

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9775 of 2016

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Vyas Paswan, Son of Sri Baburam Paswan, Resident of Village- Malti, P.S. Asthamwan, District- Nalanda at Biharsharif.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna.
3. The Director-cum-Joint Secretary, Department of Mines and Geology, Government of Bihar, Patna.
4. The Additional Secretary, Department of Mines and Geology, Government of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Prasad Singh, Sr. Adv. Mr. Rajeev Kumar Singh, Adv.
For the Respondent/s	:	Mr. Devendra Kumar Sinha, AAG2 Mr. Lalan Kumar, Adv. Mr. Neeraj Kumar Sinha, A.C. to PAAG 2

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 17-07-2018

Heard Mr. Rajendra Prasad Singh learned Senior counsel for the petitioner, Mr. Lalan Kumar learned counsel for the Mining Department and Mr. Neeraj Kumar Sinha A.C. to PAAG 2.

With the consent of parties the writ petition has been heard with a view to final disposal at the stage of admission.



The petitioner prays for quashing of the order bearing Memo. No. 2822 dated 22.07.2015 passed by the Joint Secretary-cum-Director, Department of Mines and Geology, Government of Bihar, Patna whereby the petitioner has been dismissed from service in exercise of power vested under rule 14 (xi), of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules') as amended from time to time. A copy of the order is impugned at Annexure- 1 of the writ petition.

The petitioner also questions the appellate order bearing Memo No. 813 dated 10.03.2016 impugned at Annexure-2 passed by the Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna whereby the appeal against the order of dismissal was dismissed.

A copy of the charge Memo is impugned at Annexure- 5 whereby several charges were leveled against the petitioner all relating to irregularities in discharge of duties including financial irregularities in settlement of Sand Ghats, deposits of challan, realization of the deposit money etc. Surprisingly, the charge memo nowhere discusses the evidence on which it is resting and thus prima facie, has been drawn in violation of the provisions underlying Rule 17(3) of 'the Rules'.

The petitioner has denied the allegations by filing his reply at



Annexure-6 and also contested the same during the course of enquiry. However, the Enquiry Officer not being satisfied submitted his report vide Annexure-7 upholding the allegations. A second show cause notice was served vide Annexure-8 series to which the petitioner had filed his reply at Annexure 10 but has resulted in the order of dismissal dated 22.07.2015 impugned at Annexure-1 and which has been affirmed by the Appellate Authority vide Annexure- 2 while dismissing the appeal vide order passed on 10.03.2016. Feeling aggrieved the petitioner is before this Court.

The arguments advanced by Mr. Singh learned Senior counsel appearing on behalf of the petitioner stands noted in the order passed on 02.07.2018 which runs as under:

- “(a) That the allegations are made beyond the work jurisdiction of the petitioner and even if he has made certain register entries regarding challan which was found to be forged but it is the stand of the petitioner that he merely carried out the order of the Incharge Mining Officer in recording the entry;
- (b) No evidence either oral or documentary was led in the disciplinary proceedings; and
- (c) The allegations are substantively directed against the District Mining Officer which post was never held by the petitioner who was posted as a Mining Inspector.”

It is taking note of the issues raised that learned counsel for the Mining Department was allowed time to contest the position in reference to the records of the disciplinary proceedings which was directed to be produced. Accordingly the same has been produced. On



a query made from Mr. Lalan Kumar learned counsel for the Mining Department to verify from the records of the disciplinary proceedings as to whether any evidence either oral or documentary was led during the course of enquiry as canvassed by Mr. Singh, the answer is in the negative. Learned counsel on scanning through the disciplinary records, has not been able to contest the submissions advanced by Mr. Singh.

While I have already noted the illegality in the charge memo drawn which neither mentions the name of the witnesses nor records any documentary evidence, the Enquiry Officer has been rather adventurous in recording his finding of guilt of the petitioner without bothering to remind the Presenting Officer of his obligation to lead evidence as mandated under Rule 17(14) of 'the Rules' which reads under:

“17 (14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government Servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses, as it thinks fit.”

Despite effort made by learned counsel for the Mining Department to support the charges on its seriousness, in my opinion



the arguments of learned Mining counsel cannot improve the situation for the default entirely lies on the Enquiry Officer in not holding the proceedings in the manner prescribed and unfortunately even the disciplinary authority as well as the appellate authority have also not bothered to satisfy themselves on statutory compliance.

Even though the petitioner has not chosen to question the charge memo at the appropriate time yet where the charge memo is not in tune with the prescriptions underlying Rule 17(3), its illegality is open to challenge at any stage of proceedings.

In my opinion, the entire proceedings is de hors the statutory stipulations for where the frame of charge memo itself is not in tune with the statutory prescription underlying Rule 17(3) of 'the Rules', the entire proceedings resting thereon are founded on an illegal charge memo. The illegality is perpetuated when no evidence was led by the Presenting Officer during the course of proceedings obviously in absence of any evidence relied upon by the Disciplinary Authority while framing a charge memo. In my opinion the situation is hopeless for the Department.

In consequence, the entire proceedings initiated against the petitioner including the charge memo, the enquiry report together with the punishment order impugned at Annexure 1 and 2 cannot be upheld and are accordingly quashed and set aside. The petitioner stands



reinstated with full back wages and all consequential benefits.

The writ petition is allowed.

(Jyoti Saran, J)

Bibhash/Ranveer

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.07.2018
Transmission Date	NA

