

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5042 of 2016

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Pankaj Kumar, Son of late Girish Prasad, Resident of Village- Koath, Post- Koath,
PS- Dawath , District- Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Labour Department, Government of Bihar Patna.
3. The Secretary, Labour Department, Government of Bihar, Patna.
4. The Labour Commissioner, Labour Resources Department, Disciplinary Authority, Bihar, Patna.
5. The Deputy Labour Commissioner, Labour Resources Department, Muzaffapur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nandlal Kumar Singh, Adv.
Ms. Madhuri Lata, Adv.
Mr. Manish Kumar, Adv.
Mr. Rajeev Nayan, Adv.
For the Respondent/s : Mr. Yogendra Pd. Sinha, AAG-15

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 04-09-2017

Heard the parties.

Another allegedly corrupt government servant would be succeeding in his litigation because of the ignorance of the Disciplinary Authority as regarding the mandatory procedure underlying the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as ‘the Disciplinary Rules’).

It is about time that the Chief Secretary, Government of Bihar takes appropriate steps to train its officers discharging functions of a Disciplinary Authority for unless they have the time and inclination to go through ‘the Disciplinary Rules’ and



understand the procedures prescribed therein, these disciplinary proceedings are proving a mockery.

It is because of such laches of the Disciplinary Authorities and their ignorance about the statutory procedure mandated under the 'Disciplinary Rules' that government servants facing serious corruption charges, succeed in the litigations. The matter is very serious and requires serious attention because the case in hand is not an isolated example rather this Court is burdened with matters clothed with statutory violations.

The petitioner is facing serious charges of allegedly being apprehended while taking bribe for giving a favourable order under the Indira Awas Yojana. A copy of the charge memo served on the petitioner is enclosed at Annexure-3 and no less than 5 charges all on corruption, are levelled against the petitioner relying upon the vigilance enquiry which is the foundation for such disciplinary proceeding. The charge of being allegedly caught red-handed while accepting bribe which led to institution of Vigilance P.S. Case No.53 of 2011 dated 5.8.2011 registered under the provisions of the Prevention of Corruption Act, 1988 is also the foundation for the disciplinary proceeding in question.

In my opinion, if the department was serious enough to proceed departmentally against the petitioner they would have paid more attention to the order of initiation of proceeding dated



3.1.2014 as well as in framing of the charge memo both of which are de hors the provisions underlying rule 17(3) of 'the Disciplinary Rules' which, inter alia, describes the manner in which a charge memo is to be framed and which is to include:

- (a) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge;
- (b) a statement of the imputations of misconduct or misbehaviour in support of each article of charge;
- (c) a statement of all relevant facts including any admission or confession of the Government Servant; and
- (d) a list of such document, witnesses by whom the articles of charge is to be framed.

In so far as the present case is concerned, the charge memo simply refers to the vigilance enquiry report with no oral witnesses named therein.

The second default committed by the Disciplinary Authority is of not following the provisions underlying rule 17(4) of 'the Disciplinary Rules' which, inter alia, requires the Disciplinary Authority to ask a show cause on the charge memo from the delinquent and also of hearing him in person, before the Disciplinary Authority takes the decision whether the matter



requires further enquiry in the manner prescribed or the explanation is worthy of acceptance.

In so far as the present case is concerned, the order initiating proceeding at Annexure-3 simply directs the petitioner to file his reply before the Conducting Officer which is contrary to the stipulations present at rule 17(4) of 'the Disciplinary Rules' and has come up for criticism by a Division Bench of this Court while considering similar provisions under the 'Disciplinary Rules' then in existence, in a judgment reported in **1996(2) PLJR 95 (Ravindra Nath Singh Vs. Bihar State Road Transport Corporation)** and the observations made in paragraph 6 of the judgment squarely would apply to the case in hand.

"6. We have heard learned counsel for the petitioner and learned Standing Counsel for the respondents and perused the materials placed before us. On perusal of the charge-sheet, a copy of which is annexed as Annexure-1, we find force in the submission of the learned counsel for the petitioner that the allegations contained in the charge-sheet are vague and no specific article of charge has been framed. It is also not for Corporation that the charge-sheet did not contain any statement of misconduct and misbehaviour in support of the charge against the petitioner. The list of documents, on which the article of charges was based and list of witnesses to be examined in support of the charges in the domestic enquiry, have also not been furnished with the charge-sheet. It appears from the charge-sheet that Shri E. Topno, the Chief of Administration was appointed as the Enquiry Officer in the proceedings and the petitioner was asked to submit his reply to the charges to the Enquiry Officer. 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 proceeding by holding domestic enquiry into the charges.”

The 3rd infirmity in the present case is that no Presenting Officer has been appointed for the proceedings to lead the case of the department. Once a disciplinary authority decides on holding a regular proceeding after following the procedure prescribed under rules 17(4) and 17(5) of ‘the Disciplinary Rules’ but wishes to shift responsibility on an authority other than himself, then he is to follow the procedure prescribed under rule 17(6) of ‘the Disciplinary Rules’ which mandates the Disciplinary Authority to forward certain records to the inquiring authority which also includes an order appointing the Presenting Officer which is missing in the present case.

The next infirmity in the case is that the Enquiry Officer has recorded his opinion unilaterally without any evidence, either oral or documentary being led by the department. The opinion of the Enquiry Officer is based on the vigilance report and by treating it sacrosanct.

In somewhat similar situation where the Presenting Officer was appointed but he did not choose to lead any evidence this Court in the case of **Shankar Dayal Vs. State of Bihar** arising from **CWJC No.7207 of 2016** has expressed its opinion which applies with all force to the case in hand:



“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 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.”

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.”

Where the orders of punishment impugned in the present



writ petition are resting on a proceeding which is invalid from its very inception, it would have to suffer the consequences inasmuch as they are founded on a proceeding which suffers statutory violations which are of mandatory nature.

For the reasons discussed, the entire proceedings initiated vide order bearing Memo No.18 dated 3.1.2014 inclusive of the charge memo, the enquiry report, the order of punishment bearing Memo No.1257 dated 30.4.2014 impugned at Annexure-1 as well as the appellate order bearing Memo No.2536 dated 28.8.2014 impugned at Annexure 1/A cannot be upheld and are accordingly quashed and set aside.

The writ petition is allowed.

Let a copy of this judgment be transmitted to the Chief Secretary, Bihar for taking corrective steps in the light of the observations made in this judgment.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	12-09-2017
Transmission Date	NA

