IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13744 of 2014

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1. Surendra Prasad, Son of Sri Gorakh Nath, Resident of Village- Akauni, Police Station-Kochas, District- Rohtas and at present Qr. No. J- 135, P.C. Colony, Kankarbagh, Police Station-Kankarbagh, District and Town- Patna

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Registration, Excise and Prohibition, Government of Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The Deputy Secretary to Government of Bihar, Patna.
5. The Deputy Commissioner, Excise- cum-Inquiry Officer, Tirhut- cum- Saran Division, Muzaffarpur .... Respondents

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Appearance :

For the Petitioner	:	Mr. Chitranjan Sinha, Sr. Adv. with Mr. Akhilesh Dutta Verma, Adv.
For the Respondents	:	Mr. Hari Shankar Roy, AC to AG

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT
Date: 30-10-2017

Heard Mr. Chitranjan Sinha, the learned senior counsel appearing on behalf of the petitioner, and learned Assistant Counsel to the Advocate General.

2. The writ petition is disposed off at the admission stage, itself, as the pleadings of both the parties have already completed.

3. The petitioner seeks quashing of the order, dated 27.06.2013, as contained in Memo No. 2743, Annexure 1, by which the petitioner has been terminated from service of Excise Inspector.

4. The brief facts, which is relevant for disposal of this case is that while the petitioner was posted as Excise Inspector, Samastipur, he was caught red handed accepting bribe of rupees ten thousand from Ranjeet Kumar, son of Haribans Prasad Rai, a licensee of foreign liquor shop. For that Special Case No. 25 of 2007, corresponding to Vigilance

P.S. Case No. 53 of 2007 was registered. The articles or charge was served on the petitioner. The Enquiry Officer hold enquiry and submitted report on 30.04.2008, Annexure 12. The disciplinary authority, having received the enquiry report, revoked the suspension of the petitioner and kept the enquiry pending till the disposal of the criminal case, as recommended by the enquiry officer. The disciplinary authority issued an order on 22.02.2013, as contained in Memo No. 1196, and decided to hold fresh enquiry. The disciplinary authority appointed Krishna Paswan, Deputy Commissioner, as Enquiry Officer and Superintendent, Excise, Samastipur, is Presenting Officer. The Enquiry Officer submitted his report on 07.03.2014, Annexure 13, and on the basis of which the disciplinary authority dismissed the petitioner from his service on 27.06.2014.

5. Mr. Chitranjan Sinha, learned senior counsel appearing for the petitioner firstly contended that the order of dismissal is bad in law. From perusal of Annexure "A" of the counter affidavit, it would appear that the disciplinary authority ordered for fresh enquiry, which is not permissible under Rule 18 of the Bihar Government Servant (Classification, Control and Appeal) Rule, 2005. It is, further, submitted that although the petitioner did not raise any objection about the illegality of Annexure "A", but, the second Enquiry Officer very categorically recorded the finding that on the basis of the evidence of the witnesses, the allegation of taking bribe, i.e., the charge has not been proved against the petitioner, but, the Enquiry Officer in the concluding portion of his report recorded a finding that since the police

lodged a case for taking bribe against the petitioner and petitioner was sent to jail on such allegation, prima facie the charge of misconduct under Rule 3 of the Bihar Government Servants Conduct Rules, 1976, is proved. It is submitted that this finding of the Enquiry Officer is not based on any evidence on record particularly in view of the fact that the Enquiry Officer himself recorded in his finding that the Presenting Officer did not produce any evidence in order to prove the charge against the petitioner. It is, further, submitted that in view of the provisions of sub rule (2) of Rule 18 of the Bihar Government Servant (Classification, Control and Appeal) Rule, 2005, the disciplinary authority after having received the enquiry report is duty bound to give the point of difference to the delinquent employee on the basis of the finding of the enquiry report and after considering the show cause of the petitioner-delinquent employee, the disciplinary authority should pass order. But, from perusal of Annexure "A" of the counter affidavit, it would appear that the disciplinary authority did not at all consider the representation/second show cause of the petitioner although the petitioner filed voluminous show cause, Annexure 14 to the writ petition.

7. On the contrary, the learned Assistant Counsel to the Advocate General submits that no fresh enquiry was held rather enquiry was kept pending after submission of the enquiry report submitted by the first Enquiry Officer. The learned counsel for the State, further, submits that the criminal case is still pending and the Enquiry Officer submitted his report on the basis of no evidence and the matter be

remitted to the disciplinary authority, but, when the attention of the learned Assistant Counsel to the Advocate General was drawn towards the report of the Enquiry Officer, the learned counsel for the State could not be able to show that on what evidence the Enquiry Officer recorded his finding that the petitioner is guilty of misconduct under Rule 3 of the Bihar Government Servants Conduct Rules, 1976. On mere institution of a case by the Vigilance Department, an employee can not be held to be guilty of misconduct unless the case is proved either in a criminal proceeding or in the departmental proceeding, held by the disciplinary authority.

8. On submissions of both sides and on careful perusal of the records, it appears that the first Enquiry Officer submitted report making recommendation for keeping the enquiry pending till the disposal of the criminal case. The disciplinary authority, after receiving first enquiry report, revoked the suspension of the petitioner in the year 2007 itself, but, again, ordered for fresh enquiry on 12.02.2013, as contained in Memo No. 1196. Rule 18 of the Bihar Government Servant (Classification, Control and Appeal) Rule, 2005, clearly stipulates that on receipt of the enquiry report of the Enquiry Officer, the disciplinary authority, if finds that the enquiry, on any point of charge is not hold, may remit the case to the Enquiry Officer with a direction to the Enquiry Officer to hold further enquiry. Sub rule (2) of Rule 18 of the Bihar Government Servants Conduct Rules, 1976, further, bestows power on the disciplinary authority to defer with the findings of the enquiry report and record his own findings with regard

to a point of charge on the basis of the evidence available on record and thereupon the findings recorded by the disciplinary authority with regard to the difference of opinion on any point of charge as well as the notice call upon the Government servant to give show cause. But, it appears that on receipt of the first enquiry report, the disciplinary authority neither accepted the enquiry report nor remitted to the Enquiry Officer for holding further enquiry and kept the same pending after revoking the suspension of the petitioner. After more than five years of submission of first enquiry report, the disciplinary authority on 22.02.2013, vide order, contained in Memo No. 1196, ordered for fresh enquiry, which is not permissible under the Rule. It, further, transpires from the enquiry report of the second Enquiry Officer that the Presenting Officer did not present any evidence either oral or documentary in order to prove the charge on behalf of the Department and on such the Enquiry Officer found that no charge is proved, but, on mere conjuncture and surmises the Enquiry Officer recorded the finding that since first information report is lodged by the Vigilance Department and petitioner was sent to jail on the allegation of accepting bribe, the petitioner is guilty of misconduct under Rule 3 of the Bihar Government Servants Conduct Rules, 1976.

9. On the face of it, it appears that the finding of the Enquiry Officer with regard to guilt of misconduct of the petitioner is based on no evidence and, therefore, the punishment inflicting on such enquiry report based on no evidence is also bad and is illegal and not sustainable in the eye of law.

10. Consequently, the writ petition is **allowed** and the order, dated 27.06.2013, as contained in Memo No. 2743, Annexure 1, by which the petitioner has been terminated from service of Excise Inspector, is **set aside**.

(Prabhat Kumar Jha, J)

SA/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16.11.2017
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