

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.610 of 2017

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1. Ashwini Kumar son of late Jagdish Prasad resident of Mohalla - Shivpuri, P.S. Hazaribagh, District Hazaribagh(Jharkhand) at present resident of Flat No. 301, Devlok Apartment, New Patliputra Colony, Patna - 800013, P.S. Patliputra, District - Patna (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
4. The Special Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
5. The Under Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
6. The Deputy Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
7. The Commissioner (Excise) cum Inspector General of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
8. The District Magistrate, Nawada.
9. The Bihar Public Service Commission, Patna through its Secretary.
10. The Chairman, the Bihar Public Service Commission, Patna.
11. The Secretary, the Bihar Public Service Commission, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Adv.

For the Respondent/s : Mr. Lalit Kishore, PAAG1

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 09-05-2017

Heard Mr. Arun Kumar learned counsel for the petitioner, Mr.

Hari Shankar learned A.C. to PAAG 1 for the State and Mr. Sanjay

Pandey, learned counsel for the Bihar Public Service Commission.

The petitioner prays for quashing of the order bearing Memo

No.3038 dated 28.6.2016 of the State Government in its Registration,



Excise and Prohibition Department whereby the petitioner has been dismissed from service under Rule 14(xi) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules').

With the consent of the parties, the writ petition is heard and is being disposed of at the stage of admission.

The petitioner a gazetted Government servant holding the post of Superintendent, Excise was proceeded against by service of a charge memo, a copy of which is impugned at Annexure-18 to the writ petition. Three charges were framed against the petitioner namely:

- (a) Causing revenue loss to the State for not ensuring lifting of the minimum guarantee quota of India made foreign liquor/ Beer.
- (b) Colluding with the Licensee to secure personal gains; and
- (c) Inefficiency in discharge of duties and disobedience of the orders of superiors.

Following the charge memo that a proceeding was initiated vide resolution dated 22.5.2012 impugned at Annexure-17 whereby the departmental Enquiry Commissioner was appointed as the Enquiry Officer while Mr. Jagdish Gehlaut, Additional Secretary was made the



Presenting Officer.

The charges were sought to be established on the basis of certain documentary evidence listed in the chargesheet. Conspicuously, no oral witness has been named in the chargesheet. The petitioner refuted the allegations by filing an exhaustive reply vide Annexure-19. The opinion of the department is present at Annexure-21 and the enquiry report so submitted by the Departmental Enquiry Commissioner is present at Annexure-23 upholding the three charges. The petitioner was served with the second show cause vide Annexure-24 to which he filed an exhaustive reply vide Annexure-27 but has been visited with the order of dismissal impugned at Annexure-28. The review was filed vide Annexure-29 which has remained pending and in the meanwhile the petitioner has moved this court.

While the disciplinary proceeding has been questioned by Mr. Arun Kumar on statutory violations as well as on grounds that the allegation did not constitute any misconduct nor the chargesheet was in tune with the Rule 17 of 'the disciplinary rules' inasmuch as neither any witness has been named in the chargesheet nor any witness was led by the Presenting Officer to prove the evidence referred to in the chargesheet and even the order of the disciplinary authority is a non



speaking order, the argument has been contested by Mr. Hari Shankar to submit that the petitioner having been given all opportunity to defend himself, the allegations were rather serious and the report of the Enquiry Officer was based on the materials on record leading to the impugned order of dismissal which suffers no infirmity.

I have heard learned counsel for the parties and I have perused the records.

Before I would proceed to deal with the issue raised and contested, I deem it necessary to refer to Rule 17 of 'the Rules' which casts certain obligation on the disciplinary authority requiring a discharge before he proceeds to draw a proceeding for imposing a major penalty. Rule 17(3) of the rules relates to drawing of a chargesheet and which inter alia mandatorily requires the disciplinary authority not only to give a list of documents on which the charges are founded but also give a list of such witness by whom, the article of charges are to be proved. Annexure-18 is the chargesheet and which simply refers to certain documents as evidence but no list of witness accompanies the chargesheet through whom the department proposed to uphold the charges. In other words, the chargesheet itself is de hors the statutory prescriptions for until such time that a list of witness accompanies a chargesheet, the documents relied upon by the



department suo motu cannot be simply relied upon for proving a charge as held by the Supreme Court in the Case of **Roop Singh Negi Vs. Punjab National Bank** since reported in (2009)2 SCC 570. That was a case in which the department was relying upon the First Information report to uphold the guilt but no witness was led by the Presenting Officer to prove the police report and it is taking note of such circumstance that the Supreme Court has proceeded to hold thus at paragraph 14 of the judgment:

“14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The enquiry officer performs a quasi - judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence.”

(Emphasis is supplied)

The second ground on which the proceeding stands invalidated is that even though a Presenting Officer was appointed vide Annexure-17 but he has failed in his duty as cast upon him under Rule 17(14) of ‘the rules’ which inter alia stipulates that, “on the date fixed for the enquiry, the oral and documentary evidence by which the



article of charges 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 Government servant. The Presenting Officer shall be entitled to reexamine the witnesses on any points on which they have been cross-examined, but not on any new matter without the leave of the enquiring authority. The enquiring authority may also put such questions to the witnesses as it thinks fit.”

It is undisputed that in the present case no witness was led by the department nor any attempt was made by the Presenting Officer to get the documentary evidence proved during the course of the disciplinary proceedings. On the contrary, it is simply taking note of the departmental stand as reflecting from Annexure-21 of the writ petition that the Departmental Enquiry Commissioner has proceeded to uphold the guilt and even though the enquiry report runs into almost 30 pages but the substance is lacking because the enquiry report is not supported by any material. The role of an Enquiry Officer and the obligation cast upon him stands discussed in judgment of the Supreme Court rendered in the case of **State of Uttar Pradesh Vs. Saroj Kumar Sinha** since reported in **(2010) 2 SCC 772** and I am tempted to reproduce paragraph 28 of the judgment which succinctly



explains the legal position;

“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 unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not 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.”

(Emphasis is supplied)

Completing the circle of invalidation is the final order of dismissal which neither takes into consideration the defence so led by the petitioner nor the issue raised by him rather it proceeds to comment upon past conduct of the petitioner to form his opinion, which act of a disciplinary authority has already been deprecated by the Supreme Court in the judgment in the case of **Indu Bhushan Dwivedi vs. State of Jharkhand & ors.** reported in **(2010) 11 SCC 278.**

The order of the disciplinary authority is non-speaking and proceeds to uphold the guilt mechanically without discussing the defence led by the petitioner and as I have observed, without dealing with the issue raised. The entire proceedings questioned in the writ petition is a bundle of illegalities and cannot be upheld and in



consequence, the entire proceedings including the chargesheet, the enquiry report together with the impugned order of dismissal bearing memo No.3038 dated 28.6.2016 passed by the State Government in its Registration, Excise and Prohibition Department impugned at Annexure-28 cannot be upheld and are accordingly quashed and set aside. The petitioner is reinstated with full consequential benefits.

The writ petition is allowed. In result, the review petition stands disposed of.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	31.05.2017
Transmission Date	NA

