

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16601 of 2016

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Sanjay Kumar son of Sri Ramswarup Prasad resident of Flat No. 102/A, Prince Apartment, Ashiyana Nagar, Magistrate Colony, P.S. - Rajiv Nagar, District - Patna.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Bihar, Patna.
2. The Principal Secretary, Home Department, Bihar, Patna.
3. The Additional Secretary, Home (Police) Department, Bihar, Patna.
4. The Director General of Police, Bihar, Patna.
5. The Inspector General of Police, Darbhanga Zone, Darbhanga.
6. The Deput Inspector General of Police, Darbhanga Range, Darbhanga.
7. The Superintendent of Police, Madhubani.
8. The Sub-Divisional Police Officer, Jaynagar.
9. The Enquiry Officer cum Deputy Superintendent of Police (Headquarter) Madhubani.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Vinay Ranjan, Adv.
For the Respondent/s : Md. Nashrul Hoda Khan, SC-1
Md. Irshad, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-11-2017

Heard Mr. Vinay Ranjan, learned counsel appearing for the petitioner and Md. N.H.Khan, learned SC-1, 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 is aggrieved by the order bearing Memo No. 335 dated 19.2.2014 passed by the Deputy Inspector General of Police, Darbhanga Range, Darbhanga in Departmenal Proceeding No. 68/2012 as affirmed by the appellate authority i.e. Inspector General of Police, Darbhanga Zone, Darbhanga vide order bearing Memo No.



2417 dated 11.8.2014. Even the memorial of the petitioner has been dismissed vide order bearing Memo No. 6085 dated 10.8.2016 passed by the Addl. Secretary to the Government, Home (Police) Department. Copies of the order passed by the disciplinary authority, appellate authority as well as the State Government in rejecting the memorial are impugned at Annexures 21, 23 and 28 respectively to the writ petition.

Mr. Vinay Ranjan, learned counsel for the petitioner, has straightway invited the attention of this Court to the initiation of the proceedings vide Annexure 6 at Page-63 to submit that the foundation of the departmental proceeding rests on a proceeding initiated by the Bihar Human Rights Commission on a complaint of one Premlal Mahto against the petitioner in relation to the death of his brother Ram Narain Mahto. He submits that it is proceeding on the directions of the Bihar Human Rights Commission (hereinafter referred to as the 'BSHRC') that the disciplinary proceeding in question was initiated even before the proceeding before the 'BSHRC' could reach its conclusion. It is submitted that the final order passed by the 'BSHRC' was questioned by this petitioner and one other before this Court in a proceeding arising from C.W.J.C.No. 3973/2014 and analogous case and a Co-ordinate Bench of this Court vide judgment and order passed on 25.2.2016, annexed at Annexure 26 to the writ petition, quashed



the entire proceedings on the ground of jurisdiction. He submits that by passing of the order by this Court, the foundation on which the disciplinary proceedings rested, itself stood removed. The second issue which the learned counsel for the petitioner canvasses to question the disciplinary proceeding is that it is by an authority not competent to do so in law. The third issue raised by learned counsel is that the proceeding has been conducted in absence of a Presenting Officer which is contrary to the statutory procedure underlying the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the 'Disciplinary Rules'),

Mr. N.H.Khan, learned SC-1, while defending the impugned orders has failed to satisfy this Court as to the validity of the proceedings in absence of the Presenting Officer. Rule 824A of the Bihar Police Manual gives recognition and adopts the Disciplinary Rules framed by the State Government for holding departmental proceedings and it is not a matter of contest that the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 does govern the disciplinary proceedings initiated under the Bihar Police Manual.

Rules 17 and 18 of the 'Disciplinary Rules' lays down a mandatory procedure to be followed by the disciplinary authority, which begins from the stage of service of charge memo by the



disciplinary authority enabling the delinquent to respond thereto, casting an equal obligation on the disciplinary authority to satisfy himself whether the allegation requires to be pursued and only where the disciplinary authority is satisfied on completion of such exercise as mandated under Rule 17(3) read alongside Rule 17(4) that he can either enquire into the matter himself or delegate an Enquiry Officer under Rule 17(6) to enquire into the same. It is whereafter that the Enquiry Officer takes over the proceeding. While doing so the disciplinary authority has another obligation under Rule 17(6) i.e. to appoint the Presenting Officer for leading the case for the department. This mandatory exercise has been given a go-by by the disciplinary authority.

The records confirm that the proceeding in challenge has been held de hors the procedure inasmuch as neither the petitioner has been heard on the charge by the disciplinary authority as confirmed from Annexure 8 which is copy of the charge memo framed by the Superintendent of Police and requires the petitioner to file his response before the Enquiry Officer which direction is de hors Rule 17(4) of 'the Rules'. The illegality does not end here rather the absence of the Presenting Officer as mandated under Rule 17(6), perpetuates the illegality which is a serious lacuna and has rendered the entire proceeding illegal.



The legal position on the opinion expressed above, stands discussed in the judgment of this Court arising from C.W.J.C.No. 7207/2016 (**Shankar Dayal v. the State of Bihar & ors.**) and for the sake of convenience I deem it proper to reproduce the relevant part thereof:

“Rule 17(3) of ‘the Rules’ casts an obligation on the Disciplinary Authority to draw a charge against a delinquent Government servant or cause it to be drawn up against the officer delinquent. Sub-rule (4) thereof further mandates the delivery of such charge memo so drawn up either through the Disciplinary Authority or through an officer duly authorized. The obligation cast on the Disciplinary Authority does not stop here rather he has yet to satisfy himself whether the explanation so forwarded by a delinquent on the proposed charge, requires an enquiry by the Enquiry Officer or requires a closure. This power exclusively vested in the Disciplinary Authority under rule 17(4) cannot be delegated.

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 continue 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 un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has 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 in the present case, there was no Presenting Officer appointed 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.

For the reasons and discussions aforementioned and in view of the legal position discussed, the entire proceedings resulting in the order(s) impugned, is held illegal and dehors the statutory procedure. The orders impugned at Annexures 21, 23 and 28 together with the orders passed pursuant thereto, are accordingly quashed and set aside. As a consequence the petitioner is reinstated on his post with all consequential benefits, which should be provided to him within three months of receipt/ production of a copy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.12.2017
Transmission Date	NA

