

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22076 of 2014

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1. Md. Kamal Ashraf son of Late Naeem Ashraf alias Syed Abdul Naseem Resident of A/8, Ali Nagar, Anisabad, P.S. - Gardanibagh at and District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Inspector General, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
4. The Special Secretary of the Government of Bihar, Registration Department, Government of Bihar, Patna.
5. The Assistant Inspector General-cum-Conducting Officer, Registration Department, Government of Bihar, Patna.
6. The Bihar Public Service Commission through its Chairman, Bailey Road, Patna.
7. The District Magistrate-cum-District Officer, Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Chitranjan Sinha, Sr. advocate Ms. Surya Nilambari, advocate
For the State	:	Mr. Hari Shanker Roy, AC to AG
For the BPSC:	:	Mr. Rajni Kant Jha, advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 08-11-2017

Heard Sri Chitranjan Sinha, the learned senior counsel for the petitioner, the learned AC to AG for the State and the learned counsel for the Bihar Public Service Commission.

With the consent of the parties, this writ petition is disposed of at the stage of admission itself as the pleadings are complete.

The petitioner has filed this writ petition for quashing the notification No. 4391 dated 10.10.2014 (Annexure-1) issued under the signature of Special Secretary, Registration, Excise and Prohibition



Department, Government of Bihar, Patna, respondent No.4, by which the petitioner has been dismissed from service from the post of District Sub-Registrar, Bhagalpur. The petitioner further seeks quashing the order dated 30.09.2015 (Annexure-9) issued under the signature of respondent No.4 whereby the appeal of the petitioner against the order of his dismissal has also been dismissed.

The brief facts is that while the petitioner was posted as District Sub-Registrar, Bhagalpur a case, being Economic Offence Unit P.S. case No. 23 of 2013, was registered under Section 13(i) and 13(ii) of Prevention of Corruption Act and under different sections of Bihar Government Servant Conduct Rules, 1976. On 28.06.2013 the petitioner was served with memo of charges stating therein that while the petitioner was working as District Sub-Registrar, Bhagalpur he amassed huge property beyond his legitimate source of income and for which E.O.U. P.S. case No. 23 of 2013 was registered and the conduct of the petitioner is against the Bihar Government Servant Conduct Rules, 1976. The petitioner submitted his reply (Annexure-5). The enquiry officer and presenting officer were appointed. The enquiry commenced on 25.03.2014. The enquiry officer concluded the enquiry on 06.05.2014 and submitted his report on 20.05.2014. On the basis of enquiry report, the disciplinary authority asked second show cause. The petitioner submitted his reply (Annexure-8) and on such the enquiry officer dismissed the petitioner from service (Annexure-1).

The learned senior counsel for the petitioner submits that no enquiry was held according to procedure laid down under Rule 17 of the Bihar Government (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the Bihar C.C.A. Rules, 2005). From perusal of proceeding of enquiry report (Annexure-7), it would appear that the enquiry officer, in absence of the



proceedee, himself looked into the documents annexed with the charge sheet and submitted the enquiry report without calling upon the presenting officer to produce the evidence oral and documentary, in accordance with the procedure laid down under sub-rule 11 and sub-rule 14 of Rule 17 of Bihar C.C.A. Rules, 2005. The petitioner gave his show cause that no enquiry was held in accordance with law but the disciplinary authority, without considering the show cause reply of the petitioner, dismissed the petitioner from service. The appeal of the petitioner also met the same fate as the appellate authority also did not consider the grounds taken by the petitioner in his memo of appeal nor took into consideration that no enquiry was held in accordance with law. Therefore, both the orders are illegal and not sustainable.

On the other hand, the learned AC to AG made valiant attempt to persuade this court that the enquiry was held in accordance with law but when his attention was drawn to the order sheet of the enquiry officer, he could not be able to show when the enquiry officer, in absence of the proceedee, asked the presenting officer to produce oral and documentary evidence, in order to prove the charges levelled against the petitioner. The learned AC to AG submitted that the enquiry officer has stated in his proceeding on 01.04.2014 and on 06.05.2014 that since the proceedee did not appear he concluded the enquiry on the basis of the facts presented by the presenting officer and the charge sheet but learned AC could not be able to show from the charge sheet when the presenting officer produced the evidence.

Having heard the submission of both sides, the only question arises for consideration as to whether the enquiry officer held the enquiry in accordance with the procedure laid down under sub- rule 11 and sub- rule 14 of Rule 17 of Bihar C.C.A. Rules, 2005?



Sub-rule 11 and sub-rule 14 of Rule 17 of C.C.A. Rules are as follows:-

“(11) The inquiring authority shall, if the Government Servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government Servant may, for the purpose of preparing his defence,-

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list in sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf;

Note:-If the Government Servant applies in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible.

(iii) give a notice within ten days of the order or within such further time as the inquiring authority may allow for the discovery or production of any documents which are in the possession of Government but not mentioned in the list specified in sub-rule (3) of this Rule:

Provided that the Government Servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government.

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government Servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses, as it thinks fit.”

From bare perusal of the aforesaid sub-rules, it would appear that sub-rule 11 says that if the Government Servant fails to appear within the



specified time or refuses or omits to plead, the enquiry officer shall require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days. Sub-rule 14 says that on the date so fixed for the inquiry, the presenting officer shall produce the oral and the documentary evidence by which the articles of charge are proposed to be proved on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined but from perusal of the order sheet of the enquiry officer, it is evident that the enquiry officer in his order sheet stated that the proceedee did not appear, even after several adjournments, and, therefore, he concluded the enquiry on the basis of facts stated by the presenting officer and the documents attached with the charge sheet. The provisions as contained in Rule 17 require the enquiry officer that he shall act in accordance with procedure laid down therein. The enquiry officer shall, in absence of the proceedee, ask the presenting officer to produce oral and documentary evidence, in order to prove the charge against the delinquent, but the enquiry officer never asked the presenting officer to present any evidence and it appears that the enquiry officer is not at all acquainted with the procedures and the rules meant for conducting enquiry against the delinquent. The role of the enquiry officer is of an independent arbitrator and not to take side of the Government against the delinquent and himself peruse the records and charge sheet, without asking the presenting officer to produce evidence, and submit his enquiry report. Such enquiry report is not at all acceptable and the same is based on no evidence as the report is not in accordance with sub-rule 23 of Rule 17 of Bihar C.C.A. Rules, 2005 but the disciplinary authority appears to be ignorant of these facts and procedure made by the Legislature and passed the order inflicting punishment against the delinquent/ petitioner which, in my view,



is absolutely illegal and not sustainable in the eye of law. Similarly, the appellate authority also without considering the memo of appeal filed by the petitioner dismissed the appeal. The appellate order is also absolutely illegal.

Having considered the facts aforesaid, the order dated 10.10.2014, as contained in Annexure-1, and the order dated 30.09.2015, as contained in Annexure-9, are set aside. This writ petition is, accordingly, allowed. The matter is remitted to the disciplinary authority to proceed afresh in accordance with law.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	14.11.2017
Transmission Date	N.A.

