

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19086 of 2017

=====

Dhirendra Kumar Jha, Son of Sri Shyamanand Jha, Resident of Village-Kaithwar, Police Station-Sakatpur, District -Darbhanga, Presently Posted as Additional Collector, Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary Govt. of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna
3. The Additional secretary, General Administration Department, Govt. of Bihar, Patna.
4. The Special secretary, General Administration department, Govt. of Bihar, Patna.
5. The Joint Secretary, General Administration, Department, Govt. of Bihar, Patna.
6. The Joint Commissioner, Department Enquiry, Patna Division, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Tej Bahadur Singh, Sr. Adv. Mr. Bindhyachal Singh, Adv. Mr. Satya Prakash, Adv.
For the Respondent/s	:	Mr. Utsav Kumar, AC to GA-4

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 13-08-2018

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

The petitioner is at present holding the post of Additional Collector, Saharsa and during period from 2010 to 2013-14, he was posted and discharging the function of Special Land Acquisition Officer, Patna. After the tenure was over, his predecessor Sri Vikash Kumar found the misdeed committed by the petitioner and reported the same to the Department of the illegality committed by him. On his complain, a charge-sheet was



issued contained in “Prapatra Ka” vide letter dated 5.8.2015, charges were mentioned therein, firstly, of illegal withdrawal of the amount in his name but, secondly, being a Drawing and Disbursing Officer, he was required to maintain the account. So, thereby, he has misappropriated the government fund. It appears that the Department, on receipt of the explanation from the petitioner, has sought comment from Sri Vikash Kumar, which was accepted by the Department is reflected from the letter no. 1042 dated 5.7.2017.

Learned counsel for the petitioner has submitted that it is Sri Vikash Kumar who, while discharging the duty as Special Acquisition Officer, reported the illegality committed by the petitioner. On that basis, the petitioner was served with the charge-sheet which the petitioner had replied, whereafter, the opinion was sought for from Vikash Kumar which he had given to the Department. On that basis, the Enquiry Officer has recorded his finding. Inasmuch as, he has also appeared as Presenting Officer, learned counsel for the petitioner submits that it is completely a farce enquiry and on account of active participation of Sri Vikash Kumar, the petitioner has been put incarceration, requires interference by this Court.



A counter affidavit has been filed wherein the point that has been raised by the petitioner, has not been disputed by the State that Sri Vikash Kumar followed as a shadow to all actions taken by the State which shows how Sri Vikash Kumar was present and acted against the interest of the petitioner. The Department has itself remained under the influence of Sri Vikash Kumar in accepting the opinion and ultimately resulted to the findings recorded by the Enquiry Officer which reflects that the enquiry has not been conducted fairly and properly.

In view of the above, the entire proceeding is vitiated. Let the Department should conduct a fresh enquiry from the stage of charge-sheet by appointing an independent Enquiry Officer and Presenting Officer, Sri Vikash Kumar, the Special Acquisition Officer will not be appointed as a Presenting Officer. However, the Department will be at liberty to take assistance of Sri Vikash Kumar and also examine him as a witness for proving the charge. The Enquiry Officer, after taking evidence, oral and documentary, and giving an opportunity to the petitioner to examine defence witness, if any request is made by the petitioner, if any witness is examined by the Department in support of the allegation for proving the charge against the petitioner, will be given opportunity



to cross-examine the witnesses and would take a decision in accordance with law.

With the aforementioned observation and direction, this writ application is allowed to the extent indicated above.

(Shivaji Pandey, J)

rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.08.2018
Transmission Date	NA

