

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4352 of 2018

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Ram Mangal Ram Son of Late Ram Govind Ram, Resident of Village- Barahi Jagdish, Police Station- Puranhiya, District- Sheohar.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, The General Administrative Department, Govt. of Bihar, Patna.
3. The Under Secretary to the Govt., the General Administrative Department, Govt. of Bihar, Patna.
4. The Principal Secretary, Water Resource Department, Govt. of Bihar, Patna-cum- Additional Department
5. The Commissioner, Patna Division, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh, Sr. Adv.
	:	Mr. Ahsas Manikant, Adv.
	:	Mr. Janmayjai Giridhar, Adv.
	:	Mr. Vipin Kumar Singh, Adv.
For the Respondent/s	:	Mr. Md. N.H.Khan -SC1

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
Date : 06-10-2023

Heard learned senior counsel, Mr. Bindhyachal Singh for the petitioner and learned counsel for the State.

2. The present writ petition has been filed for quashing of the enquiry report relating to departmental proceeding bearing no. 10 of 2010 contained in Memo No. 112 dated 20.06.2014 (Annexure-P/11). Further prayer has been made for quashing of the resolution contained in memo no. 9072 dated 24.07.2017 (Annexure- P/18) and further prayer for quashing of resolution contained in memo no. 16525 dated

27.12.2017 (Annexure- P/20).

3. Learned senior counsel for the petitioner submits that the petitioner was Officer of Bihar Administrative Service, 34th batch and joined being his first posting as Child Development Project Officer, Bochahan. He submits that at the relevant time, he was posted as District Transport Officer, Motihari. During his posting at Motihari, he along with one Md. Mustaq were apprehended by a trap team of vigilance for accepting the bribe of Rs.20,000/- to release a seized truck of the complainant, namely, Harendra Singh and in result Vigilance P.S. Case No. 52 of 2006 was registered on 13.09.2006. In consequence thereof, petitioner was suspended with effect from 14.09.2006 till further order and due to the said case, the petitioner was taken into custody, but subsequently released.

4. Counsel for the petitioner submits that a letter vide memo no. 815 dated 23.01.2008 has been issued by the Joint Secretary, Personal and Administrative Reform Department, Bihar, Patna by which a direction was given to the Secretary to the Commissioner, Patna Division to safeguard a report after service of memo of charge along with the evidence to the petitioner. The said memo also contains (प्रपत्र-क) in which total 2 charges had been framed against the petitioner.

5. Counsel for the petitioner submits that the said charge memo is Annexure-P3/1. From the forwarding letter as well as from the charge memo (प्रपत्र-क), it transpires that the said letter has been issued by the Joint Secretary, Personal and Administrative Reform Department, Bihar, Patna. Counsel submits that admittedly, the petitioner was a gazetted officer whose appointing authority is the Governor and the said memo of charge has been issued in gross violation of Rule 17 of the Bihar Government Servant (Classification, Control and Appeal) Rule, 2005 (hereinafter referred to as “the Rule of 2005”). According to which charge has to be issued only by the Disciplinary Authority. Here in the present case, the said Joint Secretary, Personal and Administrative Reform Department, Bihar, Patna is not the Disciplinary Authority for the petitioner. In support of his contention, counsel also relied on a judgment rendered in the case of the *Union of India vs. B.V. Gopinath* reported in *(2014) 1 SCC 351*. Counsel fairly submits that though this point has not been expressly pleaded in the writ petition, but he submits that it is pure question of law and it may be raised at any stage of the arguments.

6. Counsel further submits that after receiving the memo of charge, the petitioner has filed the detail reply to the

show cause. In the said reply, he has demanded list of documents, but in absence of those documents, he has submitted the reply intimating that demand of papers has been made by the petitioner on many occasions, but since it has not been provided, therefore, the said reply has been filed without documents provided by the Inquiry Officer to him. Counsel submits that from the enquiry report, it further transpires that prior to reaching on the conclusion on the charge memo, the point raised by the petitioner has not been considered by the Enquiry Officer and the Enquiring authority has primarily relied on the F.I.R., the sanction memo and the material which has been collected by the Vigilance Department. Counsel submits that it is well settled law that proceeding before the criminal case and proceeding before the departmental authority in service matters are two distinct proceedings and there is a distinction between the standard of proof in the criminal proceeding and in the departmental proceeding. In the criminal proceeding, the proof must be beyond the all reasonable doubts and in the departmental proceeding, this proof must be in accordance with the preponderance of probability.

7. Counsel further submits that in this regard, the case of **O.K. Bhardwaj Vs. Union of India & Ors.** reported in

(2001) 9 SCC 180 and the **State of U.P. vs. Shatrughan Lal & Anr.** reported in **(1998) 6 SCC 651**. It has been categorically held that if Disciplinary Authority failed to supply all the relevant documents, then in that case, it shall be treated as the gross violation of natural justice. Counsel also submits that the Enquiry Officer in his report has reached on the conclusion and found both the allegations proved against the petitioner and subsequently, second show cause notice has been issued upon the petitioner. The petitioner has filed a detail reply to the second show cause, but from the order passed in the departmental proceeding bearing no. 10 of 2010, none of the points mentioned in the second show cause has been discussed and without reaching and without discussing on those points which has been made by the petitioner in his second show cause, the Disciplinary Authority has passed the punishment order. Thereafter, the petitioner has preferred review. In the memorandum of review, he has raised all the points of defence meticulously, but in the rejection order, none of the points have been discussed which has been taken by the petitioner.

8. Learned senior counsel for the petitioner concludes his argument mentioning that the charge memo dated 23.01.2008 is itself non-jurisdictional and not issued by the

Disciplinary Authority and as such, this charge memo is not sustainable in the eyes of law itself, particularly, in the light of Rule 17 of the Rules of 2005 read with case of *Union of India (Supra)*.

9. Learned senior counsel submits that when the germination itself is non-jurisdictional then every subsequent stage shall automatically collapse and in this view of the matter, he submits that the report of Enquiry Officer, the second show cause, the order passed by the Disciplinary Authority and order passed by the Review Authority, all shall be treated as illegal and shall have no value in the eyes of law.

10. Counsel for the State on the other hand submits that a due process has been followed providing every opportunity to the petitioner. Counsel further submits that the petitioner was caught red-handed and vigilance case has been instituted, he was taken into custody, charge memo has been issued and the petitioner has been provided opportunity to appear before the Enquiry Officer. Upon consideration of his reply, the Enquiry Officer has discussed the materials placed by him and reached at the conclusion that charge proved against the petitioner, thereafter, second show cause notice has been issued. Upon submission of the second show cause, the Disciplinary

Authority has passed the punishment order and similarly, the Review Authority has also rejected the claim of the petitioner. But upon the specific question of this Court that whether the authority who has issued charge memo to the petitioner, is Disciplinary Authority or not?

11. Counsel for the petitioner fairly submits that the petitioner is a gazetted officer and Disciplinary Authority for the gazetted Officer is the Governor, but this letter has been issued by the level of a Joint Secretary, Personal and Administrative Reform Department, Bihar, Patna.

12. Upon going through the pleadings and after hearing the arguments prior to deciding this case, it is necessary to discuss the position of law. The extract of those laws and the relevant judgments are as follows:-

Rule 17(3) of the Rules of 2005 states as follows:-

17(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.

*The Hon'ble Supreme Court has held in the case of **Union of India (Supra)** especially in paragraphs-50, 52 to 54 of as under:-*

“50. In our opinion, the Central Administrative Tribunal as well as the High Court has correctly interpreted the provisions of Office Order No. 205 of 2005. Factually also, a perusal of the record would show that the file was put up to the Finance Minister by the Director General of Income Tax (Vigilance) seeking the approval of the Finance Minister for sanctioning prosecution against one officer and for initiation of major penalty proceeding under Rules 3(1)(a) and 3(1)(c) of the Central Civil Services (Conduct) Rules against the officers mentioned in the note which included the respondent herein. Ultimately, it appears that the charge memo was not put up for approval by the Finance Minister. Therefore, it would not be possible to accept the submission of Ms Indira Jaising that the approval granted by the Finance Minister for initiation of departmental proceedings would also amount to approval of the charge memo.

52. In our opinion, the submission of the learned Additional Solicitor General is not factually correct. The primary submission of the respondent was that

the charge-sheet not having been issued by the disciplinary authority is without authority of law and, therefore, non est in the eye of the law. This plea of the respondent has been accepted by CAT as also by the High Court. The action has been taken against the respondent in Rule 14(3) of the CCS (CCA) Rules which enjoins the disciplinary authority to draw up or cause to be drawn up the substance of imputation of misconduct or misbehaviour into definite and distinct articles of charges. The term “cause to be drawn up” does not mean that the definite and distinct articles of charges once drawn up do not have to be approved by the disciplinary authority. The term “cause to be drawn up” merely refers to a delegation by the disciplinary authority to a subordinate authority to perform the task of drawing up substance of proposed “definite and distinct articles of charge-sheet”. These proposed articles of charge would only be finalised upon approval by the disciplinary authority. Undoubtedly, this Court in P.V. Srinivasa Sastry v. CAG has held that Article 311(1) does not say that even the departmental proceeding must be initiated only by the appointing authority. However, at the same time it is pointed out that: (SCC p. 422, para 4)

“4. ... However, it is open to the Union of India or a State Government to make any rule prescribing that even the proceeding against any delinquent officer shall be initiated by an officer not subordinate to the appointing

authority.”

It is further held that: (SCC p. 422, para 4)

“4. ... Any such rule shall not be inconsistent with Article 311 of the Constitution because it will amount to providing an additional safeguard or protection to the holders of a civil post.”

53. Further, it appears that during the pendency of these proceedings, the appellants have, after 2009, amended the procedure which provides that the charge memo shall be issued only after the approval is granted by the Finance Minister.

54. Therefore, it appears that the appeals in these matters were filed and pursued for an authoritative resolution of the legal issues raised herein.

13. From perusal of the charge memo which is Annexures -P3 and P3/1, it transpires to this Court that the said charge memo has not been issued by the Disciplinary Authority and as such, it is in the gross violation of Rule 17 of the Rules of 2005. The Hon’ble Supreme Court in the case of ***Union of India (Supra)*** has categorically stated that the Disciplinary Authority is the competent authority to take decision for the issuance of charge memo, but here from the documents and the pleadings, it transpires to this Court that the said charge memo has not been issued by the Disciplinary Authority. As such, the said Annexures- P3 and P3/1 to the writ petition which is charge

memo issued by the Under Secretary, the General Administrative Department, Government of Bihar, Patna vide memo no. 815 dated 23.01.2008 is hereby quashed. In result, all the further effect which is based on the charge memo i.e., enquiry report relating to departmental proceeding bearing no. 10 of 2010 contained in Memo No. 112 dated 20.06.2014 (Annexure-P/11) issued by the Additional Departmental Enquiry Commissioner, Bihar, Patna, the resolution contained in memo no. 9072 dated 24.07.2017 (Annexure- P/18) dated 24.07.2017 and the resolution contained in memo no. 16525 dated 27.12.2017 (Annexure- P/20), dated 27.12.2017 issued by the Under Secretary to the Government, the General Administration Department, Government of Bihar, Patna respectively are hereby set aside.

14. In the Rules of 2005, there is statutory provision that due to any reason if order is being set aside then option is available in law at the hand of the employers to take further steps for departmental proceedings in accordance with law.

15. It goes without saying that petitioner was the employee and since there is nothing against him at present after passing this order, he is entitled to get all the consequential benefits.

16. With the aforesaid observation and direction, the present writ application is hereby allowed.

(Dr. Anshuman, J.)

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CAV DATE	
Uploading Date	
Transmission Date	