

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 3978 of 2015

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Ravindra Kumar Singh, aged about 51 years, S/o Late Ram Bahal Singh,
Resident of Village + P.O.- Kandap, P.S.- Gaurichak, Distt- Patna

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Jail and Reformation Services, Home Department,
Government of Bihar, Patna
3. The Inspector General, Jail and Reformation Services, Home Department,
Government of Bihar, Patna
4. The Additional Secretary (Administration), Jail and Reformation Services,
Home Department, Government of Bihar, Patna
5. The Joint Secretary (Administration), Home Department, Government of
Bihar, Patna
6. The Superintendent, Central Jail, Purnea
7. The Superintendent, Sahid Khudiram Bose Central Jail, Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajeev Kumar Singh
For the Respondent/s : Mr.Nirbhay K.Singh

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 29-03-2019

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

2 The petitioner, while posted as Assistant Head
Warder at Dalsinghsarai Sub Jail, Samastipur was directed to
assume charge to the post of Assistant Jailor on 06.01.2013. The
officiating arrangement was necessitated since Jailor had already
been transferred and the Assistant Jailor was on leave.



3 During charge of the petitioner as Assistant Jailor, in the night/morning of 29.01.2013/30.01.2013, two inmates fled away from the jail. The petitioner was, accordingly, served with a charge memo on 08.08.2013. The substance of the charges was that the manner in which the petitioner had assigned duty was inadequate to contain such incidents of jail break. It is alleged that the petitioner has failed to discharge his administrative duty and, as a result thereof, occasioned breach in the security of jail.

4 The petitioner responded to the said charge memo. He pleaded that he had merely continued the system of deployment of guards, as was being done by his predecessor. On the fateful night, some guards had gone on leave, and accordingly, with the available number of forces, he had made deployment in the best possible manner and continuing the system of deployment which was earlier being done by his predecessors.

5 The response of the petitioner did not find favour with the Enquiry Officer. Report was submitted that held the charges to be proved and the same was accepted by the Disciplinary Authority after issuing a second show cause notice to the petitioner.

6 The process has resulted in an order of punishment dated 12.06.2014 whereby and where under he has been dismissed



from service. The petitioner preferred an appeal against the said order of punishment issued by the Superintendent of Central Jail, Purnea before the Inspector General, Jail and Reformation Services, Home Department, Government of Bihar, Patna. The appeal of the petitioner has also been rejected on 22.12.2014.

7 Learned Senior Counsel appearing for the petitioner submits that the petitioner was having administrative responsibility. He had no direct role of standing guard at any post. He had ensured deployment of guards/forces in such numbers as was possible, with the forces available in hand. It is the submission of learned Senior Counsel that at best the charges constitute some error in administration. By no stretch of imagination, the petitioner, who was the overall incharge of the jail, could be saddled with the responsibility of the two inmates escaping on the fateful night.

8 Submissions have also been advanced to the extent that the authorities in conducting the proceedings have committed grave procedural lapse and that the same has occasioned violation of natural justice and fairness. The proceedings have been conducted in gross violation of the mandatory procedure prescribed under Rules 17 (3) (4) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for



brevity, *Bihar CCA Rules, 2005*). Referring to the charge memo dated 08.08.2013, it is submitted that from bare perusal of the same, it is evident that no details in respect of any witness has been provided, on basis of which charges are to be sustained in the proceedings before the Enquiry Officer. This Court would find that the procedure under Rule 17 (3) and (4) of the Bihar CCA Rules, 2005 have come for consideration repeatedly in Courts. The requirement of submitting the details of the witness and documentary evidence along with charge memo, or prior to initiation of the proceedings before the Enquiry Officer have been emphasized and reiterated by Courts repeatedly. Such a mandatory requirement is cast upon the Authority under Rule 17 (3) and (4) of the Bihar CCA Rules, 2005. clearly, the said provision has been violated by the authorities, in the instant case, as no details of witness has been provided to the delinquent/petitioner.

9 Further, submission on behalf of the petitioner is that in fact, no witness has been produced by the Presenting Officer in the enquiry. The said infirmity has occasioned a serious procedural flaw causing grave prejudice to the petitioner. Action of the Enquiry Officer is also in violation of Rule 17 (14) of Bihar CCA Rules, 2005. The respondents, in response to the specific



plea raised by the petitioner in this regard in his writ petition, have chosen not to respond in the counter affidavit.

10 In the circumstances, this Court had directed for the records of the enquiry to be produced in Court. Learned counsel for the State has appeared today along with original records of the enquiry proceedings.

11 Bare perusal of the enquiry proceedings shows that the case of the petitioner, as stated in paragraphs 19 and 20 of the writ petition, are substantiated by the records of the enquiry proceeding. On 19.09.2013, the proceedings were conducted by the Enquiry Officer himself. There was no Presenting Officer. The questions were put to the petitioner by the Enquiry Officer himself and no evidence was produced in the proceeding on the said date when the enquiry was conducted. No witness was examined. Questions were only put to the petitioner/delinquent in the enquiry.

12 On 07.01.2014, the Enquiry Officer had gone for spot verification of Dalsingsarai Sub Jail, where the occurrence had taken place. At that place also, the Enquiry Officer himself has taken statement of certain persons, who were posted at the jail. The Presenting Officer was neither present on 19.09.2013, nor on



07.01.2014. This is explicit from the original record of the proceeding produced in Court today.

13 The circumstances give rise to a situation where the Enquiry Officer has assumed the role of the Presenting Officer. Such a situation cannot be countenanced and is in violation of the provisions contained in Bihar CCA Rules, 2005 as also the judgment of the Apex Court in the case of *State of Uttar Pradesh & Others -Versus- Saroj Kumar Sinha, (2010) 2 Supreme Court Cases 772*.

14 The Apex Court, in the said judgment, has dealt with the status and duties of the Enquiry Officer. Enquiry Officer is required to function as an independent adjudicator and not as a representative of the Department which is quasi judicial in nature. Circumstances, such as in the instant case, where the Enquiry Officer, performing the quasi judicial function, proceeds to take upon himself the duty of the Presenting Officer and performs the same, vitiates the entire proceedings for want of fairness.

15 The original records of the enquiry proceedings, which have been produced in the Court, makes it clear that the mandatory procedural requirements in terms of Rule 17 (3) (4) & (14) of Bihar CCA Rules, 2005 and as per the decisions of the Apex Court taken note of hereinabove, have not been complied



with in the proceedings conducted against the petitioner. The order of the punishment dated 11.06.2014 issued by the Jail Superintendent, Central Jail, Purnea, being product of such an illegal procedure, is not sustainable and is hereby quashed.

16 The order of Appellate Authority dated 22.12.2014 merely affirming the illegal order dated 11.06.2014, therefore, must also collapse. The order of the Appellate Authority dated 22.12.2014 is also quashed.

17 Petitioner, as a result of quashing of the entire proceedings, would be entitled to be reinstated and consequential benefits. The respondent authorities, however, shall not be precluded from proceeding against the petitioner in accordance with law, if they so desire.

18 Writ petition stands allowed.

(Madhuresh Prasad, J)

M.E.H./-
Sushma

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.04.2019
Transmission Date	NA

