

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13913 of 2016

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Md. Laquab Hussain, Son of Late Md. Fida Hussain, Resident of Village - Hakikat Pur, Police Station - Awatar Nagar, District - Saran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Director General of Police, Bihar, Patna.
3. The Principal Secretary, Home Department, Bihar, Patna.
4. The Deputy Inspector General of Police, Tirhut Division, Muzaffarpur.
5. The Superintendent of Police, Sitamarhi.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 14383 of 2016

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Tribhuwan Pandey, Son of Drupji Pandey, Resident of village- Kharika Tola, P.S. Guthni, District- Siwan.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Director General of Police, Bihar Patna.
3. The Principal Secretary, Home Department, Bihar, Patna.
4. The Deputy Inspector General of Police, Tirhut Division, Muzaffarpur.
5. The Senior Superintendent of Police , Sitamadhi.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 15812 of 2016

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Sunil Kumar Tiwary, son of Yogendra Tiwary. resident of village + PO - Bariswan, P.S. - Shahpur, District - Bhojpur (Arrah).

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Home (Police), Old Secretariat, Patna.
2. The Director General-cum-Inspector General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Tirhut Range, Muzaffarpur.
4. The Superintendent of Police, Sitamarhi.

.... Respondent/s

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Appearance :

(In CWJC No.13913 of 2016)

For the Petitioner/s : Mr. Bindhyachal Singh, Adv.
Mr. Satya Prakash, Adv.

For the Respondent/s : Mr. Md. N. H. Khan, SC-1
(In CWJC No.14383 of 2016)

For the Petitioner/s : Mr. Bindhyachal Singh, Adv.
Mr. Satya Prakash, Adv.

For the Respondent/s : Mr. Ujjwal Kumar Sinha, AC to AAG-3



(In CWJC No.15812 of 2016)

For the Petitioner/s : Mr. Virendra Kuar, Adv.

For the Respondent/s : Mr. Md.Nadeem, Seraj, GP-5

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 24-07-2017

Heard Mr. Bindhyachal Singh, learned counsel appearing for the petitioners in CWJC No.13913 of 2016 and CWJC No.14383 of 2016 and Mr. Virendra Kuar, learned counsel appearing for the petitioner in CWJC No.15812 of 2016, Mr. Md. N.H. Khan, learned Standing Counsel No.1 for the State in CWJC No.13913 of 2016, Mr. Ujjwal Kumar Sinha, learned Assisting Counsel to Additional Advocate General No.3 for the State in CWJC No.14383 of 2016 and Mr. Md. Nadeem Seraj, learned Government Pleader No.5 for the State in CWJC No.15812 of 2016.

This batch of writ petitions is another addition to the usual chain where the Disciplinary Authority has proceeded in complete ignorance of the statutory provisions underlying the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Disciplinary Rules').

Though every single provision present in 'the Disciplinary Rules' has own importance but the procedure so provided under rules 17 and 18 go to the root of the matter before a decision is taken on the allegation as to the penalty to be imposed. This Court



has been noticing in the matter concerning the disciplinary proceedings that the enquiry has been held and the orders have been passed without notice of the mandatory procedure so provided.

As I have held that this batch of writ petitions is an addition to the chain. A detail order stands recorded by this Court on 1.7.2017 in CWJC No.13913 of 2016 taking note of the issues which arise in the present proceedings as canvassed by Mr. Singh. The State has practically no answer.

In my opinion, in the nature of default noticed, for the moment, this Court would not enter into the merits of the contest. The reason is that the writ petitions are fit to be allowed on the failure of the Disciplinary Authority to abide by the mandatory procedure provided under 'the Disciplinary Rules'. Without entering into the inter-se merits of the case and while taking note of the issues recorded in the order passed on 1.7.2017 which, inter alia, notices that no Presenting Officer was appointed by the Disciplinary Authority as mandated under rule 17(6) of 'the Disciplinary Rules', this Court is satisfied that the writ petitions are fit to be allowed on this violation of mandatory procedure. The legal position as to the appointment of Presenting Officer stands settled but yet the situation.

For the sake of convenience this Court deems it necessary to reproduce the extract of the opinion expressed by this Court on



the issue in the case of **Shankar Dayal Vs. State of Bihar** arising from **CWJC No.7207 of 2016** which would squarely apply to the issues arising in the present writ petitions and runs as under:

“The substance of the argument advanced by Mr. Ajey Kumar, learned counsel appearing for the petitioner to question the impugned order is that it is clothed with statutory violations. He submits that even though a Presenting Officer was appointed in the proceeding but he failed to lead any evidence against the petitioner and it is only on the basis of the allegations forming part of the charge memo that has led to the conclusion drawn by the Enquiry Officer and has been endorsed by the Disciplinary Authority and the Appellate Authority. In short the submission is that the order impugned is resting on no evidence and that in absence of the Presenting Officer the entire proceeding stood vitiated and the conclusion drawn stood void ab-initio.

....

The proceeding is clothed with gross statutory violations and confirms ignorance of statutory procedure provided under „the Rules“ beginning from the stage of service of charge memo until the passing of the impugned order(s). The Disciplinary Authority has defaulted at each stage. The charge memo placed at Annexure 2/1 even though framed by the District Magistrate, Nalanda was never served upon the petitioner by the District Magistrate as mandated under rule 17(3) of „the Rules“ nor the records in the custody of Mr. Kumar Alok would reflect any delegation of power. Mr. Alok has also not been able to satisfy from the records whether any such delegation has been made by the Disciplinary Authority in favour of any officer. Now in such circumstances the service of the charge memo by the Enquiry Officer and his direction to the petitioner to reply thereto, is unheard of in service jurisprudence and contrary to the ‘Disciplinary Rules’.

Rule 17(3) of ‘the Rules’ casts an obligation on the Disciplinary Authority to draw a charge against a delinquent Government servant or cause it to be drawn up against the officer delinquent. Sub-rule (4) thereof further mandates the delivery of such charge memo so drawn up either through the Disciplinary Authority or through an officer duly authorized. The obligation cast on the



Disciplinary Authority does not stop here rather he has yet to satisfy himself whether the explanation so forwarded by a delinquent on the proposed charge, requires an enquiry by the Enquiry Officer or requires a closure. This power exclusively vested in the Disciplinary Authority under rule 17(4) cannot be delegated.

In the present case this mandatory obligation cast on Disciplinary Authority has been flouted as confirmed from the letter dated 1.2.2008 (Annexure-2) issued by the Enquiry Officer directing the petitioner to file his reply on the charges before him. This is a gross statutory violation and has been commented upon by a Division Bench of this Court in a judgment reported in **1996 (2) PLJR 95 (Ravindra Nath Singh vs. Bihar State Road Transport Corporation)** when the Division Bench has expressed the following opinion at paragraph 6 of the judgment:

“6. 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 proceedings by holding domestic enquiry into the charges.”

In my opinion the enquiry at its very inception is vitiated for the Enquiry Officer has no business to seek reply on the charges from the delinquent. „The Rules“ again do not authorize him to do so. The illegality did not stop here and continues further.

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."

While in the case referred to above the Presiding Officer even though was appointed but did not choose to discharge his obligation, in so far as the present proceedings are concerned, the Disciplinary Authority has failed to appreciate this mandatory requirement inasmuch as even while appointing a Conducting Officer, he has failed to appoint a Presenting Officer. The extract of the opinion expressed by this Court in the case of **Shankar Dayal** (supra) succinctly explains the mandatory nature of appointment of Presenting Officer as well as his importance in conducting of disciplinary proceedings. The failure on the part of the Disciplinary



Authority to appoint a Presenting Officer is a gross statutory violation rendering the entire proceeding including the impugned orders illegal and contrary to the statutory provisions.

For the reasons aforementioned the entire proceeding inclusive of the enquiry report as well as the orders of penalty so passed by the Disciplinary Authority as well as the Appellate Authority in the respective writ petitions are held illegal and are accordingly quashed and set aside.

This Court has not expressed any opinion on the charges so framed against the petitioners leaving it open for contest in an appropriate application. The matter is remitted back to the Disciplinary Authority for proceeding afresh if so advised, but in accordance with law and by following the procedure so prescribed under the 'Disciplinary Rules'.

As a consequence of the order so passed all the petitioners are reinstated on their respective post with 50% back wages.

The writ petitions are allowed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21-08-2017
Transmission Date	NA

