

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12571 of 2016

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1. Rama Shankar Chaudhary Son of Late Shivnandan Chaudhary, Resident of Village- Bikrampur, P.O. Khabajipur, P.S.- Jadopur, District- Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Director General of Police.
2. The Director General of Police, Bihar.
3. The Inspector General of Police, Central Zone, Patna
4. The Deputy Inspector General of Police, Central Range, Patna
5. The Senior Superintendent of Police, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Y.V.Giri, Sr. Adv.

Mr. Pranav Kumar, Adv.

For the Respondent/s : Mr. Sameer Kumar Singh, A.C. to S.C.16

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 08-08-2017

Heard Mr. Y.V. Giri, learned Senior counsel for the petitioner assisted by Mr. Pranav Kumar Advocate on Record and the State is represented by Mr. Sameer Kumar Singh, A.C. to S.C.16.

In the nature of the order this Court proposes to pass it would not be required to delve deep into the merits of the case because undisputedly the entire proceedings is vitiated with statutory violations of the provisions underlying the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules').

The petitioner has prayed for issuance of a writ in the nature of



certiorari for quashing the order dated 8.2.2016 passed by the respondent No.4, the Deputy Inspector General of Police, Central Range, Patna, a copy of which is impugned at Annexure-8 whereby the appeal of the petitioner has been dismissed thus affirming the order bearing Memo No.13563 dated 23.11.2015 of the Senior Superintendent of Police, a copy of which is enclosed at Annexure-7 whereby the petitioner has been dismissed from service.

The petitioner is also aggrieved by the order bearing Memo No. 4645 dated 31.8.2016 of the Director General of Police impugned at Annexure-10 whereby his memorial has also been rejected.

A copy of the charge memo is impugned at Annexure-4 and holds the petitioner responsible for the death of the tractor driver Guddu Kumar. According to the charge memo the said Guddu Kumar was trying to escape from the illegal demand of the patrolling party led by the petitioner and in the process met with an accident. The charge memo relies upon the suspension order bearing No. 2500 of 2014. A copy of the F.I.R. dated 11.6.2014 as well as the complaint of the owner of the tractor. 3 or 4 witnesses have also been mentioned in the charge memo. A copy of the enquiry report is present at Annexure-5 holding the petitioner guilty and which is followed by a show cause on the enquiry report vide Annexure 6A which was responded to by the petitioner vide Annexure- 6B but has resulted in the dismissal



order passed by the Senior Superintendent of Police, Patna bearing Memo No.13563 dated 23.11.2015 impugned at Annexure-7. The order of dismissal has been affirmed by the appellate authority vide Annexure-8 as well as by the Director General of Police in rejecting the memorial vide Annexure-10. The petitioner feeling aggrieved is before this Court.

It is the submission of Mr. Giri that the disciplinary proceeding was a sham inasmuch as the opinion of the disciplinary authorities is not resting on any evidence, so much so that no Presenting Officer was appointed to lead evidence on behalf of the Department. It is considering such submission that this court directed for production of the disciplinary proceeding and which has since been produced by Mr. Singh learned State counsel. On query made, it is informed by Mr. Singh on verification from the records that the punishment order is resting on the opinion expressed by the superior authorities in the supervision note and that neither any documentary evidence nor any oral evidence was led by the department. He also accepts that no Presenting Officer was appointed for the proceeding.

The writ petition in question is an addition to the chain of writ petitions where the disciplinary proceeding has been held in complete ignorance of the mandatory obligations cast upon a disciplinary authority under Rule 17 and 18 of 'the Rules'. To put a Government



servant on a disciplinary charge, is not a routine affair rather it requires a satisfaction of the disciplinary authority to examine the defence of the delinquent concerned on the charge so framed against him before he refers the matter for an enquiry in terms of 'the Rules' so expressed under Rule 17 more particularly Sub rule (3)(4)(5) and (6). The obligation on the disciplinary authority does not stop here rather it is also his obligation to appoint a Presenting Officer who has a duty to discharge under Sub rule (4) of Rule 17 to lead evidence on behalf of the Department to support the charge.

In my opinion, although the disciplinary authority has framed a charge in tune with Rule 17(3) of 'the Rules' but he has neither sought an explanation from the delinquent on the charge in terms of Rule 17(4) nor there is a satisfaction on the part of the disciplinary authority for relegating the matter for enquiry in terms of Rule 17(5) by following the procedure provided under rule 17(6). All these mandatory obligations have been thrown to the winds by the disciplinary authority in the present matter.

As I have observed, this case is not in isolation rather this court is burdened with litigations of present nature. I shall do no better than to reproduce my opinion in similar circumstances in a matter arising from **C.W.J.C.No.7207 of 2016 (Shankar Dayal Vs. State of Bihar)** and the default committed by the disciplinary authority in the case of



Shankar Dayal (supra) as taken note of by this Court, applies with full force to the case in hand. The relevant extract of the judgment runs as under:

“The proceeding is clothed with gross statutory violations and confirms ignorance of statutory procedure provided under ‘the Rules’ beginning from the stage of service of charge memo until the passing of the impugned order(s). The Disciplinary Authority has defaulted at each stage. The charge memo placed at Annexure 2/1 even though framed by the District Magistrate, Nalanda was never served upon the petitioner by the District Magistrate as mandated under rule 17(3) of ‘the Rules’ nor the records in the custody of Mr. Kumar Alok would reflect any delegation of power. Mr. Alok has also not been able to satisfy from the records whether any such delegation has been made by the Disciplinary Authority in favour of any officer. Now in such circumstances the service of the charge memo by the Enquiry Officer and his direction to the petitioner to reply thereto, is unheard of in service jurisprudence and contrary to the ‘Disciplinary Rules’.

Rule 17(3) of ‘the Rules’ casts an obligation on the Disciplinary Authority to draw a charge against a delinquent Government servant or cause it to be drawn up against the officer delinquent. Sub-rule (4) thereof further mandates the delivery of such charge memo so drawn up either through the Disciplinary Authority or through an officer duly authorized. The obligation cast on the Disciplinary Authority does not stop here rather he has yet to satisfy himself whether the explanation so forwarded by a delinquent on the proposed charge, requires an enquiry by the Enquiry Officer or requires a closure. This power exclusively vested in the Disciplinary Authority under rule 17(4) cannot be delegated.

In the present case this mandatory obligation cast on Disciplinary Authority has been flouted as confirmed from the letter dated 1.2.2008 (Annexure-2) issued by the Enquiry Officer directing the petitioner to file his reply on the charges before him. This is a gross statutory violation and has been commented upon by a Division Bench of this Court in a judgment reported in **1996 (2) PLJR 95 (Ravindra Nath Singh vs. Bihar State Road Transport**



Corporation) when the Division Bench has expressed the following opinion at paragraph 6 of the judgment:

“6. The Enquiry Officer is not the competent authority to consider the reply to the charges. It is for the disciplinary authority to consider the reply to charges and on consideration of the causes shown in the reply to decide as to whether to close or to continue with the proceedings by holding domestic enquiry into the charges.”

In my opinion the enquiry at its very inception is vitiated for the Enquiry Officer has no business to seek reply on the charges from the delinquent. „The Rules” again do not authorize him to do so. The illegality did not stop here and continues further.

It is not in dispute that though a Presenting Officer was appointed for the enquiry but he did not choose to lead any evidence drawn against the petitioner or examine the petitioner on the allegation. On the contrary it is the Enquiry Officer who took this duty upon himself. Rule 17 of ‘the Rules’ draws a complete scheme of the proceeding and details the manner in which a proceeding is to be conducted. Rule 17(14) very eloquently describes as to how a proceeding is to proceed on the date fixed. A mandatory duty has been cast on the Presenting Officer to examine the witnesses and lead evidence collected against a delinquent. This mandatory duty has not been discharged. Instead the Enquiry Officer took this duty upon himself even when such practice has been deprecated by the Courts on different occasions. For ready reference I would refer to a judgment of the Supreme Court reported in **(2010) 2 SCC 772 (State of Uttar Pradesh vs. Saroj Kumar Sinha)**. At paragraph 28 of the judgment the Supreme Court has the following words of advise for the enquiry officer:

“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 un rebutted 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.”

In continuation I would also refer to a judgment reported in **1996 (1) PLJR 401 (Panchanan Kumar vs. The Bihar State Electricity Board)** in which case though a Presenting Officer was appointed but he failed to discharge his obligation and in his absence his role was assumed by the Enquiry Officer. The opinion of the Bench at paragraph 11 of the judgment would be relevant for the issue at hand:

“11. Considering the rival contentions of the parties, this Court is of the opinion that in the instant case the inquiry has been vitiated inasmuch as the enquiry officer himself has acted as the presenting officer even though the presenting officer was appointed by the Electricity Board. There is no explanation why the said presenting officer did not appear before the enquiry officer to present the case of the department. In the peculiar facts of this case, the action of the enquiry officer to present the case himself on behalf of the department and also to take upon himself the duty of enquiring the correctness or otherwise of the said case clearly shows that the enquiry officer, in the instant case, has failed to discharge his duty as a fair and impartial enquiry authority. He has rolled up within himself the role of both the presenting officer and the enquiry officer and as such has acted in a manner which is not consistent with the principles of natural justice.” .

It is undisputed that there was no Presenting Officer present either to lead or to prove the evidence whatsoever, collected against the petitioner. The Enquiry Officer in such circumstances could not have assumed this duty upon himself to examine the evidence to hold it sufficient enough for upholding the charges.

In this connection I would again refer to paragraph 14 of the judgment of the Supreme Court reported in **(2009)2 SCC 570 (Roop Singh Negi v. Punjab National Bank)** which would again apply on all fours in the present case:

"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.”

As I have already observed, the present proceeding is also an example of multiple statutory violations inasmuch as the mandatory obligation cast on the disciplinary authority has been ignored.

For the reasons aforementioned, the entire proceedings including the enquiry report impugned at Annexure-5, the dismissal order passed by the Senior Superintendent of Police, Patna at Annexure-7, the order in appeal impugned at Annexure-8 and the order passed by the Director General of Police at Annexure 10 are held patently illegal, in teeth of the mandatory procedure prescribed under ‘the rules’ and are accordingly quashed and set aside.

The writ petition is allowed. The petitioner is reinstated on his post with 50 % backwages which it should be paid to the petitioner within a period of 3 months from the date of receipt/production of a copy of this order.



I leave it on the wisdom of the disciplinary authority to decide whether he wishes to proceed against the petitioner in the matter but if he does, it has to be in tune with the statutory prescriptions.

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	07.09.2017
Transmission Date	NA

(Jyoti Saran, J)

