

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.13200 of 2017**

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Sant Om Prakash, Son of late Sadho Prasad, Resident of Village- Bele  
Bakaur, P.S. Islampur, District- Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principle Secretary, Animal and Fish Resources Department, Government of Bihar, Patna.
2. The Director, Dairy Development Directorate, Bihar, Patna.
3. The Enquiry Officer Cum Deputy Director (Dairy) Dairy Development Directorate, Headquarter, Bihar, Patna
4. The District Dairy Development Officer, Madhubani, Animal and Fish Resources Department, Madhubani.

... .. Respondent/s

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**Appearance :**

For the Petitioner : Mr. Ranjeet Kumar, Advocate  
For the Respondents : Mr. Md. Khurshid Alam- AAG-12

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**  
**ORAL JUDGMENT**

**Date : 28-02-2019**

Heard the learned counsel for the petitioner and  
the respondent State.

2. The petitioner has challenged the enquiry report dated 27.04.2017 whereby two charges out of three framed against the petitioner has been found to be proved without examination of any witness; the order dated 11.08.2017 contained in Memo No. 1196 issued by the Director, Dairy Development Directorate, Animal and Fish Resources Department, Government of Bihar, Patna whereby the petitioner has been dismissed from service as also for a direction to reinstate the petitioner in service on



the post of Dairy Field Officer with all consequential benefits.

3. On a complaint by one Kranti Kumar before the Superintendent of Police, Vigilance Investigation Bureau, Muzaffarpur, alleging that the petitioner has been demanding Rs. 4000/- from him, a trap was laid and the petitioner was apprehended with the tainted money. As a result thereof, he was made accused in Vigilance P.S. Case No. 91 of 2011 under Section 7/13 (2) read with Sections 13(1)(D) of the Prevention of Corruption Act, 1988. The petitioner thereafter was suspended by order dated 05.01.2012 but the same was revoked and a departmental proceeding was initiated against the petitioner. The charge framed against the petitioner was of his having been caught on 27.12.2011 by the Vigilance Investigation Bureau while accepting Rs. 4000/- from Kranti Kumar and that he remained absent from duty from 27.12.2011. In the enquiry which ensued, no witness including Kranti Kumar was produced before the enquiry officer for establishing the charge. A second show cause notice was given to him, which was later amended but even before the service of such show cause notice, he was dismissed from service vide order dated 22.02.2014 issued under the signature of the Director, Dairy Development Directorate, Government of Bihar.



4. After the appeal of the petitioner was also dismissed, the petitioner preferred a writ petition before this Court vide C.W.J.C. No. 7245 of 2014. A bench of this Court, by order dated 10.03.2016, set aside the order of dismissal on the ground of non-supply of relevant documents, non-examination of witnesses and non-adherence of the procedure for serving the second show cause notice being violative of the provisions contained in Section 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005.

5. The aforesaid order of the Writ Court was challenged before a Division Bench of this High Court vide LPA No. 691 of 2016 and by order dated 09.08.2016, the Division Bench held that the Writ Court ought to have directed the disciplinary authority to start the proceedings against the petitioner afresh from the stage of framing of charge after supplying documents to the petitioner, giving him opportunity to examine officers. The matter was remitted/remanded for fresh consideration in case deemed fit by the department and if any proceeding was initiated, there was a further direction to conclude the same within a period of six months from the date of passing of the order.

6. It appears that pursuant to the order passed by the Division Bench in LPA No. 691 of 2016 referred to



above, the department directed for a re-enquiry vide order dated 29.08.2016 and a memo of charge also was served upon the petitioner on 29.08.2016.

7. What has been brought to the notice of this Court is that one Ajay Kumar Jha, the Deputy Director (Dairy), Dairy Development Directorate, Headquarter, Bihar, Patna, Animal and Fish Resources Department, Government of Bihar was appointed as enquiry officer whereas another officer was appointed as a presenting officer.

8. The charges which were two in number earlier were re-framed into three heads but without any difference.

9. It has been submitted on behalf of the petitioner that despite his asking for certain documents, the same was not provided to him and again, without examination of any witness, an enquiry report dated 24.07.2017 was submitted, finding the charges against the petitioner to be proved. After serving the petitioner a second show cause and accepting his reply thereto, the disciplinary authority, by order dated 11.08.2017, contained in Memo No. 1196, again dismissed the petitioner from service.

10. The aforesaid order is under challenge.



11. The major ground of assail is that the enquiry report dated 27.04.2017 was submitted by Sri Ajay Kumar Jha, the enquiry officer who subsequently was promoted to the post of the Director, Dairy Development Officer, Bihar and he only passed the order impugned dated 11.08.2017, though ostensibly, after obtaining the approval of the Secretary of the Department. Thus, it has been submitted that the conducting officer has, for all practical purposes, acted as the disciplinary authority also which is not permissible in the eyes of law. It has also been submitted on behalf of the petitioner that one representation/review was filed by the petitioner before the Minister, Animal and Fish Resources Department, Government of Bihar, Patna which though was dismissed but the order has not been communicated to the petitioner.

12. On the aforesaid score alone, the order impugned appears to be unsustainable in the eyes of law. A conducting officer cannot be a judge in his own cause as the enquiry report has been submitted by the enquiry officer who only appears to have taken a decision of accepting such report and subjecting the petitioner with the punishment of dismissal. Though it appears from the order impugned that after consultation with the departmental secretary, the aforesaid order was



communicated. But *prima facie*, it appears that the enquiry report as also the punishment have been given by one and the same person which cannot be accepted. The objectivity in the order of the disciplinary authority therefore becomes very suspect and this Court cannot countenance the same.

13. For the reasons aforesaid, the order dated 11.08.2017 is set aside.

14. The matter is remitted to the department for appointing another disciplinary authority before whom the enquiry report shall be placed, who after going through the reply given by the petitioner to the second show cause notice and other documents available on record, shall pass a fresh order in accordance with law, without being prejudiced or biased on any score whatsoever. The aforesaid exercise be concluded within a period of three months from the date of production of a copy of this order.

15. With the aforesaid direction/observation, the writ petition is allowed and disposed of.

**(Ashutosh Kumar, J)**

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