

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2954 of 2020

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Raj Kumar, Son of Late Ram Narain Prasad, resident of Village- Hardan
Bigha (Ufror), P.O. and P.S. Barahiya, District- Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary, Rural Works Department, Govt. of Bihar, Patna.
3. The Engineer-in-Chief, Rural Works Department, Govt. of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prashant Sinha, Adv.

Mr. Rohan Verma, Adv.

For the Respondent/s : Mr. Dharendra Kumar (AC to AAG-6)

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 11-01-2024

Heard learned counsel for the petitioner and learned
counsel for the State.

2. The present writ petition has been filed for
quashing of the charge memo dated 16.01.2018 annexed as
Annexure- 2/B, enquiry report dated 03.12.2018 annexed as
Annexure-5/B, punishment order contained in Memo no. 2320
dated 16.08.2019 annexed as Annexure-8 and the appellate
order contained in Memo no. 3556 dated 03.12.2019 annexed as
Annexure-11.

3. Learned counsel for the petitioner submits that the
petitioner was appointed as Junior Engineer and during his
posting at Hilsa in the Engineering Organization, Works
Division-2 at block office Hilsa, a Vigilance P.S. case No.



103/2017 was lodged on 23.11.2017 in which he was arrested with money and subsequently, a memo of charge has been framed against the petitioner by the Engineer-in-Chief on 16.01.2018. Upon releasing the petitioner from custody on 28.02.2018, a departmental proceeding was initiated against him and the petitioner has contested, but in the enquiry report, he was held responsible and the charge was proved against him vide letter No. 3665 dated 03.12.2018. Second show cause has been demanded from the petitioner which subsequently, resulted into punishment order *vide* memo no. 2320 dated 16.08.2019 which was challenged in appeal, but the said appeal was rejected vide order dated 25.11.2019.

4. Learned counsel for the petitioner further submits that the disciplinary proceeding against the petitioner has been guided by the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as “CCA Rules, 2005”). Counsel submits that there is a gross violation of mandatory provisions of rule 17(3) of the CCA Rules, 2005. Counsel further submits that admittedly, the charge memo has been issued to the petitioner on 16.01.2018 and according to the Bihar Framing of Articles of Charge against Government Servants Regulations 2011 notified *vide* Notification No. 3/M-114/2010-322, dated 31.01.2011 which was repealed by Bihar Framing of Articles of Charge against Government Servants



Regulations 2017 (hereinafter referred to as “Regulation 2017”) notified *vide* Notification No. 3/M-114/2010GAD-15983, dated 14.12.2017 in which the proforma of article of charge has to be issued in the light of Appendix-1 of the Regulation 2017. Counsel further submits that this provision has been tested by this Hon’ble Court in case of ***Uday Pratap Singh Vs. The State of Bihar through Chief Secretary & Ors.*** reported in ***2017(4) PLJR 195***. Counsel for the petitioner further relied on another judgment in the case of ***Chairman-cum-Managing Director, Coal India Limited & Ors. Vs. Ananta Saha & Ors.*** reported in ***(2011) 5 SCC 142*** that when the very inspection is bad and illegal, then all other subsequent consequential effect shall also treated to be illegal.

5. Learned counsel for the State on the other hand opposes the prayer of the petitioner and submits that the points raised by the petitioner has not been raised by him on any early occasion either before the Enquiry Officer or before the Disciplinary Authority or before the Appellate Authority, but only before this Hon’ble Court with a view to entertain the judicial review, the petitioner has raised such plea and he may not be permitted to raise such plea at such belated stage. Counsel also submits that the charge memo has been annexed in the counter affidavit as Annexure-A and submits that the said charge memo may not be in the proforma according to



Regulation 2017, but all the ingredients mentioned in the Rule 17(3) of the CCA Rules, 2005 are there. Counsel for the State further submits that on this technical ground, the entire proceeding may not be treated illegal and if at worst, Hon'ble Court accepts this is violative of procedural lapse, then in that case, the opportunity may be granted to the State to proceed further as it is a case in which the delinquent has been arrested by the Vigilance Department with cash and the Officer who involved in corrupt practices, may not be left over.

6. Upon going through the submissions of the parties and perusal of Rule 17(3) of the CCA Rules, 2005, the judgment passed by this Hon'ble Court where analysis of this rule has been made in the case of **Uday Pratap Singh (supra)** whose paragraph 19, 20 and 22 states as follows:-

“19. A disciplinary proceeding is said to be initiated upon service of a charge memo as mandated under Rule 17(3) of “the Disciplinary Rules” which inter alia enables the Disciplinary Authority to draw a charge memo or cause it to be drawn by a competent authority and which charge memo should inter alia contain:

(a) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge; and



(b) a statement of imputations of misconduct or misbehaviour in support of each article of charge and which shall contain:

(i) a statement of all relevant facts including any admission or confession of the Government Servant;

(ii) a list of such document(s) on which, the article of charges are proposed to be sustained.

20. Rule 17(4) of “the Disciplinary Rules” again casts and obligation on the Disciplinary Authority to deliver such charge memo on the Government Servant concerned, and require him to submit a written statement of defence as well as to state whether he desires to be heard in person.

22. Rule 17(6) obliges the Disciplinary Authority, where it chooses to delegate the power of enquiry to an inquiring authority, to forward a copy of the enquiry report, the written statement of defence, if any; the copy of the statement of witnesses, if any; the evidence proving the delivery of documents and copy of the order appointing the Presenting Officer, to the inquiring authority.”

7. One more judgment which is relevant for the purpose of considering this case is the judgment of **Chairman-**



cum-Managing Director, Coal India Limited (supra) whose paragraph 32 is very much clear, which reads as under:-

“32. It is a settled legal proposition that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same. In such a fact situation, the legal maxim sublatō fundamēto cadit opus is applicable, meaning thereby, in case a foundation is removed, the superstructure falls.”

As well as after the consideration of appendix of Regulation 2017, this Court is of the firm view that the charge memo is defective and it has not been issued in accordance with the Regulation 2017 notified by the State on 14.12.2017 and therefore, this Court is of the view that this charge should go, in result the charge shall go, then automatically every consequential effect shall also not sustainable.

8. Hence, charge memo dated 16.01.2018 annexed as Annexure- 2/B, enquiry report dated 03.12.2018 annexed as Annexure-5/B, punishment order contained in Memo no. 2320 dated 16.08.2019 annexed as Annexure-8 and the appellate order contained in Memo no. 3556 dated 03.12.2019 annexed as Annexure-11 are hereby set aside.

9. But since, this matter is relating to corruption against the delinquent, therefore, such type of allegation is



necessary to be checked afresh and therefore, liberty is hereby granted to the State that State shall issue fresh charge memo according to the Regulation 2017, may proceed further and conclude it within 6 months from the date of production of the order.

10. Respondent is directed to accept the petitioner’s joining and proceed further in accordance with CCA Rules, 2005.

11. With the aforesaid observation and direction, this writ petition is hereby allowed.

(Dr. Anshuman, J.)

Divyansh/-

AFR/NAFR	
CAV DATE	
Uploading Date	16.01.2024
Transmission Date	

