

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 14048 of 2014

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Indra Deo Chaudhary S/o Late Shyama Chaudhary Village - Barah, P.S. Harnaut,
District - Nalanda

.... Petitioner/s

Versus

1. The State of Bihar
2. Inspector General of Registration, Bihar, Patna
3. Assistant Inspector General, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Javed Aslam

For the Respondent/s : Mr. NIRBHAY K.SINGH

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 15-01-2018

Heard counsel for the petitioner and the State.

2 While posted as Upper Division Clerk in the Registry Office at Munger, the petitioner was arrested in a trap case leading to institution of Vigilance Case No 65 of 2011.

3 On the same charges, the petitioner was proceeded against departmentally on 17.04.2012. In response to the same, he submitted his explanation before the Enquiry Officer.

4 The Enquiry Officer, after considering the material on record and the evidence of the witnesses appearing in the proceedings concluded that not only charges have been proved, but also the petitioner has falsely been implicated in this case. It may be relevant to note here that the trap case was at the instance of one Kunj Bihari



Singh who is relative of one Shailendra Kumar Singh against whom the petitioner had lodged a complaint leading to lodging of one first information report vide Kotwali Police Station Case No 282 of 2011. Having considered the aforesaid facts and circumstances, the enquiry officer, by his report dated 07.08.2012, which is Annexure 6 to the writ petition, concluded that the charges against the petitioner could not be proved.

5 It is the procedure thereafter by which the petitioner is aggrieved. Such findings favourable to the petitioner had been recorded by the enquiry officer with reference to documentary as well as oral evidence recorded in the departmental proceedings. Before the disciplinary authority, there were few options available which have been enumerated in Rule 18 of the Bihar Government Servants (Classification, Control & Appeal) Rules (for brevity, *Bihar CCA Rules*). The disciplinary authority, first by Annexure 7 dated 23.05.2013, issued an order to the extent that further proceedings in the departmental proceedings would be held upon conclusion of the vigilance case pending against the petitioner. However, all of a sudden vide letter dated 14.02.2014 (Annexure 8), the Assistant Inspector General (Registration) has communicated a decision of the disciplinary authority to the petitioner that the disciplinary authority has differed with the findings of the enquiry officer and that he was



required to submit his response to the second show cause within 15 days. Annexure 8, which proposes to differ with the enquiry report, is violative of Rule 18 (2) of the Bihar CCA Rules. Rule 18 (2) of Bihar CCA Rules mandates that if the disciplinary authority disagrees with the findings of the enquiry officer then it has to record such reasons for such disagreement and record its own finding with such charges and that thereafter if evidence on record is sufficient for the said purpose, the second show cause has to be forwarded with the copy of the enquiry report to the delinquent for submission of his comments thereupon within 15 days. Neither any reason has been recorded for disagreement with the findings of the enquiry officer, which was favourable to the petitioner, nor has Annexure 8, which is the second show cause been issued with reference to any evidence on record. No tentative reasons or findings have been recorded in the said second show cause (Annexure 8) so as to afford the petitioner a reasonable and adequate opportunity of placing his comments thereupon. There is total denial of fairness and compliance with the principles of natural justice. The said Annexure 8, proposing to be the second show cause, is grossly violative of Rule 18 of the Bihar CCA Rules.

6 The petitioner, however, has submitted his response thereupon raising his grievance. However, the disciplinary authority, vide Annexure 12 which is a cryptic order without assigning any



reason, has inflicted the grave punishment of dismissal from service against the petitioner. The same is the outcome of a procedure contrary to the Bihar CCA Rules and contrary to the principles of natural justice as also without reference to any material or evidence examined or collected during course of enquiry. Such punishment order is unsustainable in law. The petitioner filed his appeal against the said punishment order which too has been rejected by the appellate authority on 18.06.2014. The same is reiteration of the order passed by the disciplinary authority which, as noticed above, was grossly illegal.

7 The disciplinary authority as well as the appellate authority seem to be obsessed by the initiation of the criminal proceedings against the petitioner, the pre trap memorandum and the post trap memorandum as also the fact that charge sheet has been submitted against the petitioner in the criminal case. There is no reference whatsoever to any evidence or material produced during course of enquiry. The said first information report, pre trap – post trap memorandum, charge sheet in the criminal case cannot, by any stretch of imagination, be held against the petitioner so as to inflict the grave punishment of dismissal in a proceeding wherein report of the enquiry officer was not only to the extent that the charges against the petitioner were not proved, but also of his false implication in this



case. The said findings were based on material evidence.

8 Counsel for the State has submitted that the punishment order has been issued under the proviso to Rule 14 of the Bihar CCA Rules. The said submission has to be considered in the light of the proviso which reads as follows:

*“Provided that, in every case in which the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is **established**, the penalty mentioned in clause (x) or clause (xi) shall be imposed:”*

The said proviso contemplates the action in the case of such acts which have been “established”. This Court would only observe that “established” herein shall mean established under the Bihar CCA Rules, and in accordance with law. As such, the submission of the counsel for the State does not merit any consideration in the case.

9 The procedure, from issuance of the punishment order up to the appellate order, was contrary to the procedure under Bihar CCA Rules and not in accordance with law, as noticed above and has to be set aside. It will, however, be open to the disciplinary authority to proceed afresh from the stage of second show cause in accordance with law. The order dated 09.03.2014 (the punishment order) as also the appellate order dated 18.06.2014 are quashed. The petitioner, in



the meantime, would be reinstated and entitled to all consequential benefits arising out of quashing of the aforesaid orders.

10 The writ petition is allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
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