

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11128 of 2016

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Mohan Prasad Srivastava Son of Late Vishwanath Prasad resident of village -
Dhewahan, Police Station Kanti, District - Muzaffarpur

.... Petitioner

Versus

1. The State of Bihar
 2. The Commissioner, Tirhut Commissioner, Muzaffarpur
 3. The District Magistrate, Muzaffarpur
 4. The Senior Deputy Collector, Muzaffarpur
 5. The Additional Collector, Muzaffarpur
 6. The Assistant Collector - Cum - Assistant Magistrate (Training), Muzaffarpur
- Respondents
- =====

Appearance :

For the Petitioner/s : Ms. Mahasweta Chatterjee, Adv.

For the Respondent/s : Mr. Krishna Chandra, AC to GA-12

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 28-06-2018

Heard Ms. Mahasweta Chatterjee, learned counsel for the
petitioner and Mr. Krishna Chandra, learned AC to GA-12, for the
State.

The petitioner prays for a writ in the nature of Certiorari for
quashing the order bearing Memo No. 359 dated 30.1.2016 of the
Collector, Muzaffarpur, whereby he has been awarded punishment of
compulsory retirement in exercise of power vested under Rule 14(ix)
of the Bihar Government Servants (Classification, Control and
Appeal) Rules, 2005 (hereinafter referred to as ‘the Disciplinary
Rules’). The petitioner alongside also prays for quashing of the order
dated 11.4.2016 passed by the Commissioner, Tirhut Division,
Muzaffarpur in Service Appeal No. 29/2016, whereby the appeal has



been rejected.

The facts of the case as noted from the writ petition is that the petitioner was proceeded for acts of alleged misconduct by service of a charge memo, a copy of which is enclosed at Annexure 4 and Annexure 6 to the writ petition. It is not known as to why the same charge memo dated 22.3.2014 was served on the petitioner twice seeking his response. The documentary evidence relied upon together with the oral evidence also forms part of the charge memo served upon the petitioner. The petitioner filed his reply to the charge, each time the same was served upon him, copies of which are at Annexures 5 and 7 to the writ petition. The petitioner has denied the allegations. The matter was enquired into and the enquiry report is at Annexure 9 upholding the charges while rejecting allegation of financial irregularity. The petitioner was put on second show cause to which he replied but has been met with the order of compulsory retirement passed by the Collector bearing Memo No. 359 dated 30.1.2016 at Annexure 12 and which has been confirmed in appeal by the Commissioner, Tirhut Division, Muzaffarpur when Service Appeal No. 29/2016 of the petitioner has been dismissed vide order on 11.4.2016 and is impugned at Annexure 13 to the writ petition.

The short submission made by Ms. Chatterjee, learned counsel for the petitioner, to question the enquiry report as well as the



orders impugned is that it is resting on no evidence, inasmuch as even if oral and documentary evidence finds discussed in the charge memo, neither oral nor any documentary evidence was led during the course of enquiry. In support of her submission learned counsel has relied upon the order sheet of the enquiry proceeding, the complete text of which is enclosed at Annexure 8 and it is in reference thereto that it is submitted that while on most of the dates, the Presenting Officer did not chose to appear, having registered appearance after several directions by the Enquiry Officer on 19.2.2015 that on the same date and simply on hearing the Presenting Officer, the Enquiry Officer reserved the orders in the matter without reminding the Presenting Officer of his obligation to support the charges by leading evidence oral or documentary in terms of the mandatory provisions underlying 'the Disciplinary Rules'.

The point is well taken and though attempt is made by Mr. Chandra, learned State Counsel, to defend the impugned orders on grounds that the act complained of demonstrates rather a casual approach as well as reflects financial irregularity on the part of the petitioner in maintaining the accounts as well as in deposit of revenue receipt but he is not in a position to dislodge the argument of Ms. Chatterjee that no evidence of any nature was led by the Presenting Officer to support the charges.



Rule 17(xiv) is self eloquent and well discusses the onus cast on the Presenting Officer to prove the charge in the disciplinary enquiry by leading evidence. Rule 17(xxiii) is also a reminder to the Enquiry Officer as to the manner of preparation of the enquiry report but unfortunately neither the Presenting Officer nor the Enquiry Officer has discharged their respective obligation as cast in 'the Disciplinary Rules' and even the disciplinary authority as well as the appellate authority have not bothered to satisfy themselves on this mandatory procedure. Since the order sheet in the disciplinary enquiry itself is a conformity of the arguments advanced on behalf of the petitioner regarding violation of the statutory procedure underlying 'the Disciplinary Rules, I do not need to detain myself any further to hold that the enquiry report as well as the orders impugned, stands vitiated on this count.

In consequence the enquiry report prepared by the Enquiry Officer dated 24.2.2015 impugned at Annexure 9 together with the consequential actions taken by the disciplinary authority to serve show cause notice dated 3.10.2015 impugned at Annexure 10, the order of punishment of compulsory retirement bearing Memo No. 359 dated 30.1.2016 impugned at Annexure 12 and the order passed by the appellate authority dated 11.4.2016 impugned at Annexure 13 are held per se illegal and are accordingly quashed and set aside. As a



consequence, the petitioner stands reinstated on his post.

The matter is remitted back to the Enquiry Officer for recording his opinion afresh after holding enquiry in the manner prescribed under ‘the Disciplinary Rules’ enabling the statutory authorities for taking the enquiry to logical conclusion in accordance with law. The choice entirely rests with the disciplinary authority. In so far as the payment of arrears of salary is concerned, it would govern by the outcome of the proceedings.

The writ petition is allowed with the directions above.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.07.2018
Transmission Date	NA

