

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2822 of 2018

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Rajeev Ranjan son of Late Surendra Prasad Singh, resident of Village-Gosainpur, P.S. Hilsa, District Nalanda, Bihar.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna
2. The Bihar State Food and Civil Supplies Corporation through its Managing Director, Khadya Bhawan, Daroga Prasad Rai Path, Patna
3. The Managing Director, Bihar State Food and Civil Supplies Corporation, Khadya Bhawan, Daroga Prasad Rai Path, Patna.
4. The Chief (Procurement), Bihar State Food and Civil Supplies Corporation, Khadya Bhawan, Daroga Pras
5. The Chief TDPS, Bihar State Food and Civil Supplies Corporation, Khadya Bhawan, Daroga Prasad Rai Path, Patna.
6. The District Magistrate, District Bhagalpur, Bihar.
7. The Deputy Director (Food), Bhagalpur Division, Bhagalpur, Bihar.
8. The District Manager, State Food Corporation, Bhagalpur, District-Bhagalpur, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prabhat Ranjan, Advocate
For the Respondent/s	:	Mr. S.Raza Ahmad, AAG-5
		Mr. Vishwambhar Singh, AC to AAG-5
For the BSFC	:	Mr. Shaillendra Kumar Singh, Advocate
		Mr. Utkarsha Utpal, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
Date : 09-01-2024

Heard learned counsel for the petitioner, learned
counsel for Bihar State Food and Civil Supplies Corporation
and learned counsel for the State.

2. Learned counsel for the petitioner submits that
there was specific direction of this Court vide order dated



28.11.2023 to the State that the State may file their response on the different interlocutory applications.

3. In this regard, learned counsel for the State submits that in the counter affidavit the reply of writ petition as well as interlocutory applications are consolidated. Therefore, no need of filing separate response towards three interlocutory applications.

4. Learned counsel for the petitioner submits that the present writ petition has been filed for quashing of the order bearing Memo No.2423 dated 18.05.2017, which is a gross violation of Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the CCA Rules, 2005'). The further prayer has been made to restrain the respondents from concluding the Departmental Proceeding as initiated vide Memo No.2423 dated 18.05.2017.

5. Learned counsel for the petitioner submits that after filing of the writ petition vide order dated 12.03.2018 a protection order has been granted by this Hon'ble Court in favour of the petitioner by which it has been ordered that the final order shall not be passed undergoing departmental proceeding by the disciplinary authority. Learned counsel for the



petitioner submits that prima facie this proceeding has been started in gross violation of Rule 17(3) of the CCA Rules, 2005. His argument is on two fold, firstly that the 'Prapatra Ka' has not been prepared by the appointing authority and secondly the forwarding letter, which has been annexed under the signature of the Special Secretary, does not contain the lawful requirement as contained under Rule 17(3) of the CCA Rules, 2005. Counsel submits that the analysis of that Rule has been made in the case of **Uday Pratap Singh Vs. The State of Bihar through Chief Secretary and Others** reported in **2017(4) PLJR 195**, whose paragraph 19, 20 and 21 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.”

Counsel submits that upon analysis of the specific provision and the charge memo which is contained in



Annexure-1, it is crystal clear that there is gross violation of Rule 17(3) of the CCA Rules, 2005.

6. One more judgment which is relevant for the purpose of considering this case is the judgment of **Chairman-cum-Managing Director, Coal India Limited and Others Vs. Ananta Saha and Others** reported in **(2011) 5 SCC 142** 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 *sublato fundamento cadit opus* is applicable, meaning thereby, in case a foundation is removed, the superstructure falls.”*

7. Learned counsel for the State submits that counter affidavit has been filed and charge memo has been annexed. But the ingredient, which is required to be present under Rule 17(3) of the CCA Rules, 2005 is lacking in the present case has not been explained in the counter affidavit.

8. Learned counsel for the State further submits that due to the protection order granted by this Hon'ble Court the direction was made not to pass final order in the departmental proceeding and no final order has been passed. But



in response of the charge memo the petitioner has filed the reply and enquiry officer has prepared the enquiry report on the basis of the materials available by the department and the delinquent officer. Only final order is yet to be passed and, therefore, he submits that without interfering and passing any order in favour of the petitioner, let the departmental proceeding is directed to be concluded with liberty that in case the petitioner be aggrieved by the final order he may move for further legal remedy.

9. Upon hearing the arguments of the parties and going through the documents, this Court considering the legal aspect of the matter that the scope of the judicial review are very limited but, particularly, in the present case there is procedural lapses at the very inception of this departmental proceeding and, therefore, this Court cannot shut his eyes on the wrongs which have been done at the very inception in the procedure itself.

10. Hence, this Court has reached on the opinion that once the foundational matrix of this case itself bad in law and in violation of Rule 17(3) of the CCA Rules, 2005, the entire further steps are automatically vitiated, particularly after two judgments passed in the case of **Uday Pratap Singh** (supra) and in the case of **Chairman-cum-Managing Director, Coal**



India Limited (supra).

11. Therefore, this Court shall not permit the respondent to proceed and hereby set aside the charge memo, which has not been issued in accordance with Rule 17(3) of the CCA Rules, 2005, granting liberty to the respondent that he may proceed against the delinquent following the CCA Rules, 2005 but with the specific direction to conclude everything within 90 days.

12. In this view of the matter, this writ petition is allowed. There is no need to pass any order on the pending interlocutory applications.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.01.2024
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