

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2193 of 2015

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Rajesh Kumar Mishra S/o Sri Dev Kumar Mishra R/o village + P.O Mohabbat
Parsa, P.S- Revilganj, District - Chapra, Saran.

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Health , Government of Bihar, Patna.
3. The Director in Chief, Health Services, Bihar, Patna.
4. The Additional Director-cum-the Conducting officer of Departmental Enquiry, Health Directorate, Bihar, Patna.
5. The Additional Chief Medical Officer Officer -cum-Presenting Officer of the Departmental Inquiry, Patna.
6. The Zila Pratirakshan Padadhikari-cum-Conducting officer of Departmental Inquiry, Patna.
7. The Deputy Superintendent , Sub Divisional Hospital Danapur Cum presenting Officer of Departmental Inquiry.
8. The Civil Surgeon cum Chief Medical Officer, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Jagannath Singh, Adv.
For the Respondent/s : Mr. Vivek Prasad, GP7
Mr. S.K.Saraf, AC to GP7

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-12-2016

Heard Mr. Jagannath Singh, learned counsel appearing for the
petitioner and Mr. Vivek Prasad, G.P.VII for the State.

With the consent of the parties the writ petition has been
heard with a view to final disposal at the stage of admission itself.

The petitioner is aggrieved by the order dated 29.5.2014,
whereby he has been dismissed from service in a disciplinary
proceeding so initiated against him which bears Memo No. 436(4)
dated 29.5.2014 and is issued under the signature of the Director-in-
Chief, Health Services, Bihar, Patna.



The petitioner held the post of Clerk and was allegedly apprehended while accepting bribe of Rs.2,000/- on 11.11.2009 from the complainant Rajesh Kumar Singh in connection with issuance of a medical certificate for admission in the State Auxiliary Police Force (SAP).

The facts of the case briefly stated is that on the complaint instituted by the said Rajesh Kumar Singh with the Vigilance Department that a Pre-trap memorandum was prepared and a trap was set up. According to the F.I.R., the amount in question was handed over by the complainant Rajesh Kumar Singh to the petitioner, who in turn handed it over to the driver Ravindra Kumar. It is not in dispute that the recovery of the alleged bribe money of Rs.2,000/- was made from the pocket of the driver Ravindra Kumar. The petitioner alongwith the driver Ravindra Kumar were arrested and taken into custody leading to institution of Vigilance Case No. 109/2009 registered for the offences punishable under Sections 7, 8, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. It is not in dispute that the criminal case is pending disposal before the Vigilance Court. On the other hand, the Department initiated disciplinary proceeding against the petitioner by service of charge memo vide Memo No. 11887 dated 21.10.2011, present at Annexure 9 and 9/1, but apparently the charge merely refers to approval granted



for proceeding against the petitioner in the criminal case and departmentally. It does not refer to any specific charge as such.

Be that as it may, the charge at Annexure 9/1 was put to enquiry, the report of which is present at Annexure 10 and in the opinion of the Enquiry Officer since the criminal case was pending consideration before the Vigilance Court, the outcome of the disciplinary case should await outcome of the judgment in the criminal case. However, the Enquiry Officer to maintain secrecy of the matter opined for transfer of the petitioner. Vide Annexure 11 dated 6.2.2014 the petitioner was put to suspension and a formal charge memo was served on him vide Annexure 12 dated 15.4.2014 charging him with the alleged bribe while relying upon the report of the Vigilance dated 23.11.2009. The enquiry report submitted by the Enquiry Officer is at Annexure 16 and upholds the guilt, which is followed by the impugned order dated 29.5.2014 placed at Annexure 18, whereby the petitioner has been dismissed from service under Rule 14(10) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules'). The petitioner feeling aggrieved is before this Court.

I have heard learned counsel for the parties and have perused the records.

The short argument advanced by Mr. Singh, learned counsel



appearing for the petitioner, to contest the impugned order is that it is resting on no evidence except vigilance report which finds mentioned in the charge memo placed at Annexure 12. According to Mr. Jagannath Singh, neither the complainant nor the driver were examined in the disciplinary proceedings nor the vigilance report was proved. He submits that simply proceeding on the charge, which is a subject matter of the vigilance case, that not only the Enquiry Officer but also the disciplinary authority has got swayed on the allegations to conclude against the petitioner.

The argument though has been contested by Mr. Vivek Prasad, learned State Counsel, on grounds that the petitioner was afforded reasonable opportunity to defend himself but he has failed to satisfy this Court on the evidence led against the petitioner in the disciplinary proceeding to connect the delinquent with the alleged charge. No doubt, there is a mark distinction between an opinion recorded in a criminal proceeding from that in a disciplinary proceeding and while it is a conclusiveness of the evidence to prove a charge in a criminal proceeding, the disciplinary proceeding is guided by preponderance of probability but then there has to be some evidence to connect a delinquent to the alleged charge. Unfortunately, in the present case except for the vigilance report which is yet pending consideration before the criminal court no evidence was led by the



presenting officer. It is rather peculiar that the Department neither led the complainant nor the driver to conclude on the charge against the petitioner nor the vigilance report was proved. Conformingly the disciplinary proceedings is resting on no evidence and the opinion recorded by the disciplinary authority suffers from the same infirmity. An identical issue came up for consideration before this Court in a case arising from C.W.J.C.No. 280/2016 (Anil Kumar v. the State of Bihar & ors.) and the opinion expressed by this Court in the said case would conclusively apply to the case in hand. The relevant portion of the judgment is quoted hereinbelow for ready reference:

" The argument of Mr. Ranjeet Kumar that no evidence was led to bring home the charges is correct because neither the complainant nor the In-charge of the Vigilance Team which arrested the petitioner nor the witnesses to the alleged recovery have been led as witness or examined by the department. The enquiry report exclusively rests on the allegation made in the vigilance F.I.R. and nothing beyond.

The issue would be whether the allegation in the F.I.R. in absence of any witnesses proving the same and in absence of any witness supporting the charge of demand of bribe money/ illegal gratification by the petitioner and in absence of any witness confirming recovery, ipso facto can be sufficient to uphold charges.

A similar issue came up for consideration in the case of **Roop Singh Negi v. Punjab National Bank & ors.**,



reported in (2009)2 SCC 570, and the conclusion of the Supreme Court recorded in paragraphs 14, 15 and 23 of the judgment would squarely apply to the case in hand and are being reproduced hereinbelow for ready reference:

"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence



should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a matter that no evidence was left.

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable to a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be



held to be a substitute for legal proof."

As in the present case, even in the case of Roop Singh Negi (supra), the only evidence available with the disciplinary authority was the confession of the delinquent and the F.I.R. No witness was examined in the said case to prove the documents, rather the management witnesses merely tendered the documents as in the present case. The Supreme Court held this exercise to be insufficient to uphold the charge and also held that the allegation made in the F.I.R. simplicitor unless proved by leading evidence, by itself cannot be treated as evidence.

As I have said, the factual position is not disputed and the Presenting Officer except for relying upon two documentary evidence referred to above, led no evidence to prove the charge or to confirm the allegations. Apparently, the decision impugned, is resting on no evidence. The same view expressed by the disciplinary authority is mechanically endorsed by the appellate authority rendering the two orders unsustainable.

In the result, the order dated 17.3.2015 of the Director, Dairy Development Directorate, Bihar, Patna, impugned at Annexure 4, together with the order dated 16.3.2016 of the disciplinary authority, impugned at Annexure 12, and the order dated 15.7.2016 of the appellate authority, impugned at Annexure 14, cannot be upheld and are, accordingly, quashed and set aside.

The writ petition is allowed.

The petitioner stands reinstated and would be entitled for consequential benefit.



The records produced by Mr. Roy is being returned to him for his custody."

In the facts and circumstances discussed above, since indisputably the entire enquiry including the order of punishment impugned at Annexure 18 is resting on no evidence except the vigilance report, which finds mentioned in the charge memo at Annexure 12 and which also was not proved by its author during the disciplinary proceeding, the order of penalty is based on no evidence and accordingly, Annexure 18 dated 29.5.2014 is quashed and set aside. The writ petition is allowed.

The petitioner stands reinstated to his post. The consequences shall follow.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26.12.2016
Transmission Date	NA

