

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22077 of 2014

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Bhrigunandan Sah son of Late Balram Sah resident of village - Majhgai, Post Office - Gulni Kushaha, Police Station - Shambhuganj, District - Banka.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Land Reforms Department.
2. The Commissioner, Bhagalpur Division, Bhagalpur.
3. The District Magistrate cum Collector, Banka.
4. The Additional District Magistrate, Banka.
5. The Sub-Divisional Magistrate, Banka.
6. The Deputy Collector Land Reforms, Banka.
7. The Circle Officer, Banka.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar, Advocate
Mr. Abhanjali, Advocate
Mr. Rajeev Shekhar, Advocate

For the Respondent/s : Mr. Shally Kumari, AC to SC 24

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 24-01-2018

Heard counsels for the petitioner and the respondents.

2. While holding additional charge as Circle Inspector in the Circle, Chanan, the petitioner was arrested in a trap case for the allegation of demand and acceptance of illegal gratification of an amount of Rs. 5,000/- for some mutation related work. He was arrested on 27.08.2008 and remanded to the judicial custody.

3. On the same allegation, one charge memo dated 23.03.2010 was served on the petitioner along with evidence. In support of the allegation, a separate charge memo was also submitted which is dated 28.01.2014.

4. Perusal of the charge memo and supplementary charge



memo shows that other than the pre-trap/ post-trap memorandum, the FIR and other documents of the Vigilance Department relating to the vigilance case which is still pending, no other documents or witnesses have been referred to, in the charge memo. On the basis of such charge memo, the petitioner was subjected to a proceeding wherein he denied the allegations. The proceeding was concluded and the Enquiry Officer submitted enquiry report dated 29.03.2014 which is at Annexure 5 of the writ petition. The allegations and the response of the petitioner have been considered in the enquiry report. However, the same does not manifest that the Presenting Officer who was the Circle Officer, Chanan has presented the case on behalf of the Department. No evidence either documentary or oral has been placed before the Enquiry Officer. On the contrary the enquiry report has been submitted by the Enquiry Officer on the basis of opinion of the Presenting Officer and relying upon the pre-trap/post-trap memorandum as also relying upon the signature of the witnesses on search document in the vigilance case. In the proceedings a finding of guilt has been recorded against the petitioner.

5. Counsel for the petitioner submits that from perusal of the enquiry report itself it is evident that the same is in violation of the procedure prescribed under the **Bihar Government Servants (Control, Classification & Appeal) Rules, 2005** (hereinafter referred to as the '**Bihar CCA Rules**'), specifically Rules 17 and 18 thereof.



6. There is no reference to any oral or documentary evidence on the basis of which the articles of charges were proved. In fact even at the prior stage i.e., the stage of issuance of charge memo other than the documents in relation to the criminal proceedings pending against the petitioner which is yet to be decided, no oral or documentary evidence has been indicated on the basis of which the department proposed to prove the articles of charges. It is also noticed that no witness has been examined in support of the said documents or to even otherwise support the charges on behalf of the department.

7. Perusal of the enquiry report shows that this is a case of no evidence and it appears from the enquiry report that merely by obtaining opinion of the Presenting Officer, findings of guilt has been recorded against the petitioner. The procedure therefore, is in violation of Rule 17 (14) of the **Bihar CCA Rules**. Said points have been raised by the petitioner before the disciplinary authority in his response to the second show cause dated 12.04.2014.

8. This Court finds that the issue has specifically been raised from Paras 5 to 9 of the petitioner's response to the second show cause. The disciplinary authority without addressing these issues, has passed the order of punishment against the petitioner. Although such submission of the petitioner that the proceeding was conducted without reference to any evidence whatsoever has been recorded in the order of the Disciplinary Authority. However, the



order of the Disciplinary Authority concurring with the findings of the Enquiry Officer does not show any consideration of the said submission of the petitioner.

9. In view of the aforesaid factual position, this Court finds that a case of no evidence is made out. Even though strict standard of proof is not applicable to a departmental proceedings and charges are to be established on the preponderance of probability, it is needless to reiterate that there has to be some cogent and reliable material in support of the charges. The same is lacking in the instant case. There is no oral or documentary evidence. Merely on the basis of the “opinion” of the Presenting Officer, the severe consequences i.e., dismissal of service has been inflicted upon the petitioner.

10. Even in the counter affidavit filed on behalf of the State there is no reference to any evidence before the Enquiry Officer. In fact in paragraph 9 of the counter affidavit, the respondents have admitted that they have relied upon the opinion of the Presenting Officer.

11. Whether on the basis of the opinion of the Presenting Officer/departmental stand as indicated above, the petitioner can be made to suffer the consequences of dismissal from service has been considered by this Court in the matter of *Ashwini Kumar vs. State of Bihar* reported in **2017 (3) PLJR 500**. This Court has taken into consideration the role of the Enquiry Officer in his capacity as *quasi*



judicial authority and an independent adjudicator and relying upon the decision in the case of State of **Utter Pradesh vs. Saroj Kumar Sinha** reported in **2010 (2) SCC 772**, has explained the legal position which is as follows :

“11. It is undisputed that in the present case no witness was led by the department nor any attempt was made by the Presenting Officer to get the documentary evidence proved during the course of the disciplinary proceedings. On the contrary, it is simply taking note of the departmental stand as reflecting from Annexure-21 of the writ petition that the Departmental Enquiry Commissioner has proceeded to uphold the guilt and even though the enquiry report runs into almost 30 pages but the substance is lacking because the enquiry report is not supported by any material. 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 Vs. 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 is 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 un rebutted 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.”

(Emphasis is supplied)

12. In view of the aforesaid legal position and the admission of the respondents in paragraph 9 of their counter affidavit as noticed above the irresistible conclusion is that the instant case is a case of no evidence and in view of the aforesaid situation, all consequential actions taken as a result of the said enquiry report dated 29.03.2014 must also collapse. It may also be observed that the proceedings have not been conducted in accordance with the procedure prescribed under sub rule (14) of Rule 17 of the **Bihar CCA Rules** which mandates as follows:

“(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.”

13 The said procedure has, admittedly not been followed in the instant case. Such serious lapse has not only occasioned the violation of the **Bihar CCA Rules** but also is contrary to the principles of natural justice and fairness which are required to be observed at all costs before inflicting the petitioner with such serious consequence as his dismissal from service.



14. Even the disciplinary Authority, before recording the finding of guilt, has failed to consider this aspect. In view of the admitted position emerging from the pleadings, this Court would hold that the enquiry proceeding was vitiated on account of non-observance of the procedure prescribed under the **Bihar CCA Rules**, as noticed above and, as such, violative of natural justice and fair play. The conclusion arrived as a result thereof by the Enquiry Officer in his report dated 29.03.2014 is hereby quashed as also the consequential action taken thereupon by issuance of the order of punishment dated 30.04.2014 bearing Memo No 480 which cannot be sustained in view of quashing of enquiry report.

15. As a result of the aforesaid, the petitioner would be reinstated in service with all consequential benefits. However, it will be open to the authorities to proceed afresh in accordance with law.

16. The writ petition is allowed.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	07.02.2018
Transmission Date	

