

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 2013 of 2015

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Arun Kumar Son of Late Ram Phal Ram Resident of New Colony, Pakari,
Ara, P.S- Nawada Sadar, Town Ara, District - Bhojpur, at present posted as
Clerk , Child Development Project Office, Nawanagar, Buxar.

... .. Petitioner/s

Versus

1. The State Of Bihar through its Principal Secretary -cum- Secretary, Social and Welfare Department, Government of Bihar, Patna
2. The Director Integrated Child Development Service, Department of Social Welfare, Bihar, Patna.
3. The Deputy Development Commissioner, Bhojpur, Ara.
4. Assistant Director, Integrated Child Development Service, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr Akhilesh Dutta Verma, Advocate
For the Respondent/s : Mr Anuj Kumar, AC to GP XXIV

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 18-01-2019

Heard learned counsel for the petitioner as also the
learned counsel appearing for the State.

2 The short submission made by the learned counsel
for the petitioner is that the Enquiry Report, holding the charges
communicated under charge memo on *Prapatra "Ka"* on
12.09.2007 to be proved, is without reference to any evidence. It
is submitted that merely, by referring to a pre-trap memorandum,
the petitioner has been held guilty in the proceedings. None has
appeared to support the allegations or even the pre-trap



memorandum, which has been referred to by the Enquiry Officer in the Enquiry Report dated 24.03.2014.

3 The brief background is for the period, during which the petitioner was posted as a Clerk, a charge memo was communicated to him on 12.09.2007. The allegation was that the petitioner had demanded illegal gratification from Angan Bari Sevika for allowing payment of the honorarium due to her. Vigilance Police Station Case No 009 of 2007 was lodged on 19.01.2007 and the petitioner was taken into custody on the said allegations. After initiation of the proceedings, the same lingered for quite sometime.

4 Finally, the issue was once again revived by appointing a fresh Enquiry Officer under order dated 29.01.2014 issued by Director, Integrated Child Development Services (for brevity, *ICDS*). Pursuant thereto, the petitioner has appeared in the proceedings. The petitioner has also made a demand for certain documents in the proceedings and submitted his detailed written statement denying the charges and raising various infirmities in the charge memo issued to him. The Assistant Director, ICDS -cum- Enquiry Officer submitted Enquiry Report on 24.03.2014, that is on the same day when the petitioner has submitted his reply to the charge memo in light of the communication sent to him earlier.



5 Learned counsel for the petitioner submits that along with the charge memo issued to the delinquent vide Annexure 2 to the writ petition, no list of evidence, documentary or oral, has been communicated to the petitioner. It is, therefore, submitted that the charge memo has been issued in violation of the procedure prescribed under Rule 17 (3) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for brevity, *Bihar CCA Rules, 2005*). At this juncture, it would be relevant to take note of the provisions of Rule 17 (3) of the Bihar CCA Rules, 2005. Under the said Rules, the authorities are obliged to communicate the substance of the imputations of misconduct or misbehaviour which shall contain statement of all relevant facts and list of documents and witnesses upon which the charges are proposed to be sustained in the proceedings. The list of documents or witnesses upon which the charges are to be sustained in the proceedings have not been communicated to the petitioner in the charge memo. The show cause which the petitioner has submitted on 24.03.2014 also contain his request for supplying the documents which he wanted to produce in his favour. However, without making available copy of any document or list of witness upon which the charges are proposed to be sustained in a proceeding. The Enquiry Officer has submitted an Enquiry Report



holding the charge against the petitioner proved. The petitioner, thereafter, has been visited with the punishment of dismissal under Order dated 30.04.2014. The order of dismissal issued by the Disciplinary Authority dated 30.04.2014 records that second show cause was issued to the petitioner. The said fact is disputed by the petitioner in the instant proceedings as it is submitted that no second show cause was ever served upon the petitioner.

6 Be that as it may, the Enquiry Officer has not relied upon any evidence or witness while holding the charges proved against the petitioner and only a reference has been made to a pre-trap memorandum, which was prepared prior to the petitioner's arrest in the Vigilance Police Station Case No 009 of 2007 which by itself is not a reliable piece of evidence in light of the law laid down by the Apex Court in the case of *Roop Singh Negi -Versus- Punjab National Bank* reported in (2009) 2 Supreme Court Cases 570. Since the Enquiry Report does not contain any evidence whatsoever, the conclusions arrived at by the Enquiry Officer are unsustainable and contrary to the mandates of Rule 17 (14) of the Bihar CCA Rules, 2005 which requires that in the enquiry, oral and documentary evidence, by which the articles of charges are proposed to be sustained, are to be produced by or on behalf of the Disciplinary Authority. No such procedure has been adopted in



the instant proceeding. On the very same day on which the reply to charge memo has been submitted that is on 24.03.2014, the Enquiry Report has been prepared and submitted. There is no reference to any evidence other than the pre-trap memorandum. No witness has appeared in support of the case of the Department.

7 The conclusions of the Enquiry Officer are, therefore, held unsustainable as being based on no evidence, and product of a procedure in violation of the provisions of Rule 17 (3) as well as Rule 17 (14) of the Bihar CCA Rules, 2005.

8 From the records, another flaw, which appears, is non-service of the second show cause notice upon the petitioner. This plea has specifically been raised by the petitioner. Even the order of the Disciplinary Authority dated 30.04.2014 does not record that second show cause notice was ever served upon the petitioner though there is reference that second show cause notice has been issued to the petitioner. Issuance of the second show cause notice, by no stretch of imagination, can mean that the same has been served. Since there is no specific finding regarding actual service of the second show cause notice upon the petitioner, the findings of the Disciplinary Authority affirming the illegal order of the Enquiry Officer under the order of dismissal dated 30.04.2014 is also unsustainable in the eyes of law, and in view of



the facts recorded herein above. There appears to be a gross violation of the procedure in the entire proceedings conducted against the petitioner right from issuance of the charge memo up till the order of dismissal dated 30.04.2014.

9 The petitioner has also tried to highlight the aforesaid illegality in the procedure adopted by the Enquiry Officer and the Disciplinary Authority in his appeal filed before the Principal Secretary, Social Welfare Department, Government of Bihar, Patna. The Principal Secretary has merely reaffirmed the said illegal order issued by the Disciplinary Authority and by order dated 03.09.2014, the appeal of the petitioner has been dismissed by the Appellate Authority.

10 In view of the grave irregularity in the procedure adopted by the authorities in the proceedings conducted against the petitioner, the irresistible conclusion is that the order of punishment is unjust being in violation of the principles of nature justice as also in teeth of the provisions contained in the Bihar CCA Rules, 2005, as noticed above.

11 Learned counsel for the respondent-State, relying upon the averments made in the counter affidavit, has submitted that the entire proceeding against the petitioner has been



conducted after due opportunity and in accordance with the procedure prescribed under the Bihar CCA Rules, 2005.

12 The records are to the contrary as has been noticed herein above.

13 This Court would, therefore, quash the order of punishment of dismissal from service dated 30.04.2014 bearing Memo No 2672 issued by the Disciplinary Authority as also the order passed by the Appellate Authority dated 03.09.2014 whereby the appeal filed by the petitioner has been rejected.

14 The writ petition stands allowed.

15 The petitioner would be entitled to all consequential benefits.

16 Learned counsel for the State submits that liberty should be granted to proceed against the petitioner in accordance with law.

17 This Court would only observe that it would be open to the Authority to take any steps which the law may permit.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.01.2019
Transmission Date	NA

