

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21831 of 2012

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Sita Ram Yadav, S/O Late Prem Lal Yadav, R/O Village &P.O.-Paswa Patania,
P.S.-Riga, Distt-Sitamarhi.

.... Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of General Administration, Govt. of Bihar, Patna.
3. The Divisional Commissioner-Cum-Inquiry Officer, Darbhanga Division, Darbhanga.
4. The Joint Secretary to the Government, General Administrative Department, Patna.
5. The Deputy Secretary to the Government, General Administrative Department, Patna.

.... Respondents

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Appearance:

For the Petitioner/s : Mr. Suraj Narain Yadav, Advocate
Mr. Umesh Prasad, Advocate
Mrs. Annu Shree, Advocate

For the State : Mr. Zakir Haider, A.C. to S.C.-9

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 01-12-2017

Heard learned counsel for the petitioner and learned
counsel for the State.

2. In this case, the petitioner is challenging the order of
punishment dated 06.08.2012 passed by the disciplinary authority.
The petitioner filed review application, which has been rejected by
the same disciplinary authority vide order dated 27.11.2012, thereby
inflicted punishment of demotion to the next below post and he will
be treated to be the senior most on the demoted post, restraining the



petitioner from promotion. The Disciplinary Authority refused to review the order of punishment. So, in nutshell, two major penalties have been inflicted by the Disciplinary Authority.

3. The present writ petition is confined to departmental inquiry with respect to charges relating to Phulpras block.

4. The petitioner was posted as Block Development Officer at Pandaul Block in the district of Madhubani on 31.08.2003. He was made In-charge of the Block Development Officer of Phulpras block on 25.05.2004, which is 60 km. away from Pandaul Block. During 2004 the area was tracked by disasterring flood which caused heavy damage the houses of large number of persons of the locality. The Government had on 03.12.2004 allotted the fund for distribution among B.P.L. families for construction of their respective houses under the Indra Awas Yojana. Direction was given vide order dated 04.12.2004 to identify the B.P.L. families and distribute the amount amongst them in between from 07.12.2004 to 09.12.2004, 900 families were identified as B.P.L. family, but the Sub Divisional Officer has approved only 880 families as B.P.L. family. The money was to be paid in two installments; first installment of Rs.10,000/- and another installment of Rs.15,000/-. Accordingly, 880 families were given the first installment of



Rs.10,000/- each and the petitioner vide letter dated 29.03.2005 (Annexure-2 series) had written letter to respective Mukhiyas and Panchayat Secretaries to ensure that fund should go to the proper hand not to the wrong persons. Where-after, the petitioner has handed over the charge of Block Development Officer, Phulpras to the new successor on 02.06.2005. On 13.05.2006, the Sub Divisional Officer has submitted its report with regard to distribution of fund to the B.P.L. families, but he had no occasion to distribute second installment. After a spell of one year, two charge-sheets vide memo no.950 dated 02.07.2007 and memo no.3819 dated 04.04.2008 were issued to the petitioner containing six charges and two charges respectively (Annexures-6 and 8) and basically those charges were related to distribution of the fund to the B.P.L. families. The petitioner filed his explanation, which was not found satisfactorily. Finally, the Government decided to proceed with the departmental inquiry on the recommendation of the Joint Secretary to the Government of Bihar and whereafter vide letter dated 17.05.2011 the Divisional Commissioner was appointed as an Inquiry Officer and the District Magistrate was appointed as Presenting Officer.

5. The Divisional Commissioner vide letter no.633 dated 23.06.2011 asked the explanation from the petitioner, which he filed vide explanation dated 02.08.2011 before the Divisional



Commissioner and at the same time, the Divisional Commissioner also, asked the District Magistrate to give his comment. Accordingly, the District Magistrate, has submitted his comment vide letter no.1795 dated 05.09.2011 and after considering the explanation and the comment of the District Magistrate, the inquiry proceeding has been concluded and the Inquiry Officer has submitted his report on 08.10.2011 (Annexure-15), wherein he has found two charges proved, two charges partially proved and four charges not proved. Where-after, the petitioner was asked to submit his explanation, which he has submitted on 02.12.2011. Followed, the matter was sent to the Bihar Public Service Commission for its approval, but the Bihar Public Service Commission refused to give the approval as is apparent from letter dated 11.06.2012, giving elaborate discussion for refusal to grant sanction, but the disciplinary authority did not agree with the opinion of the Bihar Public Service Commission, passed the punishment order of demotion as well as restraining the promotion.

6. In the present case, the matter can be disposed of in a very short point because the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the 'CCA Rules') prescribes the manner the inquiry proceeding has to be conducted. Rule-14 has been divided in two



parts; minor penalty and major penalty. Clauses-(i) to (v) defines minor penalty and clause-(vi) to (xi) deals with the major penalty proceeding, the manner major penalty proceeding has to be conducted, has been dealt with in Rule-17. On perusal of rule-17, it will be clear that it requires a full fledged inquiry. Full fledged inquiry means the appointment of the disciplinary authority, appointment of the Presenting Officer and the charges have to be proved by bringing the necessary documentary and oral evidence to prove the allegation made against the delinquent. To understand the procedure, it will be useful to quote relevant portion of Rule-17, which are 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.

[Provided that where the Department Enquiry Commissioner is appointed as inquiring authority in such cases the Departmental Enquiry Commissioner either himself conduct the inquiry or may transfer the case of enquiry to the Additional Departmental Enquiry



Commissioner. In the matter of such transferred cases of enquiry the Additional Departmental Enquiry Commissioner may forward the records of enquiry alongwith Enquiry Report directly to the Disciplinary Authority.]

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.”

7. On perusal of the provision, it is evidently clear that the



Presenting Officer has to produce the oral and documentary evidence in support of the charge and on the basis of the materials produced before the disciplinary authority, the disciplinary authority will record its own finding on the basis of documentary and oral evidence produced before him, it will not be confined to explanation from the delinquent and comment from the District Magistrate as both will be treated to pleading not proved but the facts have to be proved by oral and documentary evidence, arrived to its finding without examination of either documentary evidence or oral evidence vitiates the inquiry proceeding. The procedure which has been followed in the present case is completely not in terms of aforesaid C.C.A. Rules. Procedure prescribed in the Rule is not mere a formality but it has been framed with the certain purpose to grant proper opportunity to the delinquent to defend himself and the inquiry officer analyzing the evidence produced before him will arrive to a finding on the basis of documentary evidence as well as oral evidence and the oral evidence has to be proved through witness. The manner in which the inquiry has been conducted it is foreign to the known procedure of law and not compatible with the procedure prescribed under the C.C.A. Rules.

8. In such view of the matter, the order dated 06.08.2012 (Annexure-18) as well as the order of review dated 27.11.2012



(Annexure-23) are quashed. The matter is remanded back to the respondent authorities, if they so like, may conduct fresh inquiry in C.C.A. Rules.

9. Learned counsel for the petitioner submits that during the pendency of the writ application the petitioner has already superannuated on 30.04.2013. In such view of the matter, the proceeding can only be initiated under the Bihar Pension Rules, but while conducting the inquiry, the Inquiry Officer will have to follow proper procedure prescribed in the C.C.A. Rules.

10. With the aforesaid observations and directions, this writ application is allowed.

(Shivaji Pandey, J)

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AFR/NAFR	N.A.F.R.
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