

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4644 of 2016

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Ashok Kumar , son of Late Jagan Singh, resident of Village-Okhraham, P.S.
Aurangabad, Bihar

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Divisional Commissioner, Magadh Division, Gaya
3. The District Magistrate-cum-Collector, Aurangabad
4. The Sub-Divisional Officer, Daudnagar, Aurangabad
5. The Anchal Adhikari, Daudnagar, Aurangabad

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Dr. Mayanand Jha, Mr. Anil Kumar Roy
For the State		Mr. Kumar Alok, SC 7

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

4 23-08-2019 Heard learned counsel for the parties.

The petitioner, at the irrelevant point of time, was posted as a Head Clerk in Circle Office, Daudnagar. It was complained against him that he was demanding a sum of Rs. 3000/- as bribe for issuance of S.I.O. for lifting food-grains under *Antyodaya* and B.P.L. Scheme. On the basis of the aforesaid complaint made by a PDS dealer, a raiding team was constituted by the Vigilance Bureau of the State Government. It is said that the petitioner was caught in a trap laid by the Vigilance Officials, while accepting the bribe, which led to registration of Vigilance P.S. Case No.



91 of 2009 on 08.10.2019, disclosing commission of the offences under Sections 7/8/13(2), 13/(1) (d) of the Prevention of Corruption Act. He was sent to judicial custody. Subsequently, he was placed under suspension by applying Rule 9(2) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for short 'the Rules'), under the orders of the District Magistrate, Auragabad with effect from the date of his arrest. A disciplinary proceeding was, therefore, initiated against him, with the issuance of a charge-sheet on 12.03.2011. An Enquiry Officer was appointed.

Indisputably, the charge sheet was served on the petitioner on 29.03.2011 and he was asked to file his reply by 07.04.2011.

This is not in dispute that the petitioner did not file his written statement of defence/reply.

It is the petitioner's case that he appeared before the Enquiry Officer on 07.04.2011 and requested him to make him available the documents in support of the charge and other related documents in order to enable him to take his defence effectively. There is no document, however, brought on record in support of this averment in the writ



application that any demand was ever made by the petitioner for supply of the documents before the Enquiry Officer submitted his report on 27.07.2011. The Enquiry Officer held the petitioner guilty of the charge framed against the petitioner. The disciplinary authority issued a second show cause notice on 30.06.2012, asking the petitioner to explain as to why he should not be dismissed from service, considering the gravity of the proved misconduct against him. A copy of the second show cause notice dated 30.06.2012 has been brought on record by way of Annexure-8 to the writ application. The petitioner submitted his reply to the second show cause notice on 25.07.2012.

It transpires that the petitioner had raised a grievance that the copy of the inquiry report was not supplied to him and he had made a demand for supply of the copy of the inquiry report of the Enquiry Officer. In the light of his request for supply of the copy of the inquiry report, through letter dated 20.05.2013, issued by the office of the District Magistrate, Aurangabad, a copy of the inquiry report was supplied to him. The disciplinary authority by order dated 28.01.2014, accepting the report of the Enquiry



Officer, has imposed upon the petitioner the punishment of dismissal from service. The order of the disciplinary authority has been brought on record by way of Annexure 12 to the writ application. The appeal preferred against the order of disciplinary authority has been dismissed by the Commissioner, Magadh Division, Gaya, by his order dated 28.12.2015. The orders of the disciplinary authority dated 28.01.2014 and the appellate authority dated 28.12.2015 are under challenge in the present writ application.

Assailing the impugned orders, learned counsel for the petitioner has submitted that it is evident from the report of Enquiry Officer that there was no witness examined and in the absence of any witness to prove the charge and the nature of charge, which was framed against the petitioner, could not be said to have been established in the absence of any witness. He has submitted that non-production of the witness to establish the charge has deprived the petitioner of his right to cross-examine the witness. He has further argued that the entire departmental inquiry has been held in violation of the mandatory statutory requirements under Rule 17 of the Rules. According to him, though such documents had been demanded by the



petitioner, which were in the custody of the respondents, for the purpose of setting up of effective defence, the said documents were not supplied to him. According to him, there is no order passed by the Enquiry Officer on the petitioner's application, demanding the documents for the purpose of setting up of his defence. He has further argued that evidently the report of the Inquiry Officer was not supplied to him before issuance of the second show cause notice. He contends, in that background, that he had to submit a representation/explanation against the second show cause notice without having been given an opportunity to see the report of the Enquiry Officer. He has submitted that the order of the disciplinary authority, imposing punishment of dismissal from service is, therefore, vitiated for violation of the principles of natural justice. He has next submitted that the disciplinary authority has passed the order mechanically and has done a formality of making a passing reference to the reply of the petitioner to the second show cause notice. On these grounds, learned counsel for the petitioner has attempted to convince this Court that the decision of the disciplinary authority needs interference by this Court. He has contended that the impugned order of the



appellate authority is equally bad, which does not take into account any of the grounds taken by the petitioner in his memo of appeal, in correct perspective.

Learned counsel, appearing on behalf of the State of Bihar, on the other hand, has argued that despite adequate opportunity having been given to the petitioner to submit his written statement/reply to the memo of charge, he failed to do so. He has contended that the petitioner cannot take a plea of violation of the principles of natural justice as he himself failed to avail the opportunity of denying the allegation made in the charge by replying to the memo of charge. He has also submitted that there has been substantial compliance of the principles of natural justice and the statutory requirements, prescribed under Rule 17 of the Rules. According to him, considering the seriousness of the charge against the petitioner, which had the potential of bringing down the image of the State administration, the imposition of punishment is justified, befitting the misconduct and the impugned order does not require interference, on technical ground.

I have perused the pleadings on record and the documents annexed thereto. Though, the learned counsel for



the petitioner had attempted to persuade this Court that the petitioner had requested for supply of the documents before conclusion of the enquiry on 27.07.2011, I do not find any such material available on record to support this plea. It is indicated in the report of the Enquiry Officer that the petitioner, in his letter dated 27.07.2011, had demanded supply of certain documents for the purpose of setting up his effective defence. The letter dated 27.07.2011 of the petitioner is there on record by way of Annexure-5 to this writ application. No letter of prior date has been brought on record to demonstrate that the petitioner had demanded the documents at any earlier stage.

This is also not in dispute that the petitioner was given adequate opportunity to submit his written statement of defence after the charge memo was served on him on 29.03.2011. He thus failed to specifically deny the charge by submitting his written statement of defence at the initial stage. However, in my opinion, non-filing of the written statement of defence by the petitioner itself could not be said to be a basis for the Enquiry Officer to record his finding, in respect of the charge framed against him.

Rule 17 of the Rules lays down in detail,



procedure for conducting a departmental inquiry. Clause (b) of sub-rule (5) of Rule 17 of the Rules states that if no written statement of defence is submitted by the Government Servant, the disciplinary authority may itself inquire into the articles of charge or may, if it thinks necessary to appoint an inquiry authority under sub-rule (2) of the Rule for the said purpose. Sub-rule (9) of the Rule 17 provides that if the Government Servant, who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the Inquiry Officer, the Inquiry Officer shall ask him whether he is guilty or has to say anything for his defence and if he pleads guilty to any of the articles of charge, the inquiry authority shall record the plea, sign the record and obtain the signature of the Government Servant thereon. Sub-rule 9 of the Rule 17 thus, specifically deals with the situation where a written statement of defence has not been filed by the delinquent and it requires the Inquiry Officer, in such circumstance, to ask the officer facing departmental inquiry to say as to whether he is guilty or has to say anything for his defence. Only in case he pleads guilty to any of the articles of



charge, the Inquiry Officer is required to record the plea, sign the record and obtain the signature of the Government Servant thereon.

It is not evident from the report of the Enquiry Officer whether any such opportunity was given to the petitioner by the Enquiry Officer during the inquiry. Secondly, this is an admitted fact that before the second show cause notice was issued to him, asking the petitioner to explain as to why major punishment of dismissal from service be not imposed upon him, a copy of the inquiry report was not supplied to him. This, in my opinion, is a major lapse on the part of the disciplinary authority. The supply of the report of the Enquiry Officer, considering the seriousness of the allegation against the petitioner, was essential requirement for a valid disciplinary proceeding. That having not been done, the impugned order of the disciplinary authority, in my view, vitiates. The order of the appellate authority also cannot be sustained for the said reason.

The impugned orders dated 28.01.2014, passed by the District Magistrate, Aurangabad (Annexure-12) and 28.12.2015, passed by the Divisional Commissioner,



Magadh Division, Gaya (Annexure-14) are hereby set aside.

The matter is remitted back to the Enquiry Officer to start from the stage of Rule 17(9) of the Rules.

The petitioner is restrained from taking any plea for submission of his written statement of defence as he had failed to submit any document, despite adequate opportunity having been given to him.

The District Magistrate, Aurangabad shall be at liberty to appoint a new Enquiry Officer, if the Enquiry Officer, who had earlier conducted the inquiry, is not available. The Enquiry Officer will be required to conclude the departmental inquiry within two months from the date of his appointment as Enquiry Officer. The petitioner shall be at liberty to demand supply of the document, as stipulated under Rule 17(12) of the Rules

Needless to say, the Enquiry Officer shall be at liberty to refuse to requisition such of the documents as are, in his opinion, not relevant to the case, as stipulated under proviso to Rule 17(12) of the Rules. Once the report of the Enquiry Officer is submitted, it is expected that the disciplinary authority shall act in a prudent way and take a final decision within two months thereafter. The petitioner



will be required to co-operate in the inquiry to be conducted afresh from the stage, as indicated in the present order. In case, he does not co-operate, the Enquiry Officer will be at liberty to proceed further, recording his non-co-operation.

On the point of reinstatement, I am of the view, considering the facts and circumstances and conduct of the petitioner in not filing his written statement of defence, that he shall be reinstated only for the purpose of facing the departmental inquiry and his further continuance will depend on the final decision of the departmental inquiry. It will be open for the competent authority to put the petitioner under suspension after his reinstatement in the light of the present order.

This application is allowed with the above observation and direction.

(Chakradhari Sharan Singh, J)

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