IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12386 of 2014

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Vijay Kumar Upadhyay S/o Ram Ishwar Upadhyay Resident of Mohalla Parshuram Colony, P.S. Kumhrar, Town & District Patna, Presently posted as Executive Officer, Nagar Parishad, Chapra, District Saran.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, General Administrative Department, Government of Bihar, Patna.
3. The Additional Secretary, General Administrative Department, Government of Bihar, Patna.
4. The Commissioner-cum-Enquiry Officer, Magadh Division, Gaya.
5. The District Magistrate, Nawada.
6. The Land Acquisition Officer-cum-presenting Officer, Nawada.
7. The Bihar Public Service Commission, Jawahar Lal Nehru Marg, Patna through its Secretary.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Kumar Tiwary

For the Respondent/s : Mr. Ram Balak Mahto

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 04-04-2018

This writ petition under Article 226 of the Constitution of India has been filed for quashing the order dated 12.03.2014 issued by the respondent No. 3 by which the Disciplinary Authority has imposed penalty for withholding three increments with cumulative effect.

2. Briefly stated, the case of the petitioner is that he was posted as Block Development Officer in Roh Block in Nawada District from 1998 to 1999. He was thereafter posted as Block Development Officer of Kahara Block in Saharsa District in the year 2009 when allegations were leveled against

petitioner with regard to irregularities in sanctioning Indira Awas. The allegation was inquired by Sub-Divisional Officer Officer, Rajauli and on his Enquiry Report the District Magistrate, Nawada framed charges against him in Prapatra-'Ka' and Commissioner of Magadh Division, Gaya was appointed as Enquiry Officer vide Memo dated 20.07.2009 for enquiring the charges framed under Prapatra-'Ka' dated 07.06.2002 and the Land Acquisition Officer, Nawada was appointed as Presenting Officer.

3. The Charges framed under Prapatra-'Ka' of 1998-99 financial year and pertains to irregularities committed in providing Indira Awas to the beneficiaries of Roh Block under Indira Awas Yojna and illegal deduction in making payments towards Indira Awas.

4. Petitioner submitted his explanation denying the charges and prayed to exonerate him. On completion of Enquiry, the Enquiry Officer submitted its enquiry report and on the basis of said enquiry report, the Disciplinary Authority issued 2nd show cause for submitting his explanation under Section 18(3) of CCA Rules, 2005. The Disciplinary Authority without considering the explanation of petitioner passed order on 12.03.2014 imposing penalty of withholding three increments

with cumulative effect.

5. A counter affidavit has been filed on behalf of respondents stating therein that vide letter dated 19.10.2005 allegation against the petitioner were reported by the Department of Rural Development Government of Bihar that when petitioner was posted as B.D.O., Roh in the district of Nawada he committed irregularities in providing the Indira Awas among the beneficiaries of the said scheme.

6. The allegations against the petitioner were examined meticulously by the Disciplinary Authority and allegations being grave decided to initiate departmental proceeding against the petitioner by resolution dated 20.07.2009. The Divisional Commissioner, Magadh Division, Gaya was appointed as Enquiry Officer and he sent his enquiry report dated 03.12.2011 in which out of eight allegations seven have been found to be proved.

7. The 2nd show cause notice dated 30.01.2013 along with enquiry report was sent to petitioner to submit his explanation under Rule 18(3) of the CCA Rules, 2005.

8. Petitioner submitted his representation/explanation dated 21.02.2013 and matter was examined by the Disciplinary Authority and the punishment of withholding three increments

with cumulative effect was passed. The Bihar Public Service Commission was also consulted regarding quantum of punishment and same was approved by the Bihar Public Service Commission vide its letter dated 20.01.2014.

9. From perusal of enquiry report, it appears that charges related to grant of benefit to beneficiaries under Indira Awas Yojna petitioner has submitted explanation and the Presenting Officer has also stated that the explanation of petitioner can be accepted, still the Enquiry Officer on the basis of report of S.D.O. found that charges are proved. All the charges framed against petitioner in which the Presenting Officer has found that explanation of petitioner regarding the charges can be accepted still the enquiry Officer has found that charges against petitioner stand proved. The Enquiry Officer on the basis of report of Sub-Divisional Officer has found all the charges except one against the petitioner proved contrary to view expressed by the Presenting Officer.

10. The report of Sub-Divisional Officer was prepared behind the back of petitioner and on basis of such report charges cannot be proved. On the basis of said report only a decision can be taken whether there are sufficient materials against the petitioner for initiation of departmental proceeding but on the

basis of such report charges can not to be held to be proved.

11. The Enquiry Officer only on the basis of allegation and report of Sub-Divisional Officer has found the charges to be proved against the petitioner and nowhere he has considered the explanation given by the petitioner and even disagreeing with the Presenting Officer has held that charges are proved. Moreover the decision to grant benefits under Indira Awas Yojna is taken up at different levels and petitioner cannot be singled out for any lapses. Selective proceeding is not permissible.

12. The Enquiry Officer performs role of quasi judicial authority and his conduct has to be impartial and fair but in present case he has acted as representative of department and has conducted enquiry in unfair and biased manner and has found petitioner guilty of charges on the basis of report of S.D.O. and such enquiry report being prepared behind the back of petitioner cannot be relied upon by the Enquiry Officer for holding petitioner guilty.

13. Allegations found true in the enquiry conducted by S.D.O. has to be proved before the Enquiry Officer by adducing evidence and statements recorded of the beneficiaries of Indira Awas Yojna have to be established before the Enquiry Officer by oral witnesses with petitioner having an opportunity

to cross examine them. Even the author of the report the S.D.O. has not been examined to prove its report and its contents. No officer in the State could be safe if punishment is imposed based on such enquiry reports and evidences collected behind the back of delinquent.

14. The role of an Enquiry Officer and the obligation cast upon him stands discussed in judgment of the Supreme Court rendered in the case of State of Uttar Pradesh V. Saroj Kumar Sinha since reported in (2010)2 SCC 772 and I am tempted to reproduce paragraph 28 of the judgment which succinctly explains the legal position;

> *"28. An inquiry officer acting in a quasi-judicial authority in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see 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 observed. Since no oral evidence has been*

examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.”

15. The proceeding has been conducted contrary to the provisions of CCA Rules and even the so-called enquiry report prepared by the SDO and the contents of said report was required to be proved by the person who has conducted enquiry but neither enquiry report has been proved nor the contents of the enquiry report have been established. The enquiry has been conducted in a perfunctory and biased manner and as such cannot be sustained in the eye of law and is accordingly quashed. The memo of charge is of the year 2002. If there is any allegation against any authority and government considers that such allegation is to be inquired by any superior authority and such superior authority makes an enquiry upon such allegations and prepares a report for the Government on the basis of which the Government is to take a decision that whether there are sufficient materials in the enquiry report for initiation of departmental proceeding against the concerned authority than such allegations have to be proved during departmental proceeding before the enquiry officer. If in the enquiry report

the Enquiry Officer has stated that some beneficiaries have made allegations then those beneficiaries are required to be examined before the Enquiry Officer with opportunity to petitioner to cross examine them. Only on the basis of allegations in the enquiry report which was conducted behind the back of petitioner the charges cannot be held to be proved.

16. In the present case, only on the basis of enquiry report of S.D.O. the Enquiry Officer has held the charges to be proved. He did not even consider the explanation of petitioner with respect to such charges and even the Presenting Officer opined that explanation of petitioner is worth acceptable still the Enquiry Officer found the charges to be proved.

17. The finding of Enquiry Officer in holding that charges against the petitioner is proved is not sustainable either in fact or in law and as such, the enquiry report as well as order of Disciplinary Authority based on such perverse enquiry report is quashed. Petitioner is entitled for all consequential benefits.

18. The writ petition stands allowed.

(S. Kumar, J)

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CAV DATE	
Uploading Date	
Transmission Date	