

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1714 of 2015

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Balmukund Prasad son of Late Bhagwat Prasad resident of Village - Sahbajpur,
P.S. Asthawan, District – Nalanda

.... **Petitioner**

Versus

1. The State of Bihar.
2. The Commissioner, Patna Division, Patna.
3. The District Magistrate, Nalanda.
4. The Additional Collector, Nalanda.
5. The District Land Acquisition Officer, Nalanda

.... **Respondents**

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Appearance :

For the Petitioner : Mr. Ajey Kumar, Advocate

For the State : Mr. Vasant Vikas, AC to GP 12

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 02-07-2018

Heard learned counsel for the petitioner and learned
counsel for the State.

2. The petitioner seeks quashing of the order dated
28.3.2014 (Annexure 12), passed by the District Magistrate,
Nalanda, whereby he has been dismissed from service.

3. At the relevant point of time, the petitioner was posed
as Clerk/ Assistant in the District land Acquisition Office, Nalanda
at Biharsharif. He was trapped in a vigilance case which was
instituted as Vigilance Police Station Case No. 75 of 2012 dated
11.12.2012 under various sections of the Prevention of Corruption
Act, 1988. He was placed under suspension in contemplation of a
departmental proceeding. On his release on bail, his suspension was
revoked and he was posted in SDO office, Hilsa.



4. One charge memo “Praptra Ka” dated 13.5.2013 came to be issued to the petitioner on the same charges for which a criminal proceeding was initiated under Vigilance Police Station Case No. 75/2012. Learned counsel for the petitioner submits that in the departmental proceeding neither any witness was produced and examined in support of the charge nor the requested documents were given to the petitioner. Procedure provided under the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (herein after referred to as ‘the CCA Rules’) has been violated inasmuch as the mandate of the Rule 17(4) of the CCA Rules is that the disciplinary authority shall deliver or cause to be delivered to the Government servant certain details, such as a copy of the articles of charge and a list of documents and witnesses by which charge is proposed to be sustained.

5. From bare perusal of the charge memo communicated under notice dated 13.5.2013, it is abundantly clear that no such details required under Rule 17(4) of the CCA Rules has been served upon the petitioner. He submits that initiation of the departmental proceeding was thus violative of the CCA Rules.

6. It has been stated in the enquiry report dated 17.2.2014 (Annexure 6) that other than the recovery memorandum, a copy of the FIR, pre trap memorandum and post trap memorandum, which



are all documents, which form part of the criminal investigation against the petitioner, no other document has been placed on record by the Enquiry officer. This Court would notice that even these documents by which the charge is proposed to be sustained and considered by the Enquiry officer, has not been communicated to the petitioner along with the charge memo. None has deposed before the Enquiry officer in support of these documents. The veracity of such documents which form part of the criminal investigation has yet to be decided in the trial and cannot be thrated as valid evidence in the proceedings. Whether such documents may be considered as evidence is no longer *res integra* as the same has been decided in the case of Roop Singh Negi Vs. Punjab National Bank and others, reported in (2009) 2 SCC 570, relevant extract of the same is being reproduced:-

“14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled 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.

15. We have noticed hereinbefore that the only



basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.”

7. The irresistible conclusion is that the instant case is a case of no evidence.

8. There is also violation of another requirement of Rule 17(14) of the CCA Rules which mandates that on the date fixed for the inquiry, the oral and documentary evidence by which the charge is proposed to be proved shall be produced by or on behalf of the disciplinary authority. As noticed above no witness has been examined in support of the allegations. The proceedings therefore suffer from total infraction of the CCA Rules which exists to ensure fairness and to ensure that one who has not committed offence and is innocent may not be made to suffer.

9. The petitioner has raised this issue before the Disciplinary authority after obtaining a copy of the enquiry report. The petitioner has filed his response (Annexure 11) to the second



show cause notice dated 24.2.2014 (Annexure 8) which was received in the office of the Disciplinary authority on 21.3.2014.

10. The Disciplinary authority has passed order of punishment dated 28.3.2014 (Annexure 12) imposing severe penalty of dismissal from the service without taking into consideration the issues which have been raised by the petitioner in his reply to the second show cause notice dated 21.3.2014. The only reason assigned for not considering the second show cause is that the petitioner did not submit his reply to the second show cause upto 19.3.2014.

11. Even, at this stage, order of the Disciplinary authority is in violation of the principle of Natural Justice as the response to the second show cause was received in his office prior to 21.3.2014. However, the Disciplinary authority has refused/declined to consider the same by assigning reason that no response was received upto 19.3.2014. The disciplinary authority should not have declined to consider petitioner's response to the second show cause on such technical ground. Once the response of the petitioner had been received, prior to passing of the order of punishment dated 21.3.2004, it was incumbent upon the Disciplinary authority to consider the same in terms of Rule 18 of the Bihar CCA Rules, 2005.



12. Be that as it may, since this Court has also considered that the Enquiry officer has not followed the mandatory procedure prescribed in Rule 17 of the CCA Rules and since it is a case of no evidence, the enquiry report dated 17.2.2014 (Annexure 6) and order of dismissal of the petitioner from service by the Disciplinary authority dated 28.3.2014 (Annexure 12) are unsustainable in law.

13. The entire issue has been raised by the petitioner before the appellate authority (respondent no. 2) in Service Appeal Case No. 646 of 2014. The appeal has also been rejected under order dated 7.6.2016 (Annexure 13 to the I.A. No. 8158 of 2016). Perusal of the appellate order reveals that even the appellate authority has failed to consider the fact that other than the documents forming part of the criminal investigation, there is no material which has been considered in the enquiry conducted against the petitioner. The appellate order has failed to consider the infirmities discussed hereinabove.

14. The issue thereafter stands concluded that there is total non consideration of the materials made available by the petitioner in his second show cause reply as well as the procedure laid down in the CCA Rules. In the result, the appellate order dated 7.6.2016 is also quashed.

15. As a result of quashing of the enquiry report dated



17.2.2014 (Annexure 6), the dismissal order dated 28.3.2014 (Annexure 12) and the appellate order dated 7.6.2016 (Annexure 13 to the I.A. No. 8158 of 2016), the petitioner would be entitled to all the consequential benefits.

16. Needless to say that it would be open for the respondent authorities to proceed against the petitioner in accordance with law.

17. The writ petition stands allowed in the aforesaid terms.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.07.2018
Transmission Date	NA

