

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9313 of 2014

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1. Shyam Narayan Singh, Son of Late Sakal Deo Singh, Resident of Mohalla- L-75,
Anugrah Puri Colony, P.S.- Rampur, District- Gaya Petitioner/s
Versus

1. The State of Bihar
2. The Principal Secretary, Department of Mines & Geology, Bihar, Patna
3. The Director, Department of Mines & Geology, Bihar, Patna
4. The Enquiry Officer-cum-Additional Secretary, Mines & Geology, Bihar, Patna
5. The Mineral Development Officer, Head Quarter, Patna Respondent/s
- =====

Appearance :

For the Petitioner : M/s. Sanjeev Kumar & Priya Ranjan
For the Respondents 2 to 5 : Mr. Rajendra Prasad, advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 08-09-2017

Heard both sides.

2. The petitioner has filed this writ petition for quashing the order dated 28.03.2014, as contained in memo No. 1408 (Annexure-11), issued under the signature of Director, Mines, Bihar, Patna by which the petitioner has been dismissed from service and for directing the respondents to reinstate the petitioner in service with all consequential benefits.

3. The brief facts for disposal of the writ petition are that the petitioner was appointed as Mining Inspector. While the petitioner was posted at Jehanabad as Mining Inspector, he was given charge of Mining Inspector, Gaya in the year 2011. The house of the petitioner was searched and different properties and jewellerys were recovered for which Bodh Gaya P.S. case No. 75 of 2011 was registered. The petitioner was taken into custody and he was



suspended. Vigilance case No. 35 of 2011 under Section 13(i) and 13(ii) of the Prevention of Corruption Act and under Section 109 of the IPC was also registered. The petitioner was served with articles of charge along with the documents on 23.03.2012. Sri Ghanshyam Prasad Daftuar, Additional Secretary, Mines and Geology, was appointed as enquiry officer and Upendra Kumar Sinha, Mines Development Officer, was appointed as presenting officer. The petitioner filed his reply and requested the enquiry officer to make available documents and names of persons to whom he allowed illegal mining but the enquiry officer did not hold the enquiry in accordance with law and submitted enquiry report on 15.11.2014. The disciplinary authority asked second show cause from the petitioner. The petitioner filed his detailed reply (Annexure-10) but the disciplinary authority without considering the reply dismissed the petitioner from service.

4. The learned counsel for the petitioner submits that the enquiry officer did not hold enquiry in accordance with the procedure enumerated under Rule 17 of the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the CCA Rules, 2005). It is submitted that from perusal of the enquiry report it would appear that the enquiry officer has stated that petitioner did not file any detailed show cause in defence of his case and also violated the directions of the presenting officer that is why



the enquiry officer submitted enquiry report on the basis of documents available on record. It is submitted that the presenting officer did not present any evidence oral or documentary. Sub-rule (11) of Rule 17 of the CCA Rules, 2005 deals with the situation when the proceedee did not cooperate or did not file any reply. Therefore, the order of punishment on the basis of such enquiry report is not sustainable and bad in law.

5. Mr. Rajendra Prasad, the learned counsel appearing for the Mines Department, submits that petitioner did not cooperate in the departmental proceeding and did not file his reply in tabular form about the charges made against the petitioner that is why the enquiry officer submitted report on the basis of materials available on record.

6. On the basis of submission of the parties, the question arises for consideration as to whether the enquiry officer conducted the enquiry in accordance with rules?

7. In order to appreciate the submission of the parties, it would be relevant to reproduce sub-rule (11), (12), (13) and (14) of the CCA Rules, 2005 which are as follows:-

“(11) The inquiring authority shall, if the Government Servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government Servant may, for the purpose of preparing his defence,-

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list in



sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf;

Note:-If the Government Servant applies in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible.

(iii) give a notice within ten days of the order or within such further time as the inquiring authority may allow for the discovery or production of any documents which are in the possession of Government but not mentioned in the list specified in sub-rule (3) of this Rule:

Provided that the Government Servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government.

(12) The inquiring authority shall, on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the document by such date as may be specified in such requisition:

Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(13) On receipt of the requisition specified in sub-rule (12) of this Rule, every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority:

Provided that if the authority, having the custody or possession of the requisitioned documents, is satisfied, for reasons to be recorded by it in writing, that the production of all or any of such documents will be against public interest or security of the State, he shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the Government Servant and withdraw the requisition made by it for the production or discovery of such documents.

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government Servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses, as it thinks fit”



8. Sub-rule (11) says that that the inquiring authority shall, if the Government Servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government Servant may, for the purpose of preparing his defence but from perusal of the enquiry report it appears that the enquiry officer did not even inform the Government servant/proceedee after receiving the petition of the petitioner asking for different documents and the list of witnesses that the documents and list of witnesses are not relevant for the purpose of enquiry. The enquiry officer did not ask the presenting officer to produce his witnesses and examine them and without asking the presenting officer to adduce evidences the enquiry officer submitted his report on perusal of the charge sheet and the documents appended thereto. Therefore, I find that the enquiry officer did not hold the enquiry in accordance with procedures laid down under sub-rule (11) and other sub-rules of Section 17 of the CCA Rules, 2005 and, thus, the enquiry report is vitiated and the punishment on such enquiry report is in violation of principles of natural justice and not sustainable in the eye of law. This writ petition is, accordingly, allowed and the impugned order dated 28.03.2014, as contained in memo No. 1408 (Annexure-11), issued under the signature of Director, Mines, Bihar, Patna is set



aside.

9. The learned counsel for the petitioner further submits that petitioner is to retire from service on 31.10.2017 and, therefore, no useful purpose will be served in remitting the matter to the disciplinary authority to proceed afresh but I find that there is allegation against the petitioner that he amassed huge property disproportionate to his known source of income and, thus, the enquiry is required to be held in accordance with law. Accordingly, the matter is remitted to the disciplinary authority to proceed afresh in accordance with law and conclude the departmental proceeding within six months from the date of receipt of this order.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	12.09.2017
Transmission Date	N.A.

