

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7519 of 2011

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Shashi Bhushan Prasad S/O Late Kailash Prasad, Resident Of Naya Bazar, Police
Station Buxar, District Buxar.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. The Inspector General Jail, Government Of Bihar, Patna.
3. The Jail Of Superintendent, Bhagalpur Jail, Bhagalpur.
4. Assistant Inspector General Jail Cum Conducting Officer Home (Jail)
Department, Govt. Of Bihar, Patna.
5. Home Secretary, Home Jail Department, Government Of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. D K Singh, Sr. Advocate

Mr. Nirmal Kumar

For the Respondent/s : Mr. Madhukar Mishra, AC to SC 16

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CORAM: HONOURABLE THE CHIEF JUSTICE
C.A.V. JUDGMENT
Date: 30-08-2017

Challenge in this writ petition filed under Articles 226
and 227 of the Constitution of India has been made to an order dated
23.03.2011 (Annexure 15) passed by the respondent competent
authority imposing punishment of debarring the petitioner from
promotion and preventing and denying enhancement of pay-scale for



a period of three years with effect from 18.04.2007 and further confirming the period of suspension and directing that nothing shall be paid to the petitioner for the period of suspension except the subsistence allowance already granted to him.

2. The petitioner was appointed as a Cutter in the Central Jail at Buxar initially in the year 1973. He was thereafter transferred to Bhagalpur Central Jail and subsequently, at the relevant time, when the cause of action for taking the impugned action arose, he was working in Shahid Khudiram Bose Central Jail at Muzaffarpur. Pending conduct of a departmental proceeding against him the petitioner was suspended on 18.03.2002. It was alleged against him that he had committed defalcation of 229 meters of cloth and manipulated the date of birth in his service book and thereby committed the acts of misconduct. His suspension was revoked on 31.08.2004 and a charge memorandum was issued to him on 05.10.2002. He was directed to file a show-cause which he did on 23.10.2002 by denying the charges. Thereafter, in accordance with the requirement of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as “2005 Rules”), a Conducting Officer was appointed and a departmental enquiry was conducted in the matter. The departmental enquiry was culminated in the



findings recorded by the Enquiry Officer holding him guilty of the charges levelled and after issuing the second show-cause notice, punishment was awarded on 18.04.2007, by which the petitioner was debarred from promotion, enhancement of salary was stopped and the period of suspension was confirmed and he was also imposed with a punishment of break in service and recovery of Rs.29,235/-. An appeal filed by the petitioner was rejected by the appellate authority, namely, the Principal Secretary, Special Home Department, Government of Bihar, Patna, on 18.04.2007, and thereafter the matter came to this Court at the instance of the petitioner in CWJC No. 17758 of 2009, whereby the orders of the disciplinary authority and the appellate authority were challenged. The writ petition was decided by a Single Judge of this Court on 08.03.2010 vide Annexure-12 and the learned Writ Court found that the departmental proceedings are vitiated on account of violation of the principles of natural justice even the appellate authority has not decided the appeal properly and being satisfied that the appellate order as a composite order, the matter was remanded back to the appellate authority after quashing the order of punishment.

3. This order was challenged by the State Government in LPA No. 1031 of 2010 and vide Annexure-13 on 27.09.2010, a



Division Bench of this Court found that the order passed by the learned Writ Court holding that the original punishment order merged with the appellate order and once the appellate order is quashed, the original punishment no more exists, is not correct. It held that if the learned Writ Court was of the opinion that the appellate authority exceeded in exercising its jurisdiction, the appellate order should have been set aside and the matter remanded back to the appellate authority. The order of the learned Writ Court quashing the order of punishment dated 18th April, 2007 reviving the order of appellate authority was quashed and the matter remanded the appellate authority vide Annexure-14 having again rejected the appeal on 01.03.2011 and a review application filed was also being dismissed vide Annexure-15 on 23.03.2011, this writ petition has been filed.

4. Before this Court also, three-fold submissions were made. The first submission was that the entire enquiry vitiates inasmuch as no witness was examined in the enquiry. The entire enquiry was conducted in one day without granting opportunity to the petitioner to cross-examine the witnesses. It is stated that the Enquiry Officer visited the jail on 25.04.2006, and in an illegal manner contrary to the 2005 Rules, conducted the enquiry. It was also stated that proper opportunity of hearing was not granted to



the petitioner and the appellate authority and the disciplinary authority committed grave error in dismissing the appeal and passing the impugned order.

5. Learned counsel took me to various documents and material available on record including the provisions of Rule 17 of the 2005 Rules and argued that the statutory provisions for conducting departmental enquiry having been violated, the entire enquiry stands vitiated and on this ground alone, the petition is liable to be allowed.

6. Learned counsel for the respondents refuted the aforesaid and argued that as after the remand by the Division Bench in LPA No. 1031 of 2010, the appellate authority has passed a detailed order, now no further indulgence into the matter is called for.

7. Having heard learned counsel for the parties, moot question which warrants consideration is as to whether the departmental enquiry in question was conducted in accordance with the requirement of statutory Rules, i.e. 2005 Rules. Annexure-1 series is the charge memorandum issued to the petitioner wherein nine charges are levelled against him. The petitioner submitted his reply/explanation vide Annexure-2 series and thereafter a Conducting Officer was appointed for conducting a departmental



enquiry and records indicate that the Enquiry Officer visited the Central Jail, Bhagalpur, on 24.04.2006 after issuing the notice on 22.04.2006 Annexure-3 series and when the Enquiry Officer visited the jail, the petitioner submitted his application on 25.04.2006, seeking opportunity to cross-examine the witnesses. However, the records of the enquiry is not available on record. But the report of the Enquiry Officer vide Annexure-4 series goes to show that the Enquiry Officer who was appointed for conducting the enquiry into the matter, charge-sheet and the explanation of the petitioner was received, the Enquiry Officer visited the spot and the jail for inspection on 25.04.2006, wherein he is said to have recorded the statement of the delinquent employee and other connected persons and thereafter he has recorded the finding. It is, therefore, clear that the only proceeding conducted by the Enquiry Officer was by visiting the jail on 25.04.2006, conducting inspection in the jail and recording the statement of the persons concerned. There is nothing indicated in the report of the Enquiry Officer to show that he conducted the proceedings as contemplated under Rule 17 of the 2005 Rules.

8. Vide Rule 17 of the 2005 Rules a detailed procedure for imposing major penalty has been laid down. This Rule contemplates that no order imposing any of the major



penalties as contemplated under sub-clauses (vi) to (x) of Rule 14 of the 2005 Rules shall be made without holding an enquiry in the manner provided in the Rule. Sub-Rule (2) of Rule 17 the provision statutory in nature mandated the disciplinary authority to issue a charge-sheet indicating misconduct or misbehaviour seeking explanation from the concerned employee for holding enquiry, receipt of written statement etc. after the Enquiry Officer is appointed and from sub-Rule (7) of Rule 17 onwards the procedures to be followed by the Enquiry Officer are contemplated. The Rule contemplates for holding of a detailed enquiry by permitting appointment of an assistant to assist the delinquent employee and appointment of a Presenting Officer for presenting the case of the prosecution fixing the case for recording of evidence, reading of charges to the employee and in case he denies for holding a detailed enquiry which contemplates production of evidence by the Presenting Officer after giving notice for enquiry permitting inspection of documents, cross-examining of the evidence produced by the Presenting Officer, opportunity of producing defence witness, etc. etc.

9. It is seen from sub-Rules (1) to (23) of Rule 17 of the 2005 Rules that a detailed procedure has been laid down for conducting the enquiry from the stage of issuing the charge-sheet



till submission of the findings of the Enquiry Officer. In the present case, there is no iota of evidence available on record to indicate that the enquiry was conducted in accordance with the aforesaid statutory requirement as contemplated in the Rules. On the contrary, the enquiry report indicates that the Enquiry Officer visited the jail on 25.04.2006, conducted the entire proceeding on the same date and submitted his report without following the mandatory procedure indicated hereinabove in Rule 17. This itself is a violation, statutory in nature which vitiates the entire enquiry. In the case of **State Bank of Patiala vs. S K Sharma (AIR 1996 SC 1669)**, it has been laid down by the Supreme Court that when there is a provision under a statutory rule for conducting departmental enquiry and a mandatory provision for conducting of the enquiry is laid down, an enquiry conducted in violation thereof stands vitiated. In the present case, the principle laid down in the case of **S K Sharma** (supra), stands attracted and, therefore, for this ground alone, the writ petition is liable to be allowed and the impugned action quashed.

10. That apart, a perusal of the order dated 08.03.2010 in CWJC No. 17758 of 2009 passed by this Court with regard to the same enquiry proceeding held goes to show that a finding has been recorded by this Court that there is refusal to allow cross-



examination of departmental witnesses, the procedure followed in the enquiry has not been complied with and the appellate authority did not consider this issue in the impugned order passed by the appellate authority even though the petitioner has raised this ground. However, in paragraph 5.1 of the impugned order dated 01.03.2011 (Annexure 14) the appellate authority only says that the application of the petitioner dated 25.04.2006 for cross-examination of the witnesses is not available on record. However, the departmental authority and the appellate authority failed to prove before this Court that an enquiry, as required under the statutory rule was conducted before passing the impugned order. On the contrary, as indicated hereinabove, the report of the Enquiry Officer and the procedure followed therein clearly indicated that the enquiry was conducted on a single day and was concluded on the same day itself. This Court is satisfied that the departmental proceeding held against the petitioner is not in accordance with law and, therefore, the entire action taken by the respondent authorities stands vitiated.

11. Accordingly, this writ petition is allowed. The impugned order dated 23.03.2011 (Annexure-15) and the original order dated 18.04.2007 (Annexure-6) are quashed. All consequential benefits accruing to the petitioner by quashing of



these orders shall be made available to him.

12. The writ petition is allowed but without any order
so as to costs.

(Rajendra Menon, CJ)

mrl

AFR/NAFR	NAFR
CAV DATE	23.08.2017
Uploading Date	04.09.2017
Transmission Date	N.A.

