

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 22282 of 2014

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Bipin Bihari Mandal Son of Sri Bhudev Mandal, Resident of Village - Nijhari, Post Office - Bharatshila, 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, Banka.
4. The Deputy Development Commissioner, Banka.
5. The Additional Collector, Banka.
6. The Sub Divisional Magistrate, Banka.
7. The District Panchayat Raj Officer, Banka.
8. The Block Development Officer, Phullidumar.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Sanjeev Kr & Rajeev Shekhar, Advocates
For the S t a t e : Mr Deepak Kumar, AC to SC V

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 17-01-2018

Heard counsel for the petitioner and the respondents.

2 While the petitioner was posted as a Panchayat Secretary, some allegation was leveled against him for demanding illegal gratification in the matter of appointment of *Panchayat Shikshak*. The petitioner, thereafter, was alleged to have been caught red handed in a trap case while accepting illegal gratification. Pursuant thereto and in respect of the same allegations, a charge memo vide *Prapatra Ka* dated 30.01.2014 was issued to the petitioner. The petitioner submitted his written defence. Thereafter, the proceedings were conducted. The petitioner's case is that the



findings of the Enquiry Officer dated 08.03.2014 holding the charges proved has been arrived at contrary to the procedure prescribed under the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for brevity, *Bihar CCA Rules*), specifically Rule 17 (14) thereof. He submits that even though Presenting Officer has been appointed, no evidence was led by the said Presenting Officer. From the enquiry report, he has pointed out that the findings have been recorded against him relying on only two documents which are dated 23.02.2011 (the first information report lodged in the vigilance case and suspension order dated 21.01.2014 issued pursuant to the petitioner's arrest in the said case). Other than these two documents, which are parts of the criminal proceedings and which are yet to be decided, no evidence, oral or documentary, have been produced in the proceedings.

3 This Court would first examine whether the said two documents relied on by the Enquiry Officer can form the basis of such grave consequences against the petitioner as has been inflicted upon him. Such grave consequence has been inflicted upon him as a result of the said enquiry report being dismissal of petitioner from service which has been directed by the Disciplinary Authority by order dated 30.04.2014.

4 At this juncture, this Court would refer to the decision rendered in the case of *Roop Singh Negi –Versus- Punjab National*



Bank & Others, (2009) 2 Supreme Court Cases 570 wherein taking note of such similar circumstances where reliance was placed by the Enquiry Officer on the first information report and documents in relation to the parallel criminal proceedings, the Apex Court has held in paragraph 14 as follows:

“14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The enquiry officer performs a quasi judicial function. The charges leveled 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 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.” (Emphasis is supplied)

5 The said evidence, as noticed above, is wholly unreliable and cannot be treated as any evidence. Further, case of the petitioner is that even those documents have not been proved in accordance with Rule 17 (14) of the Bihar CCA Rules.

6 In view of the aforesaid circumstances, the petitioner has specifically made out a case in the writ petition that this is a case of no evidence. The records also reveal that no oral or documentary evidence has been adduced by the Presenting Officer so as to bring home the charge of guilt against the petitioner. The response of the



State in the counter affidavit gives rise to an admitted position in this respect. In paragraph 35 of the counter affidavit, while responding to the petitioner's assertion regarding the findings being based on no evidence, State has responded in a cryptic manner by saying that it is partially correct and requires no comment.

7 In view of the aforesaid admitted position, which emerges from the pleadings, 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 08.03.2014 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 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.”

8 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.

9 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 08.03.2014 is hereby quashed as also the consequential action taken thereupon by issuance of the order of punishment dated 30.04.2014 bearing Memo No 413 which cannot be sustained in view of quashing of enquiry report.

10 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.

11 The writ petition is allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.01.2018
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