

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16030 of 2011

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MOHAMMAD UMAR S/O LATE MOHAMMAD MOINUDDIN R/O
MILKI MOHALLA ARRAH, POLICE STATION- ARRAH TOWN,
DISTRICT- BHOJPUR

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE SECRETARY ROAD
CONSTRUCTION DEPARTMENT, VISHWESHARAIYA BHAWAN,
BAILEY ROAD, PATNA
2. THE JOINT SECRETARY ROAD CONSTRUCTION DEPARTMENT,
VISHWESHARAIYA BHAWAN, BAILEY ROAD, PATNA
3. THE DEPUTY SECRETARY (VIGILANCE) ROAD CONSTRUCTION
DEPARTMENT, VISHWESHARAIYA BHAWAN, BAILEY ROAD, PATNA
4. THE UNDER SECRETARY (VIGILANCE) ROAD CONSTRUCTION
DEPARTMENT, VISHWESHARAIYA BHAWAN, BAILEY ROAD, PATNA

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rupak Kumar, Advocate
Mr. Jitendra Kumar, Advocate
For the Respondent/s : Mr. R.B.N.Singh, AC to GA 10

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 20-11-2018

Heard learned Counsel for the petitioner and the
learned Counsel for the respondent State.

2. The writ petition has been filed challenging the
punishment order dated 10.2.2010 issued under the signature of
Under Secretary (Vigilance), Road Construction Department,
whereby punishment of withholding of three increments with
non-cumulative effect has been inflicted upon the petitioner.
The petitioner has also assailed the order dated 6.4.2010 issued
by the same authority, whereby and whereunder decision not to
pay anything beyond subsistence allowance has been taken



against the petitioner. The order passed by the appellate authority on the appeal of the petitioner under order dated 10.2.2010, whereby his appeal against the order of punishment has been rejected, has also been challenged in the instant proceeding.

3. The submissions made on behalf of the Counsel for the petitioner are that the proceedings, which have been conducted against the petitioner under the Bihar CCA Rules 2005, are in gross violation of the procedure prescribed under Rule 17.

4. Laying emphasis on the charge memo, Counsel for the petitioner has submitted that the same is in gross violation of Rule 17(3) & (4) of the Bihar CCA Rules. The said Rule provides that where it is proposed to hold an inquiry against a government servant under this rule, a statement of all relevant facts, list of documents and list of witnesses should be provided along with the charge memo. The charge memo, which has been served upon the petitioner, in fact, does not contain any list of witnesses on the basis of which the charges are sought to be sustained in the proceeding against the petitioner.

5. The charge memo contains two charges. The



substance of both allegations are that the petitioner while he was posted as an Assistant, in Section 10 of the Road Construction Department at Patna, has failed to place files of two Assistant Engineers for approval of punishment orders against them, before the Departmental Minister. As a result of such failure advantage has accrued to the Assistant Engineers of the Department inasmuch as their punishment order could not be issued due to the lapse committed by the petitioner.

6. Counsel for the petitioner has also submitted on the merit of the charge that as per Rules of Executive Business it was not his duty to place the file before the Departmental Minister.

7. Counsel for the State has submitted that the misconduct of the petitioner is grave. He has by his acts of omission held up movement of files and allowed benefit to certain other persons, who were to be punished.

This Court would observe that seriousness of the Department is manifest from the procedure adopted by the Department. In view of such serious allegation, the least that is expected from the Department was that they would ensure that the proceedings are conducted in accordance with law and procedure is followed so that the delinquent may be taken to



task.

8. Without expressing any opinion on the merit of the said submission this Court would confine itself to the decision making process and not the decision itself. Bare perusal of the charge memo reveals that the same does not contain any list of witnesses. After enumerating two charges only two files which it is alleged that the petitioner has not placed in time before the authorities have been marked as evidence in the proceeding to sustain the charges. There is a total failure of the requirements as prescribed in Rule 17(3) and (4) of the Bihar CCA Rules in the manner of issuance of charge memo to the petitioner. From the charge memo dated 19.3.2009 it appears that there is no witness to support the charge for which enquiry is being conducted.

9. The proceedings thereafter have been conducted by the Enquiry Officer. The report of the Enquiry Officer is part of the second show cause notice dated 18.12.2009. The records of the enquiry reveal that in the matter of conduct of proceeding before the enquiry officer there is gross violation of the procedure prescribed under Rule 17(14) of the Bihar CCA Rules which provides as follows:-

“17(14) On the date fixed for the inquiry, the oral and documentary evidence by which the



articles of charges 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.”

10. The role of the Presenting Officer is therefore clearly specified under Rule 17(14) of the Bihar CCA Rules. The enquiry report, however, reveals that the Presenting Officer has not presented the case on behalf of the Department. The entire issue has been considered by the enquiry officer as if he himself was performing duties of the Presenting Officer. The vital role of the Presenting Officer has been reduced to an empty formality inasmuch as in respect of both the charges the enquiry officer in the enquiry report has taken note of the existence of the Presenting Officer merely by recording as follows:-

“प्रस्तुतीकरण पदाधिकारी का मंतव्य:-

प्रस्तुतीकरण पदाधिकारी द्वारा सरकारी पक्ष को रखी गया
तथा लगाये गये आरोप का समर्थन किया गया।”

.....



“प्रस्तुतीकरण पदाधिकारी का मंतव्य:—

प्रस्तुतीकरण पदाधिकारी द्वारा सरकारी पक्ष को रखा गया

तथा लगाये गये आरोप का समर्थन किया गया।”

It is clear from the enquiry report that the Presenting Officer has not produced any evidence or witness in support of the charges before the Enquiry Officer.

11. None has appeared in support of the case of the Department in support of the charges made out in the charge memo. No evidence or no witness has been produced by the Presenting Officer. Entire issue has been considered by the enquiry officer who has assumed the role of Presenting Officer. Such a situation cannot be countenanced in conduct of departmental proceeding. The issue stands settled in the judgment of *State of Uttar Pradesh & ors vs. Saroj Kumar Sinha*, reported in *(2010) 2 SCC 772*, that the enquiry officer should not be acting as a prosecutor. His function is to examine the evidence presented by the parties. In the instant case, as noticed above, the Presenting Officer was a mute spectator and has not produced any evidence. Witness had neither been specified in the charge memo nor examined during the proceeding.

12. It is a clear case where the enquiry officer



assumed the role of Presenting Officer. Such procedure adopted by the Enquiry Officer is held to be in clear violation of Rule 17(14) of the Bihar CCA Rules, 2005 and contrary to the principles of natural justice. The enquiry officer conducts the enquiry as a quasi-judicial authority and is not expected to adopt such a procedure where he was presenting the case of the department and also deciding it. The principles laid down in the case of ***Saroj Kumar Sinha (supra)*** has been clearly violated in the instant case. That apart, as noticed above, the charge memo was also in violation of Rule 17(3) & (4) of the Bihar CCA Rules.

13. In view of such procedural violations in the proceeding conducted against the petitioner, this Court would hold that the entire proceeding was conducted in unfair manner against the petitioner and such exercise of jurisdiction by the enquiry officer cannot be sustained. The two orders of punishment dated 10.2.2010 and 25.2.2010 arising out of such a procedure adopted by the enquiry officer is, therefore, unsustainable in law and is hereby quashed.

14. The appellate authority has also failed to consider the said procedural flaw in the proceeding before the enquiry officer. The order of the appellate authority (Under



Secretary, Vigilance) dated 9.6.2010 affirming the two orders of punishment is also quashed.

15. As a result of quashing of the order of punishment, the petitioner would be entitled to all consequential benefits in accordance with law.

16. The writ petition is allowed with the aforesaid observations/directions.

SNkumar/-

(Madhuresh Prasad, J.)

AFR/NAFR	NAFR
CAV DATE	N/A
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Transmission Date	N/A

