

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22180 of 2014

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Tarkeshwar Ram Son of Late Jaleshwar Ram resident of Village AND Post
Office - Paiga, Police Station - Bheldi, District - Chapra at Saran.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Land Reforms Department,
Govt. of Bihar, Patna.
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. Rajeev Shekhar Abhanjali, Advocate
For the Respondent/s	:	Mr. Jitendra Kumar, AC to AAG-14

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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 issuance of writ of certiorary for quashing the order dated 30.04.2014 passed by the District Magistrate, Banka (respondent No. 3) by which the petitioner has been dismissed from service as well as order passed by the Commissioner, Bhagalpur in Appeal No. 29/2014-15 by which appeal preferred by petitioner was rejected.

2. The case of the petitioner is that he was appointed as Extension Worker in the year 1994 and pursuant to Vigilance Enquiry the Departmental Proceeding was initiated against him and Memo of Charge in form of Prapatra -Ka was issued to



petitioner vide letter dated 08.12.2010.

3. Petitioner submitted his written statement with respect to memo of charge but authorities were not satisfied with his reply and decided to hold proceeding against petitioner. He was suspended and his suspension was revoked by order dated 07.02.2011 and petitioner was directed to join District Public Grievance Forum, Banka.

4. The District Magistrate vide memo dated 22.01.2014 again suspended the petitioner and vide memo dated 08.02.2014, supplementary memo of charge in form of Poorak Prapatra-Ka was issued to the petitioner.

5. The petitioner vide letters dated 05.02.2014, 19.02.2014, 28.02.2014, 03.03.2014, 05.03.2014, 08.03.2014 and 12.03.2014 explained his position and also asked for supply of relevant documents so that he can file a proper reply.

6. The Disciplinary Authority issued 2nd show cause notice to petitioner alongwith copy of inquiry report vide memo dated 29.03.2014.

7. Petitioner vide letter dated 12.04.2014 replied to the 2nd show cause notice and asked for supply of documents and requested for time for submission of proper reply after receipt of said document.



8. The Disciplinary Authority without providing relevant documents to the petitioner to prepare his defence passed the final order dismissing the petitioner from service vide memo dated 30.04.2014.

9. Petitioner preferred Service Appeal being Service Appeal Case No. 29/2014-15 before the learned Commissioner, Bhagalpur, who is the appellate authority, and vide order dated 27.10.2014 the appeal of petitioner was rejected.

10. It has been submitted on behalf of the petitioner that Rule 17 of Bihar Government Servants CCA Rules, 2005 provides procedure for imposing major penalty and also provides the manner in which enquiry should be conducted. In the present case the procedure has not been followed while imposing the punishment of dismissal. No list of witnesses by which the articles of charges were proposed to be proved were given to petitioner. The Presenting Officer has not adduced any evidence to prove the article of charge. No oral or documentary evidence was adduced by Presenting Officer to prove the charges, as such, the entire proceeding stands vitiated.

11. The materials collected in the course of criminal investigation cannot be used without being formally exhibited for recording of finding of guilt. The Enquiry Officer



performing a quasi judicial function has to arrive at a finding on the basis of materials produced by the parties. The purported evidence collected during investigation by the Investigating Officer could not be treated as evidence in departmental proceeding. No punishment can be based on FIR as FIR is not a substantive piece of evidence but it only raises suspicion and on suspicion, charges are not proved.

12. The Apex Court in its judgment passed in (Roop Singh Negi Vs. Punjab National Bank) since reported in 2009 (2) SCC 570 has held as following:-

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all



the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.”

13. The FIR and the materials collected by the police in a criminal case in the course of investigation has not been proved by any competent witness in the departmental proceeding. Such materials are to be proved by the Investigation Officer of the case or any other competent witness acquainted with the case. The finding of guilt recorded by the Enquiry Officer and the punishment order passed by the Disciplinary Authority as well as appellate authority is not sustainable. The proceeding has been initiated against the petitioner on the basis of Vigilance Case, which is pending before the Vigilance Court and for identical charges petitioner has been proceeded departmentally also. The charges in criminal proceeding and



departmental proceeding are identical although there is no bar in continuation of both the proceedings simultaneously as standard of prove in both the proceeding are different. In the criminal proceeding , charges are to be proved beyond reasonable doubt whereas in departmental proceeding it is based upon preponderance of probabilities.

14. In the departmental proceeding also charges are to be proved by the witnesses. It includes pre-trap memorandum, post trap memorandum and apprehending the delinquent by the Vigilance Team and recovery of any bribe money. Demanding and accepting the bribe money is to be proved in a departmental proceeding in the same manner as is to be established in a criminal court. Even the witnesses in both the proceedings and exhibits may be common and similar, accordingly charges in the departmental proceeding has to be established as per procedure prescribed under Bihar Government (CCA) Rules, 2005 and any procedural infirmity and irregularity vitiates the proceeding. This Court has perused the materials available on record such as memorandum of charge, reply filed by petitioner, enquiry report, 2nd show cause notice, supplementary charge sheet and reply filed by petitioner and final order of disciplinary authority i.e. Collector, Banka dismissing the petitioner from service as well



as order passed by the appellate authority and after going through the materials available on record, this Court finds that the procedural requirement as prescribed under the CCA Rules has not be followed by the Disciplinary Authority and as such the order of dismissal is not sustainable in the eye of law.

15. The charge memo should contain all the requirements as envisaged under Rule 18 of the CCA Rules i.e. the memo of charge should contain definite and distinct charges, statement of imputations of misconduct and oral and documentary evidences upon which department proposes to proceed.

16. The Apex Court in judgment passed in Bilaspur Raipur Khetriya Gramin Bank and Ors Vs. Madanlal Tandon since reported in 2015 (8) SCC 46 in case of similar nature where memo of charge was not accompanied by statement of imputations and list of witnesses and documents on which department proposed to prove his case quashed the entire proceeding the relevant para 9, 10, 11 is extracted below:-

9. Indisputably, no documents were supplied to the Respondent along with the charge sheet on the basis of which charges were framed. Some of



the documents were given during departmental inquiry, but relevant documents on the basis of which findings were recorded were not made available to the Respondent. It further appears that the list of documents and witnesses were also not supplied and some of the documents were produced during the course of inquiry.

10. Admittedly, show cause notice was served with 17 charges, but all the documents were not supplied to the Respondent. A perusal of the impugned order will show that when the Division Bench, during the course of arguments, asked the Learned counsel appearing for the Appellants whether documents viz. P-21, P-25, P-23, P-19, P30, P-31 & P-32 were supplied to the Respondent, on the basis of which



various charges have been held to be proved, Learned Counsel was not able to demonstrate that the above documents were supplied to the Respondent even during the course of inquiry. The Division Bench then following a catena of decisions of this Court came to the conclusion that the order of punishment cannot be sustained in law. However, taking into consideration the fact that the Respondent was out of employment since 1991, a lump sum payment of Rs. 5,00,000/- towards the salary would meet the ends of justice.

11. After giving our anxious consideration, we do not find any reason to differ with the finding recorded by the learned Single Judge and also the Division bench of the High Court in writ appeal. Therefore, this civil appeal is



dismissed.

17. The writ petition is allowed the order passed by Collector, Banka (respondent No. 3) as well as Commissioner, Bhagalpur is set aside. Petitioner is directed to be reinstate in service within three months from date of production/receipt of a copy of this order with all consequential benefits and back wages. However, this order will not preclude the Disciplinary authority from initiating fresh proceeding against petitioner in accordance with law and strictly as per procedure prescribed in Bihar Government Servant (CCA) Rules 2005.

18. The writ petition stands allowed.

(S. Kumar, J)

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CAV DATE	
Uploading Date	
Transmission Date	

