

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.485 of 2016

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1. Sanjay Kumar Suman Son of Late Rajendra Sharma, Resident of village-
Sonwan, P.O. Sonwan, P.S.- Ghosi, District- Jehanabad

.... Petitioner/s

Versus

1. The State of Bihar through the Home Secretary (Police), Bihar, Patna
2. The Director, General of Police, Bihar, Patna
3. The Inspector General of Police, Bhagalpur Zone, Bhagalpur
4. The Deputy Inspector General of Police, Munger Range, Munger
5. The Superintendent of Police, Begusarai
6. The Superintendent of Police (A), Special Branch, Bihar, Patna
7. The Addl. Superintendent of Police, Lakhisarai cum Conducting Officer,
District- Lakhisarai

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Tej Bahadur Singh, Sr. Adv.
Mr. Binod Kumar, Adv.
For the Respondent/s : Mr. Rajesh Singh, G.P.16
Mr. Amit Bhushan, A.C. to G.P.17

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 01-11-2017

Heard Mr. Tej Bahadur Singh, learned Senior counsel for the
petitioner who appears along with Mr. Binod Kumar Advocate on
Record and Mr. Amit Bhushan, A.C. to G.P.17 appearing for the
State.

With the consent of the parties, the writ petition has been heard
with the view to final disposal at the stage of admission itself and in
the nature of dispute which engages this Court I do not deem it
necessary to enter into the merits of the dispute because the entire



disciplinary proceeding is a sham having been held dehors the procedure prescribed under the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules') as amended from time to time.

The writ petition in hand is in addition to the long list of such cases which unnecessarily burdens this Court because of the failure of the authorities discharging functions of a disciplinary authority to follow the lawful procedure. Despite judgments passed reminding the authorities discharging the duties of a disciplinary authority to abide by the mandatory procedure prescribed under 'the rules', yet wisdom evades the disciplinary authority concerned resulting in success of the delinquent entirely attributable to the laches on the disciplinary authority. All that I can say is that the high officials of the State discharging duties of a disciplinary authority need to introspect the issue as that would go a long way to serve the much lauded state litigation policy boasted of.

Reverting back to the case in hand the petitioner is aggrieved by the order bearing Memo No. 3379 dated 23.6.2014 of the Deputy Inspector General, Munger Range, Munger whereby the petitioner has been compulsorily retired from service in public interest and in administrative exigencies, a copy of which order is impugned at Annexure-1 and which has been confirmed by the Director General of



Police, Bhagalpur Range, Bhagalpur vide order bearing Memo No. 729 dated 10.06.2015 impugned at Annexure-2 to the writ petition. It is unfortunate that none of the two authorities have bothered to satisfy themselves from the records of the proceeding as to whether the mandatory procedure underlying Rule 17 of 'the Rules' has been followed in the present case.

As I have said, I will not enter into the merits of the case save and except to record that it is on a complaint made by one K.C. Sharma, Senior Vice President, Ratan Global Infra Projects Ltd. which is at the foundation of the proceeding in question and it is the contention of Mr. Tej Bahadur Singh learned Senior counsel that neither the complaint so filed nor the evidence whatsoever led, does connect the petitioner to the alleged charges. He has specifically referred to paragraphs 19 to 23 of the writ petition to submit that neither the memo of charges were served on the petitioner as mandated under Rule 17(4) of 'the Rules' by the disciplinary authority nor any Presenting Officer was appointed by the disciplinary authority as mandated under Rule 17(6) of 'the Rules'. In between, he submits that a preliminary enquiry earlier held, the report of which is present at Annexure-7, exonerates the petitioner of all charges yet when the matter reached the disciplinary authority vide Annexure-8 which is the letter dated 18.02.2014 of the



Superintendent of Police, Begusarai addressed to the Deputy Inspector General of Police, Munger Range, Munger that he vide letter dated 14.03.2014 at Annexure-9 had a different opinion to direct the Superintendent of Police, Begusarai to hold a departmental proceeding as in the opinion of the disciplinary authority, the petitioner appeared guilty of the charges which form the complaint.

According to Mr. Singh learned Senior counsel for the petitioner since hereafter the entire proceedings have been conducted de hors the statutory procedure for neither the charge memo was served on the petitioner nor he was given opportunity to rebut the same by the disciplinary authority in terms of Rule 17(4) of 'the Rules' nor the disciplinary authority has proceeded to appoint the Presenting Officer to lead the case for the Department as mandated under Rule 17(6) of 'the Rules' nor the evidence whatsoever led supports the case of the Department and finally that the second show cause served on the petitioner by the disciplinary authority vide his letter dated 02.05.2014 at Annexure-16 was without enclosures as it did not enclose the enquiry report which the petitioner subsequently procured by invoking the Right to Information Act. He further submits that there are only two forms of compulsory retirement namely: (a) under Rule 74 of the Bihar Service Code; or (b) under the Disciplinary Rules and each have different pre-requisite for such



exercise, but the order put to challenge reflects a confused state of affairs for even though a disciplinary proceedings have been held under 'the Rules' but the order of compulsory retirement is passed in public interest and not as a measure of penalty.

The argument of Mr. Singh has been contested by Mr. Bhushan learned State counsel in reference to the seriousness of the charge and to submit that the petitioner though posted as a crime reader, was trying to influence the investigation by approaching the Investigating Officer and was in collusion with the accused persons which persuaded the disciplinary authority to take the extreme action. He further in reference to Annexure-D to the counter affidavit has tried to justify that the charges were served on the petitioner but in absence of any covering letter to the same that this Court directed for production of the record of the disciplinary proceeding and which has since been produced and gives a dismal picture.

I have heard learned counsel for the parties and I have perused the records.

The submissions advanced by Mr. Singh stands supported from the records of the proceeding because without doubt, the disciplinary authority has failed to observe any of the mandatory procedure underlying Rule 17 of 'the Rules' for imposing a penalty under rule 14 thereof. No doubt Annexure-9 to the writ petition advises the



Superintendent of Police to draw a charge memo against the petitioner and for its submission before the Deputy Inspector General of Police as the disciplinary authority, for initiating a disciplinary proceeding against the petitioner. The order alongside also show causes the previous Enquiry Officer who had submitted a report in favour of the petitioner vide Annexure-7. In my opinion it is highly unjust for the Deputy Inspector General of Police to show cause an Enquiry Officer which confirms an abuse of power by a higher authority. Even if the opinion of the Enquiry Officer did not satisfy the disciplinary authority yet 'the rules' amply empowers the disciplinary authority to either hold further enquiry or differ with the report giving tentative reasons but in no circumstances the rules vests jurisdiction in a disciplinary authority to show cause an Enquiry Officer because the report does not satisfy him. It is advisable for the Deputy Inspector General of Police, Munger Range concerned to keep his emotions in check and not allow it to go over board.

It is noticed from the records of the disciplinary proceeding that acting on the direction of the Deputy Inspector General of Police, Munger Range at Annexure 9 that the Superintendent of Police, Begusarai vide his letter bearing No. 1844 dated 26.3.2014 drew a charge memo and a copy of which was forwarded to the Enquiry Officer appointed by the disciplinary authority vide memo No.620



dated 26.3.2014. However, neither the Superintendent of Police, Begusarai while drawing the charge memo vide memo No.1844 dated 26.3.2014 has bothered to serve the charge memo on the petitioner nor the Deputy Inspector General of Police, Munger Range, Munger while appointing the Enquiry Officer has bothered to do so while issuing order bearing Memo No.620 dated 26.3.2014. In fact there is no other order on record of the proceedings which would confirm a service of charge memo on the petitioner by the disciplinary authority thus violating the provision of Rule 17(4) of 'the Rules'.

Interestingly, even when the disciplinary authority i.e the Deputy Inspector General of Police has chosen to appoint one Manoj Tiwari Additional Superintendent of Police, Lakhisarai as the Enquiry Officer but he has failed to appoint a Presenting Officer for the proceeding as mandated under Rule 17(6) of 'the Rules'. The order of initiation of proceeding was communicated by the Superintendent of Police Begusarai to the Enquiry Officer vide letter No.1347 dated 27.3.2014, but again the copy of the same was not endorsed to the petitioner. In other words, until the Enquiry Officer initiated the proceeding in question, the petitioner was absolutely in dark about the fact that despite the enquiry report at Annexure-7 having been submitted in his favour, the Department had yet chosen to draw a disciplinary proceeding against him.



The proceeding was held and report submitted holding the petitioner guilty though a copy of the same was never supplied to the petitioner by the disciplinary authority while serving a second show cause on 02.05.2014 vide Annexure-16 and which fact goes uncontested as confirmed from Annexure-17 series in which the Public Information Officer has informed that the letter dated 2.5.2014 of the Deputy Inspector General of Police was without enclosures. The report of the Public Information Officer dated 16.9.2015 encloses a receipt which clearly mentions that the order of the Deputy Inspector General of Police bearing Memo No.957 dated 2.5.2014 was received without enclosures. In other words, the mandatory procedure of Rule 18(3) also stood violated. The irregularities do not stop here rather even the impugned order of compulsory retirement has been passed not as a measure of penalty but in public interest.

Having heard learned counsel for the parties & taking note of the multiple statutory violations accompanying the proceedings under challenge, it would not detain this Court to hold that the entire proceeding leading to the impugned order(s) is a sham as observed by me at the outset for it has been held de hors the mandatory procedure underlying Rule 17 and 18 of 'the Rules'. The entire disciplinary proceeding including the orders impugned resting on such illegal proceedings are perpetuation of illegality and in consequence the



entire proceedings inclusive of the enquiry report, the second show cause notice, the order of the disciplinary authority dated 23.06.2014 at Annexure-1 together with the order of the appellate authority dated 10.6.2015 at Annexure-2 are quashed and set aside. The petitioner is restored to his post and shall be entitled to all consequential benefits which should be provided to the petitioner within a period of 3 months from the date of receipt/production of a copy of this order.

Since charges have been drawn in tune with Rule 17(3) of 'the rules' and no infirmity is found in this exercise, it shall be open to the disciplinary authority if so advised, to proceed in the matter afresh from the stage of service of charge memo and for disposal of the matter in accordance with law.

The writ petition is allowed.

Let the records of the proceeding be returned to Mr. Amit Bhushan learned State counsel to his custody.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	14.11.2017
Transmission Date	NA

