

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4282 of 2014

Prantosh Kumar Das Son Of Late Nakul Chandra Das Resident Of Village -
Umacharan Bose Kharamchak, P.S. Kotwali, District - Bhagalpur, Presently Posted
As Assistant Director (Administration) Bihar Police Academy, Patna

.... Petitioner

Versus

1. The State Of Bihar
2. The Home Secretary, Government Of Bihar, Patna
3. The Director, General Of Police, Government Of Bihar, Patna
4. The Deputy Secretary Home Police Department, Government Of Bihar, Patna
5. The Joint Secretary (Home) Police Department, Government Of Bihar, Patna
6. The Inspector General Of Police Darbhanga
7. The Deputy Inspector General Of Police Darbhanga

.... Respondents

Appearance :

For the Petitioner : Mrs Shama Sinha, Advocate
Mr. Sachindra Kr.Tiwari, Advocate
For the State : Mr. Sitaram Yadav, GP 16
Mr. Jitendra Kumar, AC to GP 16

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 20-07-2018

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

2. The petitioner is aggrieved by the punishment of
censure and withholding of one increment with non cumulative
effect awarded to him by the Disciplinary Authority by office order
dated 22.05.2013 bearing memo no. 3940 (Annexure 17). The
punishment has been awarded to the petitioner by the Special
Secretary to the Government of Bihar in the Home (Police)
Department. The petitioner, prior to the award of punishment, had
submitted his response to the second show cause, which was not
considered. Thereafter, he had also moved before the Appellate



Authority. The Appellate Authority rejected petitioner's appeal by a cryptic order without assigning any reason. The petitioner, in the circumstances, approached this Court by filing instant writ petition. The writ petition earlier filed by the petitioner bearing C.W.J.C.No. 9157 of 2010 (Annexure 13) was allowed by order dated 14.10.2011. The matter was again remanded to the Disciplinary Authority to proceed afresh from the stage after submission of reply by the petitioner to the second show cause notice.

3. Going through the entire ordeal again the petitioner was faced with similar treatment and as such has approached this Court for quashing order of punishment as also order of the Appellate authority dated 30.08.2013 (Annexure 18), whereby once again the petitioner's appeal has been rejected without assigning any reason and by a cryptic order.

4. Punishment has been awarded to the petitioner pursuant to the enquiry report, which is dated 24.07.2008. Findings is that the prosecutorix of Biraul Police Station Case No. 131 of 2000 was not subjected to medical examination within time resulting into loss of genuine and reliable medical evidence. Allegations under section 376 Indian Penal Code was made by the prosecutorix against one Lalo Chaudhary. The findings have been recorded by the Enquiry officer and recommendation has been made to the Disciplinary Authority that the petitioner had



committed a mistake/negligence in the submission of the supervision report while he was posted as the Sub Divisional Police Officer, Biraul. On this basis, the Disciplinary Authority has without applying himself to the various issues raised by the petitioner awarded punishment of censure and withholding of one increment with non cumulative effect.

5. Findings as noticed above have been recorded but without communicating any charge. 'Praptra Ka' dated 11.06.2007, i.e., the charge memo has been issued against the petitioner vide letter dated 15.06.2007. The charge memo records the background of the allegations made by the prosecutorix regarding some lapses alleged in the investigation of the case at the time of lodging of the FIR on 09.03.2000. Entire history recorded in the charge memo has disclosed that the matter travelled up to Lokayukta, Bihar and was also examined by the CID (Police), Bihar. Some recommendations made by these authorities have also been recorded in 'Praptra Ka' with respect to the character of the petitioner and also that in the matter in hand, his role has been found to be highly suspicious.

6. Instead of communicating any allegation of misconduct/charge, 'Praptra Ka'/Charge memo goes on to record a conclusion and the fact that there is sufficient evidence to initiate departmental proceedings against the petitioner. Relevant extract



is as follows:-

“निष्कर्ष :- उपरोक्त तथ्यों के आलोक में श्री प्राणतोश कुमार दास, तत्कालीन अनुमंडल पुलिस पदाधिकारी, विरौल, सम्प्रति अनुमंडल पुलिस पदाधिकारी, महनार के विरुद्ध प्रथम दृष्टवा आरोप सही प्रतीत होता है और उनके विरुद्ध विभागीय कार्यवाही प्रारम्भ करने के लिए पर्याप्त साक्ष्य है।”

7. The findings in the charge memo are that the charges are prima facie proved and there is sufficient evidence for initiation of departmental proceeding against the petitioner. The charge memo records a prima facie finding of petitioner's guilt but does not contain the charge to which the petitioner has to respond. The manner in which charge memo is to be issued to the delinquent is provided under the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the Bihar CCA Rules, 2005'). Rule 17 (3) & (4) of the Bihar CCA Rules, 2005 specify the details to be provided to the delinquent.

8. This Court would consider it appropriate to reproduce Sub Rule (3) & (4) of the Bihar CCA Rules, 2005 which are reproduced herein below:-

“(3) Where it is proposed to hold an inquiry against a government servant under this Rule, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which



shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government Servant;

(b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government Servant a copy of the articles of charge, such statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government Servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.”

9. Such requirements contained in the Bihar CCA Rules, 2005 is to ensure fairness and application of the principle of Natural Justice so that anyone, who is innocent may not be made to suffer. Aforesaid requirements of Rule 17 of the Bihar CCA Rules, 2005 allows the delinquent sufficient opportunity to know as to what are the charges and how department proposes to sustain the same, so that the petitioner is well informed and capable of stating his defence.

10. In the instant case, charge memo is not as per the procedure prescribed in the Bihar CCA Rules, 2005. The same does not disclose any charge whatsoever on which the petitioner is sought to be proceeded against.

11. For the first time, in the enquiry report a charge has been recorded by the Enquiry Officer on his own. The Enquiry



Officer at the top of his enquiry report has indicated the charge which was enquired by him. The same is reproduced herein below:-

“विलंब से चिकित्सा जाँच होने के कारण एक महत्वपूर्ण साक्ष्य के नष्ट होने की संभावना बन गई है। जिसका लाभ अभियुक्त लालो चौधरी को मिला है।”

12. This charge is nowhere to be found in the charge memo. Enquiry Officer has recorded findings prejudicial to the petitioner and having penal/civil consequences without even knowing what are the charges which he is to enquire into.

13. The Disciplinary Authority before proceeding to award the punishment against the petitioner, has failed to consider such a serious lapse.

14. Regarding the order passed by the Appellate Authority, least said the better. In spite of remand of the matter by this Court under earlier order dated 14.10.2011, passed in C.W.J.C. No. 9157 of 2010, once again the Appellate Authority has rejected petitioner's appeal by a non speaking and cryptic order which shows total non application of mind and non consideration of the plea raised by the petitioner.

15. When the charges are not clear and definite, then the proceedings are unfair inasmuch as no opportunity is afforded to the petitioner to submit his response and as such findings



recorded by the Enquiry officer without communicating the charges in respect of which findings have been recorded against the delinquent renders the entire departmental procedure an empty formality. No charge has been communicated to the petitioner in the charge memo however arbitrary and baseless conclusions have been arrived at by the Enquiry officer. It is a case where delinquent has been found guilty and awarded punishment for offence which were never enquired into. Since there was no allegation in respect of the findings, the entire proceedings in the instant case, right from the issuance of charge memo, is not only in contravention of the procedure provided in the Bihar CCA Rules, 2005, but also in violation of principle of Natural Justice, which vitiates the departmental proceedings in view of the findings recorded herein above. Neither charge memo nor the findings of the Enquiry Officer are sustainable or in accordance with law or procedure prescribed in the Bihar CCA Rules, 2005.

16. Learned counsel for the State has tried to persuade the Court that charge memo 'Prapatra Ka' was alleging failure on the part of the police personnel to subject the prosecutrix to medical examination within time, i.e., after lodging of the FIR on 09.03.2000.

17. Prapatra 'Ka' (charge memo) which has been communicated to the petitioner does not contain any charge



whatsoever. It is a detailed record of the facts and events leading to issuance of the charge memo. The charge memo records the facts that the informant of Biraul Police Station Case No. 31 of 2000, namely, Most. Hira Manjhi has lodged complaint against the petitioner who was conducting the investigation, that he had wrongly submitted final form finding the case to be one of false implication finding the case to be not true. In fact, final form submitted by the instant petitioner was recommending initiation of proceedings under sections 182 and 211 of the Indian Penal Code against the informant Most. Hira Manjhi. The case lodged by her under section 376 of the Indian Penal Code was found to be false. Supervising officer of the case had also concurred with the opinion of the investigating officer (the petitioner). It takes into consideration fact that the higher officials at the Police Head Quarters had subsequently opined that the case was true and the accused Lalu Chaudhary be punished.

18. Charge memo thereafter records that the allegations levelled by the informant of Biraul Police Station Case No. 31 of 2000 against the petitioner is that he had not conducted the investigation properly and that there was omission on his part in belatedly subjecting the informant to medical examination on 9.3.2000. It also records that the Lokayukta was of the opinion that to some extent the allegation levelled by the informant Most. Hira



Manjhi against the petitioner was established and recommendation was made to the Director General of Police to get an enquiry conducted into the matter whereupon issue was enquired by the Inspector General of Police, Darbhanga Range. Report was submitted by the Inspector General of Police wherein he has recommended initiation of disciplinary proceeding against the petitioner. Charge memo also records that the explanation of the petitioner before the Lokayukta was found to be unsatisfactory and that the petitioner's role as the investigating officer of the case gives rise to suspicion. Charge memo thereafter records a conclusion that the charges against the petitioner, who at the relevant time was posted as the Sub Divisional Police Officer, appear to be prima facie proved and that there is sufficient material to proceed against him by initiating a departmental proceeding. All of this has been recorded in the charge memo itself but no specific charge has been framed or communicated to the petitioner under the charge memo (Prapatra Ka) dated 11.6.2007.

19. It is trite law that clear and definite charges are to be communicated by the charge memo so as to enable the delinquent to make out his defence. The defence has to be in respect of the charges. When there are no charges, no defence is possible as delinquent would not know what he has to defend himself from. The requirement of communicating clear and definite



charge is therefore an essential facet of procedural fairness in conduct of the proceedings. The charge sheet is required to disclose with adequate clarity and precision the charges levelled against the employee. Only then it can be said that reasonable and adequate opportunity of defence to oneself has been afforded. The requirement of communicating clear and definite charges has been reiterated time and again by the Courts. Even where vague charges have been communicated, Courts have stepped in to safeguard the interest of the delinquent and strike down action on basis of the vague charges. Here situation is worst as no charge whatsoever has been communicated by the charge memo. Law in this regard on the point of vagueness of charges has been emphasized by the Hon'ble Apex Court in case of **Management of the Northern Railway Co-operative Credit Society Ltd Vs. Industrial Tribunal, Rajasthan, Jaipur and another**, reported in **AIR 1967 SC 1182**. Paragraph 14 of the said judgment is relevant which is reproduced herein below:-

“14. It is true that the Tribunal correctly held that Kanraj was not entitled to be represented by a stranger to the Society at the enquiry proposed to be held against him. In fact, the correspondence which passed between Kanraj and the Society shows that Kanraj was taking a very unreasonable and undesirable attitude in this matter and his conduct in persistently demanding representation by a stranger and on that account refusing to participate in the enquiry deserves to be condemned. That circumstance however, will not make the enquiry valid, unless it be held that an adequate opportunity was given to Kanraj to meet the charges framed against him. The charges, as we have



indicated above, which were served on Kanraj were very vague and he had no opportunity to give a reply to them. The material which was available in support of these charges was also never disclosed to him. The mere fact that Kanraj did not appear on the date fixed for the enquiry will not, in these circumstances, satisfy the requirement of the principles of natural justice that he should have been told of the details of the charges and the material available in support of these charges should have been disclosed to him. It seems to us that it was in view of this omission that the subsequent notice was given by the Vice-Chairman to Kanraj to show cause when the, Vice-Chairman had formed his provisional opinion on the basis of the report of the Committee of Enquiry that the charges were proved and Kanraj should be removed from service. This subsequent show cause notice by the Vice-Chairman was, no doubt, not required by any rule or law analogous to Art. 311 of the Constitution, but in the instant case this subsequent opportunity which was offered by the Vice-Chairman was the only opportunity which could have satisfied the requirement of principles of natural justice, because in the earlier enquiry Kanraj had already been prejudiced by the vagueness of the charges and by the omission to disclose to him the material in support of those charges. In the enquiry, no adequate opportunity having been given to Kanraj, the Tribunal was perfectly justified in setting, aside the order of removal based on the report of the Committee of Enquiry, and it appears that it was in view of the aspect explained by us above that the Tribunal proceeded to lay down that it was open to the Society to institute a fresh enquiry and give an opportunity to Kanraj to show cause after supplying copies of necessary documents to him as claimed by him when the notice dated 13th September, 1956 was issued to him. Consequently, we consider that the order passed by the Tribunal was fully justified.”

20. This Court would also refer to the judgment in the case of **Transport Commissioner, Madras Vs. A. Radha Krishna Moorthy** reported in **(1995) 1 SCC 332**. Accordingly, this Court would find that the charge memo forming the basis of the



proceedings against the petitioner wherein no charges have been communicated, but has led to petitioner being awarded punishment, is in gross violation of the established law, procedure prescribed under the Bihar CCA Rules, 2005 as also in gross violation of the principle of Natural Justice and fairness.

21. The order of punishment dated 22.5.2013, being a product of such exercise contrary to the procedure provided in the Bihar CCA Rules, 2005, is unsustainable. Order of punishment dated 22.5.2013 is quashed. In view of quashing of order of punishment dated 22.5.2013, non speaking and cryptic order passed by the Appellate Authority dated 30.8.2013 is also quashed. As a result of quashing of the impugned orders, the petitioners would be entitled to all consequential benefits.

22. The writ petition is allowed in the aforesaid terms.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	04.09.2018
Transmission Date	NA

