

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4606 of 2014

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1. Dhruva Mishra Son Of Late Parichan Mishra Resident Of Village + P.O. Rampur
Daud, P.S. Kuchaikote, District – Gopalganj Petitioner

Versus

1. The State Of Bihar
 2. The Commissioner, Saran at Chapra
 3. The District Magistrate, Gopalganj
 4. The Sub - Divisional Officer, Gopalganj
 5. The Block Development Officer, Kateya, District - Gopalganj
 6. The Block Development Officer, Thawe, District - Gopalganj Respondents
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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Srivastava, Advocate
For the Respondent/s : Mr. Avnish Nandan Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT
Date: 18-07-2017

Heard both sides.

2. The petitioner filed this writ petition for quashing the order dated 03.08.2012, as contained in memo No. 943 issued under the signature of Collector, Gopalganj, (Annexure-8) whereby one increment of the petitioner with cumulative effect was stopped and during the suspension period nothing, except subsistence allowance, was paid to the petitioner. The petitioner further prayed for quashing the order dated 02.01.2014 passed by the Commissioner, Saran Division, Chapra (Annexure-11) by which the Commissioner dismissed the appeal preferred by the petitioner and confirmed the order of punishment (Annexure-8) passed by the Collector, Gopalganj.

3. The petitioner was departmentally proceeded vide order



dated 20.01.2011, as contained in memo No.3, on the charge that petitioner did not submit his explanation sought for from the Block Development Officer, Kateya. The petitioner committed negligence, disobedience, insubordination and he did not take over the charge of head clerk in spite of the order of Block Development Officer.

4. The S.D.O., Gopalganj was appointed as enquiry officer. The petitioner filed his show cause. After enquiry the S.D.O. submitted report. The Block Development Officer, Kateya, who was presenting officer, did not produce any evidence except Praptra-Ka. The enquiry officer held that no charge was proved against the delinquent/ petitioner. The Collector vide order dated 19.12.2011, as contained in memo No. 1382, withheld one increment of the petitioner with cumulative effect and also ordered for non payment of salary and other allowances, except subsistence allowance, during the period of suspension.

5. The petitioner preferred CWJC No. 2276 of 2012 and this court vide order dated 06.03.2012 held that the disciplinary authority did not follow the procedure as laid down under Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 as the disciplinary authority did not give point of difference from the finding of enquiry officer nor asked any second show cause. Accordingly, the order inflicting punishment against the petitioner dated 19.12.2011 as contained in memo No.1382 was



quashed and the matter was remitted to the Collector, Gopalganj. The Collector, Gopalganj asked second show cause from the petitioner, giving his point of difference with the finding of enquiry officer.

6. The petitioner filed his show cause thereafter the Collector, Gopalganj reiterated the same order withholding one increment with cumulative effect and he further ordered for non payment of salary and other allowances, except subsistence allowance, during the period of suspension.

7. The petitioner again moved this court against memo No. 100/ 2012 (Annexure-8) by filing CWJC No. 4159 of 2013, which was disposed of vide order dated 12.03.2013 directing the petitioner to present appeal before the Commissioner. The petitioner preferred appeal before the Commissioner but the Commissioner vide order dated 02.01.2014 (Annexure-11) dismissed the appeal without giving any cogent reason.

8. The learned counsel for the petitioner assails the orders aforesaid on the ground that the enquiry report itself reveals that the presenting officer, the Block Development Officer, Kateya, did not produce any evidence, either oral or documentary, nor proved the charge against the petitioner, save and except photo copy of Prapatra-Ka, the charge report. The petitioner submitted his entire documents in order to show that the petitioner is not at all responsible or guilty of any charge.



9. On the other hand, the learned counsel for the State submitted that the Collector as well as the Commissioner passed the orders in accordance with law. The collector gave points of difference with the finding of enquiry officer to the petitioner and called upon him to show cause. Therefore, the order does not suffer from any procedural illegality and the writ petition is fit to be dismissed.

10. The question falls for consideration whether the enquiry was held in accordance with the procedure as prescribed under Rule 17 of Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the CCA Rules)?

11. In order to appreciate the submission of both the parties, firstly I reproduce Rule 17 of the CCA Rules which is as follows:-

“17. Procedure for imposing major penalties. - (1) No order imposing any of the penalties specified in clauses [(vi) to (xi)] of Rule 14 shall be made without holding an inquiry, as far as may be, in the manner provided in these Rules.

(2) Wherever the disciplinary authority is of the opinion that there are grounds for inquiring about the truth of any imputation of misconduct or misbehaviour against a government servant, he may himself inquire into it, or appoint under these Rules an authority to inquire about the truth thereof.

Explanation. - Where the disciplinary authority himself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) of this Rule to the inquiring authority shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against a government servant under this Rule, the disciplinary authority shall draw up or cause to be drawn up-

- (i) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge;
- (ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-



(a) a statement of all relevant facts including any admission or confession made by the Government Servant;

(b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government Servant a copy of the articles of charge, such statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government Servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(5) (a) On receipt of the written statement of defence, the disciplinary authority may himself inquire into such of the articles of charge which are not admitted, or, if it thinks necessary to appoint, under sub-rule (2) of this Rule, an inquiry authority for the purpose he may do so and where all the articles of charges have been admitted by the Government Servant in his written statement of defence, the disciplinary authority shall record his findings on each charge after taking such evidence as it may think fit and shall take action in the manner laid down in Rule 18.

(b) If no written statement of defence is submitted by the Government Servant, the disciplinary authority may itself inquire into the articles of charge or may, if it thinks necessary to appoint, under sub-rule (2) of this Rule an inquiry authority for the purpose, it may do so.

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry about such charge, it may, by an order, appoint a government servant or a legal practitioner to be known as the "Presenting officer" to present on his behalf the case in support of the articles of charge.

(6) The disciplinary authority shall, where it is not the inquiring authority, forward the following records to the inquiring authority-

(i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(ii) a copy of the written statement of defence, if any, submitted by the government servant:

(iii) a copy of the statement of witnesses, if any, specified in sub-rule (3) of this Rule.

(iv) evidence proving the delivery of the documents specified to in sub-Rule (3) to the Government Servant; and

(v) a copy of the order appointing the "Presenting officer".

(7) The Government Servant shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of receipt by him of the



articles of charge and the statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by a notice in writing, specify in this behalf or within such further time, not exceeding ten days, as may be specified by the inquiring authority.

(8) (a) The Government Servant may take the assistance of other Government Servant posted in any office, either at his headquarter or at the place where the inquiry is to be held, to present the case on his behalf:

Provided that he may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or the disciplinary authority, having regard to the circumstances of the case, so permits:

Provided also that the Government Servant may take the assistance of any other Government Servant posted at any other station, if the inquiring authority having regard to the circumstances of the case, and for reasons to be recorded in writing so permits:

Provided further that the Government Servant shall not take the assistance of any such other Government Servant who has three pending disciplinary cases on hand in which he has to give assistance.

(b) The Government Servant may take the assistance of a retired government servant to present the case on his behalf, subject to such conditions as may be specified by the Government from time to time by general or special order in this behalf.

(9) If the Government Servant, who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has to say anything for his defence and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the Government Servant thereon.

(10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the Government Servant pleads guilty.

(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.

(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in his discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government Servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government Servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear



days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government Servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government Servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interests of justice:

Provided that new evidence shall not be permitted or called for or any witness shall not be recalled to supplement the evidence. Such evidence may be called for if there is any inherent lacuna or defect in the evidence, produced originally.

(16) When the case for the disciplinary authority is closed, the Government Servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Government Servant shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Government Servant shall then be produced. The Government Servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government Servant shall then be examined and they shall be liable to examination, cross-examination and, re-examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(18) The inquiring authority may, after the Government Servant closes his case, and shall, if the Government Servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government Servant to explain any circumstances appearing in the evidence against him.

(19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed and the Government Servant, or permit them to file written briefs of their respective case, if they so desire.

(20) If the Government Servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this Rule, the inquiring authority may hold the inquiry ex-parte.

(21) (a) Where a disciplinary authority competent to impose any of the penalties specified in clauses (i) to (v) of Rule 14 [but not competent to impose any of the penalties specified in clauses [(vi) to (xi)] of Rule 14], has himself inquired into or caused to be inquired into the article of any charge and that authority having regard to his own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties



specified in clauses [(vi) to (xi)] of Rule 14 should be imposed on the government servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the penalties mentioned in clause [(vi) to (xi)] of Rule 14.

- (b) The disciplinary authority to which the records are so forwarded may act on the evidence on the records or may, if he is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witnesses and examine, cross-examine and re-examine the witnesses and may impose on the Government Servant such penalties as it may deem fit in accordance with these Rules.

(22) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has and which exercises, such jurisdiction the inquiring authority so succeeding may act on the basis of evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and reexamine any such witnesses as hereinbefore provided.

(23)(i) After the conclusion of the inquiry, a record shall be prepared and it shall contain:-

- (a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (b) the defence of the Government Servant in respect of each article of charge.
- (c) an assessment of the evidence in respect of each article of charge,
- (d) the findings on each article of charge and the reasons thereof.

Explanation. - If in the opinion of the inquiring authority the proceedings of the inquiry may establish any article of charge different from the original articles of the charge, he may record his findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the Government Servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

- (ii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include-
 - (a) the report prepared by it under clause (i) of this sub rule;
 - (b) the written statement of defence, if any, submitted by the Government Servant;



- (c) the oral and documentary evidence produced in the course of the inquiry;
- (d) written briefs, if any, filed by the Presenting Officer or the Government Servant or both during the course of the inquiry; and
- (e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry”.

12. From perusal of the Rules, it appears that onus is upon the department to prove the charge by presenting oral or documentary evidence. From the report of enquiry officer itself, it is evident that the presenting officer did not produce any documentary evidence to show that petitioner disobeyed the order of the Block Development Officer or committed any negligence in discharging his duties. The enquiry officer has categorically stated in his report that the presenting officer save and except Praptra-Ka, the article of charge, did not produce any documentary or oral evidence and the enquiry officer found no article of charge proved against the petitioner but the Collector having received the enquiry report and on remand of the case by this court, vide order passed in CWJC No. 2276 of 2012, served the point of difference from the report of enquiry officer and called upon the petitioner to show cause. The petitioner gave his detailed show cause stating that there is no material on record to prove any charge and the point of difference is mere assumption of the disciplinary authority and for that there is no evidence on record but without considering the show cause of the petitioner the Collector inflicted punishment upon the petitioner without any reason. Thus, it



appears that the order inflicting punishment upon the petitioner is based on no evidence and on non consideration of the show cause filed by the petitioner and the same is passed in violation of principles of natural justice. The order of appellate authority is also non speaking and is passed without considering the grounds taken by the petitioner. Therefore, both the orders are not sustainable.

13. Having considered the facts aforesaid and the discussions made, the order dated 03.08.2012, as contained in memo No. 943 (Annexure-8), and the order dated 02.01.2014, as contained in Annexure-11, are set aside and the writ petition is allowed.

(Prabhat Kumar Jha, J)

BKS/-

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