

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7245 of 2014

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Sant Om Prakash son of Late Sadho Prasad, resident of Village - Bela Bakaur,
Police Station - Islampur, District - Nalanda

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary Government of Bihar, Patna (Animal and Fish Resource Department).

2. The Principal Secretary, Animal and Fish Resource Department, New Secretariat, Patna

3. The Director, Dairy Development Directorate, Patna

4. The Joint Director-cum-Enquiry-Officer, Dairy Development Directorate, Bihar, Patna

5. The District Dairy Development Officer, Madhubani

6. Shri Kranti Kumar son of Shri Kameshwar Kamati Village - Simra, Police Station Jhanjharpur, District - Madhubani

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. R.K. Verma, Sr. Advocate

Mr. Sanjay Kumar, Advocate

For the Respondent/s : Mr. Sushant Praveer, AC to SC 27

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
CAV JUDGMENT

Date: 10 -03-2016

The petitioner is a dismissed employee posted at Dairy Field and was functioning as Dairy Field Officer at District Gavya Vikash Padadhikari Office, Madhubani. In the present writ application, he has come to this court seeking writ of *certiorari* for quashing the order dated 22.02.2014 (Annexure-19) passed by the respondent no. 3 (The Director, Dairy Development Directorate, Patna) by which the petitioner has been dismissed from service. The said dismissal order came about as a result of trap case which was conducted at the office of the petitioner by one Kranti Kumar (respondent

no.6) and the petitioner was arrested and Vigilance Case No. 91 of 2011 was instituted against the petitioner.

The brief facts are as follows:-

The petitioner was posted as Dairy Field Officer and during the course of his official duty one Kranti Kumar gave written information to the S.P. Vigilance Department, Investigation Bureau Muzuffarpur Zone on 22.12.2011 alleging therein that he had applied for a loan under the Gavya Vikash Scheme for setting up a Dairy Project. Though, he was sanctioned the same along with subsidy of 25 percent by the Government, the petitioner as Dairy Field Officer, Gavya Vikash Padadshikari, Madhubani demanded Rs. 5,000/- as illegal gratification for issuance of the cheque. Preliminary investigation of the allegation by one Constable of Vigilance Department, Muzuffarpur Zone, namely Yugeshwar Prasad Singh, revealed that allegation was true and accordingly, a trap team was organized under the leadership of one Subhash Sah, DY. S.P. (Vigilance), Muzuffarpur, which caught the petitioner red handed while accepting a bribe of Rs. 4,000/- and accordingly, after search and seizure, Vigilance P.S. Case No. 91 of 2011 was registered against the petitioner under Section 7 and Section 13(2) read with Section 13(1) (d) of the P.C. Act, 1988. The petitioner was arrested and remanded to jail custody on 28.12.2011.

The petitioner having been taken into custody was placed under suspension Vide Letter No. 12 dated 05.01.2012, until further orders. Thereafter, the petitioner was



released from custody by this Court vide order dated 24.04.2012 passed in Cr. Misc. No. 14218 of 2012. On his release from custody, the suspension of the petitioner was revoked vide letter No. 731 dated 30.05.2012 and a show cause was sought from him which was duly answered by the petitioner on 19.08.2013. However, the said show cause was rejected which led to the initiation of departmental proceeding vide letter no. 1219 dated 17.09.2013 accompanied by the copy of charge-sheet contained in Form – “K”.

The petitioner then received letter no. 1253 dated 25.09.2013 from the respondent no. 4 (The Joint Director-cum-Inquiry Officer, Dairy Development Directorate, Bihar, Patna) asking him to appear before him on 01.10.2013 at 11:00 A.M. The petitioner duly responded to the said letter and appeared before the respondent no. 4 requesting him to grant him some documents by which the charges were framed against him.

The next date fixed by the respondent no. 4 was 18.11.2013 which was communicated to the petitioner vide letter no. 1282 dated 01.10.2013 calling upon him to appear at 11:00 A.M. The petitioner again demanded the necessary documents so as to enable him to file his reply but the respondent no. 4 again asked him to appear on 27.01.2014 at 3:00 P.M. but the same was not provided to him.

Compelled by such circumstances, the petitioner filed his reply on 28.01.2014 even though no



documents were provided to him. The petitioner also made a prayer on the following date i.e. 05.02.2014 to permit him to appoint an advocate to conduct his case. On 06.02.2014, the petitioner again approached the Director, Dairy Development Directorate, Patna Bihar (respondent no. 3) to provide him with a copy of form – “K” along with the necessary documents and also the list of witnesses proposed to be examined against him in accordance with the government notification by the Department of General Administration contained in notification no. 322 dated 31.01.2011 but, unfortunately, instead of providing the same, the petitioner was once again placed under suspension vide letter no. 173 dated 10.02.2014.

Soon thereafter, by another letter dated 15.02.2014 contained in letter no. 95 from the District Dairy Development Officer, Siwan, the petitioner was directed to submit his second show cause (Annexure-16) within 10 days before the respondent no. 3. Since the aforementioned letter containing the second show cause did not contain any enquiry report, the petitioner again wrote to the Dairy Development Officer on 15.02.2014 wherein he prayed to provide him inquiry report as submitted by the Enquiry Officer in accordance with Rule 18(3) of Bihar CCA Rules, 2005 which is quoted hereunder.

“ 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.”.

On 26.02.2014, a letter issued by respondent no. 3 contained in letter no. 188 dated 11.02.2014 was received by the petitioner stating that it contained the enquiry report by respondent no. 4 (but in fact, not enclosing the same) whereby and whereunder the petitioner was directed to submit his second show cause within 15 days (Annexure-18). However, the authority is concerned, respondent no. 3 without waiting for the petitioner to file the second show cause proceeded to pass the order of dismissal dated 22.02.2014 which was received by the petitioner on 04.03.2014 containing letter no. 314 dated 22.02.2014 (Annexure-19). It is against the order of dismissal that the petitioner has come to this court.

The initial ground urged by the learned Sr. Counsel appearing on behalf of the petitioner is that the Disciplinary Authorities did not supply to the petitioner all the relevant documents which were required for enabling the petitioner to file his reply to the show cause notice and the charges as contained in Form – “K”. It was contended that the Rule 17(3) (ii) (b) of the CCS rules specifically enunciated that where it was proposed to hold an enquiry against the Government Servant, amongst other things, a list of such documents by which and a list of such witnesses by which the articles of charge were proposed to be sustained shall be

provided to the concerned government servant. Rule 4 further clarifies the said procedure to provide the government servant an opportunity to answer such articles of charges contained in such statement of the imputations of misconduct or misbehaviour within such time as may be specified by filing statement of his defence and to state whether he desired to be heard in person.

Rule 17 (3) and 4 of the CCS Rules are being quoted below:-

Rule – 17 (3)

“Where it is proposed to hold an enquiry against a government servant under this Rule, the disciplinary authority shall draw up 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.

Rule – 17 (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”.

It is, thus, submitted that there is a distinct violation of statutory rules by the respondents in the present case.

Learned counsel for the petitioner submits that the main document which was a letter dated 29.12.2011 contained in letter no. 81 was not supplied to the petitioner and though the enquiry was conducted for two days i.e. 01.10.2013 and 18.11.2013 only, the petitioner appeared before the Enquiry Officer and made a demand for the said documents but the same was not provided to him. The petitioner's request vide Annexure-14 dated 06.02.2014 for providing such documents which was duly supported by the Administration Department, Government of Bihar, Patna notification dated 31.01.2011 also did not have any effect on the respondent and no such documents as were required to prove articles of charge were provided to him which seriously prejudiced the defence of the petitioner. Thus, there is clear violation of Principles of Natural Justice in the case of the petitioner which calls for interference by this Court.

The other ground on which the petitioner alleges statutory violation was that the respondents also violated the statutory Rule 18 inasmuch as the inquiry report submitted by the Enquiry Officer was not forwarded to the petitioner. It is alleged by the petitioner that the second show cause did not contain the enquiry report as the letter dated 11.02.2014 though stating that the same was sent annexing a copy of the enquiry report dated 29.01.2014 but



the same was never sent to the petitioner which was immediately objected to by him vide his letter dated 15.02.2015. Learned counsel for the petitioner further pointed out that the notice period of 15 days was subsequently reduced by the respondent – Director to 10 days as is evident from his letter no. 188 dated 11.02.2014 issued to him vide Memo No. 222 dated 14.02.2014 issued in the shape of corrigendum whereby the petitioner was asked to submit his second show cause against the proposed punishment of dismissal from service within a period of 10 days. It was, thus, also apparent from such letter that the respondents had acted in a purely mala fide manner as by no stretch of imagination they could have reduced the statutory notice period.

Furthermore, it was mandatory for them to forward a copy of the enquiry report to the delinquent with their own findings, if any, so as to enable him or her to make representations within a period of 15 days. Learned counsel for the petitioner also brought the attention of the court to the arbitrariness of the respondent-Director by referring to Annexure- 19. The impugned order herein, which is purported to have been passed on 22.02.2014, much before the expiry of the statutory period of notice as prescribed in the rule was aimed at clearly overleaping the principles of *audi alteram partem*. The receipt dated 26.02.2014 clearly reveals that how severely the petitioner has been prejudiced as the impugned order has been passed prior to the expiry of the period fixed in the notice.



Another submission advanced by the learned counsel for the petitioner is that the order can also be assailed on the premise that the second show cause was also in the teeth of the decision of the Hon'ble Apex Court in the case of **Kunj Bihari Mishra Vs. Roop Singh**, as the respondents had failed to provide him with the enquiry report so as to enable him to submit his second show cause within the stipulated period. The order of dismissal dated 22.02.2014 passed thereafter, clearly reveals that a mere 6 days' notice was extended to the petitioner as though the petitioner was directed to submit his second show cause vide letter no. 188 dated 11.02.2014 within 15 days, by subsequent letter no. 95 dated 15.02.2014 the 15 days' time was modified to 10 days. The show cause also indicated that the said notice was but an empty formality as the decision to dismiss him was already taken and such post decisional show cause was impermissible under the CCA rules.

Thus, on the basis of the
aforementioned submissions being :-

(i) non supply of relevant documents
forming the subsistence of charge

(ii) non-examination of witnesses on the
basis of which the petitioner was sought to be proceeded and

(iii) non-adherence of/violation of the
procedure for filing the second show cause after providing
enquiry report, came to be the main grounds on which the
petitioner sought for issuance of writ in the nature of *certiorari*

for quashing Annexure-19 being wholly in violation of the principles of natural justice.

Learned counsel appearing for the State after referring to its counter affidavit submitted that the petitioner was caught red handed while accepting bribe and, as such, the petitioner was proceeded under the relevant service rules for which the petitioner was provided with adequate opportunity. He further submitted that in such cases a departmental enquiry need not proceed in the same manner as the criminal trial for which guilt of the accused was required to be proved beyond reasonable doubt. In this context, learned counsel for the State submitted that the action was taken against the petitioner under Rule 17 of the CCA rules. Pointing to Annexure-6, learned counsel for the State submitted that Annexure-6 clearly reveals that the petitioner was asked to show cause vide Annexure-6 in the proper manner as prescribed under Rule 17(3). The charge sheet clearly reveals that the petitioner as Dairy Field Officer at District Gavya Vikash Padhadhikari, Madhubani was being proceeded on the basis of a letter no. 81 dated 29.12.2011 issued by the Information and Public Relations Department, Patna Bihar vide Memo No. P.R. No. 1464 dated 29.12.2011. While referring to the decision of the Hon'ble Apex Court in **AIR 94 SC 1074 (ECIL Vs. B. Karunakar)**, wherein the Hon'ble Apex Court had held that in case of non-furnishing of a copy of enquiry report, it was submitted that it has to be seen as to whether the delinquent has been thereby



prejudiced by the act of the respondents that reinstatement should not be mechanical order in case punishment is set aside. Authority/management should be given an opportunity to hold fresh enquiry from the stage of furnishing report. Not furnishing a copy of enquiry report to the delinquent and the issue has been dealt by the Apex Court in the following terms :-

“When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequences would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an “unnatural expansion of natural justice” which in itself is antithetical to justice”.

Learned counsel for the State further contended that Rule 17 of CCA rules had been substantially met by the respondents and so also the provision with regard



to the issuance of the enquiry report as the letters sent by the respondents clearly indicated that the copy of the enquiry report had been supplied to him. It was further submitted by the learned counsel for the State that the Court in judgment of *Chairman, Board of Mining Examination V. Ramjee* (AIR 1977 SC 965) held that the concept of Natural Justice was not an “unruly horse”, “no lurking landmine”, “nor a judicial cure-all”. It spoke thus:

“an unnatural expansion of natural justice without reference to the administrative reality and other factors of a given cases can be exasperating”.

“The Court cannot look at law in the abstract or natural justice as a mere artifact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the court that the party visited with adverse orders has not suffered from denial of reasonable opportunity. The Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures”

Keeping such principle in mind learned counsel for the State submitted that the petitioner had not suffered from any prejudice as having been caught red handed in a trap case; had been given with due opportunity to show cause first by providing him with the memo of charge required to be faced by him and thereafter by issuance of an enquiry report. As such, the petitioner is not entitled to any relief and the case is fit to be dismissed.



Counter such submissions as made by learned counsel for the State, learned counsel for the petitioner has also filed a supplementary affidavit in which he has stated that in the case of the petitioner, serious prejudice has been caused to him not only on account of non-supply of relevant documents, particularly letter no. 81 dated 29.12.2011, which formed the basis of the memo of charge (Annexure-8) and non examination of the witnesses particularly the complainant followed by non-supply of enquiry report, but also because of the fact that the petitioner was prejudiced by the act of the respondents and the disciplinary authority (respondent no. 3) who was assisted by the respondent no. 4, conducting officer of the enquiry in deciding the Appeal. The enquiry officer was subsequently promoted to the post of Director i.e. to the rank of the disciplinary authority. Strangely enough, after the impugned order was passed, the petitioner preferred an appeal before the Principal Secretary AFRD against the aforementioned order. During the deliberations of the appeal, respondent no. 2 called upon the said disciplinary authority to assist him in disposal of the appeal. Such an action by the appellate authority to take the assistance of the same person (respondent no. 3) who had submitted report against the petitioner in the capacity of Enquiry-cum-Conducting Officer has caused serious prejudice to the petitioner. Such action by the respondent nos. 2,3 and 4 is wholly arbitrary.

Considered the submissions of the



parties and also perused the documents on record, the letter which form the basis of Form –K namely, letter no. 81 dated 29.12.2011, has not been brought on record by the State or given to the petitioner. The contention of the petitioner, thus, stands corroborated that the very document which formed the basis of the charge as contained in Form –K was a wholly relevant document and withholding the same from the petitioner amounted not only to arbitrary action but also colourable exercise of the power vested by the State. Such document could not be considered to be the document which was irrelevant if it was used as the basis of the charge. Non-supply of the documents is bound to cause serious prejudice to the delinquent. It also appears that the enquiry was held on merely two dates. On each of the dates, the petitioner appeared and demanded documents and list of witnesses so as to enable him to file reply to the charge, as contained in Form-K. Neither the complainant has been examined or his cross-examination has been brought on record by the respondent-State. It is also not stated by the respondent whether the statement of the complainant has been recorded by the State or to when the complainant was examined. Thus, this Court holds that non-examination of important witnesses also seriously vitiates the entire proceeding as it is prescribed under Rule 17 of the CCA rules. Similarly, the non-supply of enquiry report to the delinquent at the time when the second show cause was issued, that too without a clear 15 days' notice appears to be a startling example of

violation of the rules, as prescribed in the aforementioned statute.

Another aspect of the matter which has been highlighted by the learned counsel appearing on behalf of the petitioner was that by the administrative instructions as contained in Circular No. 945 dated 24.06.2005 issued by Department of Administrative Reforms instructions have been issued regarding the manner in which such complaints from outsider be treated. Under such circulars it has been made incumbent that the complaints with regard to the government servants should be duly affidavited. Such complainants who come for organizing trap must make their complaints in proper affidavit. It was indicated in the said circular that if at all such complaints came, the complainant must be ready to give the deposition at the relevant point of time. However, in the present case, there is no mention of any complainant being examined so as to establish the charge against the petitioner.

In view of the above discussions and considering the aforesaid facts and circumstances of the case, this Court has come to the considered opinion that the impugned order has been passed not only against the settled principles of law and in violation of the statutory rules but also in gross violation of the principle of natural justice. As such, this Court considers it to be in the interest of justice to quash the order of dismissal passed against the petitioner contained in Memo No. 01/2011 (Annexure-19). The writ

application is thus, allowed and impugned order as contained in Annexure-19 is set aside and the petitioner is directed to be reinstated in service.

There shall be no order as to costs.

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(Anjana Mishra, J)

