

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13213 of 2014

Ashok Kumar Pandey Son of Late Ramanuj Pandey Resident of Village-
Bhaluhan, P.O- Hethua, Rajpur, P.S.- Rajpur, District- Buxar.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary finance- Cum- Disciplinary Authority, Department of Finance, Old Secretariat, Patna
3. The Joint Secretary to the Government, Department of Finance, Old Secretariat, Patna.
4. The Enquiry Officer- cum- Secretary, Department of Finance, Old Secretariat, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Akashdeep
		Mr. Shyameshwar Kr. Singh
For the Respondent/s	:	Mr.Md. Raisul Haque SC 4

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 09-07-2019

Heard counsel for the petitioner as well as counsel for the State.

Short submission by Mr Akashdeep counsel appearing for the petitioner is that he has been visited with punishment dated 07.11.2014 whereby he has been awarded punishment of removal from service which was not a bar for future appointment. Appeal of the petitioner against the said order has also been rejected on 06.05.2015 by the appellate authority under memo no. 4234.

Referring to enquiry report submitted by Enquiry Officer on 10.06.2014, he points out that proceedings were fixed on various dates such as 14.03.2014, 10.04.2014, 21.04.2014 and



29.04.2014 which have been mentioned in the enquiry report but on none of these dates, any proceeding was conducted under Rule 17(14) of the Bihar CCA Rules. Neither any documentary nor oral witness was produced by Presenting Officer on any of these dates. Petitioner had submitted his written statement in his defence on 29.04.2014 as per enquiry report. After that enquiry report does not even suggest that Presenting Officer had presented the case on behalf of the department.

In fact, Enquiry Officer himself on the basis of the materials available on record, has concluded charges to be proved. Enquiry Officer also recorded that the petitioner had requested for ensuring appearance of the complainant who had alleged that the petitioner had been caught red handed while accepting bribe which he had solicited for grant of licence to his daughter. Even the complainant has not been examined. From charge memo, it appears that the only material, copy of which had been given to the petitioner, is letter issued by the Superintendent of Police, Vigilance Investigating Bureau. The same is obviously a letter forming part of Criminal Investigation Department. The said document having regard to the decision of the Apex Court in the case of Roop Singh Negi vs. Punjab National Bank & ors reported



in (2009) 2 SCC 570 could not be treated to be a valid piece of evidence to be considered by Enquiry Officer.

Proceeding before the Enquiry officer was required to be conducted in accordance with law. Procedural fairness cannot be sacrificed merely on consideration of gravity of allegation. Onus, is upon the allegationist/ department to prove the charges on basis of some material and in compliance with the principles of natural justice which is manifested in the procedure contained in the Bihar CCA Rules, 2005.

Inquiry report, order of the disciplinary authority and order of appellate authority all clearly reflect that Enquiry Officer had proceeded to record the evidence of the departmental witnesses against the petitioner and examine the materials on its own for arriving at conclusion of petitioner's guilt. No Presenting Officer has been appointed in the proceeding. Inquiry report reveals that no submissions were made by the Presenting Officer. He did not lead any evidence or examine any witness. Entire function of the Presenting Officer was discharged by the Enquiry Officer himself.

Conclusion of the Enquiry Officer by himself examining the documents and witnesses in support of the department cannot be countenanced. Procedure adopted by the



Enquiry officer is in violation of Rule 17(14) of the Bihar CCA Rules. The Apex Court in the case of State of Uttar Pradesh vs. Saroj Kumar Sinha reported in (2010) 2 Supreme Court case 772 has held that enquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. Conduct of the Enquiry Officer in the instant case as born from records of the enquiry by acting as agent of the department and himself examining the evidence as a prosecutor and thereafter to decide the issue, leaves a lot to be desired in terms of procedural fairness.

In light of judgment of the Apex Court in the case of Saroj Kumar Sinha(supra), the impugned order is not sustainable in law. There is also nothing on the record to show that Disciplinary Authority has considered this aspect of the matter.

In the instant case, having noticed the infirmity in the procedure adopted by the Enquiry Officer, this court would also conclude that the order of punishment dated 07.11.2014 issued by the Principal Secretary-cum- Disciplinary Authority under Memo no. 10084 is clearly unsustainable in the eye of law as being product of a procedure in violation of principle of natural justice and Bihar CCA Rules, 2005. The same is, therefore, quashed.

Appellate Authority vide order dated 06.05.2015, issued under the signature of Principal Secretary has merely affirmed the



illegal finding of the Disciplinary Authority based on illegal procedure. In the circumstance, the same must also collapse and is hereby quashed. As a result of quashing of orders, petitioner would be entitled to get his consequential relief.

Writ petition is allowed.

Needles to say that it will be open to the authority to proceed afresh in accordance with law against the petitioner.

(Madhuresh Prasad, J)

s.hassan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	7.8.2019
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