

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.10609 of 2014**

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1. Kishore Kumar Sinha S/o Late Devendra Kumar Village + P.O. Belahi,  
Nilkanth, Runni Saidpur, District Sitamarhi.

.... .... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna Secretariat, Patna.
2. Chief Secretary, Govt. of Bihar, Patna Secretariat, Patna.
3. The Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna Secretariat, Patna.
4. Secretary, Food and Consumer Protection Department, Government of Bihar, Patna Secretariat, Patna.
5. Officer On Special Duty, Food and Consumer Protection Department, Government of Bihar, Patna Secretariat, Patna.
6. Section Officer, Section-4-cum-Presenting Officer, Food and Consumer Protection Department, Government of Bihar, Patna Secretariat, Patna.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Amit Prakash

For the Respondent/s : Mr. GP17- BINODJI VERMA

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA**  
**ORAL JUDGMENT**

**Date: 04-09-2017**

**Re.: I.A. No. 4613 of 2014**

The petitioner has filed I.A. No. 4613 of 2014 for amendment of the prayer.

2. The petitioner has filed this writ petition for a direction to the respondents not to hold departmental proceeding in which charges were framed vide Memo No. 1957 dated 20.03.2014 under Rule 43 (b) of the Bihar Pension Rules but during the pendency of this writ petition after conclusion of departmental proceeding 100% of the pension of the petitioner has been withheld and therefore the petitioner seeks prayer to



quash the order dated 10.06.2014 as contained in Memo No. 3357 (Annexure-6) by filing this I.A. petition.

3. Learned counsel for the State did not raise objection.

4. Prayer is allowed.

5. The I.A. No. 4613 of 2014 shall be part of this writ petition.

**Re.: C.W.J.C. No. 10609 of 2014**

6. Heard both sides.

7. The petitioner seeks quashing of the order initiating proceeding under rule 43(b) of the Bihar Pension Rules and thereafter by filing the I.A. No. 4613 of 2014 the petitioner prayed for quashing the order dated 10.06.2014 as contained in Memo No. 3357 (Annexure-6), issued by the Principal Secretary, Food and Consumer Protection Department, Government of Bihar by which 100% of pension of the petitioner has been withheld.

8. Learned counsel for the petitioner submits that the petitioner was caught red handed for taking bribe. The departmental proceeding was initiated. The enquiry conducting officer submitted its report on 13.12.2010 holding the petitioner not guilty of any charge. The petitioner got his retiral dues but, again vide order dated 20.03.2014 as contained in Memo No. 1957, the proceeding under Rule 43 (b) of the Bihar Pension Rules was initiated. The petitioner was served with the articles of charge. Thereafter, the petitioner filed this writ petition but,



during pendency of this writ petition the petitioner also appeared before the enquiry officer and submitted his preliminary show cause requesting the enquiry officer to ask the presenting officer to supply the relevant records and the papers so that the petitioner may file detailed reply but the enquiry officer without allowing the presenting officer to present evidences on behalf of the disciplinary authority submitted its report. The disciplinary authority did not supply the enquiry report to the petitioner nor asked the petitioner to show cause after submission of the enquiry report. It is further submitted that the enquiry report along with show cause was sent to the petitioner through registered post on 09.06.2014. The petitioner received the enquiry report and the letter to show cause on 23.06.2014 but before that the disciplinary authority passed the order on 10.06.2014 withholding the 100% pension of the petitioner.

Learned counsel for the petitioner further submits that in fact no enquiry in accordance with Rule 17 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, (hereinafter referred to as the CCA Rules, 2005) was held. From the enquiry report as well as the proceeding of the enquiry officer annexed as Annexure-6 series, it would appear that the enquiry officer submitted the report on the basis of the preliminary show cause filed by the petitioner and the reply of the presenting officer. Rule 17 of the CCA Rules, 2005 provides the detailed procedure with regard to holding of departmental enquiry



after submission of articles of charge and the documents and the list of witnesses on which the department is proposed to prove the charge. The enquiry officer should have asked the presenting officer to examine the witnesses and produce the documents on which department proposes to prove the charge but, the enquiry officer did not hold the enquiry in accordance with rules and submitted the report to the disciplinary authority holding the petitioner guilty. Rule 18 of the CCA Rules, 2005 says that after receipt of the enquiry report, the disciplinary authority shall serve copy of the enquiry report and call upon the government servant to reply but, the disciplinary authority sent the enquiry report and the second show cause notice through registered post on 09.06.2014 and on the next date i.e. 10.06.2014 the disciplinary authority inflicted the punishment against the petitioner withholding his 100% pension, therefore, the order is absolutely illegal as it violates the principle of natural justice.

**9.** Learned counsel for the State, of course, drew attention of this Court towards the procedures of the enquiry officer but could not be able to show that the enquiry officer conducted the enquiry in accordance with the provision as contained in Rule 17 of the CCA Rules, 2005 and after submission of enquiry report, the disciplinary authority asked second show cause from the petitioner after serving the enquiry report to the petitioner.

**10.** Having considered the submissions of both sides and



on perusal of records, I find substance in the submission of the learned counsel for the petitioner. From Annexure-3 it appears that the enquiry was held and did not find the petitioner guilty on any of the two charges framed against the petitioner. The Deputy Director, Food and Consumer Protection-cum-Enquiry Officer submitted his report on 13.12.2010. Thereafter, suspension of the petitioner was vacated and petitioner was posted on 06.01.2011 but again vide order dated 20.03.2014 as contained in Memo No. 1957 (Annexure-5) initiated departmental proceeding under Rule 43(b) of the Bihar Pension Rules without taking any final decision on the enquiry report of the first enquiry officer who submitted report on 13.12.2010. Rule 18 of the CCA Rules, 2005 clearly says that upon receipt of enquiry report the disciplinary officer may, after perusal of enquiry report remit the reports to the enquiry officer for further enquiry if the enquiry officer did not enquire on any point of charge. Secondly the disciplinary authority after receipt of enquiry report may differ with the finding of the enquiry officer and record his own finding on the basis of evidences available on record and cause the same to be served to the government servant along with the enquiry report and ask from him the show cause and, thereafter pass order, but it appears that the disciplinary authority did not pass any order on the first enquiry report and ordered for fresh departmental enquiry on 20.03.2014 as contained in Memo No. 1957 (Annexure-5) and appointed another enquiry officer and presenting officer which is not permissible under



Rule 18 of the CCA Rules, 2005. Even the second enquiry officer did not hold the enquiry as per the procedure prescribed under Rule 17 of the CCA Rules, 2005 and submitted report on the basis of charge and documents appended to the charge and on perusal of show cause of the petitioner. The disciplinary authority without asking second show cause along with enquiry report inflicted punishment of withholding 100% pension of the petitioner which is against the procedure laid down in Rule 18 of the CCA Rules, 2005 and thus the order dated 10.06.2014 as contained in Memo No. 3357 of the disciplinary authority is bad, illegal and not sustainable.

11. Thus, the order dated 10.06.2014 as contained in Memo No. 3357 (Annexure-6) and the order dated 20.03.2014 contained in Memo No. 1957 are set aside. The matter is remitted to the disciplinary authority to proceed afresh in accordance with law. Accordingly, the writ petition is allowed.

(Prabhat Kumar Jha, J)

KKSINHA/-

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