IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14540 of 2014

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1. Vijay Kumar Chaurasia S/o Late Anuplal Chaurasia R/o Sanjay Sadan, Post Office Road, Punaichak, P.S. Shastri Nagar, District Patna .... Petitioner

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition Department, Govt. of Bihar, New Secretariat, Vikash Bhawan, District Patna.
2. The Commissioner, Excise and Prohibition Department, Govt. of Bihar-cum-Inspector General of Registration, New Secretariat, Vikash Bhawan, District Patna.
3. The Deputy Commissioner, Patna-cum-Magadh Division, Excise and Prohibition Department, Govt. of Bihar, District Patna.
4. The Assistant Commissioner, Excise and Prohibition Department, Govt. of Bihar, District Patna.
5. The Assistant I.G. of Registration, Registration, Excise & Prohibition Department, Govt. of Bihar, District Patna .... Respondents

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Appearance :

For the Petitioner	:	Mr. Manager Sah, Adv.
For the Respondents	:	Mr. Hari Shankar Roy, AC to AG

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT
Date: 02-11-2017

Heard both sides.

2. The petitioner seeks quashing of the order, dated 27.06.2014, as contained in Memo No. 2741, issued under the signature of the Deputy Secretary, Excise & Prohibition Department, Government of Bihar, by which the entire pension of the petitioner is stopped.

3. Brief facts, which is relevant for disposal of this writ petition, is that while the petitioner was posted as Excise Inspector, the petitioner was arrested by the Vigilance Department on 02.11.2007 on the allegation of accepting bribe of rupees five thousand from complainant, Rajeev Ranjan, and a departmental proceeding was also initiated on the allegation that the petitioner was arrested while accepting bribe, the conduct of the petitioner amounts to misconduct, according to the Bihar Government Servants Conduct Rules, 1976. The Assistant Commissioner, Excise, Gaya, was appointed as Enquiry

Officer and the Presenting Officer was also appointed. The Enquiry Officer submitted his report on 29.11.2012 (Annexure 7), holding that the Presenting Officer did not examine any witness arrayed in the charge sheet in order to prove the charge and, accordingly, the Enquiry Officer hold that the charge leveled against the petitioner has not been proved.

4. Upon receipt of the enquiry report, the disciplinary authority issued show cause calling upon the petitioner to give second show cause as to why he be not suitably punished differing with the findings of the Enquiry Officer. The petitioner gave his detailed reply and in sum and substance stated that the disciplinary authority while asking second show cause did not give his point of difference with the findings of the Enquiry Officer on the evidence available on record and there is, in fact, no evidence on record to prove the charge against the petitioner. After perusal of the show cause, the disciplinary authority held the petitioner guilty of accepting bribe of rupees five thousand and the acts of the petitioner amount to gross misconduct according to the Bihar Government Servants Conduct Rules, 1976, accordingly, withheld hundred per cent pension of the petitioner.

5. The learned counsel for the petitioner submits that for inflicting major punishment, the procedure under Rule 17 of the Bihar Government Servant (Classification, Control and Appeal) Rule, 2005 ((hereinafter referred to for the sake of gravity as, "the CCA Rules, 2005"). Sub rule 14 of Rule 17 of the CCA Rules, 2005 cast duty upon the Enquiry Officer to ask the Presenting Officer to present oral and

documentary evidence. After closing the case of the Department, the Enquiry Officer is obliged to give opportunity to the employee to adduce oral and documental evidence in support of his case. After submission of the enquiry report under sub rule (23)(2) of Rule 17, the disciplinary authority under sub rule (1) of Rule 18 of the CCA Rules, 2005, has got power to remit the case to the Enquiry Officer for further enquiry, if the disciplinary authority finds that the Enquiry Officer has not recorded any finding or has not made any enquiry on a particular charge. Under sub rule (2) of Rule 18, the disciplinary authority has got power to differ with the findings of the Enquiry Officer on the basis of the evidence, available on record. The Enquiry Officer, thereafter, shall cause the point of difference to be served on the charged employee along with the enquiry report asking the charge officer to give second show cause. The object of serving the point of difference along with the enquiry report is to enable the charged officer to point out that the findings of the Enquiry Officer is based on evidence or the same is not based on evidence. Similarly, the charged officer may also point out that the disciplinary authority has recorded the point of difference with the findings of the Enquiry Officer, but, there is no such evidence on record to record a point of difference with the findings of the Enquiry Officer.

6. It is, further, submitted that from perusal of the enquiry report, itself, it would appear that the Presenting Officer did not produce any oral or documentary evidence although the enquiry remained pending with the Enquiry Officer for more than five years and

during this period the Presenting Officer did not produce any evidence as mandated under Rule 17 of the CCA Rules, 2005, unless the oral as well as documentary evidence is produced during the course of enquiry, the findings of the Enquiry Officer on the basis of the documents appended to the charge sheet is based on no evidence. It is submitted that since no evidence was on record, the Enquiry Officer recorded the findings of innocence of the petitioner, therefore, the disciplinary authority recorded the point of difference with the finding of enquiry is based on no evidence and the same is perverse and absolutely illegal.

7. On the contrary, learned Assistant Counsel to the Advocate General submits that from the perusal of Annexure 13 the order, impugned, by which the entire pension of petitioner has been withheld, it would appear that the disciplinary authority has come to a finding that the act of accepting bribe on the part of the petitioner amounts to gross misconduct and the disciplinary authority, therefore, rightly withheld entire pension of the petitioner, but, when his attention was drawn to the finding of the Enquiry Officer and the order, impugned, to show that the disciplinary authority on what evidence has come to the finding that the charged employee was guilty of gross misconduct, on such query, the learned counsel for the State could not be able to show any material collected during enquiry to show that the finding of the disciplinary authority is based on any iota of evidence produced during enquiry. Rather it appears that finding of the disciplinary authority is based on his own imagination and surmises and, therefore, I find that the submissions of the learned counsel for the

State is of no substance and not, at all, acceptable.

8. It is, further, submitted that the Government authority has got power under Section 139(c) of the Bihar Pension Rules to withhold the pension of the petitioner when the service of the petitioner is not found satisfactory, but, this submission of the learned counsel for the State is also of no substance. The Government, even under Rule 139(c) of the Bihar Pension Rules, can withhold any part or full pension of any employee if the employee is found guilty in a departmental proceeding or convicted in a criminal case.

9. As stated above, during the course of the departmental enquiry the Presenting Officer failed to produce any material in order to prove the charge against the petitioner and consequently the Enquiry Officer has also recorded the finding that the charge has not been proved as there is no evidence on the record, but, the disciplinary authority contrary to the law and the rules as envisaged under sub rule (2) of Rule 18 of the Bihar Government Servant (Classification, Control and Appeal) Rule, 2005, issued second show cause without giving his finding differing with the findings of the Enquiry Officer on the basis of the evidence available on record and held the petitioner guilty and withheld the entire pension of the petitioner.

10. The order of the disciplinary authority is, admittedly, in violation of the Rules and the procedure meant for holding departmental enquiry and gives powers to the disciplinary authority to inflict punishment in accordance with law. Therefore, the violation of the procedure established under the Rules amounts to violation of

principle of natural justice and the same vitiates the order of the disciplinary authority. Therefore, the order, dated 27.06.2014, as contained in Memo No. 2741, issued under the signature of the Deputy Secretary, Excise & Prohibition Department, Government of Bihar, is palpably illegal and fit to be set aside.

11. In the result, the writ petition is **allowed** and the order, dated 27.06.2014, as contained in Memo No. 2741 (Annexure 13) is **set aside**.

(Prabhat Kumar Jha, J)

SA/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08.12.2017
Transmission Date	N/A