

IN THE HIGH COURT OF JUDICATURE AT PATNA

C.W.J.C. No. 7027 of 2018

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Bhushan Kumar Singh, s/o Shiv Narayan Singh, r/o vill-
Mohammadpur Barsima, PS- Ekangarsarai, District-Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Deputy Inspector General of Police, Railway, Bihar, Patna.
3. The Deputy Inspector General of Police, Crime Investigation Department, Patna
4. The Superintendent of Police, Railway Muzaffarpur
5. The Deputy Superintendent of Police, Railway-cum-Enquiry Officer, Muzaffarpur
6. The Station House Officer, Railway PS, Samastipur
7. The Investigating Officer, Railway PS, Samastipur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anil Kr. Singh, Adv.

For the Opposite Party/s: Mr. Suman Kr. Jha (AC to AAG 3)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

28-07-2021 The present petition has been taken up for consideration through the mode of Video Conferencing in view of the prevailing situation on account of COVID-19 Pandemic, requiring social distancing.

2. The present writ petition has been filed for quashing the order dated 17.08.2017, passed by the Superintendent of Police,



Railway, Muzaffarpur, whereby and wheunder the petitioner has been dismissed from service. The petitioner has also prayed for quashing of the appellate order dated 29.01.2018, passed by the respondent no. 3.

3. The brief facts of the case are that the petitioner is alleged to have been found sleeping in a drunken state in the police barrack while he was posted at Samastipur Railway Police Station as Assistant Sub-Inspector of Police on 09.05.2017. Thereafter, an F.I.R. bearing Samastipur Rail PS case no. 22 of 2017 was registered against the petitioner for the offence punishable under Section 37(B) of Bihar Prohibition and Excise Act, 2016. The disciplinary authority had then suspended the petitioner vide Memo dated 09.05.2017 and a charge sheet dated 15.05.2017 was served upon the petitioner containing memo of charges. Subsequently, the disciplinary authority vide order dated 30.05.2017, (Annexure C to the counter affidavit) had though appointed the Inquiry / Conducting Officer but no Presenting Officer was appointed. The departmental inquiry had then proceeded and finally, the Inquiry Officer vide inquiry report dated 30.06.2017, had found the petitioner to be guilty of the charges levelled against him.



4. The disciplinary authority had then issued a second show cause notice dated 25.07.2017 to the petitioner, to which the petitioner had submitted his reply and thereafter, the Superintendent of Police, Railway, Muzaffarpur had passed the impugned order dated 17.08.2017, dismissing the petitioner from his service. The petitioner had then preferred an appeal, however the same has also been dismissed by the impugned order dated 29.01.2018, passed by the respondent no. 3.

5. The learned counsel for the petitioner has primarily raised two legal issues, first is that no Presenting Officer was appointed by the disciplinary authority, resulting in grave prejudice to the petitioner as well as violation of the Principles of Natural Justice. It is also submitted that the appointing authority of the petitioner, at the relevant time, when the petitioner was holding the post of Assistant Sub-Inspector of Police, was/is the Deputy Inspector General of Police, however the order of punishment dated 17.08.2017 has been passed by a sub-ordinate official i.e. by the Superintendent of Police (Railway), Muzaffarpur, and not by the appointing authority of the petitioner, hence the punishment order stands vitiated on this ground as well. In this regard, the learned counsel for the



petitioner has referred to a judgment dated 21.02.2017, rendered by a co-ordinate Bench of this Court in the case of **Imteyaz Jhankar V. The State of Bihar (C.W.J.C. No. 15089 of 2016)**, relevant paragraphs whereof are reproduced herein below :-

"While Rule 17(5)(c) of 'the Rules' relied upon by Mr. Kishore mandates appointment of a Presenting Officer where the disciplinary authority himself does not choose to enquire into the charges, Sub-rule (14) thereof requires the Presenting Officer to lead evidence on which the department seeks to rely for driving home the charges. Annexure 3 though a charge memo, is also an order appointing the conducting officer. The order, however, does not proceed to appoint a Presenting Officer which is a mandatory requirement. The enquiry thus has been held on an invalid notification. Even if the charge memo in so far as it imputes the charge on the petitioner would not suffer any infirmity, the later part of the order is found wanting on the appointment of the Presenting Officer. This single lacuna has vitiated the entire disciplinary proceeding.

A similar issue fell for consideration before this Court in the case of Lalan Pandey (supra) and this Court while examining the judgments on the issue expressed its opinion in the following manner:

"Amongst several issues raised by Mr. Jha, learned counsel appearing for the petitioner to question the



dismissal of the petitioner from service on alleged charge of acceptance of bribe, one of the issues which he raises to question the proceedings leading to the impugned order is present in the enquiry report itself, a copy of which is enclosed at Annexure 14 and with reference thereto it is submitted that even when a Presenting Officer was appointed on behalf of the department for leading the evidence collected against the petitioner but for the reasons best known, he did not choose to do so and the Enquiry Officer himself assumed the role of the Presenting Officer himself to examine the evidence and hold the petitioner guilty. Column No.5 of the enquiry report present at Annexure 14 confirms this position.

Mr. Jha has referred to a Bench decision of this Court reported in 2004(4) PLJR 517 (Rajib Lochan Jha v. State of Bihar) to argue that this single infirmity is enough to hold the entire proceeding vitiated.

*Counsel for the State and Vigilance Department are unable to dispute this argument of Mr. Jha which is confirmed from the records itself. The law is well settled in this regard and where the Enquiry Officer is a person other than the Disciplinary Authority, then he acts as a delegate of the Disciplinary Authority and obviously cannot
1 disciplinary proceeding to assume*



the role of a Presenting Officer who represents the department.

The provisions of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 no doubt enables the Disciplinary Authority to also act as the Enquiry Officer, if he so likes or to delegate such jurisdiction to an independent authority but in either of the two situations the role discharged is that of a Disciplinary Authority. The Enquiry Officer thus does not represent any of the party rather is a body independent of any interest, to record his opinion on the issues that arises in a departmental proceeding in the backdrop of the evidence led and proved.

The legal position being such, the Enquiry Officer representing the Disciplinary Authority could not have assumed the role of a Presenting Officer who represents the department and thus is an interested party. This single aspect of the matter has left the entire proceedings vitiated....."

Reference in this regard is made to another judgment of this Court reported in 1996(1) PLJR 401 (Panchanan Kumar vs. Bihar State Electricity Board) which was a case in which even when the Presenting Officer was appointed for the proceedings, he failed to appear and which role



was assumed by the Enquiry Officer himself. A Bench of this Court taking note of the circumstances, made the following observations:

"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."

*In the circumstances so discussed above
as no Presenting Officer either to*



lead or to prove the evidence that was collected against the petitioner, the Enquiry Officer could not have assumed this duty to examine the evidence himself and to hold the same sufficient to uphold the guilt of the petitioner. Even if the case of the petitioner is of allegedly being caught red-handed while accepting the bribe and even if strict rules of evidence are not to be followed in the disciplinary proceeding yet a duty is cast on the Enquiry Officer to examine the evidence to see whether it is supportive of the allegation made and connects the delinquent with the charge. In absence of the Presenting Officer this mandatory procedure could not have been discharged by the Enquiry Officer himself. In the uncontested circumstances discussed it is only a completion of formality to hold that the entire proceeding beginning from the Enquiry Officer's report impugned at Annexure 14 culminating in the punishment order passed by the Disciplinary Authority dated 20.3.2014 impugned at Annexure 18 as well as the order in appeal communicated vide Memo No. 1778 dated 28.5.2014 impugned at Annexure 20 cannot be upheld and are accordingly quashed and set aside. The matter is remitted for its conclusion in accordance with law from the stage of Enquiry.

The writ petition is allowed."

The by the Bench in the case of Lalan



Pandey (supra) squarely applies to the case in hand. The writ petition thus has to succeed on this score itself."

6. The learned counsel for the petitioner has also referred to a judgment rendered by the Hon'ble Apex Court in the case of **State of U.P. v. Saroj Kumar Sinha, (2010) 2 SCC 772**, paragraph no. 28 whereof, is reproduced herein below:-

"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."

7. *Per contra*, the learned counsel for the State Sri. Suman Kr. Jha, AC to AAG 3 has submitted that there is no procedural lacuna in the conduct of the departmental inquiry, hence this Court would not sit in appeal so as to re-appreciate the evidence and come to



a different conclusion, as such, no interference is required in the order of punishment of dismissal inflicted upon the petitioner herein. It has also been submitted by the learned counsel for the respondent-State that as per Section **75(3) of the Bihar Prohibition and Excise Act, 2016**, the report of Breathe Analyser Test is admissible as evidence under the **Evidence Act, 1872** and in the present case, upon Breathe Analyser Test having been conducted upon the petitioner herein, he was found to have consumed liquor and 100 ml of liquor was found in the said test. Thus, it is submitted that there is no doubt regarding the guilt of the petitioner *qua* the allegations levelled against him.

8. I have heard the learned counsel for the parties and gone through the materials on record. The facts are not in dispute and even the respondent-State has not disputed the fact that no Presenting Officer was appointed either to lead or to prove the evidence that



had been collected against the petitioner and infact, the Inquiry Officer had committed a grave error by himself presenting the case on behalf of the department and also taking unto himself the duty of enquiring the correctness or otherwise of the said case as also examining the evidence himself and upholding the guilt of the petitioner, which clearly shows that the enquiry officer, in the instant case, has failed to discharge his duty as a fair and impartial enquiry authority, hence such conduct of the Inquiry Officer is not only contrary to **Rule 17(5)(C) and Rule 17(14) of the Bihar Government Servants (Classification, control and Appeal) Rules, 2005** but also in teeth of the law laid down by the Hon'ble Apex Court in the case of **Saroj Kr. Sinha (supra)**. Hence, on this ground alone, the petitioner is liable to succeed, although it is another matter that the petitioner being Assistant Sub-Inspector at the relevant time, his appointing authority



is the Deputy Inspector General of Police, however the punishment order dated 17.08.2017 has been passed by an officer below the rank of Deputy Inspector General, thus on this ground as well, the order of punishment dated 17.08.2017 stands vitiated.

9. Having regard to the facts and circumstances of the case and for the grounds mentioned hereinabove, the Inquiry Report dated 30.06.2017 stands vitiated in the eyes of law, hence is quashed, consequently the order of punishment dated 17.08.2017 and the appellate order dated 29.01.2018 have also got no legs to stand, hence are also set aside. Accordingly, the matter is remitted back to the disciplinary authority with liberty to hold a fresh inquiry and proceed afresh from the stage of appointment of the Presenting Officer. It is needless to state that the payment of the consequential benefits to the petitioner shall abide by the final outcome of the fresh disciplinary proceedings



to be conducted by the disciplinary authority, as aforesaid, nonetheless, the same shall be completed within a period of 06 months from the date of receipt/production of a copy of this Order, failing which the petitioner shall become entitled to payment of all the consequential benefits, as a result of quashing of the impugned orders dated 17.08.2017 and 29.01.2018. It is made clear that the petitioner shall cooperate in the fresh proceedings to be conducted by the disciplinary authority, failing which the disciplinary authority shall be free to proceed ex-parte against the petitioner.

10. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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CAV	NA
Uploading date	
Transmission date	NA

