

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.640 of 2017

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Surya Nath Singh, aged about 56 years, S/o Late Ram Rekha Singh, resident of
Village - Pandey Patti, P.S. - Buxar Muffassil, District - Buxar.

.... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Home Department,
Government of Bihar.
2. The Principal Secretary, Department of Home, Government of Bihar, Patna.
3. The Joint Secretary cum Director (Administration), Department of Home,
Government of Bihar, Patna.
4. The Inspector General (Prison), Bihar, Patna.
5. The Superintendent, Central Jail, Buxar.
6. The Superintendent, Model Jail, Chapra.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Siddhartha Prasad, Adv.

For the Respondent/s : Mr. Suman Kumar Jha, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 25-07-2017

Heard Mr. Siddhartha Prasad, learned counsel for the
petitioner and Mr. Suman Kumar Jha, AC to AAG-3, for the State.

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

The petitioner while questioning the entire disciplinary
proceeding initiated against him has prayed for issuance of a writ in
the nature of certiorari for quashing the order dated 9.9.2015 passed
by the Inspector General (Prison) and Reforms Service, Bihar, Patna
whereby in exercise of power vested under the Bihar Government
Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter
referred to as 'the Disciplinary Rules') as amended from time to time,



the petitioner has been awarded a major punishment of withholding of two increments with cumulative effect. Copy of the punishment order is impugned at Annexure 7 to the writ petition and the petitioner while questioning the same has also prayed for quashing of the appellate order dated 15.12.2015 passed by the Principal Secretary, Department of Home, Govt. of Bihar, Patna whereby the punishment order has been upheld as impugned at Annexure 9 to the writ petition.

The facts of the case leading to the writ petition briefly stated is that the petitioner at the relevant time was posted as Jailor, Mandal Jail, Chapra. An inspection was carried out on 23.1.2008 of the Jail by the Superintendent, Central Jail, Buxar, who submitted his report on 26.1.2008, a copy of which is present at Annexure 1 to the writ petition. The report addressed to the Inspector General (Prisons), Bihar, Patna complained of certain irregularities noted by the Superintendent, Central Jail. According to the petitioner, he was on leave on the said date and for which he relies on Annexure 1/1 to the writ petition. It is following the report submitted by the Superintendent, Central Jail that a charge memo was served on the petitioner by the Inspector General (Prisons), a copy of which is present at Annexure 2 and which, inter alia, carried seven charges against the petitioner. The charge memo simply relied upon the report of the Superintendent, Central Jail dated 26.1.2008 as an evidence of



the alleged act of misconduct on the part of the petitioner. No other evidence was mentioned in the charge memo as mandated under Rule 17(3) of 'the Disciplinary Rules'.

The covering order accompanying the charge memo has been placed on record in the counter affidavit vide Annexure 'A', whereby while serving the charge memo on the petitioner, the Inspector General (Prisons) appointed Sri Rupak Kumar, Superintendent, Shaheed Khudi Ram Bose, Central Jail, Muzaffarpur as the Conducting Officer while Sri Mirza Kalim Ahmad Beg, Jail Clerk, Divisional Jail, Chapra was made the Presenting Officer.

The petitioner filed his reply contesting the allegation which is Annexure 'B' to the counter affidavit. The Enquiry Officer submitted his report vide Annexure 4 and the Enquiry Officer while exonerating the petitioner of Charge Nos. 1, 5 and 6, held Charge Nos. 2, 3 and 4 partially proved while the last charge of allegation of insubordination was upheld. On submission of the enquiry report, the Joint Secretary cum Director (Administration) has taken over the role of the disciplinary authority to issue a second show cause containing the note of disagreement bearing memo No. 218 dated 19.5.2011 present at Annexure 5. The petitioner filed his reply to the disagreement note vide Annexure 6 but has been visited with the impugned order of penalty bearing memo No. 5391 dated 9.9.2015 by



the Inspector General of Prisons, Bihar, Patna impugned at Annexure 7 and even the appeal filed by the petitioner vide Annexure 8 has been rejected by the Principal Secretary vide order impugned at Annexure 9. Feeling aggrieved he is before this Court.

Mr. Prasad, learned counsel appearing on behalf of the petitioner, while questioning the entire proceeding on procedural irregularity has submitted that except for charge no.7 regarding lack of control of the petitioner over his subordinate, while half of the remaining charges have not been proved the balance have been partially proved. He submits that neither the charge memo is drawn in tune with the provisions of Rule 17(3) of 'the Disciplinary Rules' nor the Presenting Officer discharged the obligation as cast upon him under Rule 17(14) of 'the Disciplinary Rules' nor the disciplinary authority has discharged his obligation cast upon him under Rule 18(3) of the said Rules in issuing a note of disagreement, rather this role has been taken over by the Joint Secretary, Home (Prisons) Department which is contrary to the statutory Rules. He further submits that though a number of issues was raised by the petitioner before the disciplinary authority as well as the appellate authority in reference to the settled legal position and in reference to the statutory Rules but neither of the two statutory authorities has bothered to deal with the explanation given by the petitioner.



The arguments have been contested by Mr. Jha in reference to the counter affidavit filed in the present proceeding to submit that due opportunity was provided to the petitioner to defend himself and since large scale irregularities was noted by the Superintendent, Central Jail, the petitioner holding the post of Jailor has to face the consequences which in the nature of allegations is rather serious.

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

In my opinion, the entire proceedings beginning from the stage of charge memo is suffering from procedural irregularities, inasmuch as at every stage of the proceeding there has been a statutory violation by the respondents beginning from the service of charge memo, the complete copy of which is placed at Annexure 'A' to the counter affidavit. It is manifest that the Inspector General of Prisons has initiated proceeding without satisfying himself as to whether or not the circumstances were warranting, as mandated under Rule 17(4) of 'the Disciplinary Rules'. In fact the charge memo does not even satisfy Rule 17(3) for except for reference to an enquiry report submitted by the Superintendent, Central Jail, there is no mention of any oral witness for supporting the allegation. Drawing of disciplinary proceedings is not a routine matter rather Rule 17 of 'the Disciplinary Rules' spells out a complete scheme, for such initiation.



While Rule 17(3) enables the disciplinary authority to draw a charge memo or cause it to be drawn up by a competent authority and which charge memo is to include the substance of the imputation of misconduct or misbehaviour as a definite and distinct article of charge as well as a statement of imputation of misconduct or misbehaviour in support of each article of charge which shall contain not only the statement of all relevant facts including any admission or confession made by the Government servant but also a list of witnesses as well as list of documents on which the charges are proposed to be sustained. A complete goby has been given by the Inspector General of Prisons while drawing such charge memo which is lacking in statutory character.

It is again not simply by drawing a charge memo that a disciplinary proceeding comes into play rather once such charge memo is drawn up then before a decision is taken by the disciplinary authority to draw a formal disciplinary proceeding, the charge memo has to be delivered to the delinquent to enable him to file his written statement of defence and also state whether he requires a personal hearing. It is only after this exercise is over that the disciplinary authority can either drop the proceedings, if satisfied by the explanation, or enquire into the same himself in the manner prescribed or to delegate the power to an Enquiry Officer for holding enquiry as



per the 'disciplinary rules'.

In case the disciplinary authority decides to initiate a regular proceeding which is to be conducted by an authority other than himself then he has to forward the records which under Rule 17(6) would contain a copy of the articles of charge, a copy of the written statement of defence, a copy of the statement of witnesses, the evidence proving the delivery of the document and a copy of the order appointing the Presenting Officer, to the Enquiry Officer. This mandatory obligation cast on the disciplinary authority under rules 17(4), 17(5) and 17(6) of the 'disciplinary rules' has not been discharged in the present case, rather the disciplinary authority has straightway referred the matter to the Enquiry Officer without asking for any explanation from the petitioner and without satisfying himself on such application whether the matter required a detailed proceeding. Such act of the disciplinary authority in abdicating their jurisdiction in favour of the Enquiry Officer, has been commented upon by a Division Bench of this Court while considering a similar matter arising from Civil Service (Classification, Control and Appeal) Rules, 1930 having similar provision, in a judgment reported in 1996(2) PLJR 95 (**Ravindra Nath Singh v. Bihar State Road Transport Corporation**). In the opinion of the Division Bench any such direction by the disciplinary authority to relegate the delinquent to the



Enquiry Officer for filing his response was contrary to the statutory provisions for in the words of the Division Bench as found at paragraph 6, the Enquiry Officer is not a competent authority to consider the reply to the charges rather it is for the disciplinary authority to consider the reply to the charges and on consideration of the causes shown in the reply, to decide as to whether to close or to continue with the proceeding.

According to the learned counsel for the petitioner, even though a Presenting Officer was appointed for the proceeding but he neither led any witnesses to prove the charges nor anybody appeared to prove the report so relied upon by the department in support of the allegation. As per submission advanced by Mr. Prasad the opinion of the Enquiry Officer, the disciplinary authority as well as the appellate authority is resting on no evidence because no evidence was led by the Presenting Officer during the course of the proceeding. Such specific statement has not been contested by the respondents.

Apart from the fact that a conclusion drawn, whether by the Enquiry Officer or the disciplinary authority, cannot rest on whims, fancies and conjectures rather has to rest on some evidence which would connect the charge to the delinquent, the failure by the Presenting Officer to lead any such evidence to support the charge, has invalidated the entire proceeding for the Enquiry Officer could not



have examined the allegation himself nor could have usurped the role of the Presenting Officer in examining the evidence whatsoever.

The illegalities do not stop here rather continues with the second show cause which in terms of Rule 18(3) of the Rules is to be served on the delinquent by the disciplinary authority and in so far as the present case is concerned, the second show cause containing the disagreement note has been served on the petitioner by the Joint Secretary cum Director (Administration) as confirmed from Annexure 5. Such is the bundle of illegalities present in the present proceeding that I do not feel necessity to even deal with the other issues raised by Mr. Prasad as regarding the order of the statutory authorities being mechanical in endorsing the charges without dealing with the issues raised by the petitioner.

In fact the opinion expressed by this Court in a case arising from C.W.J.C.No. 7207/2016 (**Shankar Dayal v. the State of Bihar & ors.**) in similar circumstances would squarely apply in the present case for holding the entire proceedings beginning from the service of charge memo including the enquiry, the second show cause notice, the order of the disciplinary authority as well as the order of the appellate authority, illegal and contrary to the statutory provisions.

The relevant extract of the opinion expressed by this Court in the case of **Shankar Dayal (supra)** is reproduced hereinbelow:



"In the present case this mandatory obligation cast on Disciplinary Authority has been flouted as confirmed from the letter dated 1.2.2008 (Annexure-2) issued by the Enquiry Officer directing the petitioner to file his reply on the charges before him. This is a gross statutory violation and has been commented upon by a Division Bench of this Court in a judgment reported in **1996 (2) PLJR 95 (Ravindra Nath Singh vs. Bihar State Road Transport Corporation)** when the Division Bench has expressed the following opinion at paragraph 6 of the judgment:

"6. The Enquiry Officer is not the competent authority to consider the reply to the charges. It is for the disciplinary authority to consider the reply to charges and on consideration of the causes shown in the reply to decide as to whether to close or to continue with the proceedings by holding domestic enquiry into the charges."

In my opinion the enquiry at its very inception is vitiated for the Enquiry Officer has no business to seek reply on the charges from the delinquent. „The Rules" again do not authorize him to do so. The illegality did not stop here and continues further.

It is not in dispute that though a Presenting Officer was appointed for the enquiry but he did not choose to lead any evidence drawn against the petitioner or examine the petitioner on the allegation. On the contrary it is the Enquiry Officer who took this duty upon himself. Rule 17 of „the Rules" draws a complete scheme of the proceeding and details the manner in which a proceeding is to be conducted. Rule 17(14) very eloquently describes as to how a proceeding is to proceed on the date fixed. A mandatory duty has been cast on the Presenting Officer to examine the witnesses and lead evidence collected against a delinquent. This mandatory duty has not been discharged. Instead the Enquiry Officer took this duty upon himself even when such practice has been deprecated by the Courts on different occasions. For ready reference I would refer to a judgment of the Supreme Court reported in **(2010) 2 SCC 772 (State of Uttar Pradesh vs. Saroj Kumar Sinha)**. At paragraph 28 of the judgment the Supreme Court has the following words of advise for the enquiry officer:

"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.”

In continuation I would also refer to a judgment reported in **1996 (1) PLJR 401 (Panchanan Kumar vs. The Bihar State Electricity Board)** in which case though a Presenting Officer was appointed but he failed to discharge his obligation and in his absence his role was assumed by the Enquiry Officer. The opinion of the Bench at paragraph 11 of the judgment would be relevant for the issue at hand:

“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.”

It is undisputed that there was no Presenting Officer present either to lead or to prove the evidence whatsoever,



collected against the petitioner. The Enquiry Officer in such circumstances could not have assumed this duty upon himself to examine the evidence to hold it sufficient enough for upholding the charges.

In this connection I would again refer to paragraph 14 of the judgment of the Supreme Court reported in **(2009)2 SCC 570 (Roop Singh Negi v. Punjab National Bank)** which would again apply on all fours in the present case:

"14. Indisputably, a departmental proceeding is a quasi- judicial proceeding. The enquiry officer performs a quasi- judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence."

As I have already observed that the present proceeding is a classic example of multiple statutory violations. The enquiry report is a one and half page report which nowhere discusses the evidence nor discusses the rebuttal given by the petitioner rather mechanically endorses the allegation as confirmed from Annexure-5. The petitioner was served with a second show cause on the enquiry report and which is not done by the Collector cum District Magistrate, Nalanda who is the Disciplinary Authority of the petitioner rather has been served through the Establishment Deputy Collector who has no jurisdiction to do so in view of the provisions underlying rule 18(1), (2) and (3) of 'the Rules' which casts obligation on the Disciplinary Authority exclusively to seek a show cause on the enquiry report from the delinquent. In other words, the second show cause impugned at Annexure-4 is a void document. The petitioner in obedience filed an exhaustive reply to the



second show cause present at Annexure-6 but has been visited with a mechanical order passed by the Disciplinary Authority which is bereft of any reason nor there is any discussion on the issue raised by the petitioner in rebuttal of the charges."

For the reasons and discussions aforementioned, it is manifest that the entire proceedings stands vitiated for procedural irregularities and as a consequence the order bearing Memo No. 1363 dated 22.2.2008 whereby the charge memo was served on the petitioner together with the enquiry report at Annexure 4, the second show cause notice at Annexure 5, the order of the disciplinary authority at Annexure 7 and the order of the appellate authority at Annexure 9 cannot be upheld and is accordingly quashed and set aside.

The writ petition is allowed with consequential benefits, which is to be provided to the petitioner within a period of three months from the date of receipt of a copy of this order.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.08.2017
Transmission Date	NA

