

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6456 of 2018

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Arun Kumar Rajak S/o Hira Lal Rajak, R/o Mohalla- Adampur Jahaz Ghat,
P.S.- Adampur, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Chairman-cum-Member Board of Revenue, Govt. of Bihar, Patna.
3. The Divisional Commissioner Bhagalpur-cum-the Appellate Authority.
4. The District Magistrate, Bhagalpur-cum-the Disciplinary Authority.
5. The Enquiry Officer -cum-the Additional Collector, Bhagalpur.
6. The Presenting Officer-cum-the Circle Officer Sabour, District- Bhagalpur.
7. The Superintendent of Police, Vigilance Investigation Bureau, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Purushottam Kumar Jha
For the Respondent/s	:	Mr. Sanjay Parasmani, AC to GP-4
For Respondent No.7	:	Mr. Anil Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 28-02-2024

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

2. The petitioner has prayed for the following relief/s

“(i) A writ in the nature of Certiorari may be issued by this Hon'ble Court, for Quashing / Setting aside the memorandum of charge dated 08.07.2008/23.09.2008 (Annx-8) jointly framed by the Circle Officer, Sabour and the District Magistrate, Bhagalpur, whereby two charges of misconduct, appertaining to the demand and acceptance of bribe of Rs. 15,000/- from one Mr. Babu Gulam, has been leveled against the Petitioner in connection whereto the Petitioner was apprehended by the Vigilance



Trap Team on 04.05.2007 and Vigilance P S Case No 057/2007 dated 04.05.2007 (Annexure-3) had been instituted.

(ii) Issuance of an order, direction or a writ in the nature of Certiorari for Quashing/Setting aside the last Enquiry Report dated 02.04.2014 (Annx-35), whereby and where under the charges so leveled against the petitioner have been proved against the petitioner in a complete illegal and arbitrary manner; that too, in absence of any evidence.

(iii) Issuance of an order, direction or a writ in the nature of Certiorari for Quashing/Setting aside the order of petitioner's dismissal as contained in Memo No. 1978 dated 21.06.2016 issued by the Respondent No. 4 (Ann-40), whereby the petitioner has been dismissed from his service in a complete illegal arbitrary, malafide, malicious and mechanical manner

(iv) Issuance of an order, direction or a writ in the nature of Certiorari for Quashing/Setting aside the order dated 27.09.2016 passed by the Respondent No. 3 in Appeal Misc. (Service Appeal) Case No. 11/2016-17 (Ann-42), whereby the service appeal preferred by the petitioner has been dismissed in a complete illegal arbitrary, malafide, malicious and mechanical manner.

(v) Issuance of an order, direction or a writ in the nature of Certiorari for Quashing/Setting aside the order dated 31.08.2017 passed by the Respondent No. 2 (Annexure 44), whereby petitioner's Revision application has been dismissed in a complete illegal arbitrary, malafide, malicious and mechanical manner.

(vi) Issuance of an order, direction or a writ in the nature of Mandamus commanding the



Respondent No. 4 to reinstate the petitioner in the services of Bhagalpur Collectorate with all consequential benefits.

(vii) 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.”

2. Learned counsel for the petitioner submits that the petitioner was working as a *Halka Karmchari* (Revenue Clerk) and against whom an order has been issued on 12.05.2007 along with a charge memo which is Annexure-8 by the District Magistrate, Bhagalpur which was subsequently resulted into enquiry before the conducting officer, charge found proved subsequently, resulted into second show cause followed by punishment order which was challenged subsequently in appeal and appeal was also dismissed. Thereafter, the petitioner has preferred revision and the revision has also been dismissed.

3. Learned counsel for the petitioner submits that the most fundamental and mandatory provision that has to be followed by the disciplinary authority has completely been ignored as the said letter Annexed as Annexures 7 and 8 which is the foundational pillar of the departmental proceeding has been issued in a gross violation of Rule 17(4) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the ‘CCA Rules 2005’. In the



said letter, the delinquent was directed to file the written statement before the Conducting Officer whereas under the said Rule it has to be filed before the disciplinary authority and has to be considered by the disciplinary authority himself. Learned counsel relied on a judgment rendered by this Hon'ble Court dated 04.09.2017 in the case of **Pankaj Kumar vs. the State of Bihar and Ors. In CWJC No. 5042 of 2016.**

4. Learned counsel for the State submits that it is true that the delinquent was directed by the disciplinary authority to submit his written statement before the Conducting Officer/Enquiry Officer, but by the said direction, no prejudice has been caused to him and, therefore, this step may be ignored. Learned counsel further submits that after issuance of the charge memo, every step completely in accordance with the CCA Rules 2005 has been followed and it has been decided at the original level, appellate level as well as revisional level. Therefore, there is no need for any interference. Hence, this writ petition is fit to be dismissed.

5. Upon hearing both the parties and perusal of the document, it is necessary to quote the provisions on which the petitioner is relying. The provision of Rule 17 of the CCA Rules 2005 is as follows :-



“17. Procedure for imposing major penalties. -

(1)

(2)

(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.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government Servant a copy of the articles of charge, such statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government Servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

6. Similarly, the relevant extract of the case of **Pankaj**

Kumar (supra) is as follows :-

In so far as the present case is concerned, the order 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) and the observations made in paragraph 6 of the judgment squarely would apply to the case in hand.

“6. We have heard learned counsel for the petitioner and learned Standing Counsel for the respondents and perused the materials placed before us. On perusal of the charge-sheet, a copy of which is annexed as Annexure-1, we find force in the submission of the learned counsel for the petitioner that the allegations contained in the charge-sheet are vague and no specific article of charge has been framed. It is also not for Corporation that the charge-sheet did not contain any statement of misconduct and misbehaviour in support of the charge against the petitioner. The list of documents, on which the article of charges was based and list of witnesses to be examined in support of the charges in the domestic enquiry, have also not been furnished with the charge-sheet. It appears from the charge-sheet that Shri E. Topno, the Chief of Administration was appointed as the Enquiry Officer in the proceedings and the petitioner was asked to submit his reply to the charges to the Enquiry Officer. The Enquiry Officer is not the competent authority to consider the reply to the charges. It is for the disciplinary authority to consider the reply to charges and on consideration of the causes shown in the reply to decide as to whether to close or to continue with the proceeding by holding domestic enquiry into the charges.”



The 3rd infirmity in the present case is that no Presenting Officer has been appointed for the proceedings to lead the case of the department. Once a disciplinary authority decides on holding a regular proceeding after following the procedure prescribed under rules 17(4) and 17(5) of 'the Disciplinary Rules' but wishes to shift responsibility on an authority other than himself, then he is to follow the procedure prescribed under rule 17(6) of 'the Disciplinary Rules' which mandates the Disciplinary Authority to forward certain records to the inquiring authority which also includes an order appointing the Presenting Officer which is missing in the present case.

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. In somewhat similar situation where the Presenting Officer was appointed but he did not choose to lead any evidence this Court in the case of Shankar Dayal Vs. State of Bihar arising from CWJC No.7207 of 2016 has expressed its opinion which applies with all force to the case in hand:

"It is not in dispute that though a Presenting Officer was appointed for the enquiry but he did not choose to lead any evidence drawn against the petitioner or examine the petitioner on the allegation. On the contrary it is the Enquiry Officer who took this duty upon himself. Rule 17 of „the Rules“ draws a



complete scheme of the proceeding and details the manner in which a proceeding is to be conducted. Rule 17(14) very eloquently describes as to how a proceeding is to proceed on the date fixed. A mandatory duty has been cast on the Presenting Officer to examine the witnesses and lead evidence collected against a delinquent. This mandatory duty has not been discharged. Instead the Enquiry Officer took this duty upon himself even when such practice has been deprecated by the Courts on different occasions. For ready reference I would refer to a judgment of the Supreme Court reported in (2010) 2 SCC 772 (State of Uttar Pradesh vs. Saroj Kumar Sinha). At paragraph 28 of the judgment the Supreme Court has the following words of advise for the enquiry officer:

“28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have



been proved against the respondents.”

In continuation I would also refer to a judgment reported in 1996 (1) PLJR 401 (Panchanan Kumar vs. The Bihar State Electricity Board) in which case though a Presenting Officer was appointed but he failed to discharge his obligation and in his absence his role was assumed by the Enquiry Officer. The opinion of the Bench at paragraph 11 of the judgment would be relevant for the issue at hand:

“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 undisputed that there was no Presenting Officer present either to lead or to prove the evidence whatsoever, collected against the petitioner. The Enquiry Officer in such circumstances could not have assumed this duty upon himself to examine the evidence to hold it sufficient enough for upholding the charges.

*In this connection I would again refer to paragraph 14 of the judgment of the Supreme Court reported in (2009)2 SCC 570 (**Roop Singh Negi v. Punjab National Bank**) which would again apply on all fours in the present case."*

14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence."

Where the orders of punishment impugned in



the present writ petition are resting on a proceeding which is invalid from its very inception, it would have to suffer the consequences inasmuch as they are founded on a proceeding which suffers statutory violations which are of mandatory nature.

7. In the light of the said Rule 17(4) of the CCA Rules 2005 as well as the ratio decided in the case of **Pankaj Kumar (supra)**, this Court is of the firm opinion that the respondents have violated the provisions of the said Rule which are mandatory in nature.

8. In the light of the judgment rendered in the case of **State of U. P. versus Rajit Singh** reported in **(2022) 15 SCC 254** it is the mandate of law as decided by the Hon'ble Supreme Court that the department is free to initiate the proceeding afresh. Relevant paragraph no.8 is as under :-

“8. It appears from the order passed by the Tribunal that the Tribunal also observed that the enquiry proceedings were against the principles of natural justice inasmuch as the documents mentioned in the charge-sheet were not at all supplied to the delinquent officer. As per the settled proposition of law, in a case where it is found that the enquiry is not conducted properly and/or the same is in violation of the principles of natural justice, in that case, the Court cannot reinstate the employee as such and the matter is to be remanded to the enquiry officer/disciplinary authority to proceed further with the enquiry



from the stage of violation of principles of natural justice is noticed and the enquiry has to be proceeded further after furnishing the necessary documents mentioned in the charge-sheet, which are alleged to have not been given to the delinquent officer in the instant case. n LIC v. A. Masilamani [LIC v. A. Masilamani, (2013) 6 SCC 530 : (2013) 2 SCC (L&S) 608] , which was also pressed into service on behalf of the appellants before the High Court, it is observed in para 16 as under :

“16. It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide ECIL v. B. Karunakar [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] , Hiran Mayee Bhattacharyya v. S.M. School for Girls [Hiran Mayee Bhattacharyya v. S.M. School for Girls, (2002) 10 SCC 293 : 2003 SCC (L&S) 1033] , U.P. State Spg. Co. Ltd. v. R.S. Pandey [U.P. State Spg. Co. Ltd. v. R.S. Pandey, (2005) 8 SCC 264 : 2006 SCC (L&S) 78] and Union of India v. Y.S. Sadhu [Union of India v. Y.S. Sadhu, (2008) 12 SCC 30 : (2009) 1 SCC (L&S) 126] .)”

9. Hence, the present writ petition is allowed and the memorandum of charge dated 08.07.2008/23.09.2008 (Annexure-8); last Enquiry Report dated 02.04.2014 (Annexure-35); order dated 21.06.2016 contained in Memo No. 1978; order



dated 27.09.2016 passed by the respondent No.3 and order dated 31.08.2017 passed by respondent No.2 (Annexure - 44) are hereby set aside and quashed.

10. However, if the official decides to initiate a proceeding, the same shall be directed to be concluded within 90 days from the date of appearance of the petitioner.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	11/03/2024
Transmission Date	NA

