

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7017 of 2014

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1. Ramesh Pathak, Son Of Late Sita Ram Pathak, Permanent Resident Of Village- Akauna, P.S.- Barhara, District- Bhojpur, At Present Residing Of- House No.- D/2, Magadh Vihar, Near- Babu Bazar, P.S.- Anisabad, District- Patna- 2, Presently Voluntarily Retired Enforcement Sub-Inspector, Transport Department, Patna, (Bihar)

.... Petitioner/s

Versus

1. The State Of Bihar, through its Principal Secretary, Department Of State Transport, Government Of Bihar, Patna
2. The Commissioner (State Transport), Vishwaswaraiya Bhawan, Bailey Road, Patna
3. The Secretary, (State Transport Department), Government Of Bihar
4. The Under Secretary, State Transport Department, Government Of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajneesh

For the Respondent/s : Mr. Ajay Kumar, A.C. to G.P.4

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

9 02-11-2017 (1) Heard Mr. Rajeev Kumar Verma, the learned senior counsel appearing on behalf of the petitioner and the learned counsel, Mr. Ajay Kumar, A.C. to G.P.4 appearing on behalf of the respondents.

(2) This writ petition is being disposed of with the consent of the parties as the pleadings are completed. The petitioner by filing this writ petition seeks quashing of the order, dated 13.03.2014, as contained in Memo No.1607, issued under the signature of Principal Secretary-cum-State Transport



Commissioner, Bihar, Patna by which the entire pension of the petitioner has been withheld.

(3) The brief facts which is relevant is that the petitioner was working as Enforcement Sub-Inspector in the Transport Department, Government of Bihar. On the request of the petitioner, the petitioner was voluntarily retired with effect from 01.11.2012 vide order as contained in Memo No.4456 dated 31.10.2012. On 29.05.2013, Economic Offence Unit P.S. Case No.15 of 2013 was registered under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 and raid was conducted on 30.05.2013. Many documents of immovable properties and movable properties are alleged to have been recovered. The petitioner was proceeded under Section 43(b) of the Bihar Pension Rules vide order dated 25.01.2014, as contained in Memo No.524, Annexure-3. The memo of charges along with the list of witnesses and documents were attached with the memo of charges were duly served on the petitioner. The petitioner was asked upon to show cause within two weeks from the date of receipt of the show cause. The Additional Secretary, Transport Department, Bihar, Patna vide Letter No.730, dated 07.02.2014, Annexure-4 asked the petitioner to appear on 12.02.2014 before the Inquiry Officer and to file show cause. The



petitioner, in pursuance thereof, filed his detailed show cause, Annexure-5 on 12.02.2014. The Inquiry Officer fixed the next date of inquiry on 20.02.2014. On 20.02.2014, the petitioner did not appear but the Inquiry Officer on perusal of the documents attached to the memo of charges and the show cause filed by the petitioner submitted his inquiry report holding that the petitioner is guilty of misconduct under Rule 19(6) of the Bihar Government Servants Conduct Rules, 1976. The disciplinary authority, Principal Secretary-cum-State Transport Commissioner after having received the inquiry report asked second show cause vide Letter No.7-Stha.(Aa)/2013/1162 dated 22.02.2014. The petitioner submitted his show cause on 10.03.2014 but Principal Secretary-cum-State Transport Commissioner, the disciplinary authority vide order dated 13.03.2014, as contained in Memo No.1607, Annexure-8 withheld the entire pension of the petitioner holding him guilty of gross misconduct.

(4) Mr. Rajeev Kumar Verma, the learned senior counsel for the petitioner submits that even if in a proceeding initiated under Section 43(b) of the Bihar Pension Rules, the departmental inquiry has to be concluded under Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005(hereinafter referred to for the sake of brevity as



C.C.A. Rules, 2005) but no inquiry was held in accordance with the provisions of Rule 17 of the C.C.A. Rules, 2005. It is further submitted that according to sub-rules 6, 7, 9 and 11 and onwards of Rule 17, the disciplinary authority, who is not the enquiring authority, shall forward the records including the statement of witnesses and the documents on which the disciplinary authority proposes to prove the charge. After appearance of the employee and on perusal of the show cause, written statement of defence, the inquiry officer starts the departmental proceeding calling upon Presenting Officer to adduce evidence oral and documentary. Sub-rule 11 shows that if the Government Servant fails to appear within the specified time or refuses or omits to plead, the inquiry authority shall 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 inspect the documents. After fixing the date for evidence on behalf of the Presenting Officer, the Inquiry Officer fixed a date for inquiry and record the oral and documentary evidence produced by the Presenting Officer in order to prove the charges. The witnesses shall be examined by the Presenting Officer on behalf of the Department and cross-



examined on behalf of the Government Servant. It is further submitted that thereafter the Government Servant shall be allowed to produce evidence in support of his defence. After conclusion of inquiry, the report has to be submitted in accordance with sub-rule 23(2) of Rule 17 but from perusal of the inquiry report as well as the proceeding conducted by the Inquiry Officer, it would appear that on 25.01.2014, the petitioner was called upon to file show cause with memo of charges attached with the letter. Thereafter, the Inquiry Officer asked the petitioner to appear before him on 12.02.2014. The petitioner appeared before the Inquiry Officer and filed his show cause but no next date was communicated to the petitioner. It is further submitted that on 20.02.2014, the petitioner did not appear and in view of sub-rule 11, if the petitioner-proceedee does not appear before the Inquiry Officer, the Inquiry Officer should communicate the proceedee and should have asked the Presenting Officer to produce the evidence oral and documentary after adjourning the case for thirty days. But on 20.02.2014 itself, the Inquiry Officer on perusal of the documents attached with the memo of charges and the show cause filed by the petitioner submitted his report. Therefore, no inquiry was held in accordance with the procedure laid down under Rule 17 of the C.C.A. Rules, 2005. Upon submission of the inquiry report, Rule



18 of the C.C.A. Rules, 2005 provides that the disciplinary authority upon submission of the inquiry report under Rule 17, sub-rule 23(2) of the C.C.A Rules shall call upon the Government Servants to give show cause but the disciplinary authority without looking into the inquiry report which is in fact no report in the eye of law issued second show cause and without giving any reason reflecting the consideration of the facts and the grounds taken in the show cause by the Government Servant, inflicted punishment of withholding 100% pension of the petitioner. Therefore, the order is bad in law and not sustainable.

(5) On the contrary, the learned A.C. to G.P.4 submits that the Inquiry Officer perused the documents attached with the memo of charges along with the show cause of the petitioner and found sufficient material that the petitioner committed gross misconduct of amassing huge property disproportionate to the known and legitimate sources of his income. It is further submitted that according to Rule 19 of the Bihar Government Servants Conduct Rules, the Government Servant is bound to disclose and submit report with regard to acquisition of property in his name or in the name of his wife, son/sons and daughter/daughters or any members of his family. If the Government Servant is found in possession of such property,



the onus is on the Government Servant to prove that he has acquired such property through legitimate means and, therefore, the inquiry report does not suffers from any infirmities. The inquiry was held in accordance with law. If the Government Servant did not submit the details of property acquired by him in his own name or in the name of his family members after the ends of the year this acts of the Government Servant itself amounts to gross misconduct and, therefore, the punishment inflicted upon the petitioner by Annexure 8 does not require any interference.

(6) Having heard both sides, on consideration of the submissions, the sole question arises as to whether after initiation of a proceeding under Rule 43(b) of the Bihar Pension Rules, the Inquiry Officer held the inquiry in accordance with Rule 17 of the C.C.A. Rules or it is incumbent on the delinquent Government Servant without adducing any evidence on behalf of the Department to prove the facts that he acquired the property through legitimate means. Under Rule 43(b) of the Bihar Pension Rules, the Government has reserved its rights to initiate a departmental proceeding, if a Government Servant during his service tenure is found to commit any misconduct causing any pecuniary loss to the Government or he is departmentally or in a criminal proceeding found guilty, to forfeit the pension of the



Government Servant. If the proceeding is initiated under Section 43(b) of the Bihar Pension Rules, the disciplinary authority is bound to hold full-fledged departmental enquiry in order to prove the charge made against the Government Servant who has already retired from service. Of course, Inquiry Officer was appointed to hold the inquiry in accordance with law but from the facts which are admitted, it appears that on 25.01.2014, the petitioner was served with a letter along with the memo of charges by which the petitioner was called upon to show cause that a departmental proceeding has already been initiated under Section 43(b) of the Bihar Pension Rules. The Inquiry Officer, Additional Secretary, Transport Department, Government of Bihar also asked the petitioner to appear on 12.02.2014. The petitioner appeared and filed his detailed show cause on 12.02.2014. The next date of departmental proceeding was fixed on 20.02.2014. On 20.02.2014, the petitioner did not appear. On 20.02.2014, the Inquiry Officer submitted the report without asking the Presenting Officer to produce the evidence oral and documentary, in order to prove the charge against the petitioner even in absence of the petitioner, as per the provisions contained in sub-rule 11 of Rule 17 C.C.A. Rules, 2005. The Inquiry Officer submitted his report after perusing the documents not brought on record in accordance with



law during the course of departmental inquiry and on perusal of show cause recorded the finding of guilt of the petitioner of gross misconduct. In fact, this fact itself shows that the Inquiry Officer did not hold the inquiry in accordance with the procedure laid down under Rule 17 of the C.C.A. Rules, 2005 and, therefore, the report submitted by the Inquiry Officer shall not be deemed to be submitted under sub-rule 23 of Rule 17. From the records, it appears that the Presenting Officer did not examine any witness in order nor produce any documentary evidence during the departmental proceeding but the Inquiry Officer on his own recorded the finding of guilt of misconduct of the petitioner without any evidence brought on record in accordance with law. Therefore, the finding of the Inquiry Officer i.e. the inquiry report is based on no evidence and consequently, the punishment inflicted by the disciplinary authority on such inquiry report is also bad as the same is based on no evidence and fit to be set aside.

(7) So far as the contention of the learned counsel for the State that the Inquiry Officer perused the documents and the seizure list prepared by the Investigating Officer of E.O.U. P.S. is conclusively proved and conclusive proof of the fact that the petitioner has amassed huge property disproportionate to the known sources of his income, I find no force in the submission of



the learned counsel as even during the course of departmental proceeding, the Inquiry Officer should act as independent arbitrator. The appointment of Presenting Officer is meant only to produce the evidence on behalf of the Department to prove the charges proposed by the Department against the delinquent. The Inquiry Officer is not at all justified in submitting and holding the petitioner guilty on the basis of the materials only attached with the memo of charges.

(8) Having considered the facts aforesaid, I find that the order dated 13.03.2014, as contained in Annexure 8, is bad in law. Accordingly, the same is set aside and the writ petition is allowed. The disciplinary authority may proceed further in accordance with law.

(Prabhat Kumar Jha, J)

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