

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19661 of 2016

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Anant Kumar, aged about 46 years, S/o Sri Sidheshwar Prasad, Resident of Village Badgaon Lodipur, P.O. + P.S. Nalanda, District Nalanda at Biharsharif presently New Area Jakkanpur, Patna- 1.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Pricipal Secretary, Suchna Jan Sampark Bibhag, Government of Bihar, Patna.
3. The Deputy Director, Suchna Jan Sampark Bibhag, Government of Bihar, Patna -cum-Enquiry Officer.
4. The Director, Suchna Jan Sampark Bibhag, Government of Bihar, Patna .

... .. Respondent/s

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Appearance :

For the Petitioner/s :	Mr. Rajendra Prasad Singh, Sr.Adv. Mr. Mukesh Kumar, Adv Mr. Rajeev Kumar Singh, Adv.
For the Respondent/s :	Mr. Prashant Pratap-GP2

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date : 03-08-2018

Heard Mr. Rajendra Prasad Singh, learned Senior counsel appearing for the petitioner with Mr. Mukesh Kumar, Advocate on Record and Mr. Gyan Shankar A.C to G.P- 2.

With the consent of the parties the writ petition has been heard with the view to final disposal at the stage of Admission.

The petitioner is aggrieved by the notification bearing memo No. 265 dated 11.11.2016 whereby the petitioner has been dismissed from service under the order of the State Government in its Information and Public Relation Department in exercise of power vested under Section 14 (x) of the Bihar Government



Servant (Classification, Control & Appeal) Rules, 2005 (hereinafter referred as 'the Rules') as amended from time to time.

The charge memo is enclosed at Annexure- 7 bearing memo No. 468 dated 04.03.2015 whereby 5 charges have been set up against the petitioner holding the post of Public Information Officer with the respondent Department. Each of the charges bear nuances of matrimonial dispute in between the complainant Kriti Kumari and the petitioner. The allegations were enquired into, the report of which is at Annexure-2. The Enquiry Officer despite taking note of the nature of dispute and even while opining for an expert's advice on the evidence on record, has confirmed the charges leading to the punishment in question impugned at Annexure-1. Feeling aggrieved the petitioner is before this Court.

Mr. Singh has been very precise in submission to question the entire proceedings and his submissions stands noted in the order of this Court passed on 16.07.2018 and broadly are as follows:

(a) Despite the charges revolving around the complaint made by Kriti Kumari neither was she examined on her complaint by the Presenting Officer nor any evidence was led to prove the materials on record.



In the words of Mr. Singh, the conclusion drawn by the Enquiry Officer which has been affirmed by the disciplinary authority is resting on a mechanical satisfaction by the Enquiry Officer in absence of any evidence being led and in absence of any witness being examined on the truthfulness of the complaint; and

(b) The order passed by the Disciplinary Authority impugned at Annexure-1 is non speaking and passed without application of mind.

It is taking note of the submissions advanced by the learned counsel for the petitioner that the learned State counsel was directed to produce the records and also to inform whether the submissions advanced is correct. It is following the order of this Court that the records have been produced and Mr. Gyan Shankar learned AC to G.P- 2 despite canvassing the seriousness of the allegation made in the charge memo, has not been able to get assistance from the records to contest the submission of Mr. Singh that neither any evidence was led to support the allegation during the enquiry nor any evidence was led to prove the allegations present on record.

Rule 17(14) of 'the Rules' casts an obligation on the Presenting Officer to prove the charges by leading oral/ documentary evidence and to allow the delinquent to cross-



examine the same but this mandatory discharge apparently has not been carried out by the Presenting Officer. In short, the Enquiry Officer has drawn a mechanical satisfaction on the materials that was placed before him but was never examined as evidence by the Presenting Officer nor put up for contest by the delinquent. The legal position is well settled and even though strict rules underlying the Evidence Act is not to be followed in a disciplinary proceeding yet there has to be some evidence connecting the delinquent to the charge and such evidence has to be proved during the course of enquiry. Rule 17(14) is very clear on the obligation so cast on the Presenting Officer but unfortunately has not been discharged.

The contention advanced by Mr. Singh learned Senior counsel for the petitioner that the complainant never came forward to press the complaint goes unchallenged. In my opinion, in absence of examination of the complainant by the Presenting Officer on the complaint, the charge howsoever serious, remains a paper transaction and would remain an allegation until proved in accordance with law.

Recording of reasons by an authority discharging quasi judicial functions is a hallmark of a fair and transparent decision making process as it reflects application of mind. This essential



discharge again goes lacking in the present case because the order passed by the disciplinary authority records a mechanical satisfaction over the finding of the Enquiry Officer without making any discussion on the issues raised by the petitioner in his second show cause to the enquiry report. Reference is made to the judgment of the Supreme Court reported in **(2010) 9 SCC 496 (Kranti Associates (P) Ltd. v. Masood Ahmed Khan)** which exhaustively explains the mandatory nature of such discharge which is an essential part of a decision making process.

The discussion above would confirm that the order impugned is resting on no evidence and has been passed without application of mind.

In result, the writ petition is allowed the order bearing memo No. 265 dated 11.11.2016 passed by State Government impugned at Annexure -1 is quashed and set aside. The petitioner is reinstated with full back wages and all consequential benefits.

(Jyoti Saran, J)

Bibhash/Ranveer

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.08.2018
Transmission Date	NA

