

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.131 of 2017

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1. Saroj Kumar Manjhi, son of Late Jamuna Manjhi, resident of Village- Bhairampur, P.S.- Doriganj, District- Saran at Chapra, then working as Draftsman under the land Acquisition Office, Gopalganj, District- Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Land Reforms Department, Bihar, Patna.
2. The Divisional Commissioner, Saran at Chapra.
3. The District Magistrate, Gopalganj.
4. The Land Acquisition Officer, Gopalganj.
5. The Additional Collector, Saran at Chapra.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siddharth Harsh, Adv.

For the Respondent/s : Mr. Rakesh Kumar Srivastava, GP15

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 11-04-2017

Heard Mr. Siddharth Harsh, learned counsel for the petitioner and Mr. Rakesh Kumar Srivastava, A.C. to G.P.15 for the State.

In the nature of the order this court proposes to pass, it would not require to delve into merits of the case.

The petitioner is aggrieved by the order bearing Memo No.898 dated 25.4.2015 passed by the Commissioner, Saran Division Chapra whereby the petitioner has been dismissed from service. The petitioner is also aggrieved by the order bearing memo no.828 dated 5.8.2016 of the Principal Secretary whereby the appeal preferred by the petitioner has been rejected, a copy of which is impugned at



Annexure-17 to the writ petition.

The proceeding in question was initiated against the petitioner following his arrest in alleged bribery case resulting in institution of a vigilance case bearing Vigilance Case No. 30 of 2010. Alongside a departmental proceeding was initiated under the provisions of the Bihar Government Servant (Classification Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Disciplinary Rules'). The chargesheet in Form (क) issued thereunder is placed at Annexure-2 to the writ petition. Although it is in a form of a show cause but since after reply of the petitioner, that the Commissioner, Saran Division vide memo No.299 dated 31.1.2014 while enclosing the same charge initiated formal departmental proceeding against the petitioner under 'the disciplinary rules'. The enquiry was held, the report of which is placed at Annexured-11, upholding the charges. The petitioner was put to second show cause notice which was duly replied by him but not being satisfied that the order of dismissal was passed vide Annexure-15 by the disciplinary authority as affirmed by the appellate authority vide Annexure-17.

In substance the argument of Mr. Harsh leaned counsel for the petitioner is that the charge memo is not in accordance with the disciplinary rules for it neither refers to any list of witness nor mentions the documentary evidence on which the department



proposes to drive home the charges. In reference to the enquiry report at Annexure-11 he submits that the position is confirmed because the only material relied upon by the Enquiry Officer i.e. the vigilance report, was not handed over to the petitioner and no other evidence was led by the Department either oral or documentary. He refers to the opinion of the Enquiry Officer at paragraph 9 to submit that he has simply proceeded on the opinion given by the Presenting Officer that the charges have been upheld.

The argument of Mr. Harsh has been though contested on merits and on the seriousness of the charge facing the petitioner but the statutory violation so raised by Mr. Harsh, goes uncontested. A copy of the charge is impugned at Annexure-2 and is bald as it can be. Even though 'the disciplinary rules' extensively deals with the manner and procedure in which a disciplinary proceeding has to be conducted but the authorities do not have the time or the interest to abide by the mandatory conditions underlying such obligation. As to how a proceeding is to be initiated stands discussed in Rule 17 and for the purpose herein, it is Rule 17(3) which would have relevance and which reads as under:

“17. Procedure for imposing major penalties .-

.....
(3) Where it is proposed to hold an inquiry against a government servant under this rule, the disciplinary authority shall draw up or cause to be drawn up-



- (i) the substance or 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.”

The provisions underlying Rule 17(3) of ‘the disciplinary rules’ is self eloquent and mandates that where a disciplinary authority proposes to hold an enquiry against a Government servant, the disciplinary authority either by himself or through any other officer competent, would draw a charge in the manner prescribed thereunder. While sub rule (i) discusses the imputation of misconduct, its manner stands described in Sub rule (ii) whereunder it is not only the statement of fact which has to be put to the notice of the delinquent rather the charge is to be accompanied with the list of documents and the list of witness on which the article of charge is proposed to be sustained.

As I have already discussed above, the charge at Annexure-2 is bald for it only refers to the allegation but nowhere discusses the witnesses or the evidence on which it proposes to be driven home. The illegality does not stop here. While Rule 14 discusses the manner



in which the charges is to be driven home as well as the obligation cast on the Presenting Officer, in the present case the Presenting Officer has leisurely transmitted his opinion in writing and which forms the basis for the conclusion drawn by the Enquiry Officer in his report at Annexure-11 as manifest from a plain reading of paragraph 9. The enquiry report at Annexure-11 further confirms that neither any oral nor any documentary evidence was led by the department in support of the charge. Reference in this regard is made to the judgment of the Supreme Court rendered in the case of **Roop Singh Negi vs. Punjab National Bank** reported in (2009) 2 SCC 570 more particularly paragraph 14 thereof when in similar matter where a proceeding was resting on the police case, the Supreme Court has held that a mere tendering of the police report ipso facto would not be sufficient to uphold the charge until such time there is some witness to attest the allegations mentioned thereunder.

Conformingly, neither the Presenting Officer has discharged his obligation nor the Enquiry Officer has thought it proper to require the Presenting officer to support the charge. It is a clear abdication of statutory responsibility by the disciplinary authority, the presenting officer as well as the Enquiry Officer in the conduct of the disciplinary proceeding. That the charge itself is not in tune with the mandatory conditions underlying Rule 17 (3), it cannot be upheld.



Reference in this regard is made to the judgment of the Supreme Court reported in **(2011) 5 SCC 142 (Chairman-cum-Managing Director Vs. Ananta Saha & Ors.)** where it was held that if the very initial action is not in consonance with law, the subsequent proceedings would not sanctify the same. In other words, where the foundation for the disciplinary proceeding itself is void, the consequences have to meet the same fate.

For the reasons so discussed, the entire disciplinary proceedings initiated against the petitioner right from the stage of drawing of the chargesheet including the enquiry report at Annexure-11, the punishment order at Annexure-15 and the appellate order at Annexure-17 cannot be upheld and are accordingly quashed and set aside. The writ petition is allowed. The petitioner stands reinstated.

The consequences shall follow.

The respondents if so advised can proceed afresh by drawing a fresh charge memo in accordance with ‘the disciplinary rules’.

Bibhash/-

(Jyoti Saran, J)

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.05.2017
Transmission Date	NA

