

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7714 of 2020

Sipahi Ram S/o Mangru Ram, aged about 65 (Male), R/o- Village- Garahi Tola, P.s.- Kuransarai, District- Buxar

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj, Government of Bihar, Patna
2. The District Magistrate, Buxar
3. The District Panchayat Raj Officer, Buxar
4. The Block Development Officer, Nawanagar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Akash Chaturvedi
For the Respondent/s : Mr.Ajay, GA-5

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

Date : 23-03-2021

The petitioner is seeking quashing of an order dated 04.02.2020 passed by the District Magistrate, Buxar issued by Memo No. 0212 dated 05.02.2020, whereby following punishments have been imposed on the charge of misconduct said to have been proved in a departmental proceeding:-

(i) Stoppage of two increments with cumulative effect

(ii) Deduction of 40% from his salary by way of recovery for adjusting a sum of Rs. 6,48,000/- and in the event



the entire amount of Rs. 6,48,000/- does not stand recovered from his salary, the remaining amount shall be recovered from his post retiral entitlements.

2. It is evident from the order impugned that disciplinary action has been taken against the petitioner under the provisions of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules'). The petitioner, at the relevant point of time, was working as Gram Shewak at Nawanagar in the District of Buxar, in the year 2006-07. It appears that the State Government of Bihar had directed Mukhiyas and the Panchayat Secretaries of the Gram Panchayat for installation of solar lights system by purchasing equipments from Bihar State Electronic Development Corporation Limited (BELTRON) or Bihar Renewable Energy Development Authority (BREDA).

3. A disciplinary proceeding was initiated against the petitioner with the framing of charge-sheet, which was communicated through letter dated 25.06.2015, issued by the District Panchayat Raj Officer, Buxar, who was appointed as Inquiry authority. The said letter dated 25.06.2015 has been brought on record by way of Annexure-3 to the writ application from which it transpires that charge memo was framed under the



joint signatures of the District Magistrate, Buxar, Deputy Development Commissioner, Buxar, Sub-Divisional Officer, Dumraon and the Block Development Officer, Nawanagar and the District Panchayat Raj Officer, who subsequently became the Inquiring authority. There is nothing to demonstrate that before issuance of the said letter dated 25.06.2015, the disciplinary authority had put the petitioner on notice, seeking his reply in respect of the charges.

4. Be that as it may, the charge memo contains following charges, which according to the disciplinary authority constituted a misconduct, warranting disciplinary action:-

(i) Failure to purchase the solar lights from the BREDA or any agency authorized by it for the panchayat of Nawanagar block in accordance with the departmental guidelines,

(ii) Failure to purchase solar lights on the rates prescribed by the BREDA or any other authorized agency,

(iii) Misuse of public money by purchasing solar lights at higher price than the prescribed rate,

(iv) Deliberate non-compliance of the departmental guidelines with an intention to misappropriate public money,

(v) Failure to properly maintain solar lights.



(vi) Rendering the scheme ineffective because of lack of follow up action.

(vii) Lack of proper maintenance of records.

(viii) Lack of proper upkeep of the records and timely handing over and taking over of the charge of records.

5. I pause here to record at this stage itself that the charge does not disclose any description of the departmental guidelines issued which was violated, in respect of charge No.1. It does not mention what rates were fixed by BREDA for purchase of solar lights and, who were authorized agents from where the solar lights were required to be purchased, in relation to charge No.3. The charge No.3 is integrally connected with charge No.2. Charge No.4 refers to non-compliance of the departmental guidelines but it does not give the description of the departmental guidelines, which were not followed. Charge Nos.5,6,7 and 8 also do not disclose any specific act or omission which could be said to be constituting an act of misconduct committed by the petitioner. It has been vaguely mentioned that solar lights were not properly kept and the scheme became ineffective because of lack of follow up action.

6. In his reply dated 09.07.2015, the petitioner specifically stated that no departmental letter was ever received



in the Panchayat, laying down guidelines for purchase of solar lights from the agencies authorized by BREDA, at the rate fixed by BREDA. He specifically mentioned that for the first time, a letter to this effect was received in 2010, whereafter he had not installed any solar lamp and all solar lamps were installed by him before 2010. He denied the charge that there was any failure on his part in upkeep of the solar lights and the registers as also their maintenance.

7. The Inquiring authority submitted his report on 25.08.2015, which was communicated to the petitioner through letter dated 05.12.2015 (Annexure-5). From the inquiry report, it transpires that the Presenting Officer for the Department relied on an inquiry report dated 30.09.2014 and an application in a certificate case under the Bihar and Orissa Public Demand Recovery Act, 1014 filed for recovery of the amount allegedly misappropriated.

8. Following is the finding recorded by the Inquiring authority:-

“संचालन पदाधिकारी का मंतव्य— अभिलेख में संलग्न आरोप पत्र प्रपत्र 'क' में गठित आरोपो, आरोपी पंचायत सचिव का स्पष्टीकरण एवं उपस्थापन पदाधिकारी द्वारा उपलब्ध कराये गए साक्ष्यों का गहन अध्ययन एवं अवलोकन किया गया।



गठित आरोपो के संबंध में आरोपी कर्मी द्वारा जो कारण पृच्छा दिया गया है उसमें उल्लेख किया गया है कि सोलर लाईट का क्रय एवं अधिष्ठापन ब्रेडा द्वारा अधिकृत विक्रेता से ब्रेडा के निर्धारित माप दण्ड के आधार पर करने से संबंधित पत्र/निदेश वर्ष 2010 में प्राप्त हुआ है। उसके पूर्व इसकी जानकारी मुझे नहीं थी और जो भी सोलर लाइट लगाया गया है वह वर्ष 2010 के पूर्व में ही लगाया गया है। वर्ष 2010 के बाद नहीं। इस कथन के संबंध में कारण पृच्छा के साथ कोई साक्ष्य नहीं दिया गया है। जबकि वित्त विभाग, बिहार, पटना के संकल्प ज्ञापांक 1296/वि0 दिनांक 23.02.2007 एवं दिनांक 18.12.2009 को मुख्य सचिव की अध्यक्षता में बी.आर.जी.एफ कार्यक्रम से संबंधित उच्च स्तरीय समिति की बैठक की कार्यवाही में ही ब्रेडा से सोलर लाईट क्रय करने का निदेश निर्गत है।

आरोपी पंचायत सचिव द्वारा स्वयं अपने कारण पृच्छा में जो जवाब दिया गया है उसका निष्कर्ष यही है कि नियम की जानकारी के अभाव में गलती हुई है, के परिप्रेक्ष्य में उल्लेख करना प्रासांगिक है कि कानून का अभिमत है कि कानून की जानकारी नहीं होना किसी भी व्यक्ति या नागरिक द्वारा कृत अपराध से दोष मुक्ति का आधार नहीं बन सकता है।
(Ignorance of law is no excuse)



इस प्रकार लगाये गये सभी आरोप प्रमाणित पाये गये

हैं।”

8. As is evident from the report, the Inquiring authority referred to resolutions dated 23.02.2007 and 18.02.2009 of the State Government, wherein a decision was taken to the effect that the solar lights should be purchased from BREDA. He, however, completely brushed aside the plea of the petitioner that for the first time he had learnt about such guidelines in 2010 with a logic, “ignorance of law is no excuse”.

9. There is no finding in the report of the Inquiring authority that the said resolution of the State Government was duly communicated to the Panchayat where the petitioner was posted. There is no mention in the report as to how and in what manner the said documents dated 23.02.2007 and 18.02.2009 became part of the departmental enquiry. There is no clue as to on what basis the Inquiring authority treated the said resolutions dated 23.02.2007 and 18.02.2008 as having force of law. There is nothing mentioned that the said resolutions were notified in official gazette, which could have raised a presumption of knowledge about their contents. The Inquiring authority did not record his opinion in respect of each of the charges separately



and simply recorded his finding that all the charges framed against the petitioner were proved. There is no discussion at all in the inquiry report as to how the charge Nos. 5 to 8 could be said to have been proved.

10. The petitioner had submitted his response before the disciplinary authority on the findings recorded by the Inquiring authority, reiterating his defence, which he had taken in his written statement of defence.

11. The disciplinary authority, passed the impugned order dated 05.02.2020, imposing punishment as noted above under Rule 14 of the Rules, 2005. On perusal of the impugned order dated 05.02.2020, it can be easily discerned that instead of passing an order on the report of the Inquiring authority, the disciplinary authority sought for a report from the Block Development Officer through its letters dated 02.02.2016, 30.06.2016, 18.10.2016 and 09.03.2017 on the point as to how much amount of public money had been misappropriated by the petitioner and whether the said amount had been recovered from him or not. The Block Development Officer was further required to inform whether the amount misappropriated had been deposited in the Government account or not and whether any certificate case for recovery of public money has been



instituted. It is apparent from the impugned order that the disciplinary authority was informed by the Block Development Officer that responsibility of misappropriation of a sum of Rs. 6,48,0000/- of Government money has been fastened with the petitioner, which had not been recovered from him and a certificate case registered as Certificate Case No. 9 of 2014-15 was filed in the Court of Additional Collector-cum-Certificate Officer, Buxar. The disciplinary authority further proceeded to seek a report from the District Certificate Officer, Buxar through his letter dated 09.11.2019. Apparently, while passing the impugned order the disciplinary authority relied on a report of the Block Development Officer dated 17.05.2017 and that of the District Certificate Officer dated 22.11.2019, which were obtained by him much after submission of the Inquiry report and the submission of the petitioner's response to the inquiry report.

12. In my opinion, no step in the present departmental proceeding satisfies either basic requirements of the principles of natural justice nor the mandatory statutory requirements stipulated under Rules, 2005. The contents of charges, which were framed, have been noticed hereinabove, which are completely vague and do not disclose with sufficient clarity and precision the allegation of misconduct against the petitioner,



which is one of the fundamental requirements in a disciplinary proceeding against a Government servant.

13. Rule 17 of the Rules 2005 lays down the procedure for imposition of penalty. Sub-Rule (3) of Rule 17 of the Rules 2005 requires the disciplinary authority to draw or cause to be drawn up-

(i) the substance of the imputations or misconduct or misbehavior 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, containing statement of all relevant facts including any admission or confession and 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. In the present case, I do not find the charge to be definite and distinct, rather, they are vague incapable of being answered precisely. The charge-sheet does not contain statement of imputation of misconduct or misbehaviour, as it does not contain statement of all relevant facts. In the present case, the substance of imputation of misconduct is vague and statement of imputation of misconduct is absent.

15. In the same irresponsible manner, the Inquiring



authority submitted his report brushing aside the petitioner's specific contention that he did not have any knowledge about the decisions taken at the departmental level, which were not communicated to him. He has not recorded any reasonable findings on the basis of which it could have been concluded that the said decisions of the Government were made known to the petitioner. There is no clue how he (the inquiring authority) could lay his hands on the resolutions dated 23.02.2007 and 18.02.2009 in his report. In any view of the matter, the Inquiring authority, without any discussion recklessly held all charges against the petitioner to have been proved in most callous and cavalier manner. From the report of the Inquiring authority, it appears that he gave a complete go-bye to the procedure prescribed under the Rules, 2005 and recorded his finding whimsically.

16. The disciplinary authority, instead of passing an order on the report of the Inquiring authority departing from the procedure statutorily prescribed proceeded to seek informations from other offices, namely, office of the Block Development Officer and District Panchayat Raj Officer. Thereafter, taking into account the subsequent documents/informations, which he received, the disciplinary authority passed the impugned order.



This is not in dispute that the petitioner was not supplied and he did not have any occasion to receive reports of the Block Development Officer dated 09.11.2019 and that of the District Certificate Officer dated 16.11.2019, which were taken into account by the disciplinary authority while imposing punishment, which are under challenge.

17. After going through the charge-sheet, report of the Inquiring authority and the impugned order passed by the disciplinary authority, the Court has formed an opinion that the concerned respondents were not at all aware of the definite procedure prescribed under Rules 2005 for taking disciplinary action against a Government servant. The jurisdiction which is exercised by an authority of taking disciplinary action against a Government servant is a quasi-judicial function, which is supposed to be discharged with utmost care and caution strictly adhering to mandatory statutory prescriptions and principles of the natural justice. Failure on the part of such functionaries to comply with and follow such provisions and the principles of natural justice renders a disciplinary action taken against a delinquent vulnerable and results into an errant Government servant going unpunished even for the most serious of the misconduct, of the functionaries exercising power of



disciplinary control fail to or refuse to give due regard to the mandatory statutory provisions governing and regulating disciplinary action, consequence can be grave and against public interest.

18. As has been noticed above, the Inquiring authority has rejected the petitioner's plea of his lack of knowledge in respect of some of the Government decisions with the logic that "ignorance of law is no defence". It transpires that he himself is totally ignored all the provisions under Rules 2005, which prescribe definite procedure for conducting a departmental enquiry and submission of the report by the Inquiring authority. He miserably failed to follow legal mandate under the Rules and in one sentence he recorded his finding in his report that all charges against the petitioner stood proved.

19. Further, the Court is aghast to notice the action taken by the disciplinary authority on the enquiry report. He adopted procedure completely alien to establish law and statutory provisions of seeking reports from other officials for taking action on inquiry report. As a matter of fact, he relied on the reports received by him after conclusion of the departmental enquiry for the purpose of taking a decision on the report of the Inquiring authority. It appears that the disciplinary authority did



not even consult Rule 18 of the Rules, 2005, which lays down the procedure for action to be taken by the disciplinary authority on an inquiry report, before passing the impugned order.

20. The impugned order in the Court's opinion, therefore, requires interference. The same is, accordingly, set aside. Consequences shall, accordingly, follow.

21. This application is, thus, allowed.

22. There shall be no order as to costs.

23. As has been noticed above, the Court is of the opinion that it is because of lack of understanding of the procedure statutorily prescribed under Rules, 2005 that the present situation has arisen. Lack of knowledge of the statutory procedure prescribed for taking disciplinary action against a Government servant entails serious consequences. It has, therefore, been considered appropriate to direct the General Administration Department, Government of Bihar to send the officers, who framed the charge in the present case and the officers, who acted as the Inquiring authority and the disciplinary authority for a short term training, preferably in Bihar Institute of Public Administration and Rural Development, Government of Bihar in order to sensitize them in respect of the provisions, dealing with the departmental



enquiry and the disciplinary action against a Government servant.

23. Let a copy of this order be communicated to the Principal Secretary, General Administration Department, Government of Bihar, forthwith.

(Chakradhari Sharan Singh, J)

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AFR/NAFR	NAFR
CAV DATE	09.03.2021
Uploading Date	23.03.2021
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