

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7207 of 2016

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Shankar Dayal, son of Late Ramdhani Prasad, resident of Village - Bhistipara, Near Surya Hotel, Hirapur Dhanbad, P.O. and P.S. - Dhanbad, District - Dhanbad, at present residing at Handsome Gents' Parlour, Near Kumar Cinema, P.S. - Biharsharif, District - Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Commissioner, Patna Division, Patna.
3. The District Magistrate, Nalanda.
4. The Additional District Magistrate -cum- Incharge Senior Officer, District Establishment Section, Nalanda.
5. The Deputy Collector, Land Reforms, Rajgir, Nalanda.
6. The Block Development Officer, Rajgir, Nalanda.
7. The Block Development Officer, Ben, Nalanda.
8. The Circle Officer, Tharthari, Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajey Kumar, Advocate

For the Respondent/s : Mr. Kumar Alok, SC-7

Dr. Raj Kumar Singh, AC to SC-7

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 29-06-2017

Heard Mr. Ajey Kumar, learned counsel appearing for the petitioner and Mr. Kumar Alok, learned Standing Counsel No.7 for the State.

The petitioner prays for issuance of a writ in the nature of certiorari for quashing the order bearing Memo No.156 dated 22.1.2014 passed by the District Magistrate, Nalanda, whereby in exercise of powers vested under rule 14 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules'), the petitioner has been visited with the penalty of compulsory retirement. A copy of the



order of punishment is impugned at Annexure-7 to the writ petition and has been affirmed by the Appellate Authority who vide order passed on 15.12.2015 has dismissed the Service Appeal No.224 of 2014 preferred by the petitioner which is impugned at Annexure-8 to the writ petition.

With the consent of the parties the matter has been heard with a view to its final disposal at the stage of admission itself.

The facts of the case in brief is that the petitioner at the stage of passing of the impugned order was holding the post of Nazir, a Class-III post under the State and was posted at the Circle Office, Rajgir at the relevant time. A charge-sheet was drawn against the petitioner for disobedience in handing over his charge despite the transfer order bearing Memo No.608 dated 30.6.2006 issued by the District Magistrate, Nalanda, a copy of which is placed at Annexure 'A' to the counter affidavit as well as for not accounting for a sum of Rs.58,502/- and which charge framed in Form 'क' by the District Magistrate impugned at Annexure-2/1, was served on the petitioner through the Enquiry Officer –cum- Deputy Collector, Land Reforms, Rajgir vide his letter dated 1.2.2008 impugned at Annexure 2. The petitioner filed his exhaustive reply repelling each of the charge vide Annexure-3. The enquiry was conducted and the report of which was submitted by the Enquiry Officer on 29.10.2008 present at Annexure-5. The



petitioner was served with the second show cause notice vide letter dated 11.12.2009 of the Establishment Deputy Collector, Nalanda impugned at Annexure-4. The petitioner filed his reply at Annexure-6 to the second show cause but has been visited with the punishment of compulsory retirement by the District Magistrate, Nalanda which order is issued not only under the signature of the District Magistrate but also bears the signature of the Establishment Deputy Collector as well as the Senior Officer Incharge in the District Establishment Office and whereby the petitioner has been compulsorily retired under rule 11 of 'the Rules' which order bearing Memo No.156 dated 22.1.2014 is impugned at Annexure-7. The petitioner filed an appeal giving rise to Service Appeal No.224 of 2014 which also has been dismissed by the Divisional Commissioner, Patna vide order dated 15.12.2015, a copy of which is impugned at Annexure 8. Feeling aggrieved the petitioner is before this Court.

I have heard Mr. Ajey Kumar for the petitioner on merits of the contest which has been contested by Mr. Kumar Alok, learned Standing Counsel No.7.

The substance of the argument advanced by Mr. Ajey Kumar, learned counsel appearing for the petitioner to question the impugned order is that it is clothed with statutory violations. He submits that even though a Presenting Officer was appointed in the



proceeding but he failed to lead any evidence against the petitioner and it is only on the basis of the allegations forming part of the charge memo that has led to the conclusion drawn by the Enquiry Officer and has been endorsed by the Disciplinary Authority and the Appellate Authority. In short the submission is that the order impugned is resting on no evidence and that in absence of the Presenting Officer the entire proceeding stood vitiated and the conclusion drawn stood void ab-initio.

The argument of Mr. Ajey Kumar has been contested by Mr. Kumar Alok, learned Standing Counsel No.7 who in reference to the allegations submits that not only the petitioner delayed handing over of the charge which despite the order of transfer dated 30.6.2006 was given three months later in September, 2006, the petitioner also failed to account for a sum of Rs.58,502/- objected to by the audit team.

Having heard learned counsel for the parties I am of the opinion that the writ petition is fit to be allowed on all the issues raised by Mr. Ajey Kumar.

The proceeding is clothed with gross statutory violations and confirms ignorance of statutory procedure provided under 'the Rules' beginning from the stage of service of charge memo until the passing of the impugned order(s). The Disciplinary Authority has defaulted at each stage. The charge memo placed at Annexure 2/1



even though framed by the District Magistrate, Nalanda was never served upon the petitioner by the District Magistrate as mandated under rule 17(3) of 'the Rules' nor the records in the custody of Mr. Kumar Alok would reflect any delegation of power. Mr. Alok has also not been able to satisfy from the records whether any such delegation has been made by the Disciplinary Authority in favour of any officer. Now in such circumstances the service of the charge memo by the Enquiry Officer and his direction to the petitioner to reply thereto, is unheard of in service jurisprudence and contrary to the 'Disciplinary Rules'.

Rule 17(3) of 'the Rules' casts an obligation on the Disciplinary Authority to draw a charge against a delinquent Government servant or cause it to be drawn up against the officer delinquent. Sub-rule (4) thereof further mandates the delivery of such charge memo so drawn up either through the Disciplinary Authority or through an officer duly authorized. The obligation cast on the Disciplinary Authority does not stop here rather he has yet to satisfy himself whether the explanation so forwarded by a delinquent on the proposed charge, requires an enquiry by the Enquiry Officer or requires a closure. This power exclusively vested in the Disciplinary Authority under rule 17(4) cannot be delegated.

In the present case this mandatory obligation cast on



Disciplinary Authority has been flouted as confirmed from the letter dated 1.2.2008 (Annexure-2) issued by the Enquiry Officer directing the petitioner to file his reply on the charges before him. This is a gross statutory violation and has been commented upon by a Division Bench of this Court in a judgment reported in **1996 (2) PLJR 95 (Ravindra Nath Singh vs. Bihar State Road Transport Corporation)** when the Division Bench has expressed the following opinion at paragraph 6 of the judgment:

“6. The Enquiry Officer is not the competent authority to consider the reply to the charges. It is for the disciplinary authority to consider the reply to charges and on consideration of the causes shown in the reply to decide as to whether to close or to continue with the proceedings by holding domestic enquiry into the charges.”

In my opinion the enquiry at its very inception is vitiated for the Enquiry Officer has no business to seek reply on the charges from the delinquent. ‘The Rules’ again do not authorize him to do so. The illegality did not stop here and continues further.

It is not in dispute that though a Presenting Officer was appointed for the enquiry but he did not choose to lead any evidence drawn against the petitioner or examine the petitioner on the allegation. On the contrary it is the Enquiry Officer who took this duty upon himself. Rule 17 of ‘the Rules’ draws a complete scheme of the proceeding and details the manner in which a



proceeding is to be conducted. Rule 17(14) very eloquently describes as to how a proceeding is to proceed on the date fixed. A mandatory duty has been cast on the Presenting Officer to examine the witnesses and lead evidence collected against a delinquent. This mandatory duty has not been discharged. Instead the Enquiry Officer took this duty upon himself even when such practice has been deprecated by the Courts on different occasions. For ready reference I would refer to a judgment of the Supreme Court reported in **(2010) 2 SCC 772 (State of Uttar Pradesh vs. Saroj Kumar Sinha)**. At paragraph 28 of the judgment the Supreme Court has the following words of advise for the enquiry officer:

“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 un rebutted 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.”

In continuation I would also refer to a judgment reported in **1996 (1) PLJR 401 (Panchanan Kumar vs. The Bihar State Electricity Board)** in which case though a Presenting Officer was



appointed but he failed to discharge his obligation and in his absence his role was assumed by the Enquiry Officer. The opinion of the Bench at paragraph 11 of the judgment would be relevant for the issue at hand:

“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.”.

It is undisputed that there was no Presenting Officer present either to lead or to prove the evidence whatsoever, collected against the petitioner. The Enquiry Officer in such circumstances could not have assumed this duty upon himself to examine the evidence to hold it sufficient enough for upholding the charges.

In this connection I would again refer to paragraph 14 of the judgment of the Supreme Court reported in **(2009)2 SCC 570 (Roop Singh Negi v. Punjab National Bank)** which would again



apply on all fours in the present case:

"14. Indisputably, a departmental proceeding is a quasi- judicial proceeding. The enquiry officer performs a quasi- judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence."

As I have already observed the present proceeding is a classic example of multiple statutory violations. The enquiry report is a one and half page report which nowhere discusses the evidence nor discusses the rebuttal given by the petitioner rather mechanically endorses the allegation as confirmed from Annexure-5. The petitioner was served with a second show cause on the enquiry report and which is not done by the Collector –cum- District Magistrate, Nalanda who is the Disciplinary Authority of the petitioner rather has been served through the Establishment Deputy Collector who has no jurisdiction to do so in view of the provisions underlying rule 18(1), (2) and (3) of 'the Rules' which casts obligation on the Disciplinary Authority exclusively to seek a show cause on the enquiry report from the delinquent. In other



words, the second show cause impugned at Annexure-4 is a void document. The petitioner in obedience filed an exhaustive reply to the second show cause present at Annexure-6 but has been visited with a mechanical order passed by the Disciplinary Authority which is bereft of any reason nor there is any discussion on the issue raised by the petitioner in rebuttal of the charges.

Interestingly the order of the Disciplinary Authority has the endorsement of two other authorities which is unknown to service jurisprudence. There cannot be a committee of Disciplinary Authority. Apparently the District Magistrate, Nalanda, the author of the order needs to upgrade her knowledge on service jurisprudence as well as on the procedure mandated under 'the Rules'. It is about time that officer(s) discharging role of a Disciplinary Authority update themselves on the procedure for their ignorance allows a delinquent to escape punishment for the fault entirely attributable to them.

The discussion above confirms that the order of the Disciplinary Authority bearing Memo No.156 dated 22.1.2014 impugned at Annexure-7 as confirmed by the Appellate Authority vide Annexure-8 is founded on bundle of illegalities and cannot be upheld for they are products of procedural illegalities.

For the reasons so discussed the entire proceeding drawn against the petitioner beginning from the service of charge memo



vide Annexure-2, the enquiry report vide Annexure-5, the order of the Disciplinary Authority vide Annexure-7 and the order of the Appellate Authority vide Annexure-8 cannot be upheld and are accordingly quashed and set aside. The petitioner stands reinstated on his post and would be entitled to all the consequential benefits.

The writ petition is allowed.

It is made clear that this Court has not expressed any opinion on the merits of the charge nor has quashed the charge memo and thus it is entirely for the Disciplinary Authority to decide whether or not he would yet proceed in the matter but in accordance with law.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	04-072017
Transmission Date	NA

