

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19316 of 2019

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Manoj Kumar Mandal Son of Late Ganga Prasad Mandal Resident of Village
and P.O.- Nadiyama, P.S.- Sabour, District- Bhagalpur.

... .. Petitioner

Versus

1. The Bihar Legislative Assembly through its Speaker, Patna.
2. The Speaker, Bihar Legislative Assembly, Patna.
3. The Secretary, Bihar Legislative Assembly, Patna.
4. The Under Secretary, Bihar Legislative Assembly, Patna.
5. The Deputy Secretary, Bihar Legislative Assembly, Patna.
6. The Sectional Officer, Bihar Legislative Assembly, Secretariat, Patna.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Sanjay Kumar, Advocate
For the Respondent/s : Mr. Kaushal Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 04-09-2021

This matter has been taken up for hearing on-line because of COVID-19 Pandemic restrictions.

2. Heard learned counsel for the parties.

3. Seeking exception to an order dated 01.03.2019 of the Speaker, Bihar Legislative Assembly, issued under the signature of Under Secretary, Bihar Legislative Assembly, Patna, whereby punishment of compulsory retirement has been imposed upon the petitioner, he has approached this Court by filing present writ application under Article 226 of the Constitution of India. The



petitioner was working as *Farrash* (Peon) in the Legislative Assembly.

4. On the complaint of certain misconduct, a departmental proceeding was initiated against him with the issuance of charge-sheet on 24.10.2016. Copy of the charge-sheet has been brought on record by way of Annexure-4 to the writ application, from which it transpires that there were altogether four charges framed against the petitioner. The first charge related to the petitioner's unauthorized absence from duty from 15.01.2016 to 20.01.2016 and 05.05.2016 to 29.05.2016. In the second charge, it was alleged against the petitioner that despite explanation sought for by the Secretary of the Legislative Assembly, the petitioner did not submit his explanation. It was thirdly alleged that he had misbehaved with the In-charge Assistant of the Establishment Section of the Assembly Secretariat on 08.06.2014 and had used unparliamentary language. Fourthly, it was alleged against the petitioner that earlier also, for similar misconduct, as contained in charge no. 1 and 2, he was issued warning earlier and was punished departmentally.

5. To enquire into the allegations made in the charge memo, an enquiring authority was appointed. A presenting officer was also appointed.



6. Indisputably, the petitioner submitted his written statement of defence denying the charges levelled against him. In respect of fourth charge, he took specific plea that after he was punished earlier, he had corrected and improved himself and had not committed any misconduct as alleged. In respect of the allegation that the petitioner had misbehaved with the In-charge Assistant on 08.06.2014, while denying the said charge he asserted in his written statement of defence that the concerned Assistant ought to have reported that immediately thereafter. He objected to the said charge on the ground that for a misconduct of that nature alleged to have been committed in June, 2014, the petitioner should not have been framed in a proceeding initiated in October, 2016.

7. After filing of the petitioner's written statement of defence, the charge memo was modified only to the extent that in place of '08.06.2014', '08.06.2016' was substituted treating the same to be a typographical error.

8. The petitioner submitted his further written statement of defence, thereafter. The enquiring authority submitted his report on 23.08.2017, which is available on record by way of Annexure-9 to the writ application. It recorded its finding to the effect that all the charges framed against the petitioner stood proved. The



enquiry report was made available to the petitioner by the respondents with second show cause notice asking him to explain as to why punishment of removal from service be not imposed on him on the basis of proved charge of misconduct. The petitioner submitted his reply to the second show cause notice re-asserting that the explanation submitted by him in his written statement of defence in respect of the charges framed against him should have been accepted and that the petitioner's absence for the period in question were because of situation beyond his control.

9. In respect of the other charges also, he took a plea that no charge of misconduct could be said to have been proved. However, rejecting the petitioner's reply to the second show cause notice, the impugned order dated 01.03.2019 has been passed imposing the punishment as indicated hereinabove.

10. A counter affidavit has been filed on behalf of Bihar Legislative Assembly justifying the action of imposition of major punishment, considering the gravity of the misconduct and the petitioner's consistent misdemeanor.

11. Mr. Sanjay Kumar, learned counsel appearing on behalf of the petitioner, assailing the impugned order has submitted that the entire departmental proceeding stood vitiated because the presenting officer appointed for presenting the case



before the enquiring authority never participated in the enquiry proceeding. He has submitted that in the present case, the enquiring authority performed the role of the prosecutor also and merely on analysis of petitioner's written statement of defence, he concluded all the charges against the petitioner to have been proved. He has further submitted that in any case, considering the nature of allegation against the petitioner as made in the charge memo, major punishment of removal from service by way of compulsory retirement ought not to have been imposed.

12. Mr. Kaushal Kumar Singh, learned counsel appearing on behalf of the Bihar Legislative Assembly has submitted that the petitioner is habitual delinquent and as the competent authority considering the gravity of the misconduct, found it appropriate to impose punishment of compulsory retirement from service, the same would not require interference by this Court only on the ground that the presenting officer did not participate in the departmental enquiry. He has further submitted that absence of the presenting officer cannot be said to have prejudiced the petitioner's case. He contends that the petitioner has not pleaded any real prejudice caused to him either in his reply to the second show cause notice or in the present writ application,



because of absence of presenting officer in the departmental enquiry.

13. This is to be noted that a preliminary objection was initially taken over the maintainability of the writ application as according to the respondents, the petitioner ought to have preferred appeal against the impugned order. The said preliminary objection has subsequently been dropped by Mr. Singh having realized the fact that the impugned order, having been issued under the orders of the Speaker of the Bihar Legislative Assembly, was not appealable. He has, however, submitted that the petitioner still has the remedy of review before the Speaker of the Legislative Assembly.

14. I have carefully perused the report of the enquiring authority in view of the stand taken on behalf of the petitioner, as noted above. It is evident on reading of the finding of the enquiring authority that there was no person present to present the case of the department against the petitioner. Learned counsel for the petitioner appears to be right in his contention that the enquiring authority himself acted as a prosecutor, which function was to be discharged by the presenting officer. The enquiring authority, thus, cannot be said to have acted as an impartial arbiter.



15. It has been repeatedly held by this Court also that absence of a presenting officer in a departmental enquiry is a serious lacuna, if the enquiry authority records a finding against a person being proceeded against. An enquiring authority exercising statutory power under the Rules, discharges a *quasi* judicial function and in no case, he could have acted as if he himself was proceeding against the petitioner. The matter would have been different had the disciplinary authority himself was enquiring against the allegation of misconduct against delinquent government servant.

16. In case of *M.V. Bijlani vs. Union of India and others* reported in (2006) 5 SCC 88 the Supreme Court has held that the Inquiry Officer performs a *quasi* judicial function. The same view has been reiterated by the Supreme Court in case of *Union of India and others vs. Prakash Kumar Tandon (AIR 2009 SC 1375)* wherein the Court has held that a disciplinary proceeding must be fairly conducted. Since an Inquiry Officer is a *quasi* judicial authority, he must perform his functions fairly and reasonably which is the requirement of the principles of natural justice.

17. In case of *Union of India & Ors. vs. Ram Laxman Sharma* reported in (2018) 7 SCC 670 the Supreme Court has, in



uncertain terms, concluded that the Inquiry Officer cannot act as a prosecutor also as while doing so the capacity of an independent adjudicator stands lost while adversely affecting his independent role of adjudicator. Paragraph 37 of the said decision is useful for the present matter, which reads as under :-

“37. The High Court having come to the conclusion that the Enquiry Officer has acted as prosecutor also, the capacity of independent adjudicator was lost while adversely affecting his independent role of adjudicator. In the circumstances, the principle of bias shall come into play and the High Court was right in setting aside the dismissal orders by giving liberty to the appellants to proceed with inquiry afresh. We make it clear that our observations as made above are in the facts of the present cases.”

18. It further appears from the report of the enquiring authority that he has merely referred to the plea taken by the petitioner in his written statement of defence and has rejected the same without any evidence being produced on behalf of the department.

19. The submission made on behalf of the Legislative Assembly that no prejudice was caused to the petitioner and he was given ample opportunity to defend his case and, therefore, the



impugned order does not require interference by this Court is not acceptable in view of the admitted manner in which the enquiring authority proceeded to enquire into the allegation and submit his report. The approach of the enquiring authority cannot be held to be just and fair in consonance with the principles of natural justice.

20. Considering the above, in my opinion, the report of the enquiring authority itself is unsustainable and deserves to be set aside. *A priori*, the final order passed by the disciplinary authority based on such enquiry report can, therefore, not be sustained. Accordingly the impugned order dated 01.03.2019, contained in Memo. No. 2 Establishment 265/17-544, is set aside.

21. Considering the facts and circumstances of the case, the matter is remanded back to the enquiry authority to proceed afresh from the stage of after submission of written statement of defence by the petitioner.

22. Consequent upon quashing of the impugned order, the petitioner shall be required to be reinstated. The payment of back wages for the period, during which the petitioner remained out of service because of impugned order of compulsory retirement shall depend upon the final outcome of the disciplinary proceeding on remand made by this Court by the present order.

23. This application is accordingly allowed.



22. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10.09.2021
Transmission Date	N/A

