

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14424 of 2015

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1. Dinesh Kumar Singh, son of Sri Jagdish Prasad Singh, Resident of Mohalla-C12
Indrapuri, Police Station- Shastrinagar, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Revenue and Land Reform, Government of Bihar, Patna.
3. The Additional Secretary, Department of Revenue and Land Reform, Government of Bihar, Patna.
4. The Divisional Commissioner, Munger.
5. The District Magistrate, Lakhisarai.
6. Additional Collector-cum-Conducting Officer, Munger.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sachindra Kumar Tiwary

For the Respondent/s : Mr. ANSHUMAN SINGH- GP24

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 31-08-2017

Heard both sides.

The petitioner sought reliefs in this writ petition for issuance of an appropriate writ including a writ in the nature of certiorari quashing the order dated 21.02.2015 passed by the Principal Secretary, Department of Revenue and Land Reform, Government of Bihar (Annexure-14), by which the petitioner has been dismissed from the post of Circle Officer and also for quashing the order dated 30.07.2015 (Annexure-16) passed in S. R. Case No. 02/2015, by which the Presiding Officer-cum-Minister, Revenue and Land Reform Department, Government of Bihar dismissed the appeal of the



petitioner and confirmed the order of dismissal passed by the Principal Secretary, Revenue and Land Reform Department, Government of Bihar.

The factual matrix of this case is that the petitioner was posted as Circle Officer, Suryagarha in the district of Lakhisarai on 04.04.2010. The District Magistrate, Lakhisarai, vide order as contained in Memo No. 625 dated 30.07.2010, directed the petitioner to work as Sub-Registrar, Suryagarha. While the petitioner was Incharge Sub-Registrar, Suryagarha, one Damyanti Devi filed a petition for executing a sale deed and for that a commission was appointed to take her thumb impression on the sale deed. The petitioner appointed Bipin Kumar Mishra, a clerk of the Sub-Registrar Office, as Commissioner. Later on, it was found that one Prahalad Yadav fraudulently got the sale deed registered in his favour setting up a fake lady in place of Damyanti Devi with regard to the Gairmazarua Aam land of Khata No. 86, Khesra No. 491. When the petitioner was working as Sahayak Bandobasth Padadhikari, Munger, the petitioner was called upon to file show cause with regard to the charges levelled against him through letter no. 2074/12, 280 dated 13.03.2013. Additional Collector, Munger was made enquiry officer and District-Sub-Registrar, Munger was appointed as Presenting Officer. The Enquiry Officer submitted his report and there upon the



appointing authority dismissed the petitioner from his service.

Learned counsel for the petitioner assailed the order of dismissal of the petitioner only on the ground that the enquiry officer did not hold the enquiry in accordance with the procedure as prescribed by Rule 17 of Bihar Government Servants (Classification, Control & Appeal) Rule, 2005 (hereinafter for the sake of brevity mentioned as “C.C.A. Rule 2005”).

Learned counsel for the petitioner submitted that the provisions of Rule 17 of the C.C.A. Rule enumerates the procedure for holding departmental enquiry. The enquiry officer did not act in accordance with law. The presenting Officer did not examine any witness. The enquiry officer in his report wrote that the presenting officer presented himself and filed the written petition that the proceedee government servant did not commit any illegal act.

Mr. Yugal Kishore, learned Senior Counsel further drew the attention of this Court on the order sheet (Annexure-12) and submitted that from perusal of the entire order sheet, it would appear that the enquiry officer did not fix the proceeding for evidence. The Presenting Officer did not examine any witness nor produced any document to prove the charges. The Enquiry Officer himself went to Sub-Registrar Office, Suryagarha on 02.05.2014 and recorded the evidence of Bipin Kumar Mishra, a clerk of the Sub-Registrar office,



who was appointed as Commissioner, but did not allow the petitioner to cross examine him. The Enquiry Officer himself acted as Presenting Officer and chose to collect evidence to prove the charge and, therefore, the enquiry report is vitiated as the same carries the elements of biasness as the Enquiry Officer could not remain neutral. Therefore, the order of dismissal, based on such enquiry report, and review order are not sustainable.

Mr. Ramadhar Singh, learned G.P.-25 appearing on behalf of the respondents has submitted that the Enquiry Officer exercises quasi-judicial function in a departmental proceeding. The enquiry reports reveals that enquiry authority recorded the evidence of Bipin Kumar Mishra and perused different documents on the basis of which, he found the petitioner guilty of misconduct. There is no procedural illegalities.

Learned counsel has further submitted that the respondents have made statement in the counter affidavit in paras 17, 18 and 19 that the Enquiry Officer found that Damyanti Devi was impersonated and the commission took her thumb impression without being properly identified by any proper witness. In each and every office of the Sub-Registrar, there is a record of government lands. If the records were not found in the office of the Sub-Registrar, the petitioner being Circle Officer is responsible for such negligence.



Acts of the petitioner caused heavy loss to the State as the government land i.e. Gairmazarua Aam was illegally transferred to Prahalad Yadav due to negligence of the petitioner, the then Circle Officer-cum-Sub-Registrar, Suryagarha.

For better appreciation of submission of the learned counsel of both sides, it would be expedient to reproduce Rule 17 of the CCA Rules, 2005, which reads 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 along with 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 clauses [(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 re-examine 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”.

Sub-rules 11, 12, and 13 of Rule 17 of the Bihar Government Servants (C.C.A.) Rules, 2005 prescribes` the procedure and the duty of the Presenting Officer and the Enquiry Officer. Sub-Rule 14 says that on the date fixed for enquiry, 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 of such witnesses on any points on which they have been cross-examined. After closing of the case of the disciplinary authority, the Enquiry Officer shall give liberty to the government servant to state his defence and produce oral and documentary evidence.

From perusal of the aforesaid provisions it appears that it is the duty of the Presenting Officer to produce all the witnesses either oral or documentary, on the basis of which, the disciplinary authority proposes to prove the charges against the government servant proceedee, but from perusal of the proceedings drawn up by the Enquiry Officer, as contained in Annexure-12 of the petition, it appears that on 19.03.2014 the enquiry was initiated after receipt of the order of the Principal Secretary, Revenue and land Reform. Enquiry Officer asked the petitioner to file show cause by 29.03.2014 and the date for the departmental proceeding was fixed on 29.03.2014. On 29.03.2014, the Enquiry Officer asked the Presenting Officer to give his opinion and the next date was 11.04.2014. Even on the next date the Enquiry Officer asked the Presenting Officer to file his opinion, although he was absent on that date. On the next date the Enquiry Officer asked the proceedee to give his evidence on 21.04.2014. The Enquiry Officer himself went to Sub-Registrar



Office, Suryagarha and recorded the statement of Bipin Kumar Mishra, a clerk of Sub-Registrar Office, Suryagarha, but the Enquiry Officer did not allow the petitioner to cross-examine the witness. The Enquiry Officer did not inform the Presenting Officer or the petitioner about the examination of Bipin Kumar Mishra. It appears that the Enquiry Officer himself collected the evidence and perused the documents and submitted report. Admittedly, the departmental proceeding is a quasi-judicial function and the Enquiry Officer is not bound to act in accordance with rules, prescribed under Rules 17 and other Rules of the CCA Rules, 2005.

From perusal of the enquiry report as well as the proceedings of the Enquiry Officer, it is evident that the Enquiry Officer himself acted as Presenting Officer on behalf of the Disciplinary Authority and he examined only witness and peruse documents of his own choice and also usurped the function of the Presenting Officer and submitted his report and on such report the Principal Secretary, Revenue and Land Reforms passed the order of dismissal. Since the Enquiry Officer has not acted in accordance with the Rules. The report submitted by him carries biasness. The enquiry authority did not afford any opportunity to the petitioner and his report is in strict sense based on evidence. There the order of punishment based on such report is bad, illegal and not sustainable.



Thus, the writ petition is allowed. The order of dismissal dated 21.02.2015 passed by the Principal Secretary, Department of Revenue and Land Reform (Annexure-14) and the order passed in Review Case No. 02 of 2015 (Annexure-16) are set aside.

The matter is remitted back to the disciplinary authority to proceed a fresh in accordance with law.

(Prabhat Kumar Jha, J.)

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