

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.687 of 2016
IN
Civil Writ Jurisdiction Case No. 5302 of 2010

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Ram Charan Prasad Verma S/o Late Shri Bindeshwari Prasad Verma Resident of village Rampur, P.S. Matihani Dist. Begusarai at Present Amin, Land Acquisition Department, Begusarai

.... Appellant/s

Versus

1. The State of Bihar through the Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna
2. The Divisional Commissioner, Munger
3. The District Magistrate, Begusarai
4. The Conducting Officer cum Director National Employment Programme, Begusarai

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Jugal Kishore, Sr. Advocate Mrs. Sudha Ambastha, Advocate Mr. Chitranjan Kumar Sinha, Advocate Mr. Kundan Kumar Sinha, Advocate
For the State	:	Mr. Manoj Kumar Ambastha, GP-14

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CORAM: HONOURABLE THE CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 11-09-2017

Seeking exception to an order dated 23.11.2010 passed by the learned Writ Court in Civil Writ Jurisdiction Case No. 5302 of 2010, this appeal has been filed under Clause-10 of the Letters Patent.

In the writ petition, petitioner had challenged the



order of punishment dated 18.03.2006 by which a major punishment as envisaged under the Bihar Government Servants (classification, control & appeal) Rules, 2005, (hereinafter referred to as the rules of 2005), has been imposed upon the petitioner. The petitioner has been imposed a punishment of stoppage of four increments with cumulative effect and the appeal dismissed vide order dated 10.10.2008, therefore the writ petition was filed.

In the writ petition, by bringing on record the entire order-sheets of the Departmental Enquiry at Annexure-8, a specific averment has been made from para 17 onwards to say that mandatory provisions required for conducting of the Departmental Enquiry has not been followed, relevant documents were not supplied to the petitioner, witnesses were not examined and even a Presiding Officer was not appointed and the Enquiry Officer conducted the enquiry in a manner which is contrary to the statutory rules namely the rules of 2005 and therefore, the enquiry stands vitiated.

In the writ petition, no show cause was issued and no counter affidavit was called for and the learned Writ Court, after holding that in a Departmental Proceeding, in a writ petition, the jurisdiction of this Court does not pertain to reassessment of the evidence and reappraising the same, dismissed the writ petition. However, while doing so, we are constrained to note that the



averments made by the petitioner in para 17 of the writ petition and the requirement of the rules of 2005 with regard to the procedure to be followed in conduct of the Departmental Enquiry as is evident from Annexure 8 was not appended to and therefore, for considering this question, notices were issued to the respondents in the appeal.

The respondents have filed their counter affidavits and they only say that petitioner is guilty of the charges levelled against him. There was a responsible officer who conducted the proceedings totally in contravention to the law and, therefore, petitioner has been rightly punished. However, while doing so, the question is as to whether the mandatory rule contemplated under Rule 17 of the Rules of 2005 i.e. the procedure laid down for imposing major punishment has been followed or not is not established.

A perusal of the proceedings of the enquiry as is evident from Annexure-8 indicates that after the charge-sheet was issued to the petitioner on 28.10.2005 and when the petitioner did not submit his reply to the charge-sheet the enquiry was constituted. The Conducting Officer was appointed and all the papers were forwarded to the Conducting Officer. The Conducting Officer, on 03.11.2005 registered the proceedings, directed for issuance of notice to the employee concerned and fixed the matter on 12.11.2005 for further proceedings. On 12.11.2005, an order-sheet was prepared but the date



of order was shown as 21.11.2005 and it is indicated that no receipt has been received from the employee concerned and therefore the enquiry was adjourned on 30.11.2005. It is not known as to what proceedings were held on 12.11.2005 and how without holding any proceedings on 21.11.2005 and recording the order-sheet the matter was taken up on 21.11.2005. There is no material available on record to show that for appearance of 12.11.2005 whether any notice was issued to the delinquent employee and whether the notice was served upon him. Thereafter the matter is taken up on 21.11.2005. The records indicate that the delinquent appeared and he took time to produce his documents and evidence and the enquiry was adjourned to 10.12.2005. Thereafter, on 10.12.2005 also the enquiry was held and the records indicate that the documents were examined by the petitioner and the enquiry was adjourned to 14.12.2005. Thereafter, there is nothing on record to indicate as to what proceedings were held and who was the Presenting Officer appointed, who were the witnesses examined, what documents were adduced and what proceedings were held. On the contrary, the Enquiry Officer, after recording the order on 10.12.2005 immediacy starts recording his findings and submits it after filing it on 16.12.2005.

The aforesaid proceedings are analyzed in the backdrop of the requirement of rules i.e. Rule 17. It would be seen



that the rules contemplate appointment of a Conducting Officer, appearance of the delinquent employee before the Conducting Officer, reading of the charge-sheet to him. Before the Conducting Officer, reading of the charge-sheet to him is admission or denial to the same. Thereafter, adjourning the matter for 3 days after appointing the Presiding Officer, giving opportunity to the Presiding Officer to adduce evidence and examine statements of the witnesses and documents, the presence of the delinquent employee, granting opportunity to the delinquent employee to cross examine the witnesses, thereafter closure of the case of the Department. Granting some time to the delinquent employee to give his defence evidence, preventing recording of the defence evidence, closing of the defence evidence and thereafter submitting written synopsis and other documents and recording findings.

The mandatory requirements as are detailed in para 17 in the present case has not been followed and the enquiry has been held in total violation in this regard to the statutory rules. In the case of *S.K.Sharma versus State bank of Patiala reported in AIR 1996 SC 1699*, it has been held by the Supreme Court that when a statutory provision has been provided for conduct of enquiry, any breach of the statutory provision amounts to violation of the principles of natural justice and prejudice is deemed to have been caused to the



delinquent employee. In the said case, the violation of rule and natural justice has been classified into two categories. The first category is where a statutory provision has been laid down and violation of the statutory provision is alleged and the second category is where no statutory provision has been laid down. The Hon'ble Supreme Court holds that if the statutory provision is laid down and if the statutory provision is breached, prejudice is deemed to have been caused and it is not necessary for the delinquent employee to show or prove prejudice caused and the effect of the prejudice for non grant of opportunity to him, whereas in the case of violation of a non statutory procedural formalities required to be conducted, prejudice caused has to be pleaded and established in a Court of law and breach of a non statutory provision will not if so facto vitiate the enquiry. In this case, there being breach of a statutory provision and the entire enquiry stands vitiated on account of violation of the statutory provision.

That being so, we see no reason to approve the Departmental Enquiry conducted. The enquiry has been conducted in total violation and disregard to the provisions of Rule 17 of Rules of 2005.

Accordingly we allow the appeal. The order passed by learned Writ Court and the Appellate Tribunal are quashed. The petitioner shall be entitled to all consequential benefits. However,



liberty shall be available to the respondents to proceed with the enquiry, if so advised, in accordance with law.

With the aforesaid, the appeal stands allowed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Shageer/-

AFR/NAFR	NAFR
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