IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9908 of 2014

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1. Sushil Kumar Choudhary Son of late Satya Narain Choudhary resident of Village - Nikaspur, P.S. - Ujiyarpur, District - Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Home, Govt. of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Inspector General of Police, Muzaffarpur.
5. The Deputy Inspector General of Police, Tirhut Range, Muzaffarpur.
6. The Senior Superintendent of Police, Muzaffarpur.
7. The Superintendent of Police, Sitamarhi.
8. The Deputy Superintendent of Police, Town, Muzaffarpur.
9. The Deputy Superintendent of Police, West Muzaffarpur.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Prashant Sinha
For the Respondent/s : Mr. M. Nasrul Hoda Khan

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT
Date: 11-05-2018

(1) Heard both sides.

(2) The petitioner seeks relief for quashing of the order dated 07.02.2014 as contained in Memo No.422 issued by the Senior Superintendent of Police, Muzaffarpur by which the petitioner has been dismissed from service with effect from 06.02.2014. The petitioner further seeks quashing of the Memo No.350 dated 07.02.2014 whereby the Deputy Inspector General of Police, Muzaffarpur ordered for dismissal of the petitioner from service and the order of the Inspector General of Police as contained in Memo

No.961 dated 09.05.2014 by which the appeal preferred by the petitioner against the order of his dismissal has been dismissed.

(3) The petitioner further seeks quashing of entire enquiry report dated 14.01.2014 submitted by the Superintendent of Police-cum-Enquiry Officer of the departmental proceeding and also for quashing of Memo No.34 dated 08.01.2011 by which charges have been framed against the petitioner.

(4) The summary of facts leading to filing of this writ petition is that the petitioner was working as an Accountant in the office of the Senior Superintendent of Police, Muzaffarpur. Branch Manager, State Bank of India, M.I.T., Muzaffarpur Branch reported on 01.10.2010 to the Senior Superintendent of Police about the illegality and excess withdrawal of money on different bills prepared by the petitioner, on such, Mr. Manish Kumar, Dy. Superintendent of Police, Muzaffarpur lodged Muzaffarpur Town P.S. Case No.401 of 2010 under Sections 409, 420, 467, 468, 471 and 120(B) of the Indian Penal Code and under Section 13(c) of the Prevention of Corruption Act. It is alleged that the petitioner apart from his salary account bearing Rs.30041237008, he was maintaining two other accounts bearing No.11203636783 and 20041280693 in the S.B.I., MIT, Muzaffarpur branch. The petitioner also had two other accounts bearing Nos.30952718662 and 300739358736 in the name of

Shakuntala Devi and Anita Choudhary in which the petitioner used to deposit the embezzled amount. On inspection of pay bill of some of the officers/scheduled employees/Sweeper/Peon etc. it was found that on the first page of the bill that actual amount was found to be Rs.41,64,517/- while in the bill total amount to be shown Rs.58,22,081/-. Similarly in the second bill actual amount payable is shown Rs.26,10,255/- while in the bill the total amount was shown to be Rs.40,09,282/-. On the third page of the bill, the actual amount to be shown Rs.35,41,109/- but the total paid amount is Rs.52,00,580/-. The grand total of actual amount was Rs.1,03,15,881/- but the total amount withdrawn was Rs.1,50,31,943/-. The petitioner was prima facie found involved in the financial irregularity, corruption and embezzlement of Govt. funds since 2007 and he was found involved in withdrawal of much more amount from the amount shown in the salary bill of the employees. The petitioner was arrested on institution of the case. While the petitioner was under judicial custody, the Dy. Inspector General of Police, Tirhut Range, Muzaffarpur issued Memo No.34 dated 08.01.2011 by which memo of charge was given to the petitioner alleging that the petitioner being Accountant committed financial irregularity and embezzled Govt. money for which F.I.R. was lodged. The memo of charge further discloses that Departmental Proceeding No.2 of 2011 has been initiated and Superintendent of

Police, Town Muzaffarpur was appointed as conducting officer. The memo of charge was served upon the petitioner along with the Memo No.362 dated 24.01.2011(Annexure-2 series) and petitioner was directed to submit his explanation within one week. The petitioner submitted his application through Jail Superintendent on 31.01.2011 stating therein that since the petitioner was in custody and, therefore, he was unable to peruse the relevant records and submit his explanation. Dy. Superintendent of Police, West Muzaffarpur, the conducting officer, wrote letter to the petitioner as contained in Memo No.383 dated 18.03.2011 for submission of defence statement. The petitioner again replied that he was unable to submit his defence statement since the petitioner was in custody. The petitioner again received several letters and ultimately petitioner submitted his representation on 22.04.2012 about his inability to submit his defence statement from inside the jail even without going through the relevant records(Annexure 4 series). The petitioner filed CWJC No.13590 of 2012 challenging the continuance of departmental proceeding during the period of his custody and the writ petition was disposed of vide order dated 21.09.2012 with a direction to the D.G.P. to personally look into the matter. The petitioner submitted his last defence statement on 21.06.2013 but thereafter the enquiry officer submitted enquiry report on 14.01.2014. The petitioner was served with the enquiry report vide Memo No.137 dated 15.01.2014 issued under the signature of Dy. Inspector General of Police, Tirhut Range, Muzaffarpur whereby the petitioner was served with second show cause. The petitioner submitted his second show cause on 03.02.2014 Annexure 11. The Dy. Inspector General of Police vide his Memo No.350 dated 07.02.2014 ordered for dismissal of the petitioner from service and accordingly, Senior Superintendent of Police, Muzaffarpur vide his Memo No.422 dated 07.02.2014 dismissed the petitioner from service w.e.f. 06.02.2014(Annexure 12 series). The petitioner preferred appeal before the Inspector General of Police, Muzaffarpur on 27.02.2014 against the order of his dismissal and the appeal of the petitioner has also been dismissed vide order as contained in Memo No.961 dated 09.05.2014(Annexure 14).

(5) Mr. Prashant Sinha, the learned counsel for the petitioner assailed the order dismissing the petitioner from service and submitted that the memo of charge shows that the same has not been framed in accordance with Rule 17(3) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. As per Rule 17(3), if an employee is to be proceeded departmentally, the disciplinary authority will frame the charge in explicit manner. From perusal of memo of charge, Annexure-2 series, it would appear that the petitioner while acting as Accountant committed financial

irregularities and embezzled huge Govt. money by which Muzaffarpur Town P.S. Case No.401 of 2010 was registered under different Sections of the I.P.C. and the petitioner was put under suspension. It is submitted that only the letter of S.B.I., MIT branch, Muzaffarpur and the copy of the F.I.R. along with the order of D.I.G., Tirhut Range, Muzaffarpur was found mentioned along with the charge report. No paper or salary bill or any other bill showing any defalcation or embezzlement has been given and only on mere institution of the F.I.R. on the basis of the report of the Branch Manager, S.B.I., MIT branch, the departmental proceeding was initiated on such charge. It is further submitted that as per clause 148 of the Bihar Treasury Code, the head of the office of course may authorise any of his subordinate officials to sign upon the bills on his behalf but even if the power is delegated, the head of the office is not exonerated from the liability of ensuring the correctness of the bills. The Superintendent of Police is equally responsible for illegal withdrawal of money on such bills.

(6) The learned counsel for the petitioner further submitted that the disciplinary authority while initiating the departmental proceeding appointed the conducting officer but did not appoint the presenting officer to present the case on behalf of the disciplinary authority. Sub-section 5(c) of Section 17 of C.C.A. Rules

clearly mandates for the appointment of presenting officer and if the presenting officer is not appointed and the conducting officer himself usurped the function of presenting officer, the entire departmental enquiry is vitiated and on such enquiry report submitted is in violation of statutory procedure and any punishment much less the dismissal cannot be inflicted. Even the appellate authority has not looked into the illegalities committed by the departmental proceeding although the petitioner filed his explanation before the conducting officer as well as took the grounds against the order of his dismissal in his memo of appeal before the Inspector General of Police, Tirhut Range, Muzaffarpur. It is submitted that the enquiry officer acting in a quasi judicial authority is in position of independent adjudicator. He is not supposed to be representative of the department/disciplinary authority/Govt. His function is to examine the evidence presented by the Govt. even in the absence of the delinquent as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case, the aforesaid procedure has not been followed. The presenting officer did not examine any witness, therefore, the enquiry officer should have held that the charges have not been proved. The learned counsel for the petitioner placed his reliance on the judgment of the Supreme Court reported in **(2010)2 Supreme Court Cases 772(State of Uttar Pradesh and others v. Saroj**

Kumar Sinha) and on the judgment of Panchanan Kumar V. The Bihar State Electricity Board, 1996(1) PLJR 401.

(7) Learned counsel appearing on behalf of the petitioner submitted that entire disciplinary proceeding is marred by the statutory violations right from the stage of drawing of charge memo until the dismissal and its affirmation by the superior authority. Despite the legal position being so clear under the procedure prescribed under Rule 17 of the C.C.A. rules 2005 for holding disciplinary proceeding, in the present departmental proceeding the disciplinary authority and the conducting officer gave a complete goby by not framing memo of charge in accordance with Rule 17(3) and did not appoint the presenting officer in accordance with Rule 17(4), therefore, the enquiry report suffers from multiple statutory violations and on such, the order of dismissal passed by the disciplinary authority as well as its affirmation by the superior authority cannot stand. The learned counsel placed his reliance on the judgment of this court reported in **2017(4) PLJR 195(Uday Pratap Singh v. The State of Bihar through Chief Secretary & Ors.)**.

(8) The State-respondent filed counter-affidavit. Mr. Nasrul Hoda Khan, learned G.P. submits that the charges against the petitioner is very serious. The petitioner is alleged to have embezzled huge Govt. money by interpolating in the salary amount of the police

officials while the petitioner was acting as an Accountant in District Police Office, Muzaffarpur, on such, F.I.R. was lodged. The report of the Branch Manager, S.B.I., MIT branch clearly shows that the petitioner by making interpolation in the different bills illegally withdrew huge amount and transferred the same in his own account or in the accounts of his relatives. A raid was also conducted in the house of the petitioner and different incriminating articles and huge embezzled Govt. money were recovered by the raiding party in connection with Town P.S. Case No.401 of 2010. Accordingly, seizure list was prepared. It is submitted that the petitioner submitted his defence statement. The petitioner examined the witnesses during the departmental enquiry and the enquiry officer found the petitioner guilty. Second show cause was also asked but the petitioner could not explain satisfactorily even in his second show cause. Accordingly, the petitioner was dismissed from service on grave charge of defalcation of Govt. money and the dismissal of the petitioner does not warrant any interference.

(9) Having heard both sides and on the basis of the submissions, the question arises for consideration is “whether the departmental proceeding initiated against the petitioner is held in accordance with the procedure prescribed under Rule 17 of the C.C.A. Rules, 2005 or the entire statutory procedure as prescribed under Rule

17 of the C.C.A. Rules has been violated?"

(10) From perusal of the memo of charge, Annexure-2 series, it appears that the petitioner has been charged that while the petitioner was posted on the post of Accountant in the office of Sr. Superintendent of Police, Muzaffarpur, the petitioner committed embezzlement of huge amount after committing financial irregularities and for committing such financial irregularities, Muzaffarpur Town P.S. Case No.401 of 2010 was registered under Section 409 and other Sections of the I.P.C. and 13(c) of the Prevention of Corruption Act. The documents attached with the memo of charge show that the report of the S.B.I., MIT branch dated 01.10.2010 along with the F.I.R. of Muzaffarpur Town P.S. Case No.401 of 2010, letter No.4743 confidential dated 02.10.2010 and the order No.189 of 2010 issued by the D.I.G., Tirhut Range, Muzaffarpur were served. The learned counsel for the petitioner submitted that the memo of charge is vague. No salary bill and any other bills duly signed by the petitioner showing any excess amount withdrawn from the actual bill is served upon the petitioner. Mere institution of F.I.R. of any lesser or graver offence such as embezzlement of Govt. money cannot be the basis of dismissal of an employee unless the charge of embezzlement is proved in a departmental proceeding. From the order initiating departmental

proceeding, it appears that disciplinary authority did not appoint any presenting officer to present the case of the department and on behalf of the disciplinary authority.

(11) From perusal of order initiating the departmental proceeding, it is apparent that the disciplinary authority framed the charge mainly on the basis that since the F.I.R. was lodged for defalcation and embezzlement of Govt. money and only copy of the F.I.R. and statement/report of the Branch Manager, S.B.I., MIT branch, Muzaffarpur are served upon the petitioner. The petitioner filed detailed show cause/defence statement and stated that the charge has not been framed in view of the provisions of Rule 17(3) of the C.C.A. Rules, 2005. Rule 17(3) mandates the disciplinary authority where the disciplinary authority proposed to hold enquiry against the Govt. servant under this Rule, shall draw up or cause to be drawn up the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge, a statement of the imputations of misconduct or misbehaviour in support of each article of charge, a statement of all relevant facts including any admission or confession made by the Government servant and a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained. This provision clearly mandates that what are the essentials for the framing of charge and the documents as well

as names of the witnesses/statements are to be attached with the memo of charge. The charge must be explicit. From perusal of the memo of charge, it appears that since Muzaffarpur Town P.S. Case No.401 of 2010 was registered for defalcation and embezzlement by the petitioner being Accountant in the office of Sr. Superintendent of Police, Muzaffarpur for interpolation and preparation of fake bills of huge amount by forging in the salary bill of the officers and staff and withdrawal of excess amount but it appears that neither any salary bill nor any papers with regard to withdrawal showing that the petitioner prepared the bill illegally and withdrew excess amount by making any interpolation in the bill is attached with the memo of charges. The report sent by the Branch Manager of course, shows that huge amount was transferred in the account of the petitioner and his relatives but the Branch Manager was not examined.

(12) Rule 17(4) provides for serving a copy of the articles of charge along with the relevant papers to the delinquent. Rule 17(5)(c) prescribed that the disciplinary authority shall appoint a Government servant or a legal practitioner to be known as “Presenting Officer” to present on his behalf the case in support of the articles of charge but the order initiating departmental proceeding does not show that any Presenting Officer was appointed to present the case on behalf of the disciplinary authority. There appears that the conducting

officer himself usurped the function of the presenting officer and recorded the statement of the witnesses and get the documents on record according to his own choice which is contrary to the procedure prescribed for holding departmental enquiry as well as the law laid down by the Apex Court in the case of **State of Uttar Pradesh and others v. Saroj Kumar Sinha, (2010) 2 Supreme Court Cases 772 (supra**). Thus, on such enquiry report which is in violation of prescribed procedure for holding departmental enquiry any punishment inflicted upon the delinquent is vitiated and cannot be sustained. The submission of the learned counsel for the State cannot be accepted that since the charge is grave and the petitioner being Accountant in the office of Senior Superintendent of Police is alleged to have misappropriated and embezzled huge amount by preparing fake bills and by making interpolation in the actual salary bill of the police officials and staff. On mere fraction and violation of some procedural law prescribed for holding departmental proceeding, dismissal cannot be held illegal. It is needless to refer the judgment on this point that this Court in writ jurisdiction shall not interfere into the findings of the disciplinary authority or look into the sufficiency of evidence but when the finding of the enquiry officer with regard to the guilt of a delinquent is arrived at in such departmental proceeding which was held in violation of the procedures prescribed under Rule

17 of CCA Rules, 2005, the same cannot be allowed to sustain. From the articles of charge and the procedure for holding departmental enquiry without appointing the presenting officer, it appears that charge is not distinct and explicit. The charge against the petitioner is that since he has embezzled and misappropriated the Govt. money for which Muzaffarpur Town P.S. Case No.401 of 2010 was instituted, the departmental proceeding was initiated on the aforesaid charge but no evidence or materials showing the preparation of bills, excess withdrawal of amount, interpolation in the bills have been produced during the investigation and mere institution of the F.I.R. cannot be basis for holding a delinquent guilty that too without following the procedure prescribed under the Rules. The finding of the enquiry officer with regard to the guilt of the delinquent petitioner holding the enquiry for violation of the procedures meant for holding the departmental enquiry cannot be sustained.

(13) Having considered the facts aforesaid, I find that the order of dismissal passed by the Deputy Inspector General of Police, disciplinary authority as contained in Memo No.350 dated 07.02.2014 and subsequent order of dismissal issued by the Senior Superintendent of Police, Muzaffarpur as contained in Memo No.422 dated 07.02.2014(Annexure-12 series) and the order in appeal passed by the Inspector General of Police, Muzaffarpur contained in Memo No.961

dated 09.05.2014(Annexure-14) confirming the dismissal of the petitioner by the disciplinary authority are illegal and not sustainable and they are set aside.

(14) On the facts of the case, the matter is remitted to the disciplinary authority to proceed against the petitioner afresh from the stage of framing of charge and conclude the departmental proceeding within six months from the date of receipt of this order in accordance with law. Thus, this writ petition is allowed as aforesaid.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09.08.2018
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