

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9089 of 2004

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DR.RAMASHRAY RAM SON OF SHRI RAM SUBHAG RAM, RESIDENT OF VILLAGE AND
PO KAGHAIN, POLICE STATION BIKRAMGANJ, DISTRICT ROHTAS, AGED 51 YEARS.

.... Petitioner

Versus

1. THE STATE OF BIHAR THROUGH THE SECRETARY, DEPARTMENT OF ANIMAL
HUSBANDRY AND FISHERIES GOVERNMENT OF BIHAR, PATNA
 2. THE SECRETARY, DEPARTMENT OF ANIMAL HUSBANDRY AND FISHERIES
GOVERNMENT OF BIHAR, PATNA
 3. THE ADDITIONAL SECRETARY, DEPARTMENT OF ANIMAL HUSBANDRY AND
FISHERIES GOVERNMENT OF BIHAR, PATNA
 4. THE DIRECTOR, ANIMAL HUSBANDRY, BIHAR, PATNA
 5. THE DEPUTY SECRETARY, DEPARTMENT OF ANIMAL HUSBANDRY AND
FISHERIES GOVERNMENT OF BIHAR, PATNA
- Respondents
- =====

Appearance :

For the Petitioner : Mr. Rajendra Prasad Singh, Senior Advocate
Mr. Gayanandra Kr. Diwakar, Advocate

For the State : Mr. Jitendra Kumar, AC to AAG 14

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 10-05-2018

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

2. The writ petition has been filed challenging the entire
proceedings right from the enquiry report till issuance of the
resolution dated 16.7.2004 (Annexure 18), whereby and whereunder
the petitioner has been dismissed from service.

3. The short submissions made by learned counsel for the
petitioner is that while posted as the District Animal Husbandry
officer the petitioner (1) is alleged to have indulged in some illegal
appointments and (2) not showing proper adjustment of some fund.
It is also alleged that (3) he has entered into a second



marriage while having a wife since before and (4) that he has not paid rent for the official residence. The charge memo is dated 9.4.1997 (Annexure 6) and has been communicated to the petitioner vide Government resolution dated 15.4.1997. Pursuant thereto, the petitioner has expressed his reasonable likelihood of bias from the Enquiry officer. However, he has given his point wise response to the charges communicated to him in the charge memo. It is also submitted that the petitioner had made a request for certain documents so as to effectively defend himself in the proceedings.

4. Petitioner's case is that though he has expressed reasonable apprehension of bias against the Enquiry officer, the respondent authorities did not take any action on the said request made by the petitioner. Thereafter the enquiry report dated 11.12.1997 was submitted to the Disciplinary authority.

5. The first charge in the charge memo was that the petitioner had made illegal appointments and the proceedings were conducted by the Enquiry officer in spite of expressed apprehension of bias made against him by the petitioner. The Enquiry officer submitted his report holding charges no.1, 2 and 3 to be proved. As regards charge no.4, the Enquiry officer submitted a report that since the Deputy Commissioner, Hazaribagh was enquiring into the allegations, therefore no recommendation was made regarding



charge no.4.

6. Learned Senior counsel for the petitioner submits that perusal of the resolution initiating the proceedings against the petitioner as also perusal of the enquiry report shows that no witness had been produced in the case in support of the charges to prove the six documentary evidence which had been enclosed along with the charge memo.

7. In response to the said submission, learned counsel for the State has pointed out, with reference to the enquiry report, that since the petitioner was not appearing in the proceedings, no witnesses were examined. Relevant extract of the Enquiry report is being reproduced herein below:-

“क्योंकि आरोपी डा० राम स्वयं उपस्थित नहीं हुए तो उनकी अनुपस्थिति में उनके विरोधी व्यक्तियों को बुलाकर पूछ-ताछ करना न्यायसंगत प्रतीत नहीं हुआ।”

8. From perusal of the enquiry report, it is thus admitted that no witness have been examined in support of the charges. The evidence before the Enquiry officer therefore is without any witness supporting the case of the department, and without there being any deposition in support of the documentary evidence referred to in the charge memo, it is also evident that there was no Presenting officer to present the case on behalf of the Department.



9. In a case like the instant one where the Enquiry officer assumes the role of Presenting officer a serious violation of principle of Natural justice arises inasmuch as the Enquiry officer who is a quasi judicial authority has arrogated upon himself the role of the Presenting officer of the department and also deciding the charge levelled by the department against the delinquent.

10. Learned counsel for the petitioner has rightly placed reliance on a decision of the Hon'ble Supreme Court in case of **State of Uttar Pradesh and others Vs. Saroj Kumar Sinha**, reported in **(2010)2 SCC 772**.

11. Pursuant to the enquiry report having been submitted against the petitioner, a supplementary charge memo dated 23.5.1998 was also issued, wherein it has been alleged that the petitioner had misbehaved with one lady veterinary doctor. Petitioner's expression of mala fide against the Enquiry officer has not been considered or redressed. On the contrary, the same has been turned upon the petitioner as a charge that by making allegation of malafide and not appearing before the Enquiry officer in the proceeding and by requesting for change of Enquiry officer, the petitioner had shown that he was biased against the Enquiry officer. Charge to this effect, in the facts of the instant case, is prima facie perverse.



12. After submission of the second charge memo no final decision was being taken in respect of the proceedings for which the enquiry report dated 12.8.1998 had been submitted. When no action was being taken and the petitioner continued to remain in suspension, he filed C.W.J.C.No. 3450 of 2002 challenging the departmental proceedings as also the continued suspension of the petitioner. The same was disposed of by order dated 8.3.2002 with the following observations/directions:-

“Therefore, the writ petition is disposed of directing the authority concerned to see whether enquiry report has been submitted, if submitted, he will take final decision on the enquiry report within a period of two months from the date of receipt/production of a copy of this order.

It is made clear that if no final decision is taken within the aforesaid time, order of suspension shall stand revoked.”

13. The second show cause dated 27.6.2002, Annexure 12 to the writ petition, was served on the petitioner after disposal of the case as noticed above. A copy of the enquiry report was also made available to the petitioner. In response to the same, the petitioner gave a detailed reply raising the issues before the authorities denying the charges. Petitioner highlighted the reasonable likelihood of bias being occasioned by the dual role played by the Disciplinary authority and the Enquiry officer and also brought to notice of the authorities that he was not afforded with any opportunity in



accordance with the principle of the Natural justice. The petitioner's reply to second show cause is dated 12.7.2002 which is Annexure 14 to the writ petition. The supplementary second show cause was also submitted on 5.8.2002.

14. It appears that in the meanwhile the petitioner has again approached this Court by filing C.W.J.C.No. 1787 of 2003 since he was not being paid his dues. The same was disposed of on 24.9.2003. Since during pendency of the writ petition salary of the petitioner was paid C.W.J.C.No. 1787 of 2003 and the proceedings arising thereof are not being considered as it is not relevant to the instant case.

15. The final order came to be passed on the disciplinary proceedings under resolution of the Government of Bihar dated 16.7.2004 bearing Memo no. 570 wherein three charges have been found to be true against the petitioner by the Disciplinary authority and the punishment of dismissal from service has been awarded to the petitioner.

16. Order passed by the Disciplinary authority is yet another instance of a major lapse in the procedure giving rise to violation of principle of Natural justice, the first charge which has been found to be proved and for which the petitioner has been punished is as followed:-

“ [1] आरोपित डा० राम को फर्जी नियुक्ति की जानकारी थी,



फिर भी इन्होंने अवैध रूप से नियुक्त व्यक्तियों का योगदान स्वीकार कर लिया और उन्हें वेतन का भुगतान किया।”

17. The findings of the Disciplinary authority is at variance with the charges levelled against the petitioner in the charge memo. Though the charge memo dated 9.4.1997 alleges that the petitioner has indulged in large scale illegal appointment, but in the final order of the Disciplinary authority, the finding is totally different and not in respect of the charge which was levelled against the petitioner. The finding is that even though the petitioner was knowing that the appointments are illegal, he accepted the joining of those persons and paid salary thereof. The finding was not to the extent that it was the petitioner who made illegal appointment. He only accepted the joining of the employees who had illegally been appointed.

18. From perusal of the response of the petitioner to the charge memo and the enquiry report, the reason for this variance is apparent. During the proceedings it had come to light that in fact the Regional Deputy Director in the Department had made these appointments and the petitioner had only accepted the joining of such appointed persons under transfer order issue by the Director of the Animal Husbandry.



19. This is a serious infraction of principle of Natural Justice and fairness inasmuch as punishment has been inflicted on findings, in respect of which neither charges have been framed nor enquiry conducted. Before arriving at such finding, in fact no opportunity was given to the petitioner to meet such allegations. It is trite law that before an order having adverse and civil consequences can be issued, petitioner is entitled to an opportunity of hearing. The same has not been done.

20. As regards the second finding in the charge memo, the petitioner has already, in his response before the Enquiry officer, given the circumstance under which he occupied a portion of the godown. He has specifically submitted that no residential house had been constructed for the District Animal Husbandry Officer, Madhubani and there was a godown in the premises of the District Office. The condition of the accommodation was uninhabitable. For efficient discharge of his duty and since his predecessor was also occupying a portion of the premises without paying the rent, the petitioner had also occupied the premises. It is his specific case that he stayed in a portion of the godown, though the same was not providing residential accommodation. However, he has volunteered that if the Department is willing to quantify the dues in relation to his occupation of a portion of the godown he is willing to pay the



same. These facts are being noted because it has not been found in the enquiry whether there was any specific rent prescribed for a portion of the godown which the petitioner had occupied. There is no finding that the premises in a portion of the godown which was occupied by the petitioner was in fact the designated official residence or accommodation for the District Animal Husbandry officer, Hazaribagh.

21. The other findings of the Disciplinary authority that the petitioner was biased against the Enquiry officer are misconceived and perverse. In fact, instead of taking steps to redress the petitioner's allegation of malafide against the Enquiry officer, the allegation made by the petitioner has been converted into a charge against him. The third charge is being reproduced herein below:-

“[3] इन्होंने पूर्वाग्रह से ग्रसित होकर जॉच पदाधिकारी के समक्ष उपस्थित हुए बिना ही उन्हें बदलने का आवेदन दिया।”

22. As noticed above, there was no Presenting officer in the proceedings before the Enquiry officer. Specific allegation of reasonable likelihood of bias against the Enquiry officer was not considered by the authorities. Findings of the Enquiry officer leading to issuance of order of punishment was at variance with the charges levelled against the petitioner in the charge memo dated 9.4.1997. The Enquiry officer as well as the Disciplinary authority have failed



to consider that some of the allegations set out in the charge memo also could not by any stretch of imagination constitute a misconduct. The findings which have been recorded in the proceedings were in fact findings for which no charge memo has ever been issued to the petitioner, as noticed above. Entire proceedings are therefore in gross violation of the procedure prescribed under the Bihar CCA Rules as also in total violation of the Principle of Natural Justice and fair play. For these reasons and the reasons noted above, this Court is of the opinion that the entire proceedings conducted against the petitioner pursuant to charge memo dated 9.4.1997 are unsustainable in law. The resolution dated 16.7.2014 of the Disciplinary authority whereunder the petitioner has been dismissed from service, being a product of such a procedure unknown to law and de hors the procedure prescribed under the Bihar CCA Rules as also in violation of the principles of Natural Justice and fair play, are hereby quashed.

23. The writ petition is allowed. The petitioner would be entitled to all consequential benefits.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.6.2018
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