

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 939 of 2018

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Aparna Shiva S/o Sri Om Prakash Gupta, a permanent resident of Flat No.202 Chandralok Apartment, Near Geological Survey of India, Lohia Nagar, P.S.- Kankarbagh, in the town and district of Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar
2. Principal Secretary, Department of Prohibition, Excise and Registration, Bihar, Patna.
3. Special Secretary, Department of Prohibition, Excise and Registration, Bihar, Patna.
4. Inspector General (Registration), Department of Prohibition, Excise, Bihar, Patna.
5. Deputy Secretary, Department of Prohibition, Excise and Registration, Bihar, Patna.
6. Assistant Inspector General (HQ), Department of Prohibition, Excise and Registration, Bihar, Patna cum Enquiry Officer
7. District Magistrate and Collector, Kisanganj.
8. District Sub-Registrar, Kisanganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr Rajni Kant Jha, Advocate
For the Respondent/s : Mr Harishankar Roy, AC to AG

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 10-10-2022

Heard learned counsel for the petitioner and the respondents.

2 The petitioner, while posted as Probationer Sub Registrar at Thakurganj in the district of Kishanganj was served



with a charge memo dated 21.03.2016. The same contained charges substance of which is as follows:

(i) Petitioner used to come to the office late in the afternoon, usually after 3 pm with her father,

(ii) on account of her coming late to office, the State has suffered revenue loss and the distant villagers have been inconvenienced in availing the registration services in the office,

(iii) Another allegation in the charge memo is that she was not conducting spot verification before giving effect to registration of documents and

(iv) Dereliction of duty and misconduct.

3 The petitioner has been proceeded against. She has submitted a reply by way of an elaborate written statement in respect of each charge.

4 The enquiry was conducted by the Enquiry Officer who submitted his enquiry report to the Disciplinary Authority. A copy of the enquiry report is Annexure 3 to the writ petition. From bare perusal of the enquiry report, it is obvious that the proceedings, being conducted for bringing home the above noted four charges, was concluded in one single day, i e, on 29.04.2016.

5 The enquiry report contains mention of two earlier enquiry reports, one dated 09.04.2015 said to have been submitted by the Circle Officer, Thakurganj and the other dated 18.04.2015,



submitted by the District Sub Registrar. An allegation dated 24.04.2015 submitted by the District Sub Registrar is also one of the documents considered by the Enquiry Officer as documentary evidence in support of the above noted four charges.

6 The admitted position that emerges from the pleadings is that the authors of these documents have not been examined by the Enquiry Officer.

7 The learned counsel for the petitioner submits that the documents, being relied upon by the Enquiry Officer, are enquiry reports which cannot be said to be any material in support of the charges, taken note of above. The reports are said to be by the Circle Officer and the District Sub Registrar. It is an admitted position that neither the Circle Officer, Thakurganj nor the District Sub Registrar, Kishanganj have been examined in the proceedings. The procedural prescription in Rule 17 (14) of the Bihar Government Servants (Classification, Control & Appeal) (for brevity, **CCA**) Rules, 2005, therefore, has been violated. It is submitted that since these officials have not been examined in the enquiry, the petitioner has also been deprived of her opportunity to cross-examine the author of these documents and, therefore, reliance placed on these documents for bringing home the charges is clearly unsustainable.



8 The learned State Counsel, on the other hand, submitted that petitioner had partially admitted to the allegations, specifically the allegation regarding indirect control of her father in discharge of her day-to-day's duties. It is also submitted that since the Enquiry Officer has held the allegations to be proved on the basis of the documents, noted above, the submission of the petitioner's counsel, that there was no material in support of the charges, is incorrect.

9 Another aspect of the matter that this Court would notice in the proceedings is that there was no Presenting Officer in the enquiry. The Enquiry Officer has assumed the role of Presenting Officer and the proceedings manifests the fact that it is the Enquiry Officer who was placing the case of the department and taking down petitioner's response while at the same time referring to these two reports which have been relied upon by the learned counsel for the State.

10 Considering the rival submissions, this Court would find that the way in which the enquiry has been conducted is unsustainable in the eyes of law. The procedure prescription in Rule 17 (14) of the CCA Rules has not been followed. There was no Presenting Officer to present the case on behalf of the Department and when the Conducting Officer assumes the role of



Presenting Officer then procedural fairness is lost. The law in this regard is well settled by now.

11 This Court would refer to decision of Apex Court on this point in the case of *Union of India & Others -Versus- Ram Lakhan Sharma*, reported in (2018) 7 Supreme Court Cases 670.

Paragraphs 36 and 37 of which reads as follows:

“36. Thus, the question as to whether the Enquiry Officer who is supposed to act independently in an inquiry has acted as prosecutor or not is a question of fact which has to be decided on the facts and proceedings of a particular case. In the present case we have noticed that the High Court had summoned the entire inquiry proceedings and after perusing the proceedings the High Court came to the conclusion that the Enquiry Officer himself led the examination-in-chief of the prosecution witness by putting questions. The High Court further held that the Enquiry Officer acted himself as prosecutor and Judge in the said disciplinary enquiry. The above conclusion of the High Court has already been noticed from paras 9 and 10 of the judgment of the High Court giving rise to Civil Appeal No. 2608 of 2012.

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.”



12 The two reports dated 09.04.2015 and 18.04.2015, which were relied upon by the Enquiry Officer, was without examining the authors of the reports and, therefore, reliance placed on these two documents in violation of Rule 17 (14) of CCA Rules, is unsustainable.

13 The third aspect of the matter regarding partial admission on behalf of the petitioner is also noted only to be rejected. The petitioner has specifically denied the allegation of any indirect control being exercised by her father. She has stated that her father had worked as a Registrar for decades and, therefore, she sought some guidelines with reference to departmental circulars; that also not in the office premises. Such bona fide statement on behalf of the petitioner cannot be treated as admission of the charge that the father was exercising indirect control on day-to-day duty of the petitioner.

14 The impugned order of punishment dated 13.07.2017 and 27.12.2016, therefore, in the opinion of the Court, is clearly unsustainable. The order dated 13.07.2017 rejecting the review of the petitioner's appeal being an affirmation of an illegal order, therefore, also must collapse.

15 Writ petition stands allowed.



16 The petitioner would be entitled to all consequential
benefits.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	01.11.2022
Transmission Date	NA

