

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15754 of 2017

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Mukesh Kumar Singh Son of Late Ramjiwan Singh, Resident of Village-
Bithuna, P.S.- Basantpur, District- Saran.

... .. Petitioner/s

Versus

1. The State Of Bihar through its Home Secretary, Patna
2. The Home Secretary, Government of Bihar, Patna.
3. Director General of Police, Government of Bihar, Patna.
4. Inspector General of Police, Tirhoot Zone, Muzaffarpur.
5. Dy. Inspector General of Police, Saran Region, Chapra.
6. Superintendent of Police, Saran District Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh, Sr. advocate
		Mr. Parijat Saurav
For the Respondent/s	:	Mr. Ajay Kumar, AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

Date : 10-02-2023

Heard learned counsel for the parties.

Petitioner has filed this writ petition for following
reliefs:-

*i. To issue appropriate Writ(s)/order(s)/ direction for
quashing order passed by the Respondent No.5 vide memo no.
363/go Dt. 22.03.2012 dismissing the petitioner from service.*

*ii. To quash the order of the respondent No.4 passed in
memo no. 1040/ sa. Sha. of 07.05.2013 rejecting the appeal of the
petitioner against his dismissal.*



iii. To quash the order passed by the respondent No.3 rejecting the memo of appeal filed by the petitioner.

iv. For issuance of writ in the nature of certiorari or any other appropriate writ for quashing the memo of charge contained in memo no. 2926 dated 18.10.2011 issued to the petitioner by the Superintendent of Police, Saran, as being violative of Rule 16 of the Bihar CCA Rules, 2005, since the memo of charge is neither issued by the DIG of police (being the appointing authority of the petitioner) or any higher authority, nor approved by him, rather the memo of charge is issued by an authority (S.P. Saran) which is subordinate to the appointing authority of the petitioner. Further the memo of charge is also in teeth of Rule 17(3) & (4) of Bihar CCA Rules.

v. For issuance of writ in the nature of certiorari or any other appropriate writ for quashing the enquiry report daated 28.11.2011 (Annexure P9 of I.A. No. 1/ 2021) of the enquiry-cum-conducting officer, SDPO, Sonapur finding the petitioner guilty of the charges leveled against the petitioner in the memo of charges.

vi. For issuance of a writ in the nature of Mandamus or any other writ or order directing the respondents to reinstate the petitioner with all consequential benefits including backwages.

And



Pass such other orders as may be deemed fit and proper in the fact and circumstances of the case.

The brief facts leading to this writ petition are that while the petitioner was posted in Janta Bazar Police Station he was trapped red handed accepting bribe leading to institution of Vigilance PS case No. 66/ 2011, which is yet pending for disposal and in the meanwhile, a departmental proceeding was initiated against him which has culminated into an order of dismissal from service which stands affirmed in appeal and put to question before this court.

Amongst several issues raised by Mr. Bindhyachal Singh, learned senior counsel 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 proceeding leading to the impugned order, is 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 chose to do so and the Enquiry Officer himself assumed the role of Presenting Officer himself to examine the evidence and hold the petitioner guilty, which is in violation of Rule 17(6) of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 and on this ground



alone the entire departmental proceeding stands vitiated. In support of his submission learned counsel for the petitioner has relied upon a judgement of this court in the case of ***Panchanan Kumar vs. Bihar State Electricity Board & Ors*** reported in 1996 (1) PLJR 401, paragraph 11 of the aforesaid judgement reads thus:-

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...”*

It is further submitted that charge memo has been served on the petitioner issued under the signature of Superintendent of Police, Saran who is neither the Disciplinary Authority nor the Appointing Authority and thus the charge memo itself having been



issue not by an authority competent to do so is fit to be quashed in view of the judgement passed by the Supreme Court in the case of **Union of India vs. B. V. Gopinath** reported in **(2014) 1 SCC 351**.

Learned counsel for the State is unable to controvert the point of law raised by the petitioner. In paragraphs 12 & 13 of the counter affidavit it is stated that after considering all the facts, allegation leveled against the petitioner and materials available on the record of departmental proceeding the conducting officer has found the petitioner guilty. Thereafter, the Disciplinary Authority vide speaking and reasoned order dismissed the petitioner from service with immediate effect.

In the circumstances so discussed above where there was 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 aforesaid facts and circumstances and for the reasons discussed above, this court is of the opinion that the entire proceeding beginning from the Enquiry Officer's report dated 28.11.2011 impugned at Annexure-P9 with I.A. No. 1/ 2021 culminating in the punishment order passed by the Disciplinary Authority dated 22.3.2012 impugned at Annexure-P6 as well as the order in appeal communicated vide office order No.1040/sa.sha dated 07.05.2013 impugned at AnnexureP7 cannot be upheld and are accordingly quashed and set aside with all consequential benefits to the petitioner.

Since the impugned orders are set aside on the procedural infirmities, the respondents are at liberty to proceed afresh, in accordance with law, if so advised.

The writ petition stands allowed.

(Prabhat Kumar Singh, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	14.02.2023
Transmission Date	N.A.

