

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15089 of 2016

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Imteyaz Jhankar Son of Md. Safiur Rahman Resident of Village- Husainabad, P.S.-
Moro Basaura, District-Darbhanga

.... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Department, of Home,
Government of Bihar, Patna
2. The Director General of Police, Bihar , Patna
3. The Inspector General of Police, Bhagalpur Zone, Bhagalpur
4. The D.I.G., Police Munger Range, Munger
5. The Superintendent of Police , Khagaria
6. The Sub- Divisional Police Officer, Gogari, District-Khagaria

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Shivendra Kishore, Sr.Adv. Md. Anisur Rahman, Adv.
For the Respondent/s	:	Mr. M.N.Hoda Khan, SC-1 Md. Harun Quareshi, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 21-02-2017

Heard Mr. Shivendra Kishore, learned Senior Counsel
appearing on behalf of the petitioner alongwith Mr. Anisur Rahman,
Advocate on record and Md. N.H.Khan, SC-1, for the State.

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

The petitioner has prayed for quashing of the order bearing
Memo No. 1161 dated 18.8.2016 passed by the I.G. of Police,
Bhagalpur Range, Bhagalpur, whereby the appeal filed by the
petitioner against his order of dismissal has been rejected, a copy of
which is impugned at Annexure 8. The petitioner alongside has also



questioned the order of dismissal bearing Memo No. 452 dated 3.3.2016 passed by the D.I.G. of Police, Munger Range, Munger, impugned at Annexure 6.

Apart from questioning the order on merits, the legal issue raised by Mr. Shivendra Kishore, learned Senior Counsel, to question the proceeding is that:

- (a) no second show cause as mandated under Rule 18(2) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the 2005 Rules') was served on the petitioner; and
- (b) no Presenting Officer was appointed by the department as mandated under Rule 17(5)(c) and 17(14) of 'the Rules'.

Mr. Kishore, learned Senior Counsel, in support of his contentions has referred to a Bench decision of this Court reported in 2004(4) PLJR 517 (**Rajib Lochan Jha v. the State of Bihar**) and a decision of this Court arising from C.W.J.C.No. 270/2016 (**Lalan Pandey v. the State of Bihar & ors.**) to submit that the failure on the part of the department to appoint a Presenting Officer has been held fatal as to the validity of the disciplinary proceeding.

The issue raised by Mr. Kishore cannot be contested and is



supported by the documents on record and Mr. Khan, learned State Counsel, though contesting the matter on merits, is not in a position to shift the opinion regarding failure of the department to abide by the statutory procedure.

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

The petitioner was proceeded against for an alleged act of misconduct, inter alia, on grounds of being apprehended while allegedly taking illegal gratification. A police case was registered giving rise to Vigilance Case No. 35/2014. Alongside the disciplinary proceeding in question was initiated upon service of a charge memo, a copy of which is placed at Annexure 3. The Superintendent of Police, Khagaria while serving the charge memo on the petitioner on his alleged act of misconduct has though proceeded to appoint Sri Rakesh Kumar, S.D.P.O., Gogri as the Conducting Officer but he has defaulted in not appointing a Presiding Officer for the enquiry. The petitioner filed his reply to the charges at Annexure 5 before the Conducting Officer. The enquiry report is placed on record at Annexure 9 upholding the charges and which was followed by the dismissal order impugned at Annexure 6, which according to Mr. Kishore is without following stipulations present at Rule 18(3) of 'the Rules'. The petitioner filed his appeal raising all issues before the



Inspector General but met with no success, inasmuch as vide Annexure 8 the appeal has been dismissed.

A counter affidavit is on record but does not contest the legal position. The writ petition thus has to succeed on this ground alone. In fact the entire proceeding is infracted right from inception on the failure of the disciplinary authority to appoint the Presenting Officer. Rule 824A of the Bihar Police Manual adopts the service rules governing the police employees coming under All India Service (Discipline and Appeal) Rules, 1969, the Civil Services (Classification, Control and Appeal) Rules, 1930 and the Bihar Sub-ordinate Service (Discipline and Appeal) Rules, 1935.

Although the Civil Services (Classification, Control and Appeal) Rules, 1930 and Bihar Sub-ordinate Service (Discipline and Appeal) Rules, 1935 have since been replaced by 'the 2005 Rules', but it would not alter the legal position. Meaning thereby, the procedure to be followed in the case of police officials under the Home (Special) Department, is to be governed by 'the 2005 Rules'.

While Rule 17(5)(c) of 'the Rules' relied upon by Mr. Kishore mandates appointment of a Presenting Officer where the disciplinary authority himself does not choose to enquire into the charges, Sub-rule (14) thereof requires the Presenting Officer to lead evidence on which the department seeks to rely for driving home the



charges. Annexure 3 though a charge memo, is also an order appointing the conducting officer. The order, however, does not proceed to appoint a Presenting Officer which is a mandatory requirement. The enquiry thus has been held on an invalid notification. Even if the charge memo in so far as it imputes the charge on the petitioner would not suffer any infirmity, the later part of the order is found wanting on the appointment of the Presenting Officer. This single lacuna has vitiated the entire disciplinary proceeding.

A similar issue fell for consideration before this Court in the case of Lalan Pandey (supra) and this Court while examining the judgments on the issue expressed its opinion in the following manner:

" 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 v. 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 in **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."

The issue discussed by the Bench in the case of Lalan Pandey (supra) squarely applies to the case in hand. The writ petition thus has to succeed on this score itself.

At this stage an objection is being raised by Mr. Khan, learned counsel for the respondents, that the petitioner has failed to inform this Court that he had earlier moved for the similar relief.

Mr. Kishore, learned Senior Counsel, while admitting to the position relies upon the rejoinder to submit that though the petitioner had moved earlier but since in the meantime the final order was passed, hence, the writ petition has been withdrawn.

In my opinion, even if there would be a duty on the part of the petitioner to disclose all facts, but considering the explanation advanced, I am not persuaded to hold that it is a case of suppression of material fact from this Court. It may be an irregularity but it stands



explained in the rejoinder. The objection is thus taken to be rejected.

Reverting to the other issue raised, I find that even on the second issue, regarding statutory violation of the Rule 18(3) of 'the Rules', the plea taken has to be upheld and the statement made by the petitioner at paragraph 34 of the writ petition to such effect, has not been responded to.

For the reasons aforementioned, the order of dismissal bearing Memo No. 452 dated 3.3.2016 passed by the DIG of Police, Munger Range, Munger, impugned at Annexure 6, together with the order in appeal bearing Memo No. 1161 dated 18.8.2016 passed by the IG of Police, Bhagalpur Range, Bhagalpur, impugned at Annexure 8, are rendered illegal, resting on illegal and infracted decision making process and for the same reasons are quashed and set aside.

The writ petition is allowed with all consequential reliefs.

This order, however, would not preclude the authorities to proceed afresh but in accordance with law.

Surendra/-

(Jyoti Saran, J)

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	09.03.2017
Transmission Date	NA

