

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11270 of 2013

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INDRA MOHAN JHA SON OF LATE CHANDRA MOHAN JHA
PERMANENT ADDRESS - EKMA, THANA - SUPAUL, DISTRICT -
SUPAUL; AT PRESENT RESIDING AT MAITHIL TOLA, KORABARI,
MADHUBANI, DISTRICT - PURNEA

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Divisional Commissioner, Purnea Division, Purnea
3. The District Magistrate, Purnea
4. The Deputy Development Commissioner, Purnea-Cum-Conducting Officer
Of Department Proceeding, Purnea
5. The Additional Collector, Purnea-Cum-Preliminary Enquiry Officer
6. The District Land Acquisition Officer, Purnea
7. The Senior Deputy Collector-Cum-District Certificate Officer, Purnea-Cum-
Presenting Officer Of Departmental Proceeding
8. The Block Development Officer, Baisi Block, District - Purnea

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Mishra, Adv
For the Respondent/s : Mr. Anil Kumar, Adv

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 16-05-2018

Heard learned counsel for the parties.

2. This writ petition under Article 226 of the Constitution of India has been filed for setting aside the order dated 22.05.2012 (Annexure-13) passed by the District Magistrate, Purnea, by which petitioner has been dismissed from service as well as order dated 13.03.2013 passed by the Divisional Commissioner, Purnea in Service Appeal No. 53 of 2012 dismissing the appeal of petitioner.

3. Briefly stated, the facts of the case as stated by the petitioner is that he was appointed as Clerk on 28.11.1984 in



Purnea and worked up-to 31.08.1997, and thereafter worked in the Office of S.D.O. Banmankhi from 01.09.1997 till 30.11.2004 and thereafter in the Establishment Section, Purnea from 01.12.2004 till 30.06.2008 and was lastly transferred in the Office of Land Acquisition Department, Purnea and joined on 01.07.2008 and was given charge of four sections by the District Magistrate, Purnea.

4. Petitioner was served upon a memo of charge dated 19.12.2011 issued by the District Magistrate, Purnea in which four charges were framed against the petitioner and Deputy Development Commissioner, Purnea was appointed as Enquiry Officer and Senior Deputy Collector cum District Certificate Officer, Purnea was appointed as Presenting Officer. Petitioner was directed to submit his reply to the memo of charges within a fortnight. The memorandum of charge as contained in Prapatra-Ka was also accompanied by list of evidences on the basis of which charges framed against the petitioner were sought to be proved. The Disciplinary Authority appointed Deputy Development Commissioner as Enquiry Officer who was also a party in present departmental proceeding and in order to establish the charge his report is part of memo of charge as such he could not have been appointed Enquiry Officer as only such person can be appointed as Enquiry Officer who is not concerned or related with any of the



allegation for which departmental proceeding was initiated and on this ground alone whole proceeding stands vitiated.

5. The Enquiry Officer adopted the procedure which is not in conformity with the procedure as prescribed in Bihar Government Servant(Classification, Control & Appeal) Rules-2005. Preliminary enquiry which was conducted behind the back of the petitioner cannot be used for imposing punishment on the delinquent. The preliminary enquiry is conducted by the Disciplinary Authority only with a view to find out that whether there are sufficient materials against delinquent for initiation of departmental enquiry and framing of charge.

6. Petitioner submitted his reply to the four article of charges as framed against him and reply of petitioner along wiith memo of charge was sent by the Enquiry Officer to the concerned department for their opinion/comment through the Presenting Officer and submitted to Enquiry Officer.

7. Charge No. 1 relates to the petitioner when he was posted as clerk in the District Land Acquisition Office and was Bench Clerk of District Land Acquisition Officer, Purnea. Allegation against petitioner is that in cases relating to payment of compensation being Case No. 18/86 to Case No. 26/86 and on on a complaint made enquiry was conducted by A.D.M. Purnea and in



his enquiry report (Annexure-6) suspicion was raised of interpolation made by petitioner in original records.

8. In reply dated 19.01.2012 to said charge petitioner denied that he was Bench Clerk of District Land Acquisition officer, Purnea but was Incharge Head Clerk. He has further denied that he was custodian of records and there was any responsibility on him for maintenance of record and suspicion raised against the petitioner in report of ADM regarding payment of compensation is baseless.

9. The Presenting Officer send the memorandum of charge along with reply of petitioner to District Land Acquisition officer, Purnea, for his comments and he by letter dated 23.02.2012 stated that petitioner was not Bench Clerk but was Incharge Head Clerk. Mangal Hembram was Bench Clerk, however, records bear writing of petitioner. As far as payment of compensation is concerned same was paid after list was approved and signed by the District Magistrate.

10. Charge No. 1 related to interpolation in original case record and payment of compensation on fake power of attorney and concerned department has not supported the charge but still the Enquiry Officer has held charge no. 1 to be proved. If there is allegation of interpolation in original records then such records are



to be produced before Enquiry Officer to prove the charges and a copy of which is to be given to the delinquent and in absence of which charges cannot be held to be proved.

11. In Charge No. 2 allegation is that in said land acquisition cases there was order of Officer for physical presence of the raiyats for payment of compensation and said order was removed by the petitioner and payment was made on fake power of attorney.

12. In its reply dated 19.01.2012 petitioner denied any such order passed by Land Acquisition Officer and payment of compensation was made by the competent authority on the basis of power of attorney given by tenants. Department in its reply dated 23.02.2012 has stated that there is no such order of physical presence of tenants made by Land Acquisition Officer. No allegation has been found to be correct except in Land Acquisition Case No. 18/86.

13. In charge no. 2 allegations are with respect to payment of compensation on basis of fake power of attorney and order regarding physical presence of original tenants. In order to prove original records of said cases ought to have been produced before the Enquiry Officer but no record was produced still charges were held to be proved by the Enquiry Officer.



14. In response to charge no. 3 and explanation submitted by petitioner the B.D.O. Baisi by letter dated 21.12.2011 has stated that petitioner was allotted work of Head Clerk and in his absence same was to be discharged by Manoj Kumar Verma. Petitioner remained on leave from 15.10.2011 to 10.11.2011 and in his absence duty was to be performed by Manoj Kumar Verma. Due to sudden death of Nand Kishore, Nazir, S.D.O. Baisi by his letter dated 20.10.2011, appointed Circle Officer, Baisi to prepare inventory of Baisi Block Nazarat and for which on 21.10.2011, he appointed two employees to assist said Manoj Kumar Verma. It has been further stated that she herself directed petitioner to up to date the cash register but same was never done. Petitioner was proceed for similar charges earlier and explanation was sought from him in respect of not up to dating the cash register of the Baisi block but after receiving the explanation submitted by the petitioner, D.M. Purnea had dropped the proceeding after giving warning to the petitioner which has been enclosed in the writ petition as Annexure-4 dated 13.02.2012 and as such for the similar charge petitioner cannot be proceeded again.

15. In charge No. 4, allegation is that petitioner was Bench Clerk of District Certificate Officer, Purnea and he did not place records of 24 cases of UCO Bank Kasba, which shows



dereliction of duty and doubtful integrity. In reply dated 19.01.2012, petitioner stated that he was given charge of four departments and due to work load said lapse took place since no reminder was send by the concerned department. As soon he received the order he submitted all the 24 records in the office of District Certificate Officer and same was a bonafide mistake.

16. In response to said Charge No. 4, the District Certificate Officer, by its letter dated 13.02.2012 opined that the mistake was committed on account of work load and same was bonafide as such explanation of petitioner should be accepted. However, the Enquiry Officer held the charge to be proved.

17. No oral witness or documentary evidence was produced before the Enquiry Officer by the department and on the baasis of opinion given by the concerned department charges were held to be proved by the Enquiry Officer. Even the concerned authority did not appear before the Enquiry Officer to prove contents of the documents with opportunity to be cross-examined by the petitioner, as such enquiry was conducted in flagrant violation as prescribed under Bihar Government Servant(Classification, Control & Appeal) Rules-2005, and is unacceptable and fit to be quashed.



18. The District Magistrate by his letter dated 24.03.2012 as contained in Annexure-11 issued a second show cause notice to the petitioner with enquiry report to submit his explanation before 03.04.2012. Petitioner submitted his reply to the second show cause and thereafter the District Magistrate cum Disciplinary Authority passed an order of dismissal. The appeal preferred by the petitioner before the Commissioner was also dismissed by the Appellate Authority.

19. The Enquiry Officer has conducted enquiry on the basis of documents as enclosed in memorandum of charge. No oral witness was examined on behalf of department nor any document was produced and proved by the author of said documents. The enquiry conducted by the Additional Collector with respect to charge no. 1 was deemed to be correct and on the basis of such enquiry report which was conducted behind the back of petitioner the charges were held to be proved. The author of the enquiry report was not examined by the Enquiry Officer nor he was present to prove his report. The Enquiry Officer as well as the Disciplinary authority have passed the order on the basis of their perception and without any legal evidence on record.

20. The High Court under judicial review cannot examine the sufficiency or adequacy of the evidence produced



before the Enquiry Officer as the same is the function of the departmental authorities. However, the Enquiry Officer as well as departmental authorities Act as quasi judicial authority in departmental proceeding and there should be some material in the enquiry proceeding on the basis of which charges have to be proved. In present case no evidence oral or documentary has been produced before the Enquiry Officer by the Presenting Officer, as such orders passed on the basis of such enquiry cannot be sustained.

21. The charges are required to be proved on the basis of oral and documentary evidence adduced before the Enquiry Officer. The documentary evidence requires to be proved by the author who prepared the report. Delinquent has to be given opportunity to cross-examine said person and controvert the allegations and findings which are against him. In the present case, no oral or documentary evidence has been laid by the Presenting Officer and on the basis of opinion the Enquiry Officer has found charges to be proved. Those authorities never appeared before the Enquiry Officer to prove the charges or the documents.

22. The Disciplinary Authority has imposed punishment of dismissal from service upon the petitioner which deprives livelihood of employee and his family and leads to misery and



suffering, as such this Court has to deeply scrutinize the enquiry proceeding, gravity of misconduct, and if proceeding has been conducted in accordance with law and charges as framed is established by adducing legal evidence and proper appreciation and consideration of the materials available in enquiry proceeding. It is bounden duty of Courts to see that innocent are not harassed and punished as well as guilty are not spared.

23. For the reasons as stated above the enquiry conducted by the Enquiry Officer is not in accordance with procedure as prescribed under Bihar Government Servants (Classification, Control & Appeal) Rules-2005, as such the enquiry report as well as order passed by the Disciplinary Authority and Appellate Authority are set aside. Petitioner has attained the age of superannuation as such there cannot be any order of reinstatement. It is directed that petitioner will be deemed to continue in service till the age of superannuation and entitled for full back wages as well as all consequential benefits and respondents are directed to grant him pension, gratuity, leave encashment and all other retiral benefits along with back wages within three months from the date of receipt/production of a copy of this order. However, this order will not preclude the Disciplinary Authority to initiate fresh proceeding against the petitioner in accordance with law.



The writ petition is allowed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	29.06.2018
Transmission Date	N.A.

