Government Servant in his written statement of defence, the disciplinary authority shall record his findings on each charge after taking such evidence as it may think fit and shall take action in the manner laid down in Rule-18.

(b) If no written statement of defence is submitted by the Government Servant, the disciplinary authority may itself inquire into the articles of charge or may, if it thinks necessary to appoint, under sub-rule (2) of this Rule an inquiry authority for the purpose, it may do so.

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry about such charge, it may, by an order, appoint a government servant or a legal practitioner to be known as the Presenting officer' to present on his behalf the case in support of the articles of charge.”

the whole object of laying down detailed procedure for



imposing major penalty is to ensure that no departmental proceeding is lodged in huff and puff. In the case of the petitioner at the initial stage the Government had issued a resolution on the basis of the allegation received by it for one year about the truth of any imputation/import of misconduct. This Court while reading into the communication made to the petitioner on 14.12.2006 vide Annexure-B would hold that when the government had issued the explanations as with regard to the imputations allegation contained in 'Parpatra K' under Rule-167 of Bihar Boards Miscellaneous Rules which earlier covered procedure for departmental inquiry, the petitioner was only asked to give his point of view in respect of those allegations loosely called as charge.

9. It is here that this Court will have to take judicial notice that once the petitioner was posted as a District Panchayati Raj Officer at Madhubani and the allegations were also relating to the period of his posting on the aforesaid district, it was the impression that the



Government should collect materials against the petitioner by way of comment/reaction to the District Administration. All such explanations were sought by the Government to enable it to form an opinion as to whether explanations of the petitioner was fit to be accepted for the purposes of dropping the proposed inquiry or being rejected for holding the departmental proceeding. It is true that there has been sufficient evidence of Red Tapism prevalent in the offices of the State Government but then this Court will also not ignore the fact that the Collector of the district had come out to say that he had not received the letter dated 13.12.2006 and thus the government had to send another copy of that letter as explained earlier.

10. Rules did not provide any particular time frame in which either an opinion has to be formed but then whatever was said by the Apex court in the case of Bani Singh (supra) or subsequent judgments do emphasize the delay caused in the initiation of



departmental proceeding, if not explained, could be fatal. The Apex Court however in the case of Secretary Ministry of Defence and others Vs. Prabhash Chandra Mirdha reported in AIR 2012 SC 2250 after reviewing all its earlier judgments on the plea of delay becoming fatal for quashing of the memo of charge has laid down law in this regard which reads as follows :-

"9. Law does not permit quashing of charge-sheet in a routine manner. In case the delinquent employee has any grievance in respect of the charge sheet he must raise the issue by filing a representation and wait for the decision of the disciplinary authority thereon. In case the charge-sheet is challenged before a court/tribunal on the ground of delay in initiation of disciplinary proceedings or delay in concluding the proceedings, the court/tribunal may quash the charge-sheet after considering the gravity of the charge and all relevant factors involved in the case weighing all the facts both for and against the delinquent employee and must reach the conclusion which is just and proper in the circumstance. (Vide: The State of Madhya Pradesh V. Bani Singh & Anr. AIR 1990 SC 1308, State of Punjab & Ors. v. Chaman Lal Goyal, (1995) 2 SCC 570; Deputy Registrar, Co-operative



Societies, Faizabad v. Sachindra Nath Pandey & Ors. (1995) 3 SCC 134: (1995 AIR SCW 3028); Union of India & Anr. v. Ashok Kacker, 1995 Supp(1) SCC 180; Secretary to Government, Prohibition & Excise Department v. L. Srinivasan, (1996) 3 SCC 157, State of Andhra Pradesh v. N. Radhakrishnan, AIR 1998 SC 1833; Food Corporation of India & Anr. v. V.P. Bhatia, (1998) 9 SCC 131, Additional Supdt. of Police v. T. Natarajan, 1999 SCC (L&S) 646; M.V. Bijlani v. Union of India & Ors. AIR 2006 SC 3475; P.D. Agrawal v. State Bank of India & Ors. AIR 2006 SC 2064; and Government of A.P. & Ors. v. V. Appala Swamy, (2007) 14 SCC 49): (AIR 2007 SC (Supp) 587).

10. In Secretary, Forest Depttment & Ors. v. Abdur Rasul Chowdhury, (2009) 7 SCC 305:(AIR 2009 SC 2925), this court dealt with the issue and observed that delay in concluding the domestic enquiry is not always fatal. It depends upon the facts and circumstances of each case. The unexplained protracted delay on the part of the employer may be one of the employer to continue with the disciplinary proceedings. At the same time, if the delay is explained satisfactorily then the proceedings should not be permitted to continue.

11. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of



action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the Court. (vide *State of U.P. v. V. Brahm Datt Sharma*, AIR 1987 SC 943; *Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh & Ors.*, (1996) 1 SCC 327; (AIR 1996 SC 691), *Ulgappa & Ors. v. Div. Commr. Mysore & Ors.* AIR 2000 SC 3603 (2); *Special Director & Anr. v. Mohd. Ghulam Ghouse & Anr.* AIR 2004 SC 1467; and *Union of India & Anr. v. Kunisetty Satyanarayana*, AIR 2007 SC 906).

12. In *State of Orissa & Anr. v. Sangram keshari Misra & Anr.* (2010) 13 SCC 311; (2010 AIR SCW 6948), this Court held that normally a charge-sheet is not quashed prior to the conclusion of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that correctness or truth of the charge is the function of the disciplinary authority.

(See also : *Union of India & Ors. v. Upendra*

Singh, (1994) 3 SCC 357); (1994 AIR SCW 2777)

13. Thus, the law on the issue can be summarised to the effect that charge-sheet cannot generally be a subject matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceeding nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.

(underlining for emphasis)

11. Here in this case, this Court would find that there is sufficient explanation for belated consideration of the explanation given by the petitioner. From the letter of the Government written to the Chief Electoral Officer, it becomes very clear that the Government was under the constant pressure to report as with regard to the action taken by the petitioner whereas



one of the charge, in fact the main charge was that the petitioner had abdicated his responsibility in the panchayat election, which was held in the year 2006. This Court at this stage is not concerned as to whether such charges are correct or explanation of the petitioner is correct but this much is clear from the contents of the memo of charge now framed that when the petitioner had gone on leave without its being sanctioned by the competent authority over looking the work and responsibility of District Panchayati Raj Officer had somewhere allegedly adversely affected the election work of gram panchayat which was to be conducted in the year 2006, all over the State including in the district of Madhubani, in which the petitioner was posted.

12 In this background, this Court will not be in a position to hold that the charges against the petitioner are trivial in nature and he should not be proceeded. The District Panchayat Raj Officer, being the head of the district in respect of the work of panchayati raj election



being held for the post of Mukhiya and other posts of gram panchayat he has to be the spearhead of the district. If such spearhead staff is himself unaware of the responsibility either deliberately or on account of certain constraints, the Government and the Chief Electoral Officer, have a right to at least determine as to whether the petitioner had sought to cause any impediment/interference in the work of election in the year 2006 at Madhubani.

13. Considering all these aspects, this Court will not be in a position to interfere with the impugned resolution drawing departmental proceeding against the petitioner. Nonetheless, the petitioner is aged about 57 years and if the departmental proceeding is also stretched in the similar manner as has been done in this case from December-2006 to March-2015, the petitioner will be definitely prejudiced in the matter of drawing his retirement benefit, where a pending departmental proceeding by itself can become a bar in getting full and



final pension confining him to get 90 per cent of the pension. This Court therefore would like the Government to avoid such situation being created for the petitioner.

14. There would be other facets as well which the petitioner may face on account of pendency of the departmental proceeding, inasmuch as, his case of promotion or any other advancement in the career on account of the pendency of the departmental proceeding, keeping in view the law laid down in the case of **Union of India and Ors vs V.K.V Jankiraman & Ors reported in AIR 1991 SC 2010..**

15. Thus, while this Court would not interfere with the impugned resolution drawing a regular departmental proceeding by way of framing memo of charge against the petitioner, it will direct the government to take immediate action to ensure that a departmental proceeding against the petitioner is conducted in expeditious manner. Since, the petitioner



has not filed his written statement of defence as required to be done by him in terms of the impugned resolution dated 02.03.2015, this Court would direct the petitioner to do so within a period of four weeks from the date of receipt of this order.

16. Since the inquiry officer has been appointed by the impugned resolution and it is the Divisional Commissioner, Darbhanga, who has been assigned the work of Inquiry Officer, this Court would direct the Divisional Commissioner, Darbhanga, to proceed with the departmental inquiry, in the manner, that the same is concluded within a maximum of four months from the date of filing of the written statement of defence by the petitioner. If for any reason the petitioner does not co-operate in the departmental proceeding, the inquiry officer may proceed ex parte but his all efforts should be that the departmental inquiry should be completed within a period of four months from the date of filing of the written statement of defence by the petitioner after

the general elections going to be held in the month of October/November by the petitioner.

17. In this way, the departmental inquiry against the petitioner must be completed by the month of April-2016, whereafter the inquiry report, if being against the petitioner, a copy thereof should be made available to the petitioner within a maximum period of one month from the date of filing of the inquiry report by the inquiry officer. The petitioner also must submit his comment/reaction to the inquiry report within next four weeks from the date of receipt of the copy of the inquiry report and the Government thereafter must take a decision one or the other way by way of completing the departmental proceeding against the petitioner in a maximum period of three months from the date of filing of such comment/reaction by the petitioner to the inquiry report.

18. In this way, all effort should be made that the petitioner's agony in the departmental proceeding

must come to an end by the month of August-2016. It would be open for the respondents to seek extension of time for any valid reason but if they do not do so, and also do not complete the departmental inquiry as directed above, they will be precluded from punishing the petitioner on the basis of the findings arrived in the inquiry report unless they again seek prior leave from this Court.

19. With the aforementioned observation and direction, this application is disposed of.

20. Let a copy of this order be produced by the petitioner both before the Respondent no. 2 and Respondent no. 5 and the time limit fixed in this order shall commence only on receipt/production of a copy of this order by the Respondent no. 2 and 5.

(Mihir Kumar Jha, J)

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