

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8636 of 2014

Hari Niwas Gupta, Son of Late Kedar Nath Gupta, Resident of L&T College Campus, Aghoria Bazar Chowk, Muzaffarpur, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of General Administration, Government of Bihar, Patna.
2. The High Court of Judicature of Patna through the Registrar General, Patna High Court, Patna.

.... Respondent/s

With

Civil Writ Jurisdiction Case No. 22153 of 2014

Komal Ram, son of Late Ram Prasad, Permanent resident of Village Sikaria Khurd, Post Sikaria Kalan, P.S. Garwar, District Ballia (UP), at present residing at C/o Dr. R.R.B. Singh, Flat No. 202 Meera Complex, Near Gyanoday Gurukul School, Bailey Road, Gola Road, Danapur, Patna (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, General Administration Dept., Govt. of Bihar, Patna.
3. The Principal Secretary, Law Department, Government of Bihar, Patna.
4. Additional Secretary, General Administration Dept., Govt. of Bihar, Patna.
5. The High Court of Judicature at Patna through its Registrar General.
6. The Registrar General, Patna High Court, Patna.

.... Respondent/s

With

Civil Writ Jurisdiction Case No. 22165 of 2014

Jitendra Nath Singh, Son of Late Mahatam Singh, resident of village - Kolaura, police station - Mohammadabad Gohna, district - Mau, Uttar Pradesh and at present

residing at 403, Ramjit Apartment, Ara Garden, Bailey Road, Patna.

.... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Department of General Administration, Government of Bihar, Old Secretariat, Patna.
2. The Under Secretary, Department of General Administration, Government of Bihar, Old Secretariat, Patna.
3. The Secretary, Law (Judicial) Department, Government of Bihar, Patna.
4. The High Court of Judicature at Patna through its Registrar General, Patna High Court, Patna.

.... Respondent/s

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Appearance :

(In CWJC No. 8636 of 2014)

For the Petitioner	:	Mr. Vidhyakeshari Kumar, Senior Advocate Mr. Ashish Giri, Advocate Mr. Satyendra Narayan Singh, Advocate
For the Respondent No.1	:	Mr. P.K. Verma, A.A.G.-5
For the respondent no.2	:	Mr. Bindhayachal Singh, Advocate Ms. Smriti Singh, Advocate

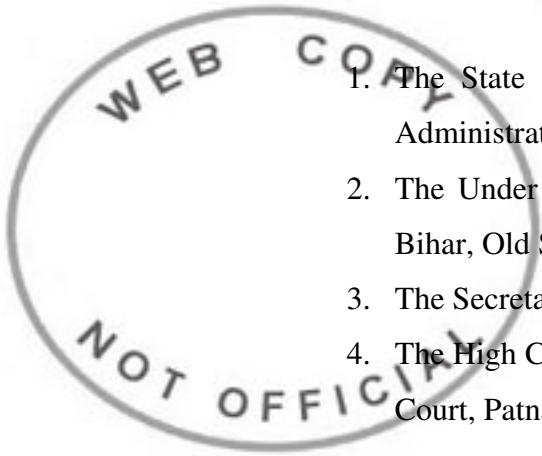
(In CWJC No. 22153 of 2014)

For the Petitioner	:	Mr. Bajarangi Lal, Advocate
For the Respondents No.1 to 4 :		Mr. Gautam Bose, AAG-8
For the respondents No. 5 & 6 :		Mr. Bindhyachal Singh, Advocate Ms. Smriti Singh, Advocate

(In CWJC No. 22165 of 2014)

For the Petitioner	:	Mr. Manoj Priyadarshi, Advocate
For the Respondents no.1 to 3 :		Mr. J.P. Karn, A.A.G.-4
For the respondent No.4	:	Mr. Bindhyachal Singh, Advocate Ms. Smriti Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

C.A.V. JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 19-05-2015

The factual background for the three writ petitions is common. All the three writ petitioners are Judicial Officers in the State of Bihar. They were dismissed from service on disciplinary grounds, through the common order of dismissal dated 12.02.2014. They challenge the said order by filing the individual writ petitions.

The petitioner in CWJC No.8636 of 2014 was appointed as Munsif in the year 1984 in the Judicial Service and was promoted to the post of Subordinate Judge. Thereafter, he was promoted as Additional District Judge. Since November, 2013, he was working as Principal Judge, Family Court, Samastipur.

The petitioner in CWJC No.22153 of 2014 was appointed as Munsif on 05.06.1989, was promoted as Subordinate Judge in the year 2005 and was working as Chief Judicial Magistrate at Araria from 01.12.2013 onwards.

The petitioner in CWJC No.22165 of 2014 was appointed as Munsif in December, 1989 and promoted as Subordinate Judge. He worked as Chief Judicial Magistrate, Araria and thereafter he was promoted as Adhoc Additional District & Sessions Judge, and posted

at that place itself.

It is stated that a news item was published on 29th January, 2013 in a local daily by name 'Udghosh' in the neighbouring country Nepal, to the effect that the police administration of Nepal apprehended three Judicial Officers from the State of Bihar by name J. N. Singh, Ram Naresh Singh and Kewal Ram on 26.01.2013 along with three Nepali women in objectionable condition at a Guest house at Biratnagar, Nepal and though they were brought to the police station, they were released on account of pressure from various circles.

On coming to know this Patna High Court addressed a letter dated 18.02.2013 to the District & Sessions Judge, Purnea requiring him to submit a report about the matter. The District & Sessions Judge, Purnea submitted a report dated 24.02.2013 stating, inter alia, that he discussed the matter with three Judicial Officers named in the newspaper and all of them have denied of having left India for Nepal, and that in fact, one of them, i.e. Komal Ram remained in Purnea in the officers' quarters in the process of vacating the quarter on transfer. He has also referred to a news item published by the same daily on 22.02.2013 expressing its regrets for inclusion of name of Sri Komal Ram. At the end of his report, he stated that the then Superintendent of Police, Araria by name Mr. Shivdeep Lande who has grudge against Judicial Officer appears to have implicated the

three officers. He ultimately observed that due to lack of concrete material, nothing can be said regarding the genuineness and falsehood of the news item.

After receipt of the report, the High Court addressed letter to the Union Home Ministry to express views on the news item. Through their communication dated 20.06.2013, the Deputy Secretary to the Government of India, Ministry of Home Affairs, expressed the view that Mobile phones of the petitioners herein, though switched off for some time on 26.01.2013 and 27.01.2013, all of them were in tower range of Forbesganj town and it is highly unlikely that the mobiles of the three officers would remain inactive simultaneously for such a long period. As regards the plea of Sri Komal Ram, one of the petitioners, that he was present at Purnea between 25th to 27th January, 2013, the Deputy Secretary expressed the view that the bills for stay in a hotel of the officers do not appear to be correct since the hotel is of not that standard.

No action as such was taken on the basis of the report received from the Home Ministry by the Patna High Court. On the other hand, the petitioner in CWJC No.8636 of 2014 was promoted to the post of District Judge on 04.10.2013. However, the order of promotion was recalled on 23.10.2013 and all the three officers were placed under suspension on 08.02.2014. The Standing Committee of



the High Court, and thereafter the Full Court, recommended to the State Government, dismissal of the three officers from service. Disciplinary enquiries against the officers were dispensed with by invoking power under sub-clause (b) of the 2nd proviso to Article 311 (2) of the Constitution (for short, 'sub-clause (b)'). Accepting the recommendation of the High Court, the Government of Bihar passed common order dated 12.02.2014 dismissing the petitioners from service. The said order is challenged in these writ petitions.

The petitioners contend that the allegations made against them are baseless and factually incorrect and even the High Court was not clear as to whom to proceed against and to whom not. It is pleaded that the name of the petitioner in CWJC No.8636 of 2014 was not even mentioned in the so-called news item, and the one who was named, was not proceeded. They further submit that the order passed against them is in clear violation of Article 311 of the Constitution of India and the relevant Service Rules that govern their service conditions. They submit that holding of departmental enquiry is one of the protections granted under the Constitution of India, and it is only when the disciplinary authority is satisfied that it is not reasonably practicable to hold enquiry, that too for reasons to be recorded, that the enquiry can be dispensed with, and that in the instant case, neither any reasons were recorded; nor the facts of the case supported the

invocation of sub-clause (b).

The State of Bihar, on the one hand, and the Patna High Court, on the other hand, filed separate counter affidavits. It is pleaded that the allegations against the petitioners, as reported in the newspaper, are very serious and taking the same into account, the orders of dismissal were passed. It is stated that when the incident had taken place in a foreign country, it is virtually impossible to conduct disciplinary enquiry, and accordingly sub-clause (b) was invoked. They submitted that the action was taken to ensure that the image of judiciary is not tarnished and there are no merits, in the writ petitions.

Arguments on behalf of the petitioners were advanced by Sri Vindhya Keshari Kumar, learned Senior Advocate, Sri Bajarangi Lal, learned advocate and Sri Manoj Pradarshi, learned advocate. They submit that the petitioners herein were imposed the highest punishment, that too at the end of their career, without any factual or legal basis. They submit that the petitioners have put in unblemished service, spread over 2-3 decades, and the corporal punishment was imposed on the basis of a belated and unverified news item, published in a local daily in the Nepal. Learned counsel submit that the District Judge, Purnea, who enquired into the matter, submitted a report expressing his suspicion about the role of the police officer in framing the officers against whom he had some grudge; and his inability to



arrive at any conclusion on account of the absence of reliable material; and the report from the Home Ministry also did not implicate any one. They submit that obviously for that reason, the High Court itself dropped further action, as is evident from the factum of promotion and posting of the 1st petitioner as District Judge as late as on 04.10.2013. It is argued that the High Court, which did not see anything objectionable for promoting the 1st petitioner on 04.10.2013, has recalled the order, hardly within two weeks and suspended all the officers on 08.02.2014.

Learned counsel argued that in case, the High Court wanted to proceed against the petitioners, the basic requirement was to initiate departmental proceedings by issuing charge-sheet and what can be dispensed with under sub-clause (b) is the only enquiry and not issuance of articles of charge. They submit that the High Court or for that matter, the Government did not spell out any reasons in writing as required under sub-clause (b) before they proceeded to impose punishment of dismissal on the petitioners. They contend that there was a total non-application of mind and violation of law and very severe action, attaching stigma to the petitioners was taken just on whimsical grounds. It is also their contention that if the respondents were in a position to hold preliminary enquiry, there was no reason why they did not hold the regular departmental enquiry.



They placed reliance upon the judgments of the Hon'ble Supreme Court in *Rishal Singh Versus State of Haryana & Ors.*¹; *Reena Rani Versus. State of Haryana*²; *Workmen of Hindustan Steel Ltd. and another versus Hindustan Steel Ltd. and others*³; *Sudesh Kumar Versus State of Haryana and others*⁴; *Tarsem Singh Versus State of Punjab and others*⁵; *Union of India and another Versus Tulsiram Patel*⁶; and *Mohinder Singh Gill and another Versus The Chief Election Commissioner, New Delhi and others*⁷.

Sri Gautma Bose, learned senior counsel appeared for the State and Sri Bindhyachal Singh, learned counsel, for the Patna High Court. They submit that the incident that led to the action against the petitioners, have taken place in a foreign country and obviously realizing the difficulty in holding enquiry, in the matter, the power under sub-clause (b) was invoked. They submit that though no specific reasons as such was recorded in the orders of dismissal and recommendation, the relevant record discloses that every endeavor was made to hold enquiry, but on finding that it is not possible to hold

¹ (2014) 13 SCC 244

² (2012) 10 SCC 215

³ 1984 (Supp) Supreme Court Cases 554

⁴ (2005) 11 SCC 525

⁵ (2006) 13 SCC 581

⁶ AIR 1985 SC 1416

⁷ AIR 1978 Supreme Court 851



the same, it was dispensed with. They argued that the High Court did ponder over the matter, even after receipt of the report from the District Judge, Purnea and Union Home Ministry, and the impugned action was taken, virtually left with no alternative. It is also stated that in the orders of dismissal, the allegations were not mentioned and it cannot be said that any stigma was attached to the petitioners.

Brief service particulars of the petitioners herein have been furnished in the preceding paragraphs. The news item was published in the Newspaper daily by name 'Udgosh' on 29.01.2013 to the effect that on 26th January, 2013, Metro Hotel near bus stand in Birat Nagar was raided by the police team headed by the Inspector Pradeep Kumar Singh and three Judicial officers of Civil Courts of Bihar, India were found therein, but on receiving information from the Superintendent of Police, Morang, those officers were released without recording their detention. It is not known as to in what manner, the news items reached the High Court. Since it is a matter of serious concern, a letter was addressed to the District Judge, Purnea on 18.02.2013 to cause enquiry. The District Judge, Purnea caused enquiry at his level, stated that the petitioners have flatly denied the allegation and gave a detailed account of their activities on 26th January, 2013. He further stated that as many as three news items were published on 29.01.2013, 10.02.2013 and 22.02.2013, which are at variance; one contradicting

the other. Enclosing the reports and the other material, the District Judge quoted as under:

“ The incident allegedly took place in Nepal which is beyond the jurisdiction of Indian Territory. The Superintendent of Police Sri Shivdeep Lande posted at Araria appears to be biased from the Judicial Officers of Araria District. He did not appear in my meeting, which was convened on 23.02.2013 to discuss the matter relating to administration of criminal justice particularly in the light of Akil @ Jved Vs. N.C.T. of Delhi case in spite of my information given to him. In these backgrounds and also conflicting news published in Nepali news paper “Udghosh” and also in lack of any concrete materials, nothing can be said regarding the genuineness or falsehood of the news in the aforesaid papers.

Hence, this report may be placed before the Hon’ble Court for needful.”

This report did not evoke any immediate reaction from the High Court warranting initiation of departmental enquiry against the petitioners. Obviously, with a view to get into the truth of the matter, the High Court addressed a letter to the Union Home Ministry enclosing a copy of the report of the District Judge, Purnea. In response to that, the Deputy Secretary to the Government of India by name S.M. Kandwal addressed a letter to the High Court on 20th June, 2013. The letter reads as under:

No.110148 2013- BM-V
Government of India, Bharat Sarkar

Ministry of Home Affairs/Grih Mantralaya
5th Floor, NDCC-II Building, Jai Singh Road,
New Delhi, dated 20th June, 2013.

To
Registrar General
Patna High Court
Patna

Sub: Involvement of three judicial officers of Bihar in
undesirable activities in Biratnagar, Nepal.

Madam,

This is regarding involvement of 3 judicial officers
in Bihar in undesirable activities in Biratnagar, Nepal.

The enquiries made by the agencies concerned
revealed that Shri Jitendra Nath Singh, ADJ, Araria, Shri
Komal Ram, CJM, Araria and Shri H.N. Gupta, Principal
Judge, Samastipur, were present in Biratnagar on the
intervening night of January 26-27, 2013. The officers
were indeed briefly detained by the Nepalese Police
following a random raid in Metro Guest House, Biratnagar.
The officials were found in a compromising position by the
Nepalese Police raiding team led by Inspector Pradeep
Kumar Singh. However, the Judicial Officials were let off
on instructions on Morang SP Shri Neeraj Shahi, without
recording their detention.

Vehicle No.BR 11 H 3802 reportedly used by these
officials had indeed crossed over to Nepal via Biratnagar
check post at 1620 hrs. on 26.01.2013 on a Suvidha permit.
It is also found that the officials were unavailable on their
respective mobile phones from around 1400 hrs. on
26.01.2013 to 1130 hrs. on 27.01.2013. All the three
members were in tower range of Forbesganj town during
the last call on 26th January and the first call on 27th

indicating that the officials were in the same area. It is highly unlikely that the mobiles of these officers would remain inactive simultaneously for such long period especially on 26.1.2013 being a National Holiday and the following day, a busy working day for these officers.

The bill submitted by Shri Komal Ram to show his presence from 25.01.2013 to 27.01.2013 at Purnea indicates that the whole bill was fabricated by Shri Komal Ram as is evident from the handwriting and his signature on the bill. Enquiries indicate that the hotel where the official claims to have stayed is a clumsy place mostly frequented by patients who visit the medical clinics around the area. The hotel was found to be very chaotic and unclean where an officer of his status would stay with his family for two nights. Moreover, the enquiry report of Hon'ble District and Sessions Judge, Purnea indicates that Shri Komal Ram had not been seen in Purnea in the period between evening of 25th January, 2013 and the evening of 27th January, 2013.

Home Secretary has spoken about this to Hon'ble Chief Justice, Patna High Court.

It is requested kindly to bring this to the notice of Hon'ble Chief Justice for information and action as deemed appropriate.

Yours faithfully,
Sd/ (S. M. Kandwal)
Deputy Secretary to the Govt. of India
Tel. No.2343 8146"

From this it is evident that the Home Ministry did not conduct any enquiry of its own, much less did it depute any officer to



Nepal to find out the truth. On the other hand, someone in the Ministry has just analyzed the contents of the report of the District Judge, Purnea and expressed the view that (a) it is not possible for the three petitioners herein to switch off their mobile for such a long period and (b), the Hotel in which one of the petitioners is said to have stayed at Biratnagar is not one in which a Judicial Officer of such a rank can stay.

The letter received from the Home Ministry did not take the matter further. Obviously for that reason, not only no punitive action was taken against the petitioners for a considerable time, but also the 1st petitioner was posted as District and Sessions Judge through order dated 04.10.2013. It is to be noted that no Additional District Judge, whose record is not clear would be posted as District Judge to head the judiciary in the District. When the 1st petitioner was about to report the duty, an order dated 23.10.2013 was passed recalling his posting. That was followed by suspension of three officers on 08.02.2014. The common order of dismissal was passed on 12.02.2014.

In case, the orders of dismissal were passed on the basis of any finding in the departmental enquiry, nature of examination or verification of the matter would have been substantially different. However, the petitioners were dismissed from service through

common order dated 12.02.2014, which reads as under:

*“ Government of Bihar
General Administration Department
Notification*

Patna-15, Dated 12.02.2014

No.7/Aarop/06-03/2014 Sa.Pra 2011

On the recommendation of Registrar General, Patna High Court received vide Memo. 6291/6292 dated 10.02.2014 Shri Hari Niwas Gupta, the then Principal Judge, Family Court, Samastipur, at present Principal Judge, Family Court, Muzaffarpur (Suspended), Shri Jitendra Nath Singh, the then Ad hoc Additional District and Sessions Judge, Araria, at present Ara (Suspended) and Shri Komal Ram, the then Sub-Judge, CJM Araria at present Sub-Judge Nawada (Suspended) are hereby dismissed from service under Article 311 (2) proviso (b) of Constitution of India read with Rule 14 and 20 of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 from the date of service of this notification.

By order of Government of Bihar

Sd/ Raj Kishore Prasad

Under Secretary to Government. “

The decision to impose punishment is taken by the High Court and the recommendation made by it was accepted by the Government.

Whenever, it is proposed to impose punishment, it is the High Court which is required to conduct disciplinary enquiry. In case,



the disciplinary enquiry is to be dispensed with, the decision in that regard has necessarily to be taken by the High Court. Admittedly, in the instant case, the departmental enquiry was not conducted and the recommendation for dismissal of the petitioners was made by the High Court, by invoking power under sub-clause (b). Though a point is urged across the bar that a common order imposing punishment against the three officers cannot be sustained in law, we do not intend to delve deep into that.

From the arguments advanced by the learned counsel for the parties, the points arise for consideration are:

- (a) Whether the order of dismissal dated 12.02.2014 as stands now is violative of Article 311 (2) (b) of the Constitution?
- (b) Whether the procedure adopted by the High Court up to the stage of invoking power under clause 2(b) is proper and correct?
- (c) Whether the facts and circumstances of the case justify the conclusion that it was reasonably not practicable to conduct disciplinary enquiry against the petitioners?

Point No.(a)

That the petitioners herein are entitled for protection under Article 311 of the Constitution, is beyond any doubt. The said provision mandates that the punishment of dismissal, removal and reduction in rank of a civil servant in the Union or State Service

cannot be imposed, (a) by an authority subordinate to the appointing authority; and (b) except after conducting an enquiry in which the civil servant has been informed of the charges against him, and was given a reasonable opportunity of being heard in support of the charges. The provision reads as under:

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-

(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges :

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply

- (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or*
- (b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or*
- (c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.*

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision

thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final”.



From the perusal of the Article 311, it becomes clear that while conducting of disciplinary enquiry is rule, dispensing with the same is a rare exception that too, under the circumstances mentioned in sub-clauses (a), (b) and (c) to second proviso. They operate in different fields. As regards the 1st exception contained in sub-clause (a), the appointing authority can simply take note of the conviction and sentence handed out by a criminal court, and then impose punishment. It is not necessary to frame any charge, to initiate disciplinary proceedings, much less to conduct departmental enquiry.

In the other two instances covered by sub-clauses (b) and (c), the decision whether or not to hold enquiry is to be taken by the disciplinary authority, on the basis of the material before him. A subtle distinction between the two is that in a case covered by sub-clause (b), the disciplinary authority is required to record reasons, in writing, to the effect that it is not reasonably practicable to hold enquiry before a decision to impose punishment is taken. In contrast, in cases which attract sub-clause (c), the President or Governor, as the case may be, are not placed under obligation to record any reasons at all, in this behalf. Their satisfaction that, it is not expedient to hold enquiry in the interest of security, is sufficient. The extent to which,



the judicial review of such conclusions can be subjected to, is very restricted. The difference of language employed by the Constituent Assembly in the sub-clauses (b) and (c) is clearly evident. In sub-clause (b), the reason for not holding enquiry is “it is not reasonably practicable to hold enquiry”, and in contrast in sub clause (c), “it is not expedient to hold such enquiry”. Added to this, the requirement to record reasons is applicable to only cases in which sub-clause (b) is invoked, and not those to which sub-clause (c) applies.

The common order of punishment passed against the three petitioners has been extracted in the preceding paragraphs. No reasons, whatever is mentioned as to why the disciplinary enquiry is dispensed with. The order proceeds as though it was passed under Article 311 (2) (b) of the Constitution. The order can be sustained, if the exercise of recording of reasons to dispense with the enquiry was undertaken by the High Court before it forwarded its recommendation. The petitioners have filed a copy of the recommendation made by the High Court to the Government. The recommendation made by the High Court to the Government reads as under:

*“ Through Fax/ Registered post
(Confidential)*

7/ Aarop-06-03/2014

Admn/Apptt/P.F.XIX-21-2014

Birendra Kumar

Fax No.0612-2504088

Registrar General

Ph: Off.-PBX.2504071-73,75

High Court of Judicature

Ext.237-2505318-19, 21

At Patna

Off: 2504111, Res:

Dated, Patna the 10th February, 2014

To,

The Principal Secretary,

General Administration Department,

Government of Bihar, Patna.

Sir,

I am directed to say that the Hon'ble Court have been pleased to recommend, in exercise of powers conferred by Clause (b) of the proviso to Article 311 (2) of the Constitution of India, read with the Rules 14 and 20 of Bihar Government Servants [Classification, Control and Appeal] Rules, 2005 that the following judicial officers be dismissed from service:

- 1. Sri Hari Niwas Gupta, the then Principal Judge, Family Court, Samastipur, presently posted as such at Principal Judge, Family Court, Muzaffarpur [placed under suspension]*
- 2. Sri Jitendra Nath Singh, the then Adhoc Additional District & Sessions Judge, Araria presently posted as such at Ara [placed under suspension].*
- 3. Sri Komal Ram, the then Sub-Judge-cum-C.J.M. Araria, presently posted as Sub-Judge, Nawadah [placed under*

suspension].

I am, therefore, to request that necessary order/notification of the State Government giving effect to the above recommendation of the Court may be issued at the earliest.

Yours faithfully,

Sd/ Birendra Kumar

Registrar General.

Memo No.6291-6292 dated, Patna the 10th February, 2014

Copy forwarded to the Secretary to the Government of Bihar, Law (Judicial), Department, Patna with a request to co-ordinate and ensure early compliance and J.R. cum-P.P.S. to Hon'ble the Chief Justice, Patna High Court, Patna, for information.

Sd/ Registrar General.”

Even from this, it is difficult to discern that any reasons that weighed with the High Court to dispense with the departmental enquiry were recorded. In fact no attempt was made in that direction. The petitioners have also placed before this Court, the copies of the resolutions passed by the Standing Committee as well as the Full Court of the High Court. Virtually, those resolutions are nothing, but a text extracted above. No reasons were mentioned.

An administrative or judicial authority, vested with the power to determine the rights of individuals is required to furnish reasons, in support of its conclusions, arrived at in the proceedings.

Such obligation is almost implied in every such exercise. This is treated as a facet of principle of natural justice. It is only in rare cases that, facility is created not to comply with the same. The logic behind the insistence on recording of reasons in support of conclusions is that-

a) The discretion of the authority to decide the matter as per its wishes gets substantially reduced on account of this. Once reasons to be furnished, they are naturally subject to scrutiny and are bound to be those that acceptable in law. If the factual basis for any reasons does not exist in the case, the authority is per force, prevented from taking a decision, that cannot be supported by proper reasoning.

b) Human tendency is such that, given a chance, it can manipulate or living about any situation through the process of supplying one justification or the other. Many a time fiction or imagination, which is the exclusive province of human brain, would be more attractive, and projected as believable, than fact or truth. It is only the fear of scrutiny of the reasoning by others, that would discourage or dissuade an individual from venturing into those exercises.

c) Secondly, the Court, or the appellate authority, that is conferred with the power to scrutinize the order passed by an

inferior court or a quasi judicial authority, would be in a position to understand the circumstances that lead to the passing of the order, by taking into account, the reasons furnished in support thereof.

Notwithstanding the general requirement under law, a given legislation may make furnishing of reasons mandatory. This is done in cases where either the stakes in the dispute are heavy or where the authority is extended the freedom to skip an otherwise mandatory requirement. Sub-clause (b) fits into this category. Since Sub-clause (c) occurs immediately next and no requirement as to furnishing of reasons is incorporated, an exemption in this behalf, can be inferred.

The result is that while requirement to record reasons is expressly mandatory in Sub-clause (b) it is impliedly exempted under Sub-clause (c).

It is not difficult to anticipate the consequences of non-compliance with a mandatory requirement stipulated in law, that too the Superior law like the Constitution. The time tested principle that where law requires a thing to be in a particular manner must be done in that manner or not at all, gets attracted with unqualified vigor.

The language of Article 311 is very clear and the facts of the case as borne out by record, have been stated. While the law requires the reasons to be recorded, they are conspicuous by

absent, at any stage of the proceedings.

Law in this regard is fairly well settled.

In *Risal Singh* (supra), recently the Hon'ble Supreme Court took note of its judgments in *Tulsiram Patel* (supra), *Jaswanti Sing*(supra) and *Reena Rani* (supra) cases and held as under:

“Tested on the touchstone on the aforesaid authorities, irresistible conclusion is that the order passed by the Superintendent of Police dispensing with the enquiry is totally unsustainable and is hereby annulled.”

It is important to note that against the appellant in that case i.e. the Assistant Sub-Inspector of Police, a T.V. channel conducted a sting operation and on the basis of the news that were telecast in the channel, the appointing authority, i.e. the Superintendent of Police made observations to the objectionable conduct of the appellant, was highly unbecoming, on the part of the police official. However, he did not mention a word as to why the departmental enquiry is not conducted. Taking exception to that, the Hon'ble Supreme Court had set aside the order of punishment.

In *Sudesh Kumar* (supra), a foreign tourist complained that the employee took bribe for granting extension of



visa for one year. A preliminary enquiry was conducted and the appellant was dismissed from service without conducting any enquiry. As in this case, Sub clause (b) was invoked. The reason mentioned by the State was that the complainant, a foreign national, may not be available for enquiry and it would not be possible to conduct such enquiry. The reason did not weigh with the Supreme Court and the order was set aside. Examples can be multiplied.

In the instant case, law laid down by the Supreme Court gets squarely attracted. There was non-application of mind by the High Court as to why and how it is reasonably not practicable to conduct an enquiry. Therefore, point no.(a) is answered in favour of the petitioners.

Point no.(b)

It is quite possible that even if reasons for dispensing with the departmental enquiry are not mentioned in the order, it can be sustained if the relevant record discloses that such exercise was undertaken, though this may result in slight deviation from the principle laid down by the Hon'ble Supreme Court in *Mohinder Singh Gill* (supra). Their Lordships have held that where the law requires an authority to record reasons before taking any decision, the reasons must be contained in the order, and cannot be supplemented by the

note file or counter affidavit. However, in certain deserving cases, slight accommodation was made.

These are two different stages in this case viz a) making of recommendation for punishment and b) the imposition of punishment as such is another. The recording of reasons was to take place at the first stage. If there is adequate material, mere fact that the order of punishment does not contain reasons, may not be fatal to the proceedings.

We have carefully gone through, not only the material placed by the parties before us, but the record maintained by the High Court. We found that no attempt whatever, was made to record reasons, for dispensing with the disciplinary enquiry. In response to applications submitted by the petitioners under Right to Information Act, the Registry furnished to them, a detailed note which reads as under:

“ Proposal for disciplinary action against Jitendra Narain Singh, the then Additional District & Sessions Judge, Araria, [at present Adhoc Additional District & Sessions Judge, Ara], Komal Ram, the then Chief Judicial Magistrate, Araria [at present Sub-Judge, Nawada]; and Hari Niwas Gupta, the Principal Judge, Family Court, Samastipur without enquiry.”

The note refers to the allegation against the petitioners, the report of preliminary enquiry submitted by the District

Judge, Purnea, the letter received from the Government of India and certain observations are made almost in the form of final conclusions. After referring to those two documents, certain allegation is made and ultimately it is observed as under:

“It is learnt that the Anamika Hotel at Purnea has manipulated its registers.

The Hotel Metro at Biratnagar has manipulated/destroyed evidence by removing the relevant pages from its register.

The incident has occurred in the territory of Nepal, a foreign country and direct evidence is not available.

The local police at Araria is reported to have definite information about the incidence, but has not co-operated to disclose/to share the information.

From the materials available, the involvement of the three officers- Jitendra Nath Singh, then ADJ, Araria; Komal Ram, then CJM, Araria; Hari Nawas Gupta, Principal Judge, Family Court, Samastipur is proved on the principle of preponderance of probability. However, a formal enquiry is not reasonably practicable.

These three judicial officers Jitendra Nath Singh, AD & SJ, Araria; Komal Ram, CJM, Araria; Hari Niwas Gupta, Principal Judge, Family Court, Samastipur have acted in a manner unbecoming of a judicial officer. They have displayed lack of moral character and lack of integrity. They have tarnished the reputation of the Bihar State Judiciary.



It is, therefore, proposed that in exercise of power conferred by Clause (b) of proviso to Article 311 (2) of the Constitution of India read with Rules 14 and 20 of the Bihar Government Servants [Classification, Control and Appeal] Rules, 2005, the services of Jitendra Nath Singh, Adhoc ADJ, Ara; Komal Ram, Sub-Judge, Nawada, and; Hari Niwas Gupta, Principal Judge, Family Court, Samastipur be terminated with immediate effect. They be dismissed from service.”

Curiously enough, this does not contain any date or signature of anyone. It completely lacks authenticity. It did not form part of the record either when the matter was considered by the Standing Committee or by the Full Court. An attempt appears to have been made to supplement the reasons, once it was realized that there was clear lapse in that behalf. Barring this there is no other material. The reasons that are contemplated under Sub-clause (b) must be recorded by the concerned and specific authority at the appropriate stage, by applying mind. It is not an empty formality. Therefore, the proceedings in the present form cannot be sustained. Point No.(b) is also decided in favour of the petitioners.

Point No.(c)

Once the Constitution itself requires that the reasons for dispensing with the enquiry must be recorded, it is obvious that



such reasons are subjected to scrutiny by way of judicial review. The makers of the Constitution were clear in their mind that the reasons are expected to justify the conclusion that it is reasonably not practicable to conduct enquiry. Therefore, the disciplinary authority must be in a position to sustain his conclusion through his reasons. For this purpose, it becomes necessary to look into the circumstances that led to invocation of power under Clause 2(b). The Hon'ble Supreme Court dealt with the cases of such nature.

*In Chandigarh Administration Vs. Ajay Manchanda etc.*⁸

it emerged that the delinquent official was terrorizing the witnesses to such an extent that they expressed their inability that even to make a formal statement before the police. The Supreme Court held that dispensing with the enquiry under those circumstances was very much justified. However, the reasons must be evident from the record.

In the instant case, the High Court did undertake a preliminary enquiry and got possession of certain materials; be it in the form of the paper clippings, report of the District Judge, Purnea or letter from the Home Ministry, Government of India. When it was possible for the High Court to undertake such an enquiry, it would have been equally possible to frame charges, and then attempt to proceed with the departmental enquiry. It is only when conducting of

⁸ (1996) 3 SCC 753



departmental enquiry was turning out to be a difficult task, either at the inception or half way-through, that a decision could have been taken to dispense with the enquiry; by recording specific reasons. The judgments of the Hon'ble Supreme Court in *Tarsem Singh (supra)* and *Tulsi Ram Patel (supra)* throw light upon this. On applying the principles laid therein, it becomes clear that there is patent violation in the impugned proceedings. Therefore, we hold this point also in favour of the petitioners.

The dismissal of an employee that too, on the allegation that he indulged in immoral activities would not only tarnish the image of the individual, but also his family members. However, if the allegation is true, his correct picture stands exposed. Just as the plea of truth in a case of defamation, the finding of an act of immorality, does not mar the reputation of the person. On the other hand, it brings his reputation to its proper level (See Winfield on Torts). Having said this, one must recognize that it is only when the allegation is proved as required under law, that the concerned person can be made to suffer the result thereof. Indeed, an individual, who indulges in illegal and immoral acts would not befit a system that is governed by rule of law. It is here, that the fairness of procedure that must be followed before recording such findings assumes significance. The concerned individual is informed of the charges, the



department is placed under obligation to prove them and the person is conferred with the right to defend. When exceptions are carved out for the general requirement, and the entire protection of *audi alterem partem* is denied, the ingredients, that would justify the exception, must be proved to the level of perfection. In the instant case, however, there are not even traces of it. The inescapable conclusion is that the common order dated 12.02.2014 challenged in the writ petitions cannot be sustained in law.

The writ petitions are, accordingly, allowed, and the common order dated 12.02.2014 is set aside. It is made clear that in case, the High Court intends to invoke its power under Sub-clause (b) of the 2nd proviso to Article 311 (2) of the Constitution of India, it shall be under obligation to record reasons, at the appropriate stage and follow the prescribed procedure.

It is brought to our notice that two of the officers have attained the age of superannuation, during the pendency of the writ petitions. We direct that as a result of the judgment in these writ petitions, the petitioner, who is already in service, shall be deemed to be under suspension, and the other two would be deemed to be continuing in service for the limited purpose of enabling the departmental proceedings to continue. The High Court shall take a decision in this behalf, within a period of two months from today. If



no decision is taken in this regard, the proceedings would lapse and the petitioners would be entitled for all the consequential benefits, as though the proceedings have been set aside in their entirety. If, on the other hand, the proceedings are initiated, the petitioners shall await the outcome thereof. While the one who is in service shall be paid subsistence allowance, the other two shall be paid provisional pension to the extent of 25%, forthwith.

Interlocutory application, if any, shall stand disposed of.
There shall be no order as to costs.

(L. Narasimha Reddy, CJ)

Sudhir Singh, J.

AFR

(Sudhir Singh, J)

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