

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25327 of 2013

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BIRENDRA PANDEY SON OF LATE LAXMAN PANDEY RESIDENT OF
VILLAGE- SIHARI, P.S.- HASPURA, DISTRICT- AURANGABAD,
POSTED AS CLERK, CIVIL COURT, BHABHUA, KAIMUR.

... .. Petitioner/s

Versus

1. The High Court Of Judicature At Patna Through The Registrar General.
2. The Registrar (Administration), High Court of Judicature At Patna.
3. The Judge Incharge Administration, Civil Court, Kaimur At Bhabhua.
4. The Registrar, Civil Court, Kaimur At Bhabhua.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Aditya Narain Singh, Advocate
	:	Mr. Uday Pratap Singh, Advocate
	:	Mr. Prashant Singh, Advocate
	:	Mr. Kundan Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Piyush Lall, Advocate

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 27-06-2018

Heard the parties.

2. This writ petition under Article 226 of the Constitution of India has been filed for setting aside the enquiry report dated 18.01.2004 by which Enquiry Officer has held charge Nos. 1 and 2 as proved against petitioner and order dated 19.01.2009 passed by District & Sessions Judge (Disciplinary Authority), Kaimur at Bhabhua by which punishment of reduction to a lower scale in time scale of pay with cumulative effect has been imposed against petitioner and order passed by Patna High Court dismissing the appeal of petitioner and enhancing the order of punishment issued on 20.09.2013 by the District &



Sessions Judge, Kaimur at Bhabhua by which petitioner has been dismissed from service.

3. Briefly stated, the facts of the case is that petitioner was appointed in the year 1981 on the post of Clerk, Civil Court in the district of Rohtas at Sasaram and was transferred on the same post in Civil Court, Bhabhua. Petitioner passed Hindi noting and drafting examination on 16.12.1988 and also passed departmental examination held on 30.06.1985 for Court Rules Part-I and Part-II and Court fee Stamp and Indian Stamp Act on 21.07.1985. Petitioner had unblemished service record.

4. The District Judge, Kaimur at Bhabhua by his letter dated 08.10.2001 sought an explanation from petitioner as to how a huge amount has been deposited in his account bearing No. 9284 and 3260 maintained with Bhojpur Rohtas Gramin Bank, Bhabhua and State Bank of India, Bhabhua. Petitioner submitted a detailed explanation on 15.10.2001 giving the details of amount under various accounts.

5. Petitioner received memo dated 01.05.2002 along with article of charges along with anonymous complaint made against petitioner. On 08.05.2002 the 1st day of enquiry proceeding he made a representation for legible copies of documents enclosed with articles of charge but same was never



provided to petitioner. Petitioner filed his reply on 24.06.2002.

6. Memo of charge did not contain any list of witnesses or list of documents to be produced during the departmental proceeding. Petitioner vide petition dated 17.08.2002 demanded legible copies of complaint and list of documents and witnesses on basis of which department sought to prove the charges but the required documents were never provided to petitioner. Memo of charge did not contain statement of facts on basis of which Department proposed to establish charge against petitioner.

7. Petitioner filed an information petition dated 09.09.2002 which was replied on 11.02.2003 with an information that basis of charge was an anonymous complaint and no other document relating to charge was available on record.

8. The initiation of departmental proceeding itself was bad as there was no material before the Disciplinary Authority on basis of which decision to initiate departmental proceeding was taken. Petitioner was show caused to explain the deposits made by him into bank accounts on the basis of anonymous complaint made to High Court that petitioner has amassed crores of Rupees in his two accounts but as a matter of fact



deposit in two accounts of petitioner were found to be in thousands. The Disciplinary Authority himself had called for details of bank account from the bank and which was provided to him but said statements of bank which was the basis of framing of charge was not made enclosures in memo of charge framed against petitioner neither same was sent to Enquiry Officer by the Disciplinary Authority. Those bank accounts were obtained by the Disciplinary Authority during preliminary investigation made against petitioner. Petitioner demanded preliminary enquiry report on basis of which decision was taken for initiation of proceeding but same was not provided, as such the initiation of enquiry itself was vitiated. This Court in case of Hari Sharan Thakur Vs. State of Bihar & Ors since reported in 2008(2)PLJR 49 in para 8 has held as follows:-

“8. Is settled law in service jurisprudence that in a departmental enquiry and/or a departmental proceedings, if there be any preliminary or primary investigation on basis of which a departmental enquiry or departmental proceedings is taken, the delinquent is mandatorily required to be given a copy of such preliminary or primary investigation report, failing which the entire proceedings are vitiated. It has been held that in that event serious prejudice is caused to the delinquent that he does not have full information of the case that he is required to meet. If an authority be needed for the purpose,



reliance may be placed upon the judgment of the Apex Court reported in Union of India and Ors. V. Md. Ibrahim”.

9. Petitioner had filed a writ application being C.W.J.C. No. 13893 of 2002 against the initiation of departmental proceeding without providing legible copies of the documents to the petitioner which was disposed of by order dated 07.07.2003 with direction to conclude departmental proceeding within eight months and supply copies of documents as demanded by petitioner. However ignoring the direction of High Court proceeding was concluded after 10 years and no petition was filed to extend the time granted by High Court.

10. It has been contended on behalf of the petitioner that on 28.11.2003 and 29.11.2003 the list of witnesses were not provided to petitioner and witnesses on their own volition appeared before the Enquiry Officer and their statement was recorded and petitioner was asked to cross examine them. Petitioner filed a protest petition in the manner department proceeding was being conducted against the prescribed procedure.

11. Altogether 16 witnesses were examined before the Enquiry Officer without providing a list of witnesses to the petitioner. After closure of evidence petitioner filed a written



argument on 16.02.2004 and case was fixed on 28.06.2004 for passing the final order but same was passed on 18.12.2004.

12. The District & Sessions Judge, Bhabhua (Disciplinary Authority) issued 2nd show cause notice to the petitioner after lapse of three years from the date of submission of enquiry report by the Enquiry Officer vide memo dated 05.01.2008 but enquiry report was not enclosed with 2nd show cause notice, however, petitioner submitted his reply on 14.02.2008 and also filed written argument on 23.09.2008, 25.09.2008 and 30.09.2008.

13. After giving personal hearing to petitioner and on conclusion of argument the District Judge, Bhabhua (Disciplinary Authority) passed an order of punishment dated 19.01.2009 holding petitioner guilty of 1st two charges and was awarded punishment of reduction to a lower stage in time scale of pay since the date of order with cumulative effect and he will not be posted on a responsible post for five years from the date of order.

14. It has been contended on behalf of the petitioner that Disciplinary Authority has relied upon many facts which were not part of charge or came during the enquiry proceeding but



were extraneous materials upon which the Disciplinary Authority has arrived on finding that petitioner is guilty of two charges.

15. It has been further submitted that Disciplinary Authority has taken extraneous materials while considering the enquiry report and has placed reliance upon materials which were not part of enquiry proceeding and as such the order passed by the Disciplinary Authority also stands vitiated for considering extraneous materials which were not part of enquiry proceedings. In para10 of counter affidavit filed on behalf of respondent No. 3 the allegation of petitioner that the order of disciplinary authority is based on extraneous materials has been admitted.

16. Petitioner preferred an appeal before the High Court against the order of punishment of Disciplinary Authority on 17.02.2009. Petitioner received memo dated 24.04.2012 by which it was intimated that appellate authority, Patna High Court had dismissed appeal preferred by petitioner. It was further resolved by Patna High Court that punishment imposed against petitioner was inadequate and petitioner was directed to show cause within 15 days with respect to enhancement of punishment to a major penalty. Petitioner submitted his reply on



09.05.2012 and again on 05.08.2013.

17. Petitioner received order dated 20.09.2013 issued by the District and Sessions Judge, Kaimur at Bhabhua communicating to petitioner that he has been dismissed from service by the Patna High Court on its administrative side.

18. A counter affidavit has been filed on behalf of respondent No. 3 in which it has been stated that enquiry proceeding was initiated against petitioner on direction of Patna High Court vide letter dated 20.03.2002. Proceeding was initiated on basis of anonymous complaint but same was accompanied with several papers and High Court felt necessity of enquiry into the matter. Petitioner had filed C.W.J.C. No. 13893 of 2002 which was disposed of on 07.07.2003 and writ petitioner had received copy of complaint on 01.05.2002 and further in compliance of order fresh copy of page Nos. 47 and 48 of the writ petition was supplied to the learned counsel for the petitioner.

19. It has been further stated that on the basis of statement received from concerned bank regarding transaction made in account No. 3260 and 9284 and explanation was sought from petitioner asking him to explain transaction/deposit of huge amount in his account.



20. On consideration of his explanation and details of deposits in the concerned account the Disciplinary Authority being dissatisfied with the explanation submitted his report to Patna High Court which necessitated initiation of departmental proceeding. Preliminary enquiry was conducted on the basis of statement of concerned account and explanation submitted by petitioner and no oral evidence was collected as such there was no occasion for supply of the same. The enquiry has been conducted as per prescribed procedure and all documents were supplied to petitioner along with article of charge on 01.05.2002.

21. It has been further submitted that all 16 witnesses appeared before the Enquiry Officer Suo Motu and made prayer that they want to depose in the proceeding. The Enquiry Officer rightly allowed the witnesses to give their evidence which is apparent from the order dated 28.11.2003. All witnesses were cross-examined by the petitioner. The Enquiry Officer has considered and appreciated the evidence on record as well as defence of petitioner and found charge Nos. 1 and 2 proved and charge Nos. 3 and 4 as not proved. The Disciplinary Authority issued 2nd show cause to petitioner along with enquiry report and after receiving the reply of petitioner against the finding of



Enquiry Officer has passed the order after due consideration of evidence on record and defence of petitioner.

22. It has been submitted on behalf of petitioner that article of charges dated 01.05.2002 as framed against petitioner are vague and unspecific. The memo of charge does not contain statement of facts or the list of witnesses or documents on basis of which charges framed were sought to be proved. The articles of charge as framed against petitioner are being reproduced below:-

I, N.K. Singh, District Judge, Kaimur at Bhabhua, charge you/Sri Virendra Pandey, Clerk, Civil Court, Bhabhua, as follows:-

1. That it is alleged that you had indulged yourself in the affairs of a chit fund company which was running in the name and style as “KRISHI EXPORT COM.COMP. at Bhabhua without taking prior permission of the department and thereby, violated the established norms of Bihar Government Servants Conduct Rules.

2. That it is also alleged that when the said company left the place by grabbing the amounts of its depositors you obtained huge amount from the company to get the cases lodged against the said company by its depositors hushed up and thereby you



acquired huge amounts as it appears from your bank accounts bearing No. 3260 (SBI Bhabua) and 9284 (Bhojpur Rohtas Gramin Bank), Bhabua.

3. That it is also alleged that you have taken bribe to be paid to some judicial officers to get the cases lodged against the said company disposed of and in that consequences you approached the Dy. S.P. and other police officials, too.

4. That it is alleged that you have got yourself associated with some veteran criminals, facilitated them in their criminal activities like kidnapping etc. and made yourself involved in such criminal activities.

Therefore, you are, hereby directed to submit **written report within a week before E.O. in your defence if any,** and also state as to whether you like to be heard in person or through pleader. (emphasis is mine)

District Judge, Kaimur
at Bhabua

23. The above memo of charge was accompanied by one anonymous complaint made to the Patna High Court and except said complaint no other document was enclosed with memo of charge. No statement of facts or imputations of misconduct formed the part of memo of charge. Perusal of charge it appears



that same is vague indefinite and unspecific and no chargesheeted employee could file any effective reply against such memo of charge.

24. The Apex Court in the case of Anant R. Kulkarni Vs. Y.P. Education Society and Ors since reported in (2013) 6 SCC 515, has held as follows:-

“16. Where the charge-sheet is accompanied by the statement of facts and the allegations are not specific in the charge-sheet, but are crystal clear from the statement of facts, in such a situation, as both constitute the same document, it cannot be held that as the charges were not specific, definite and clear, the enquiry stood vitiated. Thus, nowhere should a delinquent be served a charge-sheet, without providing to him, a clear, specific and definite description of the charge against him. When statement of allegations are not served with the charge-sheet, the enquiry stands vitiated, as having been conducted in violation of the principles of natural justice. The evidence adduced should not be perfunctory; even if the delinquent does not take the defence of, or make a protest that the charges are vague, that does not save the enquiry from being vitiated, for the reason that there must be fair play in action, particularly in respect of an order involving adverse or penal consequences. What is required to be examined is whether the delinquent knew the nature of accusation. The charges should be specific, definite and giving details of the incident which formed the basis of *charges* and no *enquiry* can be sustained on vague charges.

25. The Disciplinary Authority after framing of charge served article of charges through letter dated 01.05.2002 to the delinquent and has further directed petitioner to submit his reply to



the memo of charge to the Enquiry Officer within three months which is not permissible. The reply to the memo of charge has to be considered by the Disciplinary Authority and if he is not satisfied with the reply and decides to continue the proceedings then he could either himself conduct the enquiry or appoint Enquiry Officer to conduct the enquiry. This Court in case reported in PLJR 2018 (1) 91 has held that defence statement of the delinquent has to be considered by the Disciplinary Authority himself and same cannot be delegated to Enquiry Officer and as such the enquiry proceeding stands vitiated from its inception.

26. This Court in case of Rama Shankar Chaudhary Vs. State of Bihar & Ors. Since reported in 2018 (1) PLJR 91 in paragraph No. 8 relevant extract of which is quoted below:-

“Rule 17(3) of "the Rules" casts an obligation on the Disciplinary Authority to draw a charge against a delinquent Government servant or cause it to be drawn up against the officer delinquent. Sub-rule (4) thereof further mandates the delivery of such charge memo so drawn up either through the Disciplinary Authority or through an officer duly authorized. The obligation cast on the Disciplinary Authority does not stop here rather he has yet to satisfy himself whether the explanation so forwarded by a delinquent on the proposed charge, requires an enquiry by the Enquiry Officer or requires a closure. This power exclusively



vested in the Disciplinary Authority under Rule 17(4) cannot be delegated.

In the present case this mandatory obligation cast on Disciplinary Authority has been flouted as confirmed from the letter dated 1.2.2008 (Annexure-2) issued by the Enquiry Officer directing the petitioner to file his reply on the charges before him. This is a gross statutory violation and has been commented upon by a Division Bench of this Court in a judgment reported in **1996 (2) PLJR 95 (Ravindra Nath Singh vs. Bihar State Road Transport Corporation)** when the Division Bench has expressed the following opinion at paragraph 6 of the judgment:

"6.The Enquiry Officer is not the competent authority to consider the reply to the charges. It is for the disciplinary authority to consider the reply to charges and on consideration of the causes shown in the reply to decide as to whether to close or to continue with the proceedings by holding domestic enquiry into the charges."

(emp

hasis is mine)

27. The Enquiry Officer is not permitted to collect any material from outside sources during the conduct of enquiry. In the midst of proceeding the Enquiry Officer suo motu called the balance sheet from SBI Branch, Bhabua in enclosed envelop in respect of account No. 3260 and same was marked as Exhibit and on basis of which Enquiry Officer has based his finding. The Enquiry Officer has also in midst of proceedings called file of some criminal proceedings to ascertain the charges against petitioner and such procedure



cannot be adopted by the Enquiry Officer during the departmental proceeding as there is no such provision under procedure rules. The procedure under CCA rules are to be followed in conduct of departmental proceedings against the employees of Civil Courts. The Enquiry Officer recorded evidence of 16 witnesses to appear Suo Motu before the Enquiry Officer and same was not permissible and thereafter Enquiry Officer asked petitioner to submit his reply to the four questions.

(i) Whether the petitioner was employed in the Krishi export commercial corporation on any post.

(ii) Whether the petitioner has issued any cheque to any account holder of the said corporation on behalf of Krishi export commercial corporation.

(iii) The petitioner was directed to explain about the money deposited and withdrawn from the BRGB,A/C No. 9284.

(iv) The petitioner was directed to explain about the amount of money deposited and withdrawn in the joint account of petitioner and his wife in State Bank of India of Bhabua A/C No. 3260.



28. In a Departmental proceeding the department has to prove the charges against delinquent on the basis of oral and documentary evidence produced before the Enquiry Officer and petitioner has not to establish his innocence. The onus of the department to prove the charges cannot be shifted on delinquent to disapprove the charges to disapprove the charges. Petitioner cannot be asked to give evidence against him.

29. Enquiry Officer has to conduct enquiry in a fair and impartial manner. The burden to prove charges is on Presenting Officer who represents department. The Apex Court in case of State of Uttar Pradesh Vs. Saroj Kumar Sinha since reported in 2010 (2) SCC 772 in paragraph No. 28 has outlined the role of enquiry officer in departmental proceeding.

“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.”

30. The Apex Court has set aside the enquiry proceeding for non-compliance of mandatory provisions of not providing alongwith memo of charge a list of name of oral witnesses as well as documentary evidences. The Apex Court in Bilaspur Raipur Kshetriya Gramin Bank and Ors Vs. Madanlal Tandon, since reported in (2015) 8 SCC 461 para 5 and 9

“5. Aggrieved by aforesaid decision, the appellants preferred writ appeal, wherein Division Bench of the High Court, after perusing the record, found that although the show cause notice was served along with 17 charges, but no documents were supplied along with the show cause to the respondent. Even the list of documents sought to be relied during the inquiry was not supplied along with the show cause.

The Division Bench opined that it is trite law that when a delinquent employee is facing disciplinary proceeding, he is entitled to be afforded with a reasonable opportunity to meet the charges against him in an effective manner. If the copies of the documents are not supplied to the concerned employee, it would be difficult



for him to prepare his defence and to cross-examine the witnesses and point out the inconsistencies with a view to show that the allegations are false or baseless.

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”.

31. For the reasons as stated above the enquiry proceeding as well as findings of enquiry officer is vitiated and not sustainable and accordingly set aside.

32. This Apex Court in Coal India Ltd. Vs. Ananta Saha since reported in 2011 (5) SCC 142 has held in paragraph No. 32 and 33 as follows:-

“32. It is a settled legal proposition that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same. In such a fact situation, the legal maxim *sublato fundamento cadit opus* is applicable, meaning thereby, in case a foundation is removed, the superstructure falls.

33. In *Badrinath v. Govt. of T.N.* this Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle of consequential order which is applicable to judicial and quasi-judicial proceedings



is equally applicable to administrative orders”.

33. As a result the order passed by Disciplinary Authority as well as appellate authority is also not sustainable and accordingly set aside.

34. Writ petition is allowed. Petitioner is directed to be reinstated in service with all consequential benefits and continuity of service with 50% back wages from date of dismissal to the date of reinstatement within three months from date of receipt/production of a copy of this order. However, this order will not preclude the Disciplinary Authority from initiating fresh proceeding against the petitioner in accordance with law.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	16.08.2018
Transmission Date	N.A.

