

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3442 of 2014

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Dilip Choudhary Son Of Late Ram Kishun Choudhary Resident Of Village-
Hatiyagachhi, Ward No. 31, Saharsa, P.S. + District- Saharsa

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Department Of General
Administration, Government Of Bihar, Patna
2. The Divisional Commissioner, Koshi Division, Saharsa
3. The District Magistrate, Supaul
4. The Deputy Development Commissioner, Supaul
5. The Sub-Divisional Officer, Supaul
6. The Block Development Officer, Saraigarh, District- Supaul
7. The Mukhiya, Gram Panchayat Raj- Saraigarh, Block- Saraigarh, District-
Supaul

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Chaudhary, Adv.
Mr. Kulanand Jha, Adv.

For the Respondent/s : Mr. SC19- Rishi Raj Singh

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 16-08-2017

Heard both sides.

2. The petitioner filed this petition for quashing the order
dated 25.10.2013 (Annexure-3) passed by the Divisional
Commissioner in Service Appeal No. 212/2012 and order of District
Magistrate dated 16.04.2012, as contained in Memo No. 339-2
(Annexure-2) by which District Magistrate dismissed the petitioner
from his service.

3. Learned counsel for the petitioner assailed the order
inflicting punishment of dismissal against the petitioner and for



recovery of Rs. 3,05,000/- on the ground that no departmental enquiry was held in accordance with law. It is submitted that on perusal of Annexure-4, the report of Enquiry Officer, it would appear that no date was fixed for adducing any evidence. The Presenting Officer did not adduce any oral or documentary evidence. The Enquiry Officer submitted its report on no evidence and, on such, the District Magistrate dismissed the petitioner from his service and ordered for recovery of Rs. 3,05,000/-. The Commissioner, Koshi Division also dismissed the appeal of the petitioner without assigning any reason, the order of the Commissioner does not reflect that the grounds taken by the petitioner have been considered. Since no departmental proceeding was held in accordance with Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 and therefore, both the orders are not sustainable.

4. On the other hand, learned counsel for the State submits that enquiry was held in accordance with law and there is no procedural illegality.

5. On the basis of the submissions of the parties, the question falls for consideration is as to whether the enquiry was held in accordance with law. Rule 17 of the CCA Rules, 2005 provides the procedure for holding the enquiry. After serving or forwarding the charge-sheet along with the documents and evidences to be relied



upon by the department in order to prove the charges, the Enquiry Officer shall ask the delinquent to file show-cause. Thereafter, the enquiry officer shall ask the presenting officer to present oral as well as documentary evidence on which department is proposing to prove the articles of charge, but from perusal of annexure-4 the enquiry report, it would appear that the enquiry officer did not follow any rule. When the attention of the learned counsel for the State was drawn to order sheets and the enquiry report (annexure-4), he could not be able to show that on any date the presenting officer produced any evidence either oral or documentary in order to prove the articles of charge against the delinquent. The enquiry report shows that the enquiry officer on perusal of the documents without holding any enquiry submitted his report on the basis of his own opinion. It is well settled that the provisions of Evidence Act is not strictly adhered to in the departmental enquiry, but the presenting officer has to produce the evidence, oral as well as documentary, in order to prove the articles of charge. Thus, it appears that the enquiry officer did not hold the enquiry in accordance with law and the report of the enquiry officer is based on no evidence. Therefore, the order of the District Magistrate as well as the Commissioner inflicting punishment of dismissal of the petitioner and recovery of Rs. 3,05,000/- from the petitioner and dismissal of appeal are not sustainable and therefore, the order dated



25.10.2013 (Annexure-3) passed in Service Appeal No. 212/2012 and order dated 16.04.2012, as contained in Memo No. 339-2 (Annexure-2) are set aside. Thus, the writ petition is allowed. The matter is remitted to the disciplinary authority to proceed afresh in accordance with law.

(Prabhat Kumar Jha, J.)

Vinita/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.09.2017
Transmission Date	NA

