

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5306 of 2020

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Vikash Kumar, Son of Sri Chandrabhan Singh, Resident of Resident of Shashi Kunj, Bihari Path, near New Bus Stand, New BIGHRAHPUR, P.S. JAKKANPUR District- Patna, Bihar- 800001.

... .. Petitioner/s

Versus

1. The Union of India, through the Comptroller and Auditor General, Pocket-9, Deen Dayal Upadhyay Marg, New Delhi.
2. The Deputy Comptroller and Auditor General, O/o the Comptroller and Auditor General, Pocket-9, Deen Dayal Upadhyay Marg, New Delhi.
3. The Accountant General (Audit) Bihar, Indian Audit and Accounts Department, Birchand Patel Marg, Patna.
4. The Deputy Accountant General (Administration), O/o the Accountant General (Audit), Birchand Patel Marg, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Kumar Kaushik, Advocate
Mr.Namrata Dubey, Advocate
Mr.Pushkar Bhardwaj, Advocate
For the Respondent/s : Mr.Arun Kumar Arun, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 13-10-2022

In the instant petition, petitioner has assailed the order of the Central Administrative Tribunal, Patna Bench, Patna dated 19.02.2019 passed in O.A. No./050/00143/2016 and M.A. No./050/00256/2016 by the Central Administrative Tribunal, Patna Bench, Patna (for short 'CAT, Patna Bench').

02. The petitioner while working as Assistant Auditor Officer he was placed under suspension on 08.08.2013 and he was



charge-sheeted on 24.10.2013 under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short 'Rules, 1965'). The petitioner denied all the seven charges framed against him while submitting reply on 04.11.2013. The disciplinary authority revoked the order of suspension on 04.11.2013. However, he was not satisfied with the petitioner's reply dated 04.11.2013 on seven charges. In the result, Inquiring Officer and Presenting Officer were appointed. In the meanwhile, on 04.11.2013 common proceedings were initiated under Rule 18 of Rules, 1965 to hold enquiry against the petitioner and two others namely Shri Hemant Kumar, Sr. Audit Officer and Shri Bhopal Kumar, Sr. Auditor. The Inquiring Officer has ignored the common proceedings order dated 04.11.2013 (Annexure P-4) and proceeded to hold individual inquiry against petitioner and two others namely Shri Hemant Kumar and Shri Bhopal Kumar. The Inquiring Officer submitted report while holding that charge one to six were partly proved and charge number seven was not proved. On receipt of Inquiring Officer's report, disciplinary authority proceeded to disagree with the Inquiring Officer's report insofar as not proved charges and proceeded to issue show cause notice. Disagreeing with the Inquiring Officer's report and not proved charges proceeded to issue show cause notice (second show cause



notice) on 21.07.2014 for which petitioner had submitted his reply on 04.08.2014. Thereafter, disciplinary authority proceeded to impose penalty of reduction of pay by one stage for a period of three years and during the currency of aforesaid penalty the petitioner is not entitled to increments which are due to him.

03. Feeling aggrieved and dissatisfied with the order of penalty dated 25.08.2014 petitioner preferred memorandum of appeal before Appellate Authority on 02.10.2014 and it was rejected on 06.05.2015. The petitioner filed O.A.No. 050/00143/2016 before the Tribunal. The Tribunal rejected the petitioner's original application, hence, the present petition.

04. Learned counsel for the petitioner submitted that there is a non-compliance to Rule 14(4) and so also Rule 15(2) of Rules, 1965. It is further submitted that when the disciplinary authority by its order dated 04.11.2013 passed an order there would be common proceedings against the petitioner and two others. The Inquiring Officer should have commenced the joint inquiry and concluded. It is also submitted that disciplinary authority has not withdrawn the order of common proceedings dated 04.11.2013. Therefore, the Inquiring Officer is bound by the order/direction of the disciplinary authority to hold joint inquiry against the petitioner and two others. It is also submitted that even



though twenty six documents have been cited in support of the seven charges and it is required to be proved by relevant witnesses like author of the documents. On the other hand, while issuing charge memo under Sub-rule 4 of Rule 14 of Rules, 1965 the disciplinary authority failed to furnish list of witnesses. On the other hand, annexure to the charge memo insofar as list of witnesses is concerned it is stated nil.

05. It is further submitted that CAT, Patna Bench could not apprise the issue of common proceedings even though it was pleaded in the original application and further proceeded to uphold the imposition of penalty and its confirmation by the Appellate Authority. The Tribunal has committed error in not noticing the legal issues that the Inquiring Authority has failed to hold joint inquiry in terms of Rule 18 of Rules, 1965.

06. *Per contra*, learned counsel for the respondents resisted the aforesaid contentions and submitted that there is no infirmity in the initiation of enquiry and its conclusion. It is further submitted that based on documents the charges were proved before the Inquiring Officer and disciplinary authority as is evident from the Inquiring Officer's report dated 17.07.2014 read with disciplinary authority order dated 25.08.2014. Further, it is



submitted that there is no error committed by the CAT, Patna Bench in rejecting the petitioner's original application.

07. Heard learned counsel for the respective parties.

08. Disciplinary Authority initiated enquiry in framing of article of charges on 24.10.2013 as on that day he has not determined as to whether common proceedings is required to be launched against petitioner and two others or not? Later on, he has realised that it is a case for common proceedings under Rule 18 of Rules, 1965. Thus, on 04.11.2013 he has passed an order to hold common proceedings. In other words, disciplinary authority framed article of charges and passed common proceedings vide order on 04.11.2013 against all the three officers.

09. Perusal of the record, it is evident that even though article of charges were issued individually. However, joint common proceedings order was passed while invoking Rule 18 of Rules, 1965 by the disciplinary authority, in such an event it was bounden duty of the Inquiry Officer to hold common enquiry. In fact, initiation of enquiry on individual basis itself is incorrect, for the reasons that once the disciplinary authority determined to hold common proceedings under Rule 18 and it was bounden duty of the disciplinary authority to frame article of charges against all the officials in framing charges read with each individual officers' role



in the alleged charges. This is legal lacuna in initiation of enquiry and commencement and conclusion of the enquiry by the Inquiring Officer in not holding common proceedings/joint enquiry. Disciplinary authority while disagreeing with Inquiry Officer should have noticed that it was a common proceedings. Therefore, there is a non-application of mind. It is further noticed that there is a violation of Sub-rule 4 of Rule 14. Sub-rule 4 of Rule 14 read as under:-

(4) (a) The Disciplinary Authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article or charges is proposed to be sustained.

(b) On receipt of the articles of charge, the Government servant shall be required to submit his written statement of defence, if he so desires, and also state whether he desires to be heard in person, within a period of fifteen days, which may be further extended for a period not exceeding fifteen days at a time for reasons to be recorded in writing by the Disciplinary Authority or any other Authorised by the Disciplinary Authority on his behalf;

Provided that under no circumstances, the extension of time for filing written statement of defence shall exceed forty-five days from the date of receipt of articles of charge."



10. The aforesaid provision mandates that the disciplinary authority is required to furnish article of charges, statement of imputation, list of documents and list of witnesses. No doubt, list of witnesses annexure is enclosed. At the same time, as against list of witnesses it has been indicated nil. When the disciplinary authority has cited twenty six documents it was bounden duty of the disciplinary authority to adduce oral evidence like author of the documents. Hon'ble Apex Court in the case of **S.C. Girotra vs. United Commercial Bank (UCO BANK)** reported in **1995 Supp. (3) SCC 212** it is held that in a departmental enquiry if any document is required to be cited against an employee/officer author of the documents is required to be examined and cross-examined. To that affect there is an error committed by the disciplinary authority in not citing the relevant witnesses.

11. On receipt of Inquiring Officer's report disciplinary authority had disagreed with the Inquiry Officer's report on unproved charges for which he is required to invoke Rule 15. The disciplinary authority had option as to remand the matter to the Inquiring Officer or he himself can hold an enquiry from the defective stage or disagree with the Inquiring Officer's report. In the present case, it is noticed that disciplinary authority instead of



issuing show cause notice in disagreeing with the unproved charges and how it would be proved seeking petitioner's explanation. Thereafter, the disciplinary authority was also required to examine whether any witnesses were required to be cited in support of disagreed insofar as unproved charges. These are all the lacuna committed by the disciplinary authority and not following Rule 15 of Rules, 1965.

12. The CAT, Patna Bench could not appreciate that common proceedings has been ordered by the disciplinary authority and Inquiring Officer has not held joint enquiry against the petitioner and two others even though the petitioner has pleaded in his original application that the disciplinary authority has ordered common proceedings at para 4.8.

13. In the light of these facts and circumstances, the impugned penalty order dated 25.08.2014 (Annexure-P7) and appellate authority order dated 06.05.2015 (Annexure-P9) and order of CAT, Patna Bench dated 19.02.2019 (Annexure-P1) passed in O.A. No./050/00143/2016 and M.A. No./050/00256/2016 are set aside.

14. The disciplinary authority is hereby directed to withdraw the common proceedings order dated 04.11.2013 and commence enquiry from the defective stage namely in furnishing



list of witnesses and proceed to hold enquiry afresh from the defective stage and complete within a period of six months from the date of receipt of this order.

15. Accordingly, the present writ petition stands allowed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

