

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21858 of 2014

Purnendu Kumar Sinha son of Late Prafulla Kumar Sinha resident of village -
Jankipur, Post Office - Pawai, Police Station - Amarpur, District - Banka.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Land Reforms Department.
2. The Commissioner, Bhagalpur Division, Bhagalpur.
3. The District Magistrate cum Collector, Banka.
4. The Additional District Magistrate, Banka.
5. The Sub-Divisional Magistrate, Banka.
6. The Deputy Collector Land Reforms, Banka.
7. The Circle Officer, Banka.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar, Advocate
: Ms. Abha Sinha, Advocate
For the Respondent/s : Mr. K.P. Gupta, G.P.-10

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 05-02-2018

1. This petition under Article 226 of the Constitution of India has been filed for quashing the order dated 30.04.2014 passed by District Magistrate, Banka dismissing petitioner from the services as well as the order passed by the Appellate Authority dated 27.10.2014 passed in Appeal No. 30 of 2014-15 passed by Commissioner, Bhagalpur Division, Bhagalpur.

2. Briefly stated, the facts of the case as stated in petition is that petitioner was working as Revenue Karmachari



in Katoria Circle. He joined the services in the year 1982 and his date of retirement was in year 2016. Pursuant to Vigilance Case a memo of charge in form of Prapatra –Ka was issued to the petitioner vide memo dated 16.07.2009. The petitioner was suspended by the District Magistrate on 20.01.2014 and another memo of charge in form of Prapatra –Ka was issued to the petitioner. The Enquiry Officer conducted the departmental proceeding and submitted enquiry report to the Disciplinary Authority who issued 2nd show cause notice dated 29.03.2014 to the petitioner.

3. The petitioner replied to the 2nd show cause notice on 12.04.2014 in which he has stated that many documents which were asked by him to be supplied by the Enquiry Officer was not supplied to him and in absence of which he cannot properly defend his case. The Disciplinary Authority by order dated 30.04.2014 (Annexure-5) dismissed the petitioner from services.

4. Aggrieved by the order of District Magistrate, Banka Disciplinary Authority as contained in Annexure-5 the petitioner preferred service appeal before the Commissioner, Bhagalpur being Service Appeal Case No. 27/2014-15 which was rejected by the Appellate Authority.

5. A counter affidavit has been filed on behalf of



respondent nos. 3 to 7 in which they have stated that enquiry was conducted in accordance with procedure as provided in CCA Rules, 2005 and ample opportunity was given to petitioner to defend himself and on the basis of materials available in the enquiry proceeding the Enquiry Officer has found the charges to be proved. A Departmental Proceeding was initiated on the basis of trap case against the petitioner and on the basis of evidence adduced before the Enquiry Officer the charges against the petitioner was held to be proved by the Enquiry Officer. Report submitted by the Vigilance Department was also considered by the Enquiry Officer and full opportunity was given to petitioner to defend the charges against him. Petitioner has filed a supplementary affidavit in which enquiry report has been enclosed as Annexure-7 from which it appears that District Magistrate, Banka vide his order dated 08.02.2014 suspended the petitioner and was served memo of charge and he appointed Enquiry Officer and Circle Officer, Katoria was appointed as a presenting Officer. The memo of charge relates to raid conducted by Vigilance Department on 09.09.2008 in which petitioner was caught red handed while accepting bribe in a trap case which is Vigilance case No. 62 of 2008 dated 10.09.2008 and petitioner was made accused in said



Vigilance Case along with memo of charge the letter of Superintendent of Police, Vigilance, Patna dated 11.09.2008 FIR registered against petitioner and arrest of petitioner and report of raiding party of Vigilance and petition of complainant to the Officer-in-Charge a photocopy of pre-trap and post trap memorandum was enclosed with memo of charge. The memo of charge was received on 11.02.2014 and charge sheeted petitioner as well as Presenting Officer was informed about the next date of inquiry proceeding to be held on 17.02.2014 to appear before him to produce evidence and on date fixed chargesheeted employee appeared and filed his reply and a copy of said reply was sent to the Presenting Officer for his opinion and after receiving reply from chargesheeted employee (petitioner) and evidences received from the Vigilance Department i.e. arrest of petitioner and his forwarding to judicial custody, copy of FIR, action of raiding party, copy of complainant to Officer-in-charge and pre trap and post trap memorandum. Vigilance Department was requested that if they want to produce any further evidence then they should appear on the next day i.e. 24.02.2014 and submit their opinion. Charge sheeted employee petitioner appeared on 24.02.2014 and submitted his further reply but no reply was received from the



Vigilance Department and on next day of proceeding i.e. 26.02.2014 reply from the Presenting Officer was received.

6. The Enquiry Officer in his order has stated about the charges against the petitioner and thereafter has noted the reply of petitioner against aforesaid charges and thereafter has taken opinion of the Presenting Officer and it has been stated that Presenting Officer has not given any reply on the charges framed against petitioner and even has not given any opinion for or against the petitioner. The Enquiry Officer thereafter has considered the evidence on record and on the basis of pre trap and post trap memorandum search and signature of witnesses reply of the petitioner has come to the conclusion that petitioner has received bribe and the defence of the petitioner that the seized money was the cash collected was of rent receipts was not accepted and lastly concluded that petitioner has received the bribe money and charges against him has been proved which is a misconduct under the Conduct rules, 1976.

7. The petitioner was given 2nd show cause by letter dated 24.03.2014 along with enquiry report and has submitted his reply on 12.04.2014 the District Magistrate on the basis of enquiry report and materials available in the enquiry proceeding dismissed petitioner from the service.



8. Petitioner preferred an appeal before the Commissioner, Bhagalpur Division but same was also rejected by the Appellate Authority.

9. After hearing the parties and perusing the enquiry report as well as order passed by the Disciplinary Authority dismissing the petitioner from service as well as order of appellate authority dismissing the appeal of petitioner, it is apparent that the proceeding has not been initiated against the petitioner in accordance with Bihar CCA Rules, 2005. In the enquiry proceeding the departmental Presenting Officer has to prove the charges on the basis of oral evidence and documentary evidence to be adduced before the Enquiry Officer.

10. In order to prove the charge of accepting bribe by the petitioner the personals who had conducted the trap case they are to be brought as a witnesses on behalf Presenting Officer before the Enquiry Officer and delinquent employee shall have an opportunity to cross-examine them and only thereafter such oral deposition can be treated as a evidence in departmental proceeding, even the complainant who has filed the complaint before the Officer-in-Charge has to be produced before the Enquiry Officer as prosecution witness with liberty to the delinquent employee to cross examine him. The pre trap and



post trap memorandum has to be proved by authority who has prepared it before the Enquiry Officer where also delinquent employee can cross examine him and only thereafter such documents can be treated as documentary evidence in the enquiry proceedings. None of the procedural requirements which is required to be followed in the enquiry proceedings as contained in Bihar CCA Rules, 20005 have been followed by the Enquiry Officer, and, as such, whole proceeding stands vitiated, as such the enquiry report as well as order passed by the Disciplinary Authority on the basis of such enquiry as well order passed by the appellate authority is set aside. Since petitioner has already retired from his service, as such, there cannot be any order of reinstatement. However, petitioner is entitled for post retirement benefits i.e. pension and gratuity leave encashment and all post retiral benefits for which he is entitled. The Disciplinary Authority is at liberty to continue Departmental proceeding from the stage it stood vitiated. In present case even Memo of Charge was not in conformity with rule 17(3) of C.C.A. Rules, 2005 where memo of charge should contain name of oral witnesses and copy of documents on basis of which department propose to prove the charges. If department considers to continue proceeding against petitioner



then during pendency of proceeding petitioner is entitled for payment of provisional pension and gratuity in terms of government circular. The Disciplinary Authority can pass order of punishment if petitioner is convicted by by Vigilance Court. Department should take all steps to expedite the trial and help prosecution so that trial is concluded at earliest.

11. The writ petition stands allowed to the extent indicated above.

(S. Kumar, J)

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CAV DATE	
Uploading Date	
Transmission Date	

