

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.270 of 2016

=====

Lalan Pandey, S/o late Murlidhar Pandey, Resident of Village- Paharpur, PO-
Lohchi, P.S. Kharagpur, District- Munger.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Government of Bihar, Patna.
2. The Appellate Authority -cum- the Principal Secretary, Co-operative, Department, Govt. of Bihar, Patna.
3. The Disciplinary Authority -cum- the Registrar, Co-operative Societies, Govt. of Bihar, Patna.
4. The Enquiry officer -cum- the District Co-operative Officer, Gaya.
5. The Presenting Officer -cum- the Assistant Registrar, Co-operative Societies, Gaya.
6. The Principal Secretary, Revenue and Land Reforms Department, Govt. of Bihar, Patna.
7. The Deputy Secretary, Revenue and Land Reforms Department, Govt. of Bihar, Patna.
8. The Superintendent of Police, Vigilance Investigation Bureau, Bihar, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Purushottam Kumar Jha, Advocate
For the Respondent-State	:	Mr. Rakesh Kr. Shrivastava, AC to GP-15
For the Respondent No.8	:	Mr. Amresh Kumar,
		A.C. to Mr. Ramakant Sharma, Sr. Adv.

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 26-10-2016

Heard Mr. Purushottam Kumar Jha, learned counsel
appearing for the petitioner, Mr. Rakesh Kumar Shrivastava,
learned Assisting Counsel to Government Pleader No.15 for the
State and Mr. Amresh Kumar, learned Assisting Counsel to Mr.
Ramakant Sharma, learned senior counsel appearing for the
Vigilance Department.

The petitioner by way of this writ petition has prayed

for the following reliefs:

- 
- (i) Issuance of an order, direction or a writ in the nature of certiorari quashing the Memorandum of Charge dated 17.8.2011 framed by the Respondent No.3 (Annexure-8), whereby and whereunder one charges of taking bribe of Rs.5,000/- from one Mr. Shyam Kishore Mishra, has been levelled against the petitioner.
 - (ii) Issuance of an order, direction or a writ in the nature of certiorari quashing the Enquiry Report dated 24.01.2014 submitted by the Respondent No.4 as contained in Annexure-14 of this writ petition, whereby and whereunder the Enquiry Officer even without holding a proper and effective departmental proceeding and in absence of there being any evidence on record, has proved all the charges against the petitioner in a complete illegal, arbitrary and unauthorized manner.
 - (iii) Issuance of an order, direction or a writ in the nature of certiorari quashing the order passed by the Respondent No.3 as contained in Memo No.1720 dated 20.3.2014 (Annexure-18 of this writ petition)

whereby and whereunder the petitioner has been dismissed from the service of the Government.

- 
- (iv) Issuance of an order, direction or a writ in the nature of certiorari quashing the order passed by the Respondent no.2 as contained in Memo No.1778 dated 28.5.2015 (Annexure-20) whereby and whereunder the service appeal preferred by the petitioner against the order dated 20.3.2014 passed by the Disciplinary Authority has been rejected in a complete mechanical manner, and thereby the order passed by the Disciplinary Authority has been upheld.
- (v) This Hon'ble Court may further be pleased to issue a writ in the nature of mandamus commanding the respondents concerned to reinstate the petitioner in the Government Services, that too, with all consequential benefits.
- (vi) For grant of any other relief or reliefs to which the petitioner may be found entitled to in the facts and circumstances of this case.

In the nature of the order which this Court proposes to pass it would not require to enter into the relative merit of the case. Suffice it to say that the petitioner was allegedly caught red-handed



while accepting bribe money leading to the institution of a vigilance case which is yet pending for disposal and in the meanwhile the disciplinary proceeding so initiated, has culminated into an order of dismissal which stands affirmed and put to question before this Court.

Although the parties have endeavoured to argue the matter on merits but as I have observed hereinabove, in the nature of apparent legal infirmity in holding of the disciplinary proceeding I shall not delve into the merits of the case.

Amongst several issues raised by Mr. Jha, learned counsel appearing for the petitioner to question the dismissal of the petitioner from service on alleged charge of acceptance of bribe, one of the issues which he raises to question the proceedings leading to the impugned order is present in the enquiry report itself, a copy of which is enclosed at Annexure-14 and with reference thereto it is submitted that even when a Presenting Officer was appointed on behalf of the department for leading the evidence collected against the petitioner but for the reasons best known, he did not choose to do so and the Enquiry Officer himself assumed the role of the Presenting Officer himself to examine the evidence and hold the petitioner guilty. Column No.5 of the enquiry report present at Annexure-14 confirms this position.

Mr. Jha has referred to a Bench decision of this Court reported in **2004 (4) PLJR 517 (Rajib Lochan Jha vs. State of Bihar)** to argue that this single infirmity is enough to hold the entire proceeding vitiated.

Counsel for the State and Vigilance Department are unable to dispute this argument of Mr. Jha which is confirmed from the records itself. The law is well settled in this regard and where the Enquiry Officer is a person other than the Disciplinary Authority, then he acts as a delegate of the Disciplinary Authority and obviously cannot be a party to a disciplinary proceeding to assume the role of a Presenting Officer who represents the department.

The provisions of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 no doubt enables the Disciplinary Authority to also act as the Enquiry Officer, if he so likes or to delegate such jurisdiction to an independent authority but in either of the two situations the role discharged is that of a Disciplinary Authority. The Enquiry Officer thus does not represent any of the party rather is a body independent of any interest, to record his opinion on the issues that arises in a departmental proceeding in the backdrop of the evidence led and proved.

The legal position being such, the Enquiry Officer



representing the Disciplinary Authority could not have assumed the role of a Presenting Officer who represents the department and thus is an interested party. This single aspect of the matter has left the entire proceedings vitiated. The opinion expressed by this Court is supported in the judgment of the Supreme Court reported in **(2010)2 SCC 772 (State of Uttar Pradesh vs. Saroj Kumar Sinha)** and paragraph 28 of the judgment explains the legal position which reads as under:

“28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

Reference in this regard is made to another judgment of this Court reported **1996 (1) PLJR 401 (Panchanan Kumar vs. Bihar State Electricity Board)** which was a case in which even when the Presenting Officer was appointed for the proceedings, he failed to appear and which role was assumed by the Enquiry Officer himself. A Bench of this Court taking note of the circumstances,

made the following observations:

“11. Considering the rival contentions of the parties, this Court is of the opinion that in the instant case the inquiry has been vitiated inasmuch as the enquiry officer himself has acted as the presenting officer even though the presenting officer was appointed by the Electricity Board. There is no explanation why the said presenting officer did not appear before the enquiry officer to present the case of the department. In the peculiar facts of this case, the action of the enquiry officer to present the case himself on behalf of the department and also to take upon himself the duty of enquiring the correctness or otherwise of the said case clearly shows that the enquiry officer, in the instant case, has failed to discharge his duty as a fair and impartial enquiry authority. He has rolled up within himself the role of both the presenting officer and the enquiry officer and as such has acted in a manner which is not consistent with the principles of natural justice.”

In the circumstances so discussed above where there was no Presenting Officer either to lead or to prove the evidence that was collected against the petitioner, the Enquiry Officer could not have assumed this duty to examine the evidence himself and to hold the same sufficient to uphold the guilt of the petitioner. Even if the case of the petitioner is of allegedly being caught red-handed while accepting the bribe and even if strict rules of evidence are not to be followed in the disciplinary proceeding yet a duty is cast on the Enquiry Officer to examine the evidence to see whether it is supportive of the allegation made and connects the delinquent with

the charge. In absence of the Presenting Officer this mandatory procedure could not have been discharged by the Enquiry Officer himself.

In the uncontested circumstances discussed it is only a completion of formality to hold that the entire proceeding beginning from the Enquiry Officer's report impugned at Annexure-14 culminating in the punishment order passed by the Disciplinary Authority dated 20.3.2014 impugned at Annexure- 18 as well as the order in appeal communicated vide Memo No.1778 dated 28.5.2014 impugned at Annexure-20 cannot be upheld and are accordingly quashed and set aside. The matter is remitted for its conclusion in accordance with law from the stage of Enquiry.

The writ petition is allowed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10-11-2016
Transmission Date	NA