

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 4502 of 2015

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Bipin Bihari, Son of Late Chamari Singh, Resident of Mohalla - Vamika
Enclave, B-403, Murlichak Jagdeo Path, Patna- 14

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary
2. The Secretary, Rural Work Department, Bihar, Patna
3. The Additional Secretary, Rural Work Department, Bihar, Patna
4. The Engineer-in-Chief, Rural Work Department, Bihar, Patna
5. The Chief Engineer, Rural Work Department, Bihar, Patna
6. The Superintending Engineer, Rural Work Department, Work Circle, Gaya
7. The Additional Secretary, Establishment in-charge, Rural Work Department, Bihar, Patna
8. The Under Secretary, Account Section, Rural Work Department, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : M/s Amaresh Kr Sinha, Alok Chaubey, Advocates
For the Respondent/s : Mr U P Singy, AC to SC IV

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 10-05-2019

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

2 The petitioner, who was posted as a Junior Engineer, was arrested pursuant to a trap case by the Vigilance Department on 07.12.2012. First information report bearing Vigilance Police Station Case No 74 of 2012 was, thus, instituted. Allegation was that petitioner had solicited a bribe of Rs 15,000, which he was



caught accepting. The bribe is said to have been solicited for facilitating some pending payments from the Departed in favour of the contractor. However, the petitioner's defence is that prior to such complain being made by the contractor, petitioner, on 05.11.2012, had already lodged a complaint before the Executive Engineer, Nimchak Bathani, Gaya against the same contractor.

3 The Department, relying upon the allegations made in the vigilance case, framed the charge memo on Prapatra Ka. Departmental proceedings against the petitioner, thus, commenced by service of charge memo upon the petitioner on 30.08.2013. The charge memo contained the same allegations on basis of which the Vigilance Police Station Case No 74 of 2012 had been instituted against the petitioner.

4 The petitioner submitted his written statement in response to the charge memo. He has raised a requirement of various documents which were essential for preparing his defence. The written statement, fled by the petitioner, is Annexure 11 to the writ petition and the same is dated 05.09.2013. The specific case of the petitioner is that on the said demand raised for documents, the Department did not make available any of the documents. In fact, there was not even an order rejecting the petitioner's prayer for such documents and the proceedings commenced before the



Enquiry Officer who was the Engineer-in-Chief -cum- Additional Commissioner -cum- Special Secretary of the Rural Works Department, Bihar. One Shri Ravinder Rajak, Section Officer had been appointed as the Presenting Officer in the proceedings.

5 19.02.2014 was the first date on which the proceedings were fixed. On that day, from perusal of the proceedings of the enquiry (Annexure 16), it is apparent that there was just an adjournment till 03.03.2014. On 03.03.2014, the petitioner as well as the Presenting Officer were present. The petitioner was asked by the Enquiry Officer to submit his statement and, thereafter, on a request made by the petitioner, the proceedings were adjourned to 10.04.2014. On 10.04.2014, the petitioner appeared before the Enquiry Officer. The Presenting Officer also appeared. The Enquiry Officer records that the petitioner was asked whether he has submitted his written statement in response to which the petitioner contended that he had nothing further to add, in view of the earlier communication which he had sent to the Enquiry Officer on 05.09.2013. The Enquiry Officer, thereafter, proceeds to consider the petitioner's request dated 05.09.2013. He goes on to record that the documents requested for could not be supplied to the petitioner as they were



all documents arising out of criminal trial and the records were with the Vigilance Investigation Bureau.

6 Learned State Counsel has submitted that the Enquiry Officer has clearly informed the petitioner that since the documents requested were in the Criminal Court, it was not possible to give copies of the same. It is his submission that the petitioner was caught in the trap case red handed and such grave allegation cannot be treated with any leniency. The petitioner has been awarded the punishment in the circumstances and after affording opportunity in accordance with law. The order requires no interference by this Court.

7 From perusal of the enquiry report and the counter affidavit filed on behalf of the respondents, the admitted position that emerges is that no documents were supplied to the petitioner and without any document, the proceedings commenced. In the enquiry proceedings, the Presenting Officer was a mute spectator. From the enquiry report itself, it is apparent that whatever transpired was between the Enquiry Officer himself as well as the delinquent/petitioner. From the records, it is clear that proceedings suffered from procedural lapses. Petitioner's request for documents was not considered by the Enquiry Officer and, admittedly, no documents were supplied. The Presenting Officer



did not discharge his role to prove the charges. In fact, Enquiry Officer has discharged the role of the Presenting Officer. The enquiry, on the basis of these two infirmities itself, stands vitiated.

8 In addition to these two grounds, from the enquiry report, it is also apparent that no charges were proved against the petitioner. There appears to be a total non-compliance with the procedure prescribed under Rule 17 (14) of the Bihar CCA Rules, 2005. No documents were presented before the Enquiry Officer. No oral witness was examined in support of the charge, not even the complainant.

9 From perusal of the Enquiry Report itself, it seems the charges against the petitioner could not be established. In the circumstances, Enquiry Officer has shifted the onus on the delinquent and goes on to record a finding that having considered the matter, he was of the opinion that the delinquent could not produce any evidence to disprove the charges of accepting Rs 15,000/- as bribe. On the basis of such consideration, Enquiry Officer has recorded a finding of the charges being proved.

10 From the proceedings, it is apparent that the Enquiry Officer has conducted the proceedings in violation of Rule 17 (14) of the Bihar CCA Rules. The Enquiry Officer has discharged the duties of Presenting Officer in stark violation of the law as laid



down by the *Apex Court in the case of State of U P & Others -Versus- Saroj Kumar Sinha, (2010) 2 Supreme Court Cases 772*. The petitioner's failure to discharge the onus of disproving the charges has been made the basis of holding the charges proved. Such an approach, where onus of disproving the charge is sought to be shifted on the delinquent, is arbitrary and unfair and has been held by the Apex Court to be grossly illegal. It is for the Department which alleges the misconduct to bring home the charges. The standard in the departmental proceedings may be on the preponderance of probabilities. However, there has to be some material to support the allegations. The Department cannot be permitted to shift the onus of disproving the charge upon the petitioner. It is trite law that burden of proof lay on the Department to bring home the charges on basis of some material n the standard of preponderance of probability. Department has erred in shifting the onus on the delinquent/petitioner to disprove the charges. In this connection, the Court would consider judgment of the Apex Court in the case of *Nirmala J Jhala -Versus- State of Gujarat & Another* reported in (2013) 4 *Supreme Court Cases 301*, wherein the Apex Court has concluded that the Department (High Court) erred in procedure by shifting the onus of proving negative circumstances upon the delinquent. Apex



Court has also held that onus lies on the Department to prove the charges.

11 The proceedings before the Enquiry Officer suffers from various procedural lapses and lacuna and the petitioner in his response to the second show cause has highlighted these infirmities. The Disciplinary Authority, in his order dated 05.08.2014, has accepted the findings of the Enquiry Officer which is the product of an illegal exercise, in violation of the established procedure, as has been noticed herein before. The Disciplinary Authority's order also suffers from the vice of non-application of mind and the order dated 05.08.2014 is without assigning any reason in support of the same. The cryptic conclusion of the Disciplinary Authority is to be found in paragraph 5 of the order dated 05.08.2014 which records as follows:

“5. श्री विपिन बिहारी द्वारा उपलब्ध कराये गये द्वितीय कारण पृच्छा के समीक्षोपरान्त बिहार, सरकारी सेवक (वर्गीकरण नियंत्रण एवं अपील) (संशोधित) नियमावली 2005 के नियम 14 की कंडिका (xi) के आलोक में सेवा से बर्खास्त करने का निर्णय लिया गया।”

12 The said findings are without any reason and totally non-speaking order and grossly unsustainable in the eye of law having regard to the principles regarding recording of reasons summarized in judgment of the Apex Court in the case of *Kranti Associates Private Limited -Versus- Masood Ahmad Khan &*



Others, (2010) 9 Supreme Court Cases 496 wherein the Apex Court has reiterated and emphasized the requirement of assigning reasons so as to exclude arbitrariness and ensure fairness in the decision.

13 Findings of Disciplinary Authority and the punishment of dismissal imposed upon the petitioner by order dated 05.08.2014 are grossly unsustainable in law and the order of Disciplinary Authority is quashed.

14 The Appellate Authority's order which is dated 23.01.2015 is a mere reaffirmation of the said order of the Disciplinary Authority which is in violation of procedural fairness. The order of the Appellate Authority is, therefore, also unsustainable and must collapse on account of setting aside/quashing of the order passed by the Disciplinary Authority. Both the orders are quashed.

15 Writ petition is allowed.

16 The petitioner, as a result of quashing of the impugned order would be entitled to his consequential benefits.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.05.2019
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