

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18725 of 2021

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Pramod Kumar Singh, Son of Late Shyam Bihari Singh, Resident of MIG-177, Lohia Nagar, P.S.- Kankarbagh, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Prohibition, Excise and Registration, Govt. of Bihar, Patna.
2. The Joint Secretary Department of Prohibition, Excise and Registration, Govt. of Bihar, Patna.
3. The District Magistrate cum Collector Bhojpur, Ara.
4. S.K. Agarwal Enquiry Commissioner
5. The Bihar Public Service Commission Through its Chairman, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Ranjan, Advocate
For the Respondent/s : Mr. Sriram Krishna, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 18-02-2025

Heard Mr. Rajesh Ranjan, learned Advocate for the petitioner and Mr. Sriram Krishna, learned Advocate for the State.

2. The petitioner is aggrieved with the order as contained in notification dated 22.12.2020 (Annexure 10) whereby he has been inflicted with the punishment of compulsory retirement under Rule 14(ix) of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (in brevity Rules, 2005).

3. The facts as culled out from the materials available on record, in brief, are that the petitioner was initially



appointed on 27.04.1997 as Sub-Registrar under the Department of Prohibition, Excise and Registration, Government of Bihar.

4. While the petitioner was posted as Sub-Registrar at Ara, he was served with a Memo of Charge under Memo no. 3801 dated 01.09.2017, containing eight charges, directing the petitioner to submit his explanation. In response to the Memo of Charge, the petitioner submitted his detailed explanation. Departmental Proceeding was initiated vide resolution bearing Memo No. 319 dated 25.01.2018. The Departmental Enquiry Commissioner was appointed as Conducting Officer. The enquiry was conducted and the conducting officer, on receipt of reply of the petitioner as also a report from the Presenting Officer submitted its enquiry report, the copy of which is marked as Annexure 6 to the writ petition. On being found all the charges stand proved, the petitioner was allowed to submit a second show cause reply; in response thereto he submitted a detailed show cause reply denying all the charges and pleaded to exonerate. The show cause reply of the petitioner did not find favour and finally the impugned order inflicting the punishment of voluntary retirement under Rule 14(ix) of the rules, 2005 came to be passed, which is put to challenge.

5. Learned Advocate for the petitioner while



assailing the impugned order has finally drawn the attention of this Court to the memo of charge and submitted with all vehemence that the memo of charge, without the list of witness is in complete defiance of the prescription as provided under Rule 17(3) and 17(4) of the Rules, 2005; since no oral evidence has been examined, the documents have not been proved.

6. It is further contended that the list of documents on the basis of which the proposed charges are to be proved is nothing but two reports, one by the three men committee and another submitted by the deputy inspector general of registration, which in the submission of the petitioner duly prepared behind the back of the petitioner. He thus contended that once, neither of the author of any of the report has been examined, nor they have been produced as a witness, in such circumstances no reliance over the report can be placed by the disciplinary authority.

7. Learned Advocate for the petitioner also referred to a guidelines issued by the State Government in the Department of Personnel & Administrative Reforms issued in the year 2008 mandated the Disciplinary Authority to provide a list of witnesses, documentary evidence and specific statement of imputation with memo of charge, but the respondents failed



to comply the same. Reliance has also been placed on a judgment rendered by the Hon'ble Apex Court in the case of ***Roop Singh Negi vs. Punjab National Bank & Ors., (2009) 2 SCC 570***. Referring thereto, he contended that the entire disciplinary proceeding falls to the ground for the simple reason that no witnesses was examined to prove the charges.

8. It is also urged that since no oral evidence has been examined, the documents have not been proved and thus, could not have been taken into consideration to conclude that the charges have been proved against the petitioner. For the said purpose, he further placed reliance on a decision of the Apex Court in the case of ***State of Uttar Pradesh & Ors. vs. Saroj Kumar Sinha, (2010) 2 SCC 772***.

9. Referring to the enquiry report, Mr. Rajesh Ranjan, learned Advocate for the petitioner thus contended that the Enquiry Commissioner has failed to take note of any of the defence placed by the petitioner and it is rather unfortunate, that the same has only been narrated in the enquiry report, without there being any deliberation and discussion. Effort has also been taken to persuade the Court, that none of charges stand substantiated; the primary and the serious charge has no leg to stand in view of the order passed by this Court in C.W.J.C. No.



11458 of 2013, wherein while allowing the writ petition, the Court has held that the inclusion of the subject land in the list of the ban land of the Government, already stand quashed. It is the contention of the petitioner that the charge no. 1 was also the subject matter of the C.W.J.C. No. 11458 of 2013. Notwithstanding the fact, that the afore-noted judgment of the writ petition was produced before the enquiry officer as well as the disciplinary authority, but they refused to accept the contention, only on the ground that the writ petitioner and the person who had executed the sale deed were different persons.

10. The next course of submission of the learned Advocate for the petitioner is confined to the order passed by the disciplinary authority that the same is wholly perverse, inasmuch as, without application of mind. Apart from the order being cryptic, it does not discuss any evidence placed by the petitioner to rebut the charges. There was absolutely no reference of his argument. To support the aforesaid contention, reliance has also been placed on a decision of the learned Division Bench, specially paragraph no. 18 and 19 wherein the Hon'ble Apex Court has held in no uncertain term that :

“18. A Disciplinary Authority is under obligation to provide consideration of the entire circumstances of the case in order to decide the nature and extent of penalty



to be imposed. The delinquent is entitled to the consideration of the show-cause by the Disciplinary Authority and the application of mind of said authority is imperative, before imposing any punishment. Thus, where no reason is assigned as to why the reply is found unsatisfactory and punishment is imposed thereupon, it only becomes apparent that there has been no application of mind by the authority for giving of reasons in support of an order, which effects a person's basic need of the principles of natural justice.

19. The Hon'ble Apex Court in the case of Barium Chemical Limited v. A.J. Rana [(1972) 1 SCC 240 : AIR 1972 SC 591], while highlighting the merit of the word "Considers" has observed as follows:- "14. The words 'considers it necessary' postulate that the authority concerned has thought over the matter deliberately and with care and it has been found necessary as a result of such thinking to pass the order. The dictionary meaning of the word 'consider' is to attentively survey, examine, inspect (arch), to look attentively, to contemplate mentally, to think over, mediate on, give heed to, take note of, to think deliberately, to think oneself, to reflect, (vide shorter Oxford Dictionary). According to words and phrases-permanent Edn. Vol.8-A to 'consider' means to think with care. It is also mentioned that to 'consider' is to fix the mind upon with a view to careful examination, to ponder, study; mediate upon think or reflect with care".

11. Per contra, learned Advocate for the State submits that there is no procedural infirmities in the disciplinary



proceeding, inasmuch as, the petitioner had been given ample opportunity to rebut the imputations contained in the Memo of Charge. Moreover the strict rule of evidence is not required for the purposes of disciplinary proceeding. He further contended that during the course of enquiry, all the charges stand proved against the petitioner and based upon which the disciplinary authority has inflicted the punishment, which is proportionate to the charges proved.

12. This Court has considered the submissions advanced on behalf of learned Advocate for the respective parties and also perused the materials available on record. It would be worth mentioning that rules, 2005 has brought in force in exercise of the powers conferred under the proviso to Article 309 of the Constitution of India to regulate the disciplinary proceeding of Government servant/employees.

13. Rules 17 provides procedure for imposing major penalty. Sub Rule 3 thereof obligates the disciplinary authority in case it is proposed to hold enquiry against a Government servant to draw up or cause to be drawn up *inter alia* the substance of the imputation of misconduct or misbehaviour in a distinct Article of charge, a list of such documents by which and a list of such witnesses by whom the



Articles of charge are proposed to be sustained.

14. The Rule 17(4) cast a duty upon the disciplinary authority to deliver or cause to be delivered to the Government servants all the necessary documents as has been disclosed in Sub Rule 3 of Rule 17. Further Rule 17(14) provides that on the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government Servant.

15. It has further been ruled under Rule 17(17) that the evidence on behalf of the Government Servant shall then be produced. The Government Servant may examine himself in his own behalf if he so prefers; and the witnesses produced by the Government Servant shall then be examined and liable to cross-examination and, re-examination by the inquiring authority.

16. On account of non-adherence to the statutory rules as prescribed under Rules, 2005, the Government of Bihar in the Department of Personnel and Administrative Reforms issued circular dated 21.10.2008 containing a detailed check list necessitating the disciplinary authority to provide the list of



witnesses and documentary evidence in support of the charges alongwith the memo of charge.

17. It would be also worthy to note that Rule 17(13)(i) directs the conducting officer/enquiry officer that after conclusion of enquiry, a record shall be prepared and it shall contain apart from the articles of charge and the defence of Government Servant in respect of each articles of charge, the assessment of the evidence in respect of each article of charge and the finding on each article of charge and the reasons thereof.

18. The Hon'ble Supreme Court in the case of ***Saroj Kumar Sinha (supra)*** while emphasizing the procedural fairness and compliance of the principles of natural justice has ruled that it is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings, which may culminate in punishment being imposed on the employee. In no circumstances the departmental enquiry be treated as a casual exercise.

19. Emphasizing the status and role of the enquiry officer, the Hon'ble Court mandated that an enquiry officer acting as a quasi-judicial authority, holding the position of an independent adjudicator, not supposed to be representative of the Department/Disciplinary Authority/Government. His



function is to examine the evidence presented by the Department as to whether the un rebutted evidence is sufficient to hold the charges are proved. The Court in the said case has found that 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.

20. In *Roop Singh Negi (supra)* outlying the importance of evidence in departmental proceeding, the Hon'ble Court held the enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. Mere production of a document is not enough, the contents of documentary evidence has to be proved by examining the witnesses.

21. In the case of *State of Uttaranchal & Ors. Vs. Kharak Singh, (2008) 8 SCC 236* the Hon'ble Court observed that the enquiries must be conducted bona fide and care must be taken to see the enquiries do not become empty formalities. In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter the workman/delinquent be asked



whether he wants to lead any evidence and asked to give any explanation about the evidence lead against him. On receipt of the enquiry report before proceeding further it is incumbent on the part of the disciplinary authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his view, if any.

22. A bench of this Court in the case of ***Pankaj Kumar vs. The State of Bihar & Ors. (C.W.J.C. No. 5042 of 2016)*** has held that non-compliance of the mandatory provisions of Rule 17(3) and 17(4) would render the entire proceeding as null and void.

23. Now coming to the case in hand, undisputedly the disciplinary authority failed to provide the list of witnesses by whom, the articles of charge are proposed to be sustained. The documents much less the enquiry reports, which are made the basis to sustain the charges is of no help to the disciplinary authority, once none of the witnesses or the author of said documents was/were examined to prove the said documents. It is trite that mere tendering of the document would not be enough, unless the contents thereof are proved through the oral evidence.

24. This Court has also gone through the enquiry



report and found that though all the imputations, explanation and the concern of the Presenting Officer have narrated, but surprisingly there is no discussions as to why the explanation of the petitioner is not acceptable; it is rather unfortunate that onus has wrongly been shifted to the petitioner, that the petitioner failed to produce any reasonable and rationale material to rebut the imputation.

25. The order inflicting the punishment of compulsory retirement under Rules 14(ix) of the Rules, 2005 issued by the respondent no. 2 also suggest that there is absolutely no discussion either in respect of evidence in support of the allegations or the submission made by the petitioner in his defence. The disciplinary authority *prima facie* has not applied his independent mind and reiterated and reaffirmed the enquiry report as well as the opinion of Bihar Public Service Commission, while awarding the afore-noted punishment.

26. The learned Division Bench of this Court while examining the legality of an order held that to hold that cause shown can be cursorily rejected in one line by saying that it was not satisfactory or acceptable in our opinion, shall be vesting completely arbitrary and uncanalised powers in the authority in a given situation when the cause shown by the petitioner is



difficult to deal and reject, it shall be very convenient for him not to discuss the matter and reject it by simply stating that it was not acceptable. [vide *Kems Service Pvt. Ltd. vs State of Bihar & Ors, (2014) 1 PLJR 622*].

27. Although, learned Advocate for the petitioner has made a strenuous effort to persuade this Court that a remand on finding the enquiry proceeding to be vitiated on technical ground is to avoid prejudice to the delinquent employee and it cannot be a measure to cover up the negligence or laxity of disciplinary authority in conducting a proper enquiry. To support the aforesaid contention reliance has also been placed on a decision of the learned Division Bench of this Court in *The State of Bihar & Ors. vs. Vikash Kumar, L.P.A. No. 446 of 2024* and further in *Srikant Singh vs. The State of Bihar & Ors, L.P.A. No. 58 of 2024*.

28. However, this Court is of the view that there is complete procedural irregularity and the disciplinary proceeding proceeded in complete defiance of the statutory prescriptions provided under the Rules, 2005, apart from the memo of charge, enquiry report as well as the impugned order suffer from vice of non-application of mind leading to patent illegality; this Court is, thus, hereby set aside the memo of charge, enquiry report as



well as the impugned order as contained in notification under memo no. 4160 dated 22.12.2020 and relegate the matter with liberty to the disciplinary authority to re-examine the matter and if warrants proceed further in accordance with law.

29. Suffice it to observe that on account of setting aside the impugned order; the consequences shall follow with the reinstatement of the petitioner with all the back wages.

30. The writ petition stands allowed.

(Harish Kumar, J)

supratim/-

AFR/NAFR	NAFR
CAV DATE	NA
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