

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2330 of 2015

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Rajesh Ranjan Poddar, son of Late Janardan Poddar, resident of Mohalla-Govind Prasad Verma Lane, Mundichak, Bhagalpur, Police Station-Tilka Manjhi, District-Bhagalpur.

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Bihar Land and Revenue Department.
2. The Commissioner, Bhagalpur Division, Bhagalpur.
3. The District Magistrate, Bhagalpur.
4. The Additional Collector, Bhagalpur.
5. The Sub Divisional Magistrate, Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr. Ansul, Advocate Mr. Sanjeev Kumar, Advocate Mr. Rajeev Shekhar, Advocate
For the State	:	Mr. Ajay, A.C. to G.P.-7

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT

Date : 25-02-2020

The writ petitioner before this Court is seeking a writ of *certiorari* for quashing the impugned order, contained in Annexure 4 to the writ application, issued under the signature/order of the Collectorate, Bhagalpur, bearing Memo No.1145 dated 26.05.2014, and which has been affirmed by the Appellate Authority-the Commissioner, Bhagalpur Division, Bhagalpur, in Service Appeal No.39/2014-15, vide order dated 08.12.2014 (Annexure 6), which is also impugned in the present writ application.



2. Before advertng to the submissions of the petitioner, it would be necessary to detail the brief facts from which the present writ application emanates:

(i) Having joined the service of the State of Bihar, the petitioner worked as Halka Karmachari in Anchal Office at Kahalgaon at the time of the occurrence. The petitioner is to superannuate in the year 2027.

(ii) Pursuant to a vigilance case, the authorities, vide Memo No.2184 dated 30.09.2008, issued a memo of charge in the form of Prapatra-“Ka” to the petitioner and accordingly, a departmental proceeding was initiated, to which the petitioner submitted his explanation.

(iii) After the Enquiry Officer and the Presenting Officer were appointed, the disciplinary proceeding continued and the Enquiry Officer submitted his report, vide Memo dated 04.03.2014. Thereafter, the disciplinary authority issued second show cause notice dated 04.03.2014 to the petitioner annexing therewith a copy of the enquiry report, which was duly answered by the petitioner on 18.03.2014. However, ignoring the reply filed by the petitioner and ignoring the grounds stated therein, the disciplinary authority vide Memo No.1145 dated 26.05.2014,



dismissed the petitioner from the service with effect from the date of issuance of the order (Annexure 4).

(iv) The petitioner being aggrieved by the impugned order, preferred an appeal, bearing Service Appeal Case No.39/2014-15 before the court of learned Commissioner, Bhagalpur Division, Bhagalpur, but the same was also dismissed vide order dated 08.12.2014, thus upholding the order of dismissal passed by the disciplinary authority. Hence the present writ application.

3. Learned counsel for the petitioner, while placing his grounds for interference in the aforementioned orders impugned in the present writ application, submitted that Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as “the 2005 Rules”) provides a specific procedure for imposing major penalties and also the manner in which the enquiry can be held. It is submitted that in the present case, entire procedure has not been followed and the manner which was adopted by the disciplinary authority was wholly irregular while inflicting the petitioner with the punishment of dismissal from service. Neither the list of documents nor the list of witnesses by whom the articles of charge were proposed to be sustained, were given to the petitioner and therefore, the entire



proceeding stands vitiated and any order of punishment which followed thereafter, including the consequential order passed in the appeal, could not be sustained in the eyes of law and thus the same may be quashed.

4. Tracing the history of the complaint against the petitioner, learned counsel for the petitioner submitted that on the basis of a complaint, the Vigilance Bureau laid a trap and arrested the petitioner. Admittedly, no money was recovered from the person of the petitioner nor the petitioner had demanded any bribe from the complainant. On the contrary, the allegation by the complainant was that he had been informed by the villager that without bribe, his work could not be done. The money in question was recovered from a distant place from a box, which led to the institution of an FIR., being Vigilance Police Station Case No.99 of 2006. It was on the basis of such an FIR, that the departmental proceeding was initiated against the petitioner by serving Prapatra-“Ka”, alleging that the petitioner was caught red-handed while accepting bribe and hence, the act of the petitioner was against the 2005 Rules.

5. Learned counsel for the petitioner further pointed out that the witnesses appeared before the conducting officer and the complainant denied the fact of giving bribe and also denied any



kind of demand made by the petitioner. Moreover, the two independent witnesses who had purportedly signed had stated that their signatures were taken on a blank paper and they were not aware of anything, rather the police forcibly asked them to do so. Nevertheless, the conducting officer held the petitioner guilty of the charges and the disciplinary authority served a second show cause notice on the petitioner.

6. In response to the aforesaid notice, the petitioner raised his defence in his reply to the second show cause notice, but the disciplinary authority without considering the defence and without appreciating the evidences held the petitioner guilty of the charges and accordingly dismissed him from the service. It is pertinent to refer hereto the opinion expressed by the Hon'ble Supreme Court in the case of ***Kuldeep Singh vs. Commissioner of Police***, reported in ***(1999) 2 SCC 10***, with particular reference to paragraph 41 of the judgment, to submit that in a similar situation and on the complainant's resale from the charge of offer of bribe money, the Hon'ble Court held it to be a case of no evidence. Paragraph 41 of the said judgment is extracted hereunder :

“41. Smt. Meen Mishra, appearing as a witness for the Department, denied having made any payment to the appellant on that day. The labourers to whom the payment is said to have been made have not been produced at the



domestic enquiry. Their so-called previous statement could not have been brought on record under Rule 16(3). As such, there was absolutely no evidence in support of the charge framed against the appellant and the entire findings recorded by the enquiry officer are vitiated by reason of the fact that they are not supported by any evidence on record and are wholly perverse.”

7. Learned counsel for the petitioner further averred that the proceeding is grossly in violation of the provisions of Rule 17(3)(i) of the 2005 Rules, which provides that the substance of imputations of misconduct or misbehaviour must be definite and distinct from the article of charge. However, in the instant case, the charge is vague and it is an admitted fact that no money was recovered from the body of the petitioner, but the memo of charge indicates to the contrary, stating that the petitioner was caught red-handed while taking bribe. This anomaly goes to the root of the matter and on this score alone, the departmental proceeding is fit to be quashed.

8. A further anomaly has been pointed out by the learned counsel for the petitioner, stating that as per Rule 17(5)(c) of the 2005 Rules, the presenting officer has to present the case in support of the article of charge whereas, in the instant case, he has failed to do so. It is urged that Rule 17(14) of the 2005 Rules has also not been followed as the presenting officer failed to prove the



article of charges by way of oral and documentary evidences. It was pointed out that since the presenting officer remained absent, therefore, the witnesses were not examined by or on behalf of the presenting officer and therefore, the charges have not been proved by the presenting officer, which is serious infirmity in the departmental proceeding. On the contrary, the presenting officer instead of proving the charges, filed reply, wherein it is categorically stated that he does not have to say anything.

9. It is submitted by the learned counsel for the petitioner that the absence of the presenting officer stands admitted by the respondents in their counter affidavit at paragraph no.5, page 5, wherein it is mentioned that “Presenting Officer was absent”, clearly indicates that the enquiry officer found the imputation of allegation of bribery *prima facie* true after gathering evidence and affording opportunity to the petitioner for his evidence cannot be acceptable and hence, it is not for the enquiry officer to gather evidence or information on his own, rather the same has to be done by the presenting officer. It is well settled by this Court in the case of ***Panchanan Kumar Vs. Bihar State Electricity Board***, reported in ***1996(1) PLJR 401***, wherein it was held that the role of the presenting officer cannot be assumed by



the enquiry officer himself. In paragraph 11 of the said judgment the Court has held as follows :

“11. Considering the rival contentions of the parties, this Court is of the opinion that in the instant case the inquiry has been vitiated inasmuch as the enquiry officer himself has acted as the presenting officer even though the presenting officer was appointed by the Electricity Board. There is no explanation why the said presenting officer did not appear before the enquiry officer to present the case of the department. In the peculiar facts of this case, the action of the enquiry officer to present the case himself on behalf of the department and also to take upon himself the duty of enquiring the correctness or otherwise of the said case clearly shows that the enquiry officer, in the instant case, has failed to discharge his duty as a fair and impartial enquiry authority. He has rolled up within himself the role of both the presenting officer and the enquiry officer and as such has acted in a manner which is not consistent with the principles of natural justice”

10. Learned counsel thus contended that in the present case, once the absence of the presenting officer has been noted, the enquiry officer could not have assumed the role of the presenting officer to examine the evidence himself or to uphold the guilt of the petitioner. Learned counsel for the petitioner further clarified that even if the petitioner had been caught red-handed while



accepting the bribe and even if the strict rules of evidence was not followed in the disciplinary proceeding, yet a duty is cast on the enquiry officer to examine the evidence to see whether it supports the allegations and connects the delinquent to the charge. In this context, learned counsel, while explaining the role of the enquiry officer, has referred to a judgment of this Court in the case of ***Ashwini Kumar vs. State of Bihar***, reported in **2017(3) PLJR 500**, where the enquiry officer was a quasi-judicial authority and independent adjudicator and the ratio of the decision of an earlier case in the case of ***State of Uttar Pradesh vs. Saroj Kumar Sinha***, reported in **(2010) 2 SCC 772**, has been adopted for explaining the legal position as is extracted hereunder:

“11. It is undisputed that in the present case no witness was led by the department nor any attempt was made by the Presenting Officer to get the documentary evidence proved during the course of the disciplinary proceedings. On the contrary, it is simply taking note of the departmental stand as reflecting from Annexure-21 of the writ petition that the Departmental Enquiry Commissioner has proceeded to uphold the guilt and even through the enquiry report runs into almost 30 pages but the substance is lacking because the enquiry report is not supported by any material. The role of an Enquiry Officer and the obligation cast upon him stands discussed in judgment of the Supreme Court rendered in the case of **State of Uttar Pradesh Vs. Saroj Kumar Sinha**, since reported in (2010) 2 SCC 772 and I am



tempted to reproduce paragraph 28 of the judgment which succinctly explains the legal position;

“28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.” (Emphasis is supplied)

11. Learned counsel for the petitioner further contended that contrary to the provisions of Rule 17 of the 2005 Rules, the procedure which was followed while imposing the punishment of dismissal, was also not followed and neither the list of witnesses by which the article of charges was proposed to be proved, was ever given to the petitioner. It was further contended that the presenting officer had not adduced any evidence to prove the article of charge and since no oral or documentary evidence was adduced by the presenting officer to prove the charge, the entire proceedings stands vitiated. Thus, in the event of such a lacuna in the procedure, the entire proceeding stands vitiated and so does its consequential order of dismissal, as no punishment can be based



on an FIR as the purported evidence collected during the investigation by the Investigating Officer could not be treated as an evidence in a departmental proceeding. This issue has also well been discussed by the Apex Court in its judgment in the case of ***Roop Singh Negi vs. Punjab National Bank***, reported in (2009) 2 SCC 570, paragraph 14 of which is quoted herein under:

“14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.”

12. Learned counsel for the petitioner further contended that in any view of the matter, in order to prove the charge of accepting the bribe by the petitioner, the personnel who had conducted the trap case were required to be brought as witnesses on behalf of the presenting officer before the enquiry officer and the delinquent employee ought to have been given an opportunity to examine them, which would be in consonance with the



principles of natural justice and only thereafter could their oral deposition be accepted as an evidence in a departmental proceeding. Furthermore, even the complainant was required to be produced before the enquiry officer as a prosecution witness with liberty to the delinquent employee to cross-examine him. The pre-trap and post-trap memorandum have to be proved by the authority who had prepared it before the enquiry officer and the delinquent employee could also be permitted to cross-examine and only thereafter the same could be treated as a documentary evidence in the enquiry proceeding. However, no such procedure was followed by the enquiry officer which in itself vitiated the departmental proceeding and any consequential order which followed thereafter by the disciplinary authority, was also fit to be set aside.

13. In the wake of the aforementioned submissions, learned counsel for the petitioner submitted that it was a fit case in which the entire proceeding being against the settled principles of law and the procedure being against and violative of Article 17 of the 2005 Rules was fit to be set aside and the petitioner be reinstated in service with all consequential benefits and back wages. Accordingly, he prayed that the impugned orders be quashed and appropriate direction be issued to the respondents.



14. *Per contra*, the counter affidavit filed by the State of Bihar indicates that the petitioner was caught red-handed while taking bribe of Rs.800/- on 29.12.2006 and accordingly he was prosecuted under Section 7/13(2) read with Section 13(1) of the Prevention of Corruption Act. The petitioner was accordingly suspended by the order of the District Magistrate, Bhagalpur, vide Letter No.27(Est.) dated 10.01.2007 and was remanded to jail custody. The petitioner was subsequently released on bail by the order of the High Court and his suspension was revoked vide letter No.260/Est. dated 08.03.2008. However, the petitioner was again put under suspension in the light of the order of the Personnel and Administrative Reforms Department, Bihar, Patna, vide letter No.773 dated 27.03.2006 and vide letter No.1821 dated 23.05.2007 and Pirpainti Anchal was fixed as his headquarters. He was also issued Form- "K" by which the departmental proceeding was initiated against him and the charges were communicated. The then S.D.O. Mr. Divesh Sehra was appointed as the enquiry officer by the order of the District Magistrate, Bhagalpur, vide letter No.1013/Est. dated 27.09.2008 and the Anchal Adhikari (Circle Officer), Kahalgaon was appointed as the presenting officer. Subsequently, on account of transfer of the S.D.O., the S.D.O. Sadar, Bhagalpur was appointed as a conducting officer vide



Memo No.498/Est. dated 07.07.2009. However, on his transfer again, the Additional Collector (Departmental Enquiry) was appointed as conducting officer vide letter No.65/Est. dated 20.01.2014.

15. Learned counsel for the State submitted that the petitioner presented his reply mentioning that he has already submitted his evidence and the presenting officer was absent. The conducting officer meticulously examined the facts which emerged during the course of enquiry and came to the conclusion that the petitioner has been guilty of misconduct and the charges levelled against him were found to be *prima facie* true. It was contended that only the demand for money and its acceptance was essential to prove the case as against the delinquent. The enquiry report having been submitted, the petitioner was asked to file second show cause notice under Rule 18(3) of the 2005 Rules and a copy of the enquiry report was supplied to him. The petitioner submitted his reply to the second show cause notice, wherein it was contended that the finding of the departmental proceeding should be kept in abeyance till the finding of the criminal court. Accordingly, the District Magistrate, being the disciplinary authority, did not find the reply to the second show cause notice to be satisfactory and held the petitioner guilty of misconduct and corrupt practices and



thus he was dismissed by the order of the District Magistrate vide letter No.1145 dated 26.05.2014.

16. Learned counsel for the State further submitted that the service appeal, bearing Misc. Service Appeal No.39/2014-15, preferred by the petitioner in the court of Divisional Commissioner, Bhagalpur has been rejected on 08.12.2014. It was further contended that the entire proceeding was conducted in a proper manner, but so far as the allegations attributed against the petitioner are concerned, it is wholly against the norms of conduct of the Government employee and the allegation of taking bribe by the petitioner has been found *prima facie* true on the basis of the evidence adduced during the course of the departmental enquiry and hence, the petitioner is not entitled to any relief, leave alone issuance of a writ in the nature of *certiorari*.

17. Learned counsel for the State strongly opposed the contention of the petitioner that the 2005 Rules has not been followed and contended that the proceedings had been conducted in strict provisions of the 2005 Rules. It was stated that first of all, Form-“K” was framed and issued and on receipt of reply of the petitioner, the evidence was gathered in his presence while affording an opportunity of cross-examining, but the petitioner failed to do so. However, evidence was gathered at the stage of



conduct of the departmental proceeding and on consideration of the evidence presented by the presenting officer, the petitioner was found guilty in the enquiry report and he was thereafter issued a second show cause notice along with a copy of the enquiry report. The petitioner then submitted his reply to the second show cause notice, but the authorities having considered the same did not find it satisfactory. The petitioner was thereafter dismissed from service. Learned counsel for the State thus submitted that the order impugned is thus wholly legal and valid and does not warrant interference by this Hon'ble Court.

18. Heard learned counsel for the parties and perused the records of the case. It appears that the delinquent-petitioner was issued Form-“K” under Rule 17(3) of the 2005 Rules. The aforementioned Rules relates to a specific procedure for imposing major penalties and the steps to be taken while conducting the enquiry against the delinquent. The procedure to be followed as enumerated under Rule 17 of the 2005 Rules is extracted hereunder:

“ Part-VI

Procedure for Imposing Penalties

17. Procedure for imposing major penalties. - (1) No order imposing any of the penalties specified in clauses (vi) to (xi) of Rule 14 shall be made without holding an inquiry, as far as may be, in the manner provided in these Rules.



(2) Wherever the disciplinary authority is of the opinion that there are grounds for inquiring about the truth of any imputation of misconduct or misbehaviour against a government servant, he may himself inquire into it, or appoint under these Rules an authority to inquire about the truth thereof.

Explanation. - Where the disciplinary authority himself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) of this Rule to the inquiring authority shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against a government servant under this Rule, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the government servant;

(b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government Servant a copy of the articles of charge, such statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government Servant to submit, within such time as may be specified, a written



statement of his defence and to state whether he desires to be heard in person.

(5) (a) On receipt of the written statement of defence, the disciplinary authority may himself inquire into such of the articles of charge which are not admitted, or, if it thinks necessary to appoint, under sub-rule (2) of this Rule, an inquiry authority for the purpose he may do so and where all the articles of charges have been admitted by the Government Servant in his written statement of defence, the disciplinary authority shall record his findings on each charge after taking such evidence as it may think fit and shall take action in the manner laid down in Rule 18.

(b) 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, under sub-rule (2) of this Rule an inquiry authority for the purpose, it may do so.

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry about such charge, it may, by an order, appoint a government servant or a legal practitioner to be known as the "Presenting officer" to present on his behalf the case in support of the articles of charge.

(6) The disciplinary authority shall, where it is not the inquiring authority, forward the following records to the inquiring authority-

- (i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (ii) a copy of the written statement of defence, if any, submitted by the government servant:



(iii) a copy of the statement of witnesses, if any, specified in sub-rule (3) of this Rule.

(iv) evidence proving the delivery of the documents specified to in sub-Rule (3) to the Government Servant; and

(v) a copy of the order appointing the "Presenting officer".

(7) The Government Servant shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of receipt by him of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by a notice in writing, specify in this behalf or within such further time, not exceeding ten days, as may be specified by the inquiring authority.

(8) (a) The Government Servant may take the assistance of other Government Servant posted in any office, either at his headquarter or at the place where the inquiry is to be held, to present the case on his behalf:

Provided that he may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or the disciplinary authority, having regard to the circumstances of the case, so permits:

Provided also that the Government Servant may take the assistance of any other Government Servant posted at any other station, if the inquiring authority having regard to the circumstances of the case, and for reasons to be recorded in writing so permits:

Provided further that the Government Servant shall not take the assistance of any such other Government



Servant who has three pending disciplinary cases on hand in which he has to give assistance.

(b) The Government Servant may take the assistance of a retired government servant to present the case on his behalf, subject to such conditions as may be specified by the Government from time to time by general or special order in this behalf.

(9) 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 inquiring authority, such authority 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 inquiring authority shall record the plea, sign the record and obtain the signature of the Government Servant thereon.

(10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the Government Servant pleads guilty.

(11) The inquiring authority shall, if the Government Servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government Servant may, for the purpose of preparing his defence,-

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list in sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf;



Note:-If the Government Servant applies in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible.

(iii) give a notice within ten days of the order or within such further time as the inquiring authority may allow for the discovery or production of any documents which are in the possession of Government but not mentioned in the list specified in sub-rule (3) of this Rule:

Provided that the Government Servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government.

(12) The inquiring authority shall, on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the document by such date as may be specified in such requisition:

Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(13) On receipt of the requisition specified in sub-rule (12) of this Rule, every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority:

Provided that if the authority, having the custody or possession of the requisitioned documents, is satisfied, for reasons to be recorded by it in writing, that the production of all or any of such documents will be against public interest or security of the State, he shall inform the inquiring authority accordingly and the



inquiring authority shall, on being so informed, communicate the information to the Government Servant and withdraw the requisition made by it for the production or discovery of such documents.

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government Servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses, as it thinks fit.

(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in his discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government Servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government Servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government Servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government Servant to produce new evidence, if it is of the opinion



that the production of such evidence is necessary in the interests of justice:

Provided that new evidence shall not be permitted or called for or any witness shall not be recalled to supplement the evidence. Such evidence may be called for if there is any inherent lacuna or defect in the evidence, produced originally.

(16) When the case for the disciplinary authority is closed, the Government Servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Government Servant shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Government Servant shall then be produced. The Government Servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government Servant shall then be examined and they shall be liable to examination, cross-examination and, re-examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(18) The inquiring authority may, after the Government Servant closes his case, and shall, if the Government Servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government Servant to explain any circumstances appearing in the evidence against him.

(19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed and the Government Servant, or permit



them to file written briefs of their respective case, if they so desire.

(20) If the Government Servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this Rule, the inquiring authority may hold the inquiry ex-parte.

(21) (a) Where a disciplinary authority competent to impose any of the penalties specified in clauses (i) to (v) of Rule 14 [but not competent to impose any of the penalties specified in clauses [(vi) to (xi)] of Rule 14], has himself inquired into or caused to be inquired into the article of any charge and that authority having regard to his own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses [(vi) to (xi)] of Rule 14 should be imposed on the government servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the penalties mentioned in clause [(vi) to (xi)] of Rule 14.

(b) The disciplinary authority to which the records are so forwarded may act on the evidence on the records or may, if he is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witnesses and examine, cross-examine and re-examine the witnesses and may impose on the Government Servant such penalties as it may deem fit in accordance with these Rules.

(22) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence



in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has and which exercises, such jurisdiction the inquiring authority so succeeding may act on the basis of evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and reexamine any such witnesses as hereinbefore provided.

(23)(i) After the conclusion of the inquiry, a record shall be prepared and it shall contain:-

- (a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (b) the defence of the Government Servant in respect of each article of charge.
- (c) an assessment of the evidence in respect of each article of charge,
- (d) the findings on each article of charge and the reasons thereof.

Explanation. - If in the opinion of the inquiring authority the proceedings of the inquiry may establish any article of charge different from the original articles of the charge, he may record his findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the Government Servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.



(ii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include-

(a) the report prepared by it under clause (i) of this sub rule;

(b) the written statement of defence, if any, submitted by the Government Servant;

(c) the oral and documentary evidence produced in the course of the inquiry;

(d) written briefs, if any, filed by the Presenting Officer or the Government Servant or both during the course of the inquiry; and

(e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.”

19. Having perused the Rules, it is for this Court to determine as to whether the provisions of Rule 17(3)(ii)(b) and (4) have been followed by the disciplinary authority. Learned counsel for the petitioner has submitted that a list of such documents by which, and a list of such witnesses by whom, the article of charge was proposed to be sustained, were not provided to him. However, the enquiry officer failed to supply the documents asked for by the petitioner during the course of enquiry and the statement of witnesses upon which the enquiry officer proposed to rely and that which has been collected in course of criminal investigation were not formally exhibited for recording the finding of guilt of the petitioner. Thus, the enquiry officer was required to act as an



independent authority being a quasi-judicial authority and ought to have acted in conformity with the provisions of the 2005 Rules.

20. It is evident from the record of the case that the documents called for by the petitioner and the list of witnesses were not supplied to him while serving Prapatra-“K”. Furthermore, the articles of charge revealed that the petitioner had received the money but, on the contrary, in the enquiry report, it has been stated that the money in question, which is alleged to have been received by the petitioner, was found in an iron chest in the chamber of the petitioner. Thus, the allegation that the petitioner was caught red-handed while accepting bribe cannot be said to have been substantiated. It further appears that the articles of charge were not clearly stated in the charge memo. It also appears from Annexure 1, which is the charge memo, that the list of documents and witnesses by which each article of charge was proposed to be sustained was not provided along with the charge memo, which vitiates the proceeding. The enquiry report having indicated that the money in question was found in the iron chest and not from the personal possession of the petitioner is also indicative of the fact that the question of being caught red-handed while accepting bribe could not be corroborated by their own finding.



21. Learned counsel for the petitioner has also pointed out that the presenting officer “remained absent” while the enquiry proceeded and witnesses, who are purported to have been present at the time of the trap, have categorically stated that their signatures were taken on plain papers. This fact has come in the case diary which has been used by the enquiry officer, but it is not known as to whether they were examined at the enquiry. Non-supply of the relevant documents to the delinquent despite repeated demands also indicates that the proceeding ensued without supply of such papers or documents to the petitioner. If at all these were to be declined or not granted to the delinquent, the same ought to have been by a reasoned order. Thus, non-supply of such documents which formed the basis of the vigilance enquiry vitiates the proceeding.

22. Another crucial aspect which remained unanswered by the respondents is with regard to denial by the complainant regarding payment of bribe to the petitioner as he in his statement has stated that he had not paid Rs.800/- to the delinquent, rather the same is said to have been recovered from a box kept in the room. In his statement, he has stated that Rs.800/- was shown to him by the vigilance team. The two independent witnesses have stated that they have been made to sign on a plain paper. The



independent witness Sheolal Tanti has also stated that he was taken to the Combined Building at 9-10 O'Clock in the night and made to sign on a plain paper and on a bottle containing reddish water. He has not seen the money. Similarly, the other independent witness also stated that he was taken from the house at Lalu Chak to the Combined Building and made to sign on a plain paper. He also denied his earlier statement. Such facts stand recorded in the enquiry report (Annexure 2) itself indicating that these witnesses were not present at the time of trap. The statements of the two independent witnesses are reproduced herein under:

“7. स्वतंत्र गवाह श्री शिवलाल तांती का बयान

स्वतंत्र गवाह श्री शिवलाल तांती को पूर्व में निगरानी पदाधिकारियों के समक्ष दिये गये बयान को पढ़कर सुनाया गया। उन्होंने कहा कि बयान पर मेरा ही हस्ताक्षर है जो मैंने सादे कागज पर किया है। रात के लगभग 9-10 बजे जब मैं बाहर निकला तो तीन आदमी मुझे कम्बाईन्ड बिल्डिंग ले गये। बोतल में लाल पानी जैसा था उस पर कागज साटा गया, जिस पर भी मैंने दस्तखत किया। पैसा मुझे नहीं दिखलाया गया। इसके अलावे मुझे कोई जानकारी नहीं है।

8. स्वतंत्र गवाह श्री रंजीत कुमार तांती का बयान

घटना के बारे में मुझे कुछ भी जानकारी नहीं है। सादे लिवास में तीन आदमी मेरे लालूचक पहुंचे। वे बोले कि थाना चलना है। लेकिन कम्बाईन्ड बिल्डिंग लेकर चले गये। मुझे सादे पन्ने पर दस्तखत करने के लिये कहा। मैंने इन्कार किया, फिर भी उन्होंने मुझसे दस्तखत करवा लिया। पूर्व के बयान से मैं इन्कार करता हूँ। मुझे और कुछ नहीं कहना है।”

23. It was thus submitted that the entire proceeding and the statements of the witnesses indicated that the petitioner



had been falsely framed and implicated in the trap case and there was no scientific report even of the F.S.L. to indicate that, in fact, the petitioner had taken a bribe. The enquiry thus proceeded without compliance of the principles of natural justice and ultimately indicted the petitioner in violation of the rules governing the field.

24. Having considered the aforementioned situation, in which the enquiry proceeded against the petitioner and upon consideration of the settled principles of law as enunciated, this Court finds that the materials collected during the course of criminal investigation cannot be used by the enquiry officer performing a quasi-judicial function. He has a duty to arrive at a finding upon taking into consideration the materials which have been brought on record by the parties. It appears from the enquiry report that the purported evidence collected during the investigation by the investigating officer was used against the delinquent, but such material was not proved in the proceeding and hence, the finding of guilt recorded by the enquiry officer and the punishment order passed by the disciplinary authority, including the consequential order passed by the appellate authority, stand vitiated. The enquiry officer having conducted the proceeding which was initiated against the petitioner did not



bring on record any concrete or substantial evidence and no proper documents were produced to prove the factum of the petitioner having been caught red-handed while accepting a bribe. His entire report is based on the opinion of the presenting officer which vitiates the proceeding which followed as a corollary thereof and no fair opportunity was given to the petitioner by supplying the documents called for by him to dispute the correctness of the charges.

25. This Court thus finds that there has been gross violation not only of the 2005 Rules but also the same is in clear defiance of the principles of natural justice. Having observed thus, and noting further that the enquiry officer is to act as a quasi-judicial authority and is in a position to adjudicate independently, he has just examined the evidence presented by the Department objectively, even in the absence of the delinquent officer and see as to whether unrebutted evidence is sufficient to hold that the charges are proved. The enquiry officer having not followed the procedure as prescribed under the 2005 Rules cannot support his findings and report by applying his mind to the evidence and he cannot record *ipse dixit* that the charges are proved. Thus, the enquiry report also stands vitiated as mere recital without assigning clear and cogent reasons that



he had considered the documentary and substantial evidence would not suffice.

26. In the result, the writ application is allowed and the enquiry report as also the impugned orders, bearing Memo No.1145 dated 26.05.2014, as contained in Annexure 4, and dated 08.12.2014, as contained in Annexure 6, are set aside. However, in the facts and circumstances of the case, the matter is remitted back to the disciplinary authority for taking appropriate steps in accordance with law from the stage it stood vitiated. There shall be no order as to costs.

(Anjana Mishra, J)

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