

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8002 of 2016

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Girish Parsad Sah, Son of Balmiki Prasad Sah, resident of Village & P.O. - Goraiya
Bathan, P.S. - Gogaree Jamalpur, District - Khagaria.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Rural Works Department, Govt. of Bihar, Patna.
3. The Engineer-in-Chief -cum- Additional Commissioner -cum- Special
Secretary, Rural Works Department, Govt. of Bihar, Patna.
4. The Special Secretary, Rural Works Department, Govt. of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prashant Sinha, Advocate

For the Respondent/s : Mr. Rakesh Prabhat, AC to SC-21

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 13-09-2017

Heard Mr. Prashant Sinha, learned counsel appearing for
the petitioner and Mr. Rakesh Prabhat, learned Assisting Counsel to
Standing Counsel No.21 for the State.

The petitioner is aggrieved by the enquiry report dated
24.12.2014 prepared by the Engineer-in-Chief –cum- Additional
Commissioner –cum- Special Secretary –cum- Conducting Officer,
a copy of which is impugned at Annexure 10/C to the writ petition.

The petitioner also prays for issuance of a writ in the
nature of certiorari for quashing the order bearing Memo No.2516
dated 30.6.2015 passed by the Engineer-in-Chief, Rural Works
Department, whereby the punishment of dismissal from service has
been awarded on the petitioner. The petitioner also prays for



issuance of a writ in the nature of certiorari for quashing the order bearing Memo No.4083 dated 7.12.2015 of the Secretary, Rural Works Department whereby the appeal of the petitioner has been rejected. Copies of the orders passed by the Disciplinary Authority and the Appellate Authority are impugned at Annexures 12 and 15 respectively to the writ petition.

The brief summary of facts leading to the impugned order is that the petitioner was allegedly apprehended while accepting bribe which led to institution of Vigilance P.S. Case No.12 of 2014 registered under the provisions of the Prevention of Corruption Act, 1988. A departmental proceeding was also initiated alongside in which a show cause was asked from the petitioner on the charge vide Annexure-3. The petitioner filed his reply contesting charge vide Annexure-4 and not being satisfied that the Disciplinary Authority decided to initiate a disciplinary proceeding against the petitioner vide Annexure-5 appointing the Enquiry Officer as well as the Presenting Officer to complete the exercise and the petitioner was directed to appear before the Enquiry Officer. Proceedings were conducted and the enquiry report is placed at Annexure 10/C at running page 94 of the proceedings. The proceedings have resulted in dismissal as affirmed by the appellate authority and feeling aggrieved, the petitioner is before this Court.



Two-fold submissions has been made by Mr. Sinha, learned counsel appearing for the petitioner to question the entire proceedings which, according to Mr. Sinha, is resting on an invalidly conducted enquiry by the Conducting Officer, namely:

- (a) Even though the charge memo lists 9 charges with equal number of documentary evidence and even though the Presenting Officer was appointed by the Disciplinary Authority to present the case on behalf of the department but the enquiry report at Annexure 10/C simply proceeds to uphold the guilt on the basis of allegations without reference to any evidence whatsoever; and
- (b) The petitioner has raised these issues before the Disciplinary Authority as well as the Appellate Authority but they have proceeded to mechanically uphold the findings of the Enquiry Officer without bothering to deal with the issues raised by the petitioner.

It is taking note of the submissions advanced by Mr. Sinha that this Court while recording the same in the order dated 6.9.2017, allowed the learned State Counsel to satisfy this Court on the issue raised with the aid of the records of the disciplinary proceedings which was also directed to be produced. The matter has thereafter been taken up today when Mr. Rakesh Prabhat, learned Assisting



Counsel to Standing Counsel No.21 has produced the records and which does confirm the submission of Mr. Sinha that the confirmation of guilt by the Enquiry Officer is resting entirely on the allegation for neither the Presenting Officer has bothered to lead evidence nor any such reference has been made by the Enquiry Officer in the report. The records of the proceedings also do not demonstrate whether any such effort was made by the Presenting Officer.

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

It is rather unfortunate that despite the anxiety shown by this Court in the judgments, on the brazen infraction of the statutory procedures as prescribed under the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Disciplinary Rules') by the Disciplinary Authority as well as the authorities associated therewith but wisdom has evaded the respondents. The result is that even though the petitioner faces a rather serious charge for which he has also been subjected to a criminal proceeding yet the Disciplinary Authority apparently feels that his job is over by initiation of a disciplinary proceeding and the conduct of the Enquiry Officer is even worse.

A complete procedure stands discussed under rule 17 to



19 of 'the Disciplinary Rules' in which the role of the Disciplinary Authority, the Presenting Officer and Enquiry Officer is very clearly explained but as I have said neither the Disciplinary Authority has bothered to appreciate his obligation nor has the Enquiry Officer or the Presenting Officer. Holding of the disciplinary proceeding is not a routine matter rather a stigma is attached to the officer concerned and which requires to be driven home in the manner provided under 'the Disciplinary Rules' and not by getting swayed on the allegation.

The role of the Enquiry Officer and the Presenting Officer stands discussed in a judgment of this Court on a similar matter arising from **CWJC No.7207 of 2016 (Shankar Dayal Vs. State of Bihar)** and which should have been a guidance for the respondents which runs as under:

“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."

Obviously where the punishment orders are resting on an invalid enquiry it would have to bear the consequences.

For the reasons aforementioned the entire disciplinary proceedings beginning from the stage of the enquiry report present at Annexure 10/C, the second show cause notice dated 4.2.2015 present at Annexure 10/A, the order of punishment bearing Memo No.2516 dated 30.6.2015 at Annexure 12 together with the appellate order bearing Memo No.4083 dated 7.12.2015 at Annexure-15



cannot be upheld and are accordingly quashed and set aside. The petitioner stands reinstated on his post together with the consequential benefits.

The writ petition is allowed.

This order, however, would not preclude the Disciplinary Authority for proceeding afresh in the matter but in accordance with law.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	09-10-2017
Transmission Date	NA

