

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 17665 of 2015

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Mukesh Kumar Singh Son of Ramji Prasad Singh Resident of Village- Jagatpur ,
P.S Harnaut, District Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar through Secretary, Water Resources Department, Bihar Patna.
2. The Secretary, Water Resources Department , Bihar Patna.
3. The Additional Secretary, Water Resources Department, Bihar Patna.
4. The Under Secretary, Water Resources Department, Bihar Patna.
5. Arun Kumar Verma, then Superintendent Engineer-cum-Department Enquiry Officer, Water Resources Department , Bihar Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr Chitranjan Sinha, Sr Advocate with Ms Soni Srivastava & Mr Ravi Bhardwaj, Advocates
For the S t a t e	:	Mr Yogendra Pd Sinha, AAG VII with Mr Shankar Kumar, AC to AAG VII

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 08-03-2018

Heard learned counsel for the petitioner and the respondents.

2 While the petitioner was posted as Sub Divisional Officer (for brevity, *SDO*), Chanderdai in Irrigation Department in the district of Araria, a raid was conducted by the Economic Offences Unit (for brevity, *EOU*), Patna and the petitioner was made accused in First Information Report No 24 of 2013. Thereafter, he was placed under suspension on ground of the said FIR and a charge memo dated 06.09.2013 on Prapatra *Ka* was served on the petitioner for



proceeding departmentally. The sole ground on which the charge memo is served is the institution of the FIR against the petitioner. An allegation was made that he had acquired assets worth Rs 98,64,000/- which was disproportionate to his known source of income. The only evidence, which is referred to in the charge memo on the basis of the charges sought to be established against the petitioner, was the FIR annexed along with the communication from the office of the Inspector General (for brevity, *IG*), EOU. Other than the said communication, no other evidence has been referred to in the disciplinary proceeding, either documentary or oral. The petitioner, thereafter, made request for certain documents which had been seized by the EOU during the raid. Even though the documents were not made available, the proceedings were initiated against the petitioner and he appeared before the enquiry officer for the first time on 16.12.2013.

3 Counsel for the State has submitted that the proceedings were conducted in accordance with procedure and adequate opportunity has been afforded to the petitioner to submit the reply and after personal hearing, the impugned order was passed. However, with reference to the counter affidavit filed on behalf of the respondents, the counsel for the State is not in a position to point out as to whether any evidence, documentary or oral has been adduced



before the enquiry officer.

4 At this stage, this Court would notice the provisions contained in Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for brevity, *Bihar CCA Rules*), more specifically Rule 17 (14) thereof which mandates as follows:

“17

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge 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.”

5 The procedure prescribed under the statutory Rules in Rule 17 of the Bihar CCA Rules has been provided for conduct of enquiry. Any breach of statutory provisions amounts to violation of principles of natural justice and will cause prejudice to the delinquent employee. In this connection, this Court would refer to the judgment of the Division Bench delivered in the case of *Ram Charan Prasad Verma –Versus- State of Bihar & Others* in LPA No 687 of 2016 wherein the Division Bench, relying on the decision in the case of *S K*



Sharma –Versus- State Bank of Patiala, AIR 1996 Supreme Court

1699, wherein it has been held as follows:

“The mandatory requirements as are detailed in para 17 in the present case has not been followed and the enquiry has been held in total violation in this regard to the statutory rules. In the case of S K Sharma versus State Bank of Patiala reported in AIR 1996 SC 1699, it has been held by the Supreme Court that when a statutory provision has been provided for conduct of enquiry, any breach of the statutory provision amounts to violation of the principles of natural justice and prejudice is deemed to have been caused to the delinquent employee. In the said case, the violation of rule and natural justice has been classified into two categories. The first category is where a statutory provision has been laid down and violation of the statutory provision is alleged and the second category is where no statutory provision has been laid down. The Hon’ble Supreme Court holds that if the statutory provision is laid down and if the statutory provision is breached, prejudice is deemed to have been caused and it is not necessary for the delinquent employee to show or prove prejudice caused and the effect of the prejudice for not grant of opportunity to him, whereas in the case of violation of a non statutory procedural formalities required to be conducted, prejudice caused has to be pleaded and established in a Court of law and breach of a non statutory provision will not ipso facto vitiate the enquiry. In this case, there being breach of a statutory provision and the entire enquiry stands vitiated on account of violation of the statutory provision.”

6 No evidence whatsoever seems to have been produced before the enquiry officer and on the contrary, the enquiry officer



instructed the petitioner to submit some financial statements pertaining to his father and wife. The same were submitted by the petitioner as directed by the enquiry officer. After going through the said statements demanded from the petitioner and enclosing letter dated 11.09.2013, on 16.09.2013, the petitioner was served with a supplementary charge sheet wherein it has been alleged that in the disclosure of assets made before the Department, he has suppressed the details in respect of the properties held in the name of his wife, both movable and immovable. The records clearly suggest that the enquiry officer was proceeding only on the basis of whatever materials were placed on record by the petitioner in his defence in compliance of the directions of the disciplinary authority, as noticed above. By relying upon the same, it appears the onus has been shifted upon the petitioner to establish his innocence. The proceedings clearly reveal that there was total non-compliance with the procedure prescribed under Rule 17 (14) of the Bihar CCA Rules which has been taken note of hereinabove. Other than the communication from the office of the IG, EOU, no document whatsoever has been produced in the departmental enquiry. No witness has also been produced even to support the said letter issued from the IG, EOU. There appears to be total non-compliance of the said statutory procedure prescribed under the Bihar CCA Rules.



7 It need not be emphasized that the whole purpose behind the statutory procedure is to comply with the principles of natural justice and fair play. The same is to ensure that the petitioner or any other delinquent is afforded adequate opportunity and that no innocent person is held guilty. The action in the instant case taken by the enquiry officer leading to submission of the enquiry report dated 25.04.2014 is in total contravention of the statutory procedure as also in violation of the principles of natural justice inasmuch as the same is without reference to any evidence adduced in the departmental proceedings.

8 Even though the proceedings have been conducted in the aforesaid manner, the enquiry officer, while submitting his enquiry report dated 25.04.2014, records finding in respect of the first charge that the manner in which the petitioner has acquired income between the period 2006-2010 gives rise to a suspicion regarding his income being disproportionate to his known source of income. As regards the supplementary charge regarding suppression of properties held in the name of his wife, while submitting the details to the Department, the finding of the enquiry officer is that the reply given by the petitioner is not satisfactory and further action in this regard is required.

9 The Secretary, Water Resources Department,



Government of Bihar, Patna thereafter wrote a letter to the enquiry officer dated 22.05.2014 returning the said enquiry report dated 25.04.2014 and requesting the enquiry officer to give a clear report within a period of one week. The Secretary, Water Resources Department has found the enquiry report dated 25.04.2014 submitted by the enquiry officer to be misleading and ambiguous and that no specific finding has been recorded. The said letter dated 22.05.2014 establishes the fact that no clear and specific finding has been recorded by the enquiry officer, and the fact that the enquiry officer has been directed to submit a clear report within a period of one week thereafter, shows the manner in which the authorities were proceeding against the petitioner.

10 Clearly, the enquiry report dated 25.04.2014 was not to the liking of the disciplinary authority (the Department). In compliance of the said directions issued by the superior authority, the enquiry officer, without referring to any further evidence, material, oral or documentary, proceeded to submit a second enquiry report dated 29.05.2014. Perusal of the second enquiry report shows that by referring to whatever statements have been submitted by the petitioner in compliance with the earlier directions issued by the enquiry officer, a finding has been recorded on the basis of surmises and conjectures that the petitioner has acquired assets by improper and illegal means



which were disproportionate to his known source of income. The said finding has been recorded in respect of the first charge memo.

11 Without assigning any reasons, the enquiry officer seems to have arbitrarily accepted or found acceptable some of the statements which had been submitted by the petitioner and arbitrarily rejected or discredited other statements submitted by the petitioner in relation to the income derived by his wife's rental income and other gifts from his family sources.

12 In respect of the supplementary charge also, a finding has been recorded that in respect of "many" assets, moveable and immovable, the petitioner has not made any disclosure to the Department and thereby he has found the second charge also established. In respect of the second charge also, there is no definite and specific finding as to which of the assets the petitioner has suppressed or not disclosed before the Department.

13 Merely by finding the statements submitted by the petitioner to be insufficient, the enquiry officer has concluded that the charges against the petitioner have been proved. In so far as evidence adduced by the Department, other than the memo dated 28.06.2013 issued by the IG, EOU in respect of lodging the criminal case against the petitioner, which has been referred in the charge memo, no other evidence whatsoever has been produced in course of the enquiry. The



said memo issued by the office of the IG, EOU, is a communication regarding initiation of the criminal proceedings against the petitioner containing a copy of the FIR No 24 of 2013 dated 27.06.2013 lodged against the petitioner. No witness has been examined by the Department in the enquiry, nor any other documentary evidence has been produced. In this connection, this Court would refer to the decision in the case of *Roop Singh Negi –Versus- Punjab National Bank, (2009) 2 Supreme Court Cases 570* wherein the Apex Court has held, in relation to similar circumstances, where reliance was placed by the enquiry officer only on an FIR, to hold that the FIR could not have been treated as evidence. Since, in the instant case also, other than the FIR, there is no other evidence, either oral or documentary, this Court would come to the irresistible conclusion that the instant case is a case of no evidence before the departmental enquiry.

14 In so far as the findings having been based on statements submitted by the petitioner in relation to his source of income, this Court can only observe that in such a situation, where no tangible evidence has been produced by the Department to prove the charges against the petitioner, the insufficiency or weakness of his defence could not have been made the basis of holding the charges proved against the petitioner. The same is not only in violation of the principles of natural justice and fair play but also in gross violation of



the statutory provisions prescribed under Rule 17 (14) of the Bihar CCA Rules.

15 In this connection, this Court considers it appropriate to refer to the decision of the Apex Court in the case of *A Savariar – Versus- Secretary, Tamilnadu Public Service Commission & Another, 2013 Lab IC 1680* has held as follows:

15. On behalf of the Commission oral evidence is said to have been adduced to substantiate the allegations leveled against the appellant but neither the report of the Enquiry Officer nor the orders passed by the Controller of Examinations or the Chairman of the Commission make a mention of that evidence and none of them relied upon the same for recording a finding that the appellant had arrogated to himself the powers of his superiors and unauthorisedly appointed Invigilators. As a matter of fact, Enquiry Officer simply referred to the statement of the appellant, analysed the same and concluded that Charges No 1, 2 4 and 6 have been proved against him. It is thus evident that the inquiry report was not prepared in consonance with Rule 17(b)(i) of the Rules.

16.

17. The learned Single Judge and the Division Bench of the High Court failed to notice the aforesaid fatal flaw in the orders passed by the Controller of Examinations and the Chairman and decided the matter by assuming that even though the Commission had not adduced any tangible evidence to prove the charges against the appellant, the same stood proved because of the weakness of his defence.

18. *In Delhi Cloth and General Mills Company v Ludh Budh Singh (1972) 1 SCC*



595 : (AIR 1972 SC 1031), this Court held that it is the primary duty of the person making the allegations to establish the same by producing evidence and not for the delinquent to produce negative evidence to prove his innocence.

... ..”

16 The aim of the statutory Rules is to ensure, that an innocent person is not punished, the same has been emphasized by the Apex Court in the case of *Union of India -Versus- H C Goel, AIR 1964 Supreme Court 364*, relevant portion of which has been summarized, is being produced:

“It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules.”

17 In view of the aforesaid proposition of law, as reiterated by the Apex Court time and again, as noticed above, the entire procedure before the enquiry officer seems to be devoid of any substance and unsustainable both on the count of non-compliance of principles of natural justice and fair play as also being contrary to the statutory procedure prescribed under the Bihar CCA Rules, 2005.

18 In view of the findings, as recorded hereinabove, the entire action taken against the petitioner including the order of punishment of dismissal from service dated 10.07.2015 bearing No



1599 of the Water Resources Department deserves to be set aside.

19 This Court would notice that even at the stage after the enquiry officer had submitted the enquiry report, the authorities have failed to consider the said illegalities in the enquiry report and have further compounded and completed the circle of invalidation of the entire proceedings inasmuch as the second show cause which has been issued to the petitioner seems to have been issued after deliberations and analysis at the departmental level and after recording of finding that the charges against the petitioner “more or less appeared to be established”. In this connection, the relevant portion of the second show cause is being produced:

“प्राप्त जाँच प्रतिवेदन आर्थिक अपराध ईकाई से प्राप्त प्रतिवेदन आरोप एवं आरोपित का बचाव बयान की सम्यक समीक्षा सरकार द्वारा की गई, सम्यक समीक्षोपरान्त यह पाया गया कि श्री सिंह के विरुद्ध लगाये गये आय से अधिक सम्पत्ति अर्जित करने का मामला कमोवेश ही सही, प्रमाणित होता है। जिसके लिए सरकार द्वारा दण्ड के निरूपण के पूर्व आपसे द्वितीय कारण पृच्छा करने का निर्णय लिया गया है।”

20 Apparently, the disciplinary authority has, while issuing show cause to the petitioner, recorded a prima facie finding regarding the charges having been proved. Such show cause cannot be said to subserve the principles of natural justice. From perusal of the second show cause, which has been taken note of hereinabove, it is quite obvious that relying on the enquiry report, some report from the EOU and upon consideration at the departmental level, the



conclusion of the charges having been more or less proved has been recorded in the second show cause.

21 In the circumstances, it is beyond comprehension as to on what basis or material, the enquiry officer has recorded his finding regarding the charges being proved which have been accepted by the disciplinary authority. Such a second show cause wherein a conclusive finding has been recorded “charges more or less proved” cannot sustain the test of fairness.

22 Learned counsel for the petitioner has rightly relied on the judgment of this Court passed in the case of *Horil Sahni – Versus- State of Bihar & Others, 2009 (3) PLJR 982* to submit that since the absolute opinion was already there, formality of the second show cause notice cannot cure the apparent illegality in the impugned order of punishment. The said judgment in the case of *Horil Sahni (supra)* has been affirmed by Division Bench of this Court. The judgment of the Division Bench of this Court has been reported in the same issue of PLJR at page 988.

23 On issuance of the second show cause, as noticed above, the petitioner has submitted his representation on 17.09.2014. However, ignoring the same, the disciplinary authority, by letter dated 21.01.2015, has sought the opinion of the Bihar Public Service Commission (for brevity, *BPSC*) regarding dismissal of the petitioner



from service. Approval has been accorded by the BPSC vide letter dated 13.05.2015 bearing No 442 and in the aforesaid manner, the order of dismissal dated 10.07.2015 from service, impugned in the instant writ petition, has been issued.

24 In view of the various infirmities noticed above, including violation of the principles of natural justice as well as the statutory procedure prescribed under the Bihar CCA Rules, this Court cannot approve the departmental enquiry conducted against the petitioner as the same is in total violation of the Bihar CCA Rules and even otherwise cannot sustain the test of reasonableness and fairness in action.

25 Accordingly, the writ petition is allowed and the impugned order dated 10.07.2015, whereby the petitioner has been dismissed from service, is quashed. As a result of quashing the order of punishment, the petitioner would be entitled to all consequential benefits. However, the respondents would be at liberty to proceed with the enquiry, if so advised in accordance with law.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.03.2018
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