IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18674 of 2015

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1. Sanjay Kumar S/o Late Phuldeo Prasad R/o Vill- Maldah, P.S.- Barbigha, Distt- Sheikhpura.

.... Petitioner

Versus

1. The State of Bihar
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Secretary, Registration Excise and Prohibition Deptt. Govt. of Bihar, Patna.
4. The Deputy Secretary Registration, Excise and Prohibition Deptt., Govt. of Bihar, Patna.
5. The Additional Secretary, Registration, Excess & Prohibition Deptt., Govt. of Bihar, Patna.
6. The Assistant Inspector General of Registration Excise and Prohibition Deptt. Govt. of Bihar, Patna.
7. The Secretary, Bihar, Public Service Commission, Patna.
8. The Departmental Inquiry Commissioner, Department of General Administration, Govt. of Bihar, Patna.
9. The Presenting Officer cum Deputy Commissioner Excise, Patna Division, Govt. of Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Y. V. Giri, Sr. advocate
		Mr. Indu Bhushan
For the State	:	Mr. Hari Shanker Roy, AC to AG
For the BPSC	:	Mr. Sanjay Pandey, advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 11-09-2017

Heard both sides.

2. The petitioner has filed this writ petition for quashing the order dated 27.06.2014, as contained in memo No. 2744 (Annexure-22), by which the petitioner has been dismissed from service from the post of Excise Superintendent.

3. The brief facts relevant for disposal of the writ petition is that the petitioner was caught while accepting bribe and he was arrested for which Vigilance P.S. case No. 69 of 2009 was registered on 12.06.2009. Thereafter, the

petitioner was put under suspension vide memo No. 2598 dated 06.07.2009 (Annexure-1). Another vigilance case No. 86 of 2009 was registered on 19.08.2009 alleging therein that petitioner amassed properties worth Rs. 75,53,981/-, which is disproportionate to the known source of his come. A departmental proceeding was initiated on two charges. Firstly, that on 12.06.2009 on the complaint of Mahesh Rai the petitioner was apprehended red handed, while accepting bribe of Rs. 10,000/-, for which Vigilance case No. 69 of 2009 was registered under Section 7/ 13(2) and 13(1) D of Prevention of Corruption Act, 1988 and this act of the petitioner amounts to gross misconduct and is against service conduct Rule, 1976. Secondly, the petitioner was found to have amassed properties worth Rs. 75,53,981/-, which is disproportionate to the known source of income of the petitioner for which Vigilance case No. 86 of 2009 was also registered. The Departmental Enquiry Commissioner conducted enquiry and submitted report. The enquiry officer found both the charges not proved against the petitioner. The disciplinary authority on receipt of the enquiry report differed with the finding of the enquiry officer and asked second show cause from the petitioner vide letter No. 694 dated 12.02.2014 (Annexure-14). The petitioner submitted his reply and thereafter the disciplinary authority came up with notification No. 2744 dated 27.06.2014 dismissing the petitioner from service.

4. Sri Y. V. Giri, the learned senior counsel for the petitioner, assails the order, dismissing the petitioner from service, firstly on the ground that the enquiry officer did not find the petitioner guilty on both the charges. The disciplinary authority has got power to differ with the finding of enquiry officer in view of provisions as contained in Rule 18 (2) of the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the CCA Rules, 2005) but the disciplinary authority has to record his own finding on

the charge differing with the finding of enquiry officer on the basis of evidence available on record. No evidence has been adduced during the course of enquiry to show that the petitioner amassed huge properties worth Rs. 75,53,981/-, which is disproportionate to the known source of income of the petitioner. The disciplinary authority should have stated the grounds for differing with the findings of enquiry officer on the basis of evidence but the disciplinary authority only stated about institution of the case and recovery of money but no such evidence is brought on record by the presenting officer during the course of enquiry. From perusal of the enquiry report, it would appear that the presenting officer, for proving the charge No.2, produced only letter No. 5609 dated 10.11.2009. Therefore, there is no material presented by the presenting officer on behalf of disciplinary authority to show that the petitioner amassed any property disproportionate to known source of his income.

5. On the contrary, the learned AC to AG, submits that the disciplinary authority has given reasons for differing with the finding of the enquiry officer but when his attention was drawn to the report of enquiry officer with regard to charge No.2 he is unable to show any material on record on the basis of which the disciplinary authority differed with the finding of enquiry officer.

6. On submission of both sides, the only point falls for consideration as to whether the order passed by the disciplinary authority differing with the finding of enquiry officer is in accordance with the law and punishment thereon is sustainable in the eye of law?

7. For appreciating the submissions of the parties, it would be appropriate to reproduce Rule 18(2) of the CCA Rules, 2005, which reads as follows:-

> "18 (2) The disciplinary authority, after receipt of the enquiry report as per Rule 17 (23)(ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose".

8. From bare perusal of the aforesaid Rule, it appears that the disciplinary authority, after receipt of the enquiry report as per Rule 17(2) 23(ii) or as per sub-rule (1), shall, if it disagrees with the finding of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidence on record is sufficient for the purpose. The disciplinary authority may differ with the finding of the enquiry officer but for that the disciplinary authority has to record its reasons for such disagreement and also record its own finding on such charge, if the evidence on record is sufficient for the purpose. The Rule makes it clear that the finding of the disciplinary authority with regard to any point of charge differing with the finding of enquiry officer must be based on the evidence collected during the course of enquiry. Sub-rule (3) of Rule 18 of CCA Rules, 2005 provides that the disciplinary authority shall forward or cause to be forwarded a copy of the inquiry report, together with its own findings, if any, as provided in sub-rule (2), to the Government servant who may submit, if he or she so desires, his or her written representation or submission to the disciplinary authority within fifteen days. With regard to charge No.2 the disciplinary authority differed with the finding of enquiry officer but from perusal of Annexure-14, the second show cause notice, which was given to the petitioner after differing with the finding of enquiry

officer, with regard to amassing properties worth Rs. 75,53,981/-, which is disproportionate to known source of income of the petitioner, it appears that the disciplinary authority did not give any reason nor discussed any evidence for differing with the finding of enquiry officer. Thus, the finding of disciplinary authority on the point of amassing properties disproportionate to known sources of income of the petitioner is based on no evidence and the order of punishment is vitiated and bad in law and not sustainable as is in violation of principles of natural justice.

9. Having regard to the facts discussed above, this writ petition is allowed and the impugned order dated 27.06.2014 (Annexure-22) is set aside. The matter is remitted to the disciplinary authority to proceed afresh from the stage of asking second show cause and pass order in accordance with law within a period of four months from the date of receipt of this order.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	21.09.2017
Transmission Date	N.A.