

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13959 of 2014

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1. Arun Kumar Singh Son of Sri Ramanuj Singh Resident of Village- Ranipur Ke Chak, P.O.- City, P.S.- By-Pass, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, New Secretariat, Patna.
2. The Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, New Secretariat, Patna.
3. The Under Secretary to the Government, Revenue and Land Reforms Department, Government of Bihar, New Secretariat, Patna.
4. The Commissioner, Magadh Division, Gaya.
5. The District Magistrate, Gaya.
6. The Additional Collector, Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chitranjan Sinha, Sr. advocate
Mr. Sanjeet Kumar, advocate

For the Respondent/s : Mr. Ram Subhash Singh, AC to AAG VII

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 23-11-2017

Heard Sri Chitranjan Sinha, the learned senior counsel for the appellant, and Sri Ram Subhash Singh, the learned AC to AAG VII.

2. The petitioner has filed this writ petition for quashing the order dated 19.05.2014 (Annexure-1), issued under the signature of Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna by which the petitioner has been dismissed from service from the post of Circle Officer.

3. The brief facts is that petitioner is a member of Bihar Subordinate Service and he was appointed as Assistant Consolidation Officer-cum- Circle Inspector on 07.03.1989. After merger of different



revenue cadres, the petitioner was made Circle Officer of Tankuppa, Gaya. One case, bearing Tankuppa P.S. case No. 02/2009-10, was initiated by the predecessor of petitioner on 16.03.2010 against one Indradeo Yadav on the complaint of Sarpanch of the Panchayat. The petitioner inspected the place of occurrence and sent letter for institution of case and, on such, Fatehpur P.S. case No. 146 of 2010 under section 447, 397, 34 of the IPC was instituted against Indradeo Yadav. The petitioner also initiated Land Encroachment Case No. 01/2011-12 but Indradeo Yadav did not appear. On the complaint of Indradeo Yadav the petitioner was arrested on 06.09.2011 on the allegation that he was accepting bribe of Rs. 10,000/- from the complainant for which Vigilance case No. 61/2011 under section 7/13(2) read with 13(1) of the Prevention of Corruption Act, 1988 was registered. The petitioner was put under suspension but, after his release from custody, the petitioner submitted letter to revoke his suspension and accept his joining. The Department vide letter dated 10.01.2012 vacated the order of suspension and accepted the joining of the petitioner. On 24.01.2012 the petitioner was served with memo of charge (Annexure-6) in which it is stated that petitioner was arrested while taking bribe for which Vigilance case has already been registered and the conduct of the petitioner amounts to indiscipline and dereliction of duty. The petitioner submitted his reply. Additional Collector, Gaya was appointed enquiry officer and the petitioner was directed to appear before the enquiry officer. The Deputy Collector, Land Reforms, Sadar, Gaya was appointed as presenting officer. The enquiry officer submitted his report (Annexure-10) without any



evidence and on such report the Principal Secretary, Revenue & Land Reforms Department dismissed the petitioner from service.

4. The learned senior counsel for the petitioner assailed the order on the ground that from the memo of charge it would appear that the departmental proceeding was initiated only for institution of Vigilance case No. 61 of 2011 as the petitioner was arrested while taking bribe of Rs. 10,000/- and it amounts to misconduct, indiscipline and dereliction of duty. It is submitted that nowhere in the memo of charge it is stated that petitioner initiated any encroachment proceeding and the same was kept pending but the enquiry officer without allowing the presenting officer to produce any oral or documentary evidence submitted enquiry report and reported that the vigilance case is pending in court but did not record finding of guilt of the petitioner. It is submitted that enquiry report is based on no evidence. The enquiry was not held in accordance with Rule 17 of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred as Bihar CCA Rules, 2005), therefore, the order of punishment is vitiated and not sustainable.

5. The learned counsel for the State, on the contrary, submits that from the enquiry report itself it appears that the petitioner was given sufficient opportunity and after perusing the entire records and the evidence available on record the enquiry office come to the finding about the guilt of the petitioner.

6. Having heard the submission of both sides, the sole question arises for consideration as to whether the departmental proceeding



was held in accordance with Rule 17 of Bihar CCA Rules, 2005?

7. Rule 17 of Bihar CCA Rules, 2005 and its sub-rules prescribes the procedure in a very meticulous and exhaustive way as to how the departmental proceeding should be concluded. Sub-rule (2) says that where the disciplinary authority is of the opinion that there are grounds for inquiring about the truth of any imputation of misconduct or misbehaviour against a Government servant, he may himself inquire into it, or appoint under these Rules an authority to inquire about the truth thereof. Sub-rule (3) prescribes that the disciplinary authority shall draw up or cause to be drawn up the substance of the imputation of misconduct or misbehaviour as a definite and distinct article of charge. Statement of the imputations of misconduct or misbehaviour in support of each article of charge which shall contain statement of all relevant facts including any admission or confession made by the Government servant and a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained. Sub-rule (4) says that the disciplinary authority shall deliver the articles of charge and statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be proved. Sub-rule (14) prescribes that the on the date fixed for enquiry 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 delinquent.



8. It appears from memo of charge that only charge is made against the petitioner that Vigilance case No. 61 of 2011 under section 7/13(2) read with 13(1) of the Prevention of Corruption Act was registered when the petitioner was arrested while taking bribe of Rs. 10,000/- from Indradeo Yadav and such act of the petitioner amounts to indiscipline and misconduct. The list of documents was not appended with the memo of charge. The petitioner submitted his reply but it appears from Annexure-9 that the enquiry officer did not ask the presenting officer to adduce any oral and documentary evidence in order to prove the charge made against the petitioner. From perusal of order dated 11.11.2013 it appears that the proceeding was adjourned for 23.11.2013 and some paper was submitted on that date. On 23.11.2013 the petitioner submitted his reply and the case was adjourned for 16.01.2014. On 16.01.2014 the presenting officer was asked to present his case but the enquiry officer submitted report on 30.01.2014 on the basis of reply of the petitioner and opinion of the presenting officer but no evidence as required under Rule 17 of Bihar CCA Rules, 2005 was produced before the enquiry officer and on such report the disciplinary authority called upon the petitioner to file his second show cause reply. It appears that the disciplinary authority, without looking into the facts that the enquiry officer did not submit the enquiry report in accordance with the procedure laid down under Bihar CCA Rules, 2005 and the report is based on no evidence, dismissed the petitioner from service. Hence, I find that due procedure has not been followed during the course of enquiry and on the basis of such enquiry report the order of punishment is vitiated and not



sustainable.

Accordingly, this writ petition is allowed and the order dated 19.05.2014 (Annexure-1) is set aside. The petitioner is entitled to get all the consequential benefits.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	04.12.2017
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