

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.3922 of 2017**

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Rishikesh Kumar S/o Late Ramanand Prasad, C/o Sri A.B. Choudhary, Shati Sadan, North Mandiri, P.S.- Buddha Colony, Town and Dist.- Patna- 800001.

... .. Petitioner

Versus

1. The State Of Bihar through the Principal Secretary General Administration Department Government of Bihar Patna
2. The Appellate Authority-cum-the Principal Secretary-Co-operative Department, Govt. of Bihar, Patna.
3. The Disciplinary Authority-cum-the Registrar, Co-operative Societies, Govt. of Bihar, Patna.
4. The Enquiry Officer-cum-the Deputy Registrar Mu, Co-operative Societies, Bihar, Patna.
5. The Presenting Officer-cum-the Assistant Registrar, Co-operative Societies, Bihar, Patna.
6. The District Co-operative Officer Hajipur.
7. The Vigilance Investigation Bureau through the Superintendent of Police, Vigilance Investigation Bureau, Bihar, Patna

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Purushottam Kumar Jha, Advocate  
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH**  
**ORAL ORDER**

4      02-02-2023                      Heard learned counsel for the petitioner and the State.  
This writ application has been filed for following reliefs:-

1) Issuance of an order, direction or a writ in the nature of Certiorari quashing the Memorandum of Charge dated 18.06.2010 framed by the respondent no. 3(Annexure-5), whereby and where under charges of being apprehended by Vigilance Trap Team while taking bribe from the complaint Lal Babu Sahni has been leveled against the petitioner, which are identical and similar to the charges involved in Trap Case so lodged against the petitioner being Vigilance P.S. Case No. 006/12 dated 03.01.2012 (Annexure-2).



2) Issuance of an order, direction or a writ in the nature of certiorari quashing the Enquiry Report dated 31.12.2013 submitted by the respondent no. 4 as contained in Annexure-10, whereby and where under the Enquiry Officer even without holding a proper and effective Departmental Proceeding and in absence of there being any evidence on record, has proved the Charges against the petitioner in the following terms:-

*“Paristhithian Chahe Jo Bhi Ho, Par Itna To Spasta Hai Ki Aaropi Ko Dinank 21.01.2009 Ko Nigrani Dal Dwara Mo. 8000=00 Rupye Ghus Lete Hue Range Hath Pakra Gaya, Jo Sarkari Sevak Ke Acharan Ke Anukul Nahi Kaha Ja Sakta.”*

3) Issuance of an order, direction or a writ in the nature of certiorari quashing the Order of Dismissal passed by the respondent no. 3 as contained in Memo No. 5669 dated 08.09.2015 (Annexure-13) whereby and where under the petitioner has been dismissed from the service of the Department.

4) To hold and declare that the action of the respondent no. 2 in not taking a final decision on petitioner's Service Appeal so filed by the petitioner against the order of Dismissal by the Respondent no. 3 as Memo No. 5669 dated 08.09.2015 (Annexure-13), in spite of submission of seven reminders is highly illegal, arbitrary, malafide, malacious and unsustainable in the eye of law and on facts both and is fit to be deprecated by this Hon'ble Court in strong words?

5) Issuance of an order, direction or a writ in the nature of Mandamus commanding the Respondents concerned for the reinstatement of the petitioner in the Government Services, that too, with all consequential benefits.



6) For grant of any other relief or reliefs to which the petitioner may be found entitled to in the facts and circumstances of this case.

By filing I.A.No.3892/2018 petitioner has also challenged appellate order contained in Memo No. 246 dated 23.01.2018 (Annexure-21 in IA No. 3892/ 2018) by which order of dismissal has been affirmed and appeal has been rejected.

Learned counsel for the petitioner makes a short submission to assail the order of punishment and the appellate order to the effect that the Enquiry Officer has himself played the role of the Presenting officer. He submits that though the enquiry officer was appointed, but he did not choose to lead any evidence during the enquiry. And it was the enquiry officer who played the role of Presenting officer as well as by rendering his opinion regarding guilt of the petitioner in relation to the charges, as evident from the impugned orders as well as the enquiry report contained in Memo No. 5669 dated 08.09.2015. (Annexure 13). It is submitted that this completely vitiates the proceeding in view of the observation of this court in the case of **Panchanan Kumar vs. The State of Bihar State Electricity Board** reported in **1996 (1) PLJR 401**.

He next submits that the second default committed by the Disciplinary Authority is of not following the provisions underlying rule 17(4) of the 'Disciplinary Rules' which inter alia requires the disciplinary authority, to ask the show cause on the charge memo from the delinquent and also of hearing him in person, before the Disciplinary Authority takes the decision whether the matter requires further enquiry in the manner prescribed or the explanation is worthy of acceptance. In the present case, the order of initiating proceeding at Annexure-3



simply directs the petitioner to file his reply before the Conducting Officer which is contrary to the stipulations present at rule 17(4) of the 'Disciplinary Rules' and has come up for criticism by a Division bench of this Court while considering similar provisions under the 'Disciplinary Rules' then in existence, in a judgment reported in **1996(2) PLJR 95 (Ravindra Nath Singh Vs. Bihar State Road Transport Corporation)**.

Learned counsel for the petitioner submits that the next infirmity in the case is that the Enquiry Officer has recorded his opinion unilaterally without any evidence, either oral or documentary being led by the department. The opinion of the Enquiry officer is based on the vigilance report and by treating it sacrosanct.

*Per contra*, learned counsel for the state submits that the petitioner was caught red handed by Vigilance Trap party while taking bribe of Rs. 8000/- from Lal babu Sahni (complainant). He further submits that the enquiry report as well as the show cause filed by the petitioner, were examined carefully and after examination the charges labeled against the petitioner were found to be true. And after following all due processes of law, the order of punishment has been passed, and as such no interference is required by this Hon'ble court.

Having heard the submission of learned counsel for the petitioner and on carefully considering all the materials available on record, this court finds merit in the writ application. As has already been settled in the decision of this court in the case of **Panchanan Kumar (supra)** that a proceeding stands vitiated when the enquiry officer himself acted as presenting officer which is the situation drawn in the present case. Since



the order of punishment is being quashed on this ground alone, this court does not go into other aspects of the case.

The order of punishment dated 08.09.2015 contained in memo no. 5669 passed by the Registrar, Co-Operative Societies, Bihar, Patna as well as appellate order dated 23.1.2018 are accordingly set aside with consequential benefits to the petitioner. Needless to say, that since orders have been quashed on the ground of procedural lapses, the respondents shall be at liberty to initiate a fresh proceeding against the petitioner in accordance with law, if so advised.

This writ petition stands allowed.

**(Prabhat Kumar Singh, J)**

asmit/-

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