

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5779 of 2016

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1. Shweta Mishra D/o Sri Dinesh Kumar Mishra resident of House No. G-105, Sector Goverdhan, Kalindipuram, Allahabad (U.P.) 211011, at present dismissed Senior Deputy Collector, Kaimur, Bhabhua (B.P.S.C.) Serial No. 1312/11, P.S. Bhabua, District- Kaimur, Bihar

.... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary to the Hon'ble Chief Minister, Government of Bihar, Patna
3. The Secretary, Government of Bihar, Patna
4. The Principal Secretary, General Administration Dept., Govt. of Bihar, Patna
5. The Joint Secretary, General Administration Department, Government of Bihar, Patna
6. The Deputy Secretary, General Administration Department, Government of Bihar, Patna
7. The Joint Commissioner, Departmental Inquiry, Saran Division, Chapra cum Inquiry Officer, Saran at Chapra
8. The District Collector, Saran at Chapra

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Adv.
Mr. Aditya Narayan Singh-1, Adv.

For the Respondent/s : Mr. Dipak Sahay Jamuar, A.C. to AAG 4

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 06-09-2017

Heard Mr. Bindhyachal Singh, learned counsel for the petitioner and Mr. Dipak Sahay Jamuar, learned A.C. to AAG 4 for the State.

With the consent of the parties, the writ petition has been heard with the view to final disposal at the admission itself.

It takes only a photograph to dismiss a Senior Deputy Collector, a member of the Bihar Administrative Service on an allegation of



bigamy. The petitioner while questioning the entire disciplinary proceedings initiated against her has prayed for quashing of the order bearing Memo No.1403 dated 28.1.2016 passed by the State Government in its General Administration Department impugned at Annexure-12 to the writ petition whereby the petitioner has been dismissed from service. The petitioner also prays for reinstatement with full consequential benefits.

The foundation for the disciplinary proceeding resulting in the impugned order of dismissal lies in a complaint filed by one Arpana Tripathi on 6.3.2013 in which the complainant while accepting that she has instituted an F.I.R. against her husband and the petitioner charges the two person of colluding in torturing her. The allegation is that the two persons i.e the husband of the complainant and the petitioner were in relationship. It is treating the complaint sacrosanct that an enquiry was directed by the General Administration Department and the District Magistrate, Saran at Chapra was directed to enquire into the matter and report. A copy of such direction contained in the letter dated 22.4.2013 is enclosed at Annexure-2. Following the direction that a show cause was issued by the District Magistrate, Saran and the petitioner was directed to file her reply on the complaint. The petitioner filed her reply, a copy of which has been placed at Annexure-4 denying the allegations as a figment of



imagination of the complainant and resting on no evidence. The petitioner informed the District Magistrate that she has been receiving threatening messages from the complainant for which she has also moved the judicial forum. She also informed the District Magistrate that the complainant had dragged her in a criminal case instituted in the State of West Bengal and in which she has obtained anticipatory bail. A copy of the order was also enclosed at Annexure-5 to the writ petition. The report of the District Magistrate, Saran at Chapra was forwarded to the Deputy Secretary, General Administration Department through letter dated 6.8.2013 and he has proceeded to accept the allegation simply on the basis of photographs produced by the complainant without even bothering to enquire into its veracity. Even while the first complaint was being examined by the State that a second complaint was filed by the complainant Arpana Tripathi on 9.7.2013 present at Annexure-6 levelling the same allegation against her husband and the petitioner. Mechanically, a show cause was asked for the second time which was duly reply by the petitioner vide Annexure-7. The State not being satisfied by the explanation given by the petitioner initiated disciplinary proceedings against her through resolution bearing memo No. 18117 dated 27.11.2013, a copy of which is impugned at Annexure-8. The Enquiry Officer submitted his report vide Annexure-11 to the writ petition upholding the charge.



The petitioner was served with a 2nd show cause vide Annexure-12 which was duly replied but which has not satisfied the disciplinary authority to result in the order of dismissal passed on 28.1.2016 impugned at Annexure-15 to the writ petition. Feeling aggrieved the petitioner is before this Court.

I have heard learned counsel for the parties and perused the records.

In my opinion, the very initiation of the disciplinary proceeding is contrary to Rule 17 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules').

Rule 17 of 'the Rules' casts certain mandatory obligation on the disciplinary authority which needs to be discharged before he decides to hold a regular proceeding either by himself or delegates the jurisdiction to an Enquiry Officer competent to discharge such duty. The obligation casts on a disciplinary authority are mandated under Rule 17(3), 17(4), 17(5) and 17(6) and it is only after this obligation is completed that an Enquiry Officer has a duty to discharge but not prior thereto.

In so far as the present case is concerned, although the petitioner has been show caused on the complaint and to which she has also filed her reply but the intention to reduce the allegation into a



formal disciplinary proceeding is not reflected in either of the show causes. In fact for the first time that the State as the disciplinary authority decided to initiate disciplinary proceeding against the petitioner vide Annexure-8 dated 27.11.2013 that while enclosing the copy of the charge memo, the disciplinary authority has directed the petitioner to file her reply before the Enquiry Officer which is contrary to the stipulations present in rule 17(3) of 'the Rules'. Though this mandatory procedure and the duty cast thereunder has been discussed by this Court in a number of judgments yet wisdom evades the State when it discharges the role of the disciplinary authority. The disciplinary authority without bothering to satisfy himself on the statutory requirements as present under 'the rules' mechanically decided on the enquiry and directed the petitioner to file his reply before the Enquiry Officer which is in teeth of the statutory prescriptions. According to Mr. Singh learned counsel for the petitioner though the charge memo refers to two evidences i.e the letter of the District Magistrate and the complaint of Arpana Tripathi but neither of the two have been examined on the evidence nor any person has appeared to prove the documentary evidence. In other words, the submission of Mr. Singh is that finding of the enquiry Officer which has been endorsed by the disciplinary authority is resting on no evidence. Reference is made to the Constitution Bench



judgment of the Supreme Court reported in **AIR 1964 SC 364 (Union of India Vs. H.C. Goel)** more particularly paragraph 23 thereof and the judgment reported in **(1999) 2 SC 10 (Kuldeep Singh V. Commissioner of Police & Ors.)** paragraph 10 wherein it has held that where a conclusion is resting on no evidence, it has to be held a perversity.

Learned State counsel though has tried to impress upon the Court on the allegations facing the petitioner but the statutory violations by the disciplinary authority as noticed above has not been answered nor learned counsel has been able to show from the records whether any evidence was led during the enquiry and whether the documentary evidence so relied upon was proved by the Presenting Officer during enquiry.

In my view the disciplinary proceeding is suffering from multiple statutory violations. Considering that the extreme penalty of dismissal has been passed against the petitioner simply on the basis of a photograph, the genuineness of which is not even proved during the course of the proceeding or before a competent forum, it is the case resting on no evidence and the petitioner has been unnecessarily dragged into a proceeding which does not lay foundation on any definite piece of evidence connecting the petitioner to the charge. Even though the disciplinary proceeding is to be tested on the



principles of preponderance of probability but it would be stretching the principle of bit beyond the seams to uphold the guilt of the petitioner simply on the basis of photograph, the veracity of which is yet to be proved.

For the reasons so discussed the entire proceeding initiated against the petitioner together with the chargememo bearing Memo No. 18117 dated 27.11.2013, the enquiry report submitted thereon at Annexure 11, together with and the order of dismissal passed by the State bearing No. 1403 dated 28.1.2016 are held illegal and passed in violation of the statutory prescriptions underlying the ‘disciplinary rules’ besides resting on no evidence and are accordingly quashed and set aside. The petitioner stands restored to her post together with full consequential benefits which should be provided to her within a period of 3 months from the date of receipt production of a coy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21.09.2017
Transmission Date	NA

