

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3074 of 2018

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Rakesh Kumar Son of Sri Madan Prasad Chaudhary, Resident of Bramhan Toli Sanghat, Muzaffarpur P.S.-Muzaffarpur, Presently Posted as In Charge Superintendent of Excise, Bettiah.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Excise Commissioner, Registration Excise Prohibition Department, Government of Bihar, Patna.
3. The Special Secretary, Registration Excise and Prohibition Department, Government of Bihar, Patna.
4. The Joint Commissioner, Registration Excise and Prohibition Department, Government of Bihar, Patna.
5. The Deputy Commissioner, Darbhanga Cum Kosi Cum Purnea Division Darbhanga.
6. The Superintendent of Excise, Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Lalit Kishore, Sr. Adv. Mr. Ranjeet Kumar, Adv. Mr. Ayush Kumar, Adv. Mr. Mohit Sriwastava, Adv. Mr. Kanishk Kaustubh, Adv. Mr. Shikhar Mani, Adv. Mr. Rishikesh Ojha, Adv.
For the Respondent/s	:	Mr. Manish Kumar, (AC to AAG-6)

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
Date : 23-01-2024

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

2. The present writ application has been filed for setting aside the inquiry report contained in Memo No. 43 dated 26.08.2016 further for setting aside the punishment order contained in Memo No. 5068 dated 20.12.2017 and a new prayer which is being added by interlocutory application to set aside the order dated 16.04.2018 contained in Memo No. 1404

dated 19.04.2018 by which the memorial/ review of the petitioner has been rejected.

3. Learned counsel for the petitioner submits that the petitioner was appointed on the post of Inspector Excise in the year 2004 through Bihar Public Service Commission. During the relevant period, which is subject matter of this case, his posting was at Katihar being In-Charge Superintendent of Excise where he resumed his duty on 05.08.2012 and continued till 27.08.2015, thereafter, he was transferred to Bettiah and till filing his writ petition, he was working as In-Charge Superintendent Excise of Bettiah itself.

4. Learned counsel for the petitioner further submits that the petitioner was served a show cause containing in Memo No. 5150 dated 11.12.2015 issued by the Special Secretary of the Registration Excise and Prohibition Department, Government of Bihar, Annexure-1. He further submits that from the said annexure, it transpires that the document which was relied against him is the report of Deputy Commissioner of Excise Darbhanga-cum-Kosi-cum-Purnea Division, Darbhanga report dated 20.09.2015. The said report dated 20-22.09.2015 is Annexure-2.

5. Learned counsel for the petitioner further submits that in the charge memo, imputation of charges has been explained to him and the same Deputy Commissioner of Excise has been appointed as Inquiry Officer on whose inquiry report, decision has been taken to initiate the departmental proceeding against the petitioner. He further submits that the petitioner has categorically taken the plea in paragraph 15 and 16 of his writ petition that request has been made by the petitioner to the Excise Commissioner, Bihar requesting him to

change the Inquiry Officer, as the departmental inquiry was being carried out on the basis of the Memo No. 90 dated 22.09.2015 which had been prepared by the same Inquiry Officer himself and there was possibility of prejudice to the interest of the petitioner. The said letter is Annexure-5 to the writ petition.

6. Learned counsel for the petitioner further submits that on the basis of the inquiry report which has been prepared by the Inquiry Officer is full of bias which resulted into punishment to the petitioner. This aspect has neither been considered by the disciplinary authority nor by the reviewing authority.

7. On merit, learned counsel for the petitioner submits that allegation has been made against the petitioner that he has not taken action against the licensee holders and if action taken, recovery could not be made which incurred the loss to the Government.

8. In this regard, learned counsel for the petitioner submits that the petitioner has taken action, license of the defaulters has been cancelled and those who have not paid money, certificate case were already been instituted for the financial year 2013-14 and 2014-15, whereas notices were issued for the defaulter of 2015-16. He further submits that every lawful and prudent steps were taken at the level of the petitioner, therefore, allegation that recovery has not been made is not correct.

9. At the time of argument, learned counsel for the petitioner submits that the case of ***State of U.P. & Ors. Vs. Saroj Kumar Sinha*** reported in ***2010(2) SCC 772***, it has been hold that an Inquiry Officer acting in quashi-judicial authority is

in a position of independent adjudicator and a departmental proceeding has to be concluded following the rules of natural justice. The basic requirement of rule of natural justice is that an employee be given a reasonable opportunity of being heard as well as the inquiry proceeding has not to be conducted with a close mind and it must not suffer the doctrine of bias. It is due to this reason, learned counsel submits that the entire departmental proceeding is nullity and the orders under challenge contained in different memos may be directed to be quashed.

10. Learned counsel for the State on the other hand submits that the inquiry proceeding has been conducted following due process of law as laid down under CCS Rule, 2005. He further submits that preliminary inquiry was conducted resulted into initiation of departmental proceeding and resulted into second show cause resulted into order passed by the disciplinary authority and duly approved by the reviewing authority. As such there is no scope for the petitioner and writ petition may be dismissed.

11. Upon the specific query of the Court that whether the person who has worked as Inquiry Officer has conducted the inquiry and the report submitted in Memo No. 90 dated 22.09.2015 is the basis of the departmental proceeding or not. Learned counsel fairly submits that the person who has submitted a report on the basis of inquiry contained in Memo No. 90 dated 22.09.2015 and the person who is the Inquiry Officer are one and the same person.

12. In the light of the submissions made by the parties and the documents on record as well as considering the case of *State of U.P. & Ors. Vs. Saroj Kumar Sinha (supra)*, this Court has reached on the conclusion that a person on whose

report, departmental proceeding has been initiated, charges has been framed may be a probable witness but instead of that he has been appointed as adjudicator in the departmental proceeding which is a quashi-judicial hearing and there is every probability of bias that a person on whose report, the entire proceeding has been initiated, shall try to hold his own decision which he has submitted in his earlier report on the basis of which departmental proceeding has been initiated. The relevant paragraphs of the judgment quoted above *i.e. State of U.P. & Ors. Vs. Saroj Kumar Sinha* are as follows:

“28. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service. In the case of Shaughnessy v. United States, 345 US 206 (1953) (Jackson J), a judge of the United States Supreme Court has said "procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied."

29. The affect of non disclosure of relevant documents has been stated in Judicial Review of Administrative Action by De Smith, Woolf and Jowell, Fifth Edition, Pg.442 as follows:

"If relevant evidential material is not disclosed at all to a party who is potentially prejudiced by it, there is prima facie unfairness, irrespective of whether the material in question arose before, during or after the hearing. This proposition can be illustrated by a large number of modern cases involving the use of undisclosed reports by administrative tribunals and other adjudicating bodies. If the deciding body is or has the trappings of a judicial tribunal and receives or appears to receive evidence ex parte which is not fully disclosed, or holds ex parte inspections during the course or after the conclusion of the hearing, the case for setting the decision aside is obviously very strong; the maxim that justice must be seen to be done can readily be invoked."

30. In our opinion the aforesaid maxim is fully applicable in the facts and circumstances of this case."

13. In the light of the discussion made above, this Court is of the view that an inquiry report which has been initiated by a person on whose report, departmental proceeding initiated cannot be said to be an independent inquiry. As it has been held by the Hon'ble Supreme Court in the above mentioned case that an Inquiry Officer acting in a quasi-judicial authority is in the position of an independent adjudicator.

14. Here in the present case, the charge memo has been issued on the basis of the report submitted by the Inquiry Officer. Hence, he cannot be said to be an independent adjudicator and therefore, on this ground alone, the inquiry report, the order of disciplinary authority and reviewing

authority dated 26.08.2016, 20.12.2017 and 25.01.2018 respectively are hereby set aside.

15. Liberty is hereby granted to the State to initiate the fresh proceeding, appointing other person as Inquiry Officer but the entire process has to be completed within 6 months.

16. The petitioner is directed to join immediately and State may take action afresh in accordance with CCS Rule, 2005. All payments for which petitioner shall be entitled be directed to be paid within 3 months.

17. With this direction, the present writ application is hereby allowed.

(Dr. Anshuman, J.)

sadique/-

AFR/NAFR	NAFR
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