

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13075 of 2010

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Sri Prakash Gupta S/O Late Dasrath Prasad R/O Moh.- Nehru Tola,P.S.-
Chowk,Patna City In The District Of Patna.

.... Petitioner/s

Versus

1. The State Of Bihar Through Principal Secretary Department Of Home (Jail)
Govt. Of Bihar, Patna.
2. The Principal Secretary, Department Of Home (Jail), Govt. Of Bihar, Patna.
3. The Deputy Secretary To The Govt. Of Bihar, Department Of Home (Special),
Patna.
4. The Inspector General Of Jail, Govt. Of Bihar, Patna.
5. The Superintendent Of Jail, Mandal Kara, Bettiah.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar, Adv.

For the Respondent/s : Mr. Deepak Sahay Jamuar, AC to AAG-4

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 12-12-2017

Heard learned counsel for the parties.

In the present case, the petitioner is challenging the order dated 27.2.2007 passed by the Inspector General of Jail, Bihar, whereby and whereunder, the petitioner has been demoted to the post of Clerk from the post of Assistant Jailor. Against this order, the petitioner filed an appeal before the Principal Secretary (Home) who, vide Memo No. 11855 dated 6.11.2007, dismissed the appeal filed by the petitioner.

The petitioner was initially entered in the service as a Clerk but, in course of time, he was promoted on the post of Assistant



Jailor, at the relevant time, was posted at Betiah Jail. On the fateful day i.e. on 10/11.8.2002, he was discharging the function of Assistant Jailor and four persons, namely, Prabhu Nath Singh, Bishambhar Pandey, Om Prakash and Sunil Paswan were deputed as Warder, Sri Bishwanath Prasad was the Superintendent and one Arjun Prasad Sahu was the Jailor. On that day, nine persons had tried to escape jail but, finally eight persons escaped from the jail and the ninth one was caught hold by one Prabhu Nath Singh. The petitioner had made round of the Jail during 2.15 AM to 2.35 AM recorded in the Register number of prisoners in Ward No.8, Prabhu Nath Singh had joined the duty as a Warder, while making a round, found that the window's rods were removed, blew whistle, in course of searching, one prisoner was caught. He disclosed his name as Mohan Sah, as he failed to escape the jail boundary wall but, eight persons succeeded and escaped from the jail. On the next day, an inspection was conducted by the Director (Probation) found the petitioner had derelicted in discharging the official duty recorded finding that the entry made by the petitioner in the Register is ipse dixit without making proper counting of the prisoners as already eight prisoners were already escaped from the jail. On that basis, a charge-sheet was issued against him vide Praptra Ka (Annexure-4), altogether five charges have been framed, whereafter, the enquiry report was submitted by the Enquiry



Officer (Annexure-6) and found two charges to be proved against the petitioner. Later on, the Disciplinary Authority served the copy of the enquiry report to which the petitioner filed his explanation but, by the impugned order, the punishment has been inflicted of demotion from Assistant Jailor to the post of Clerk and the appellate authority affirmed the order.

Learned counsel for the petitioner has submitted that the preliminary enquiry was not conducted properly which was required to be followed. Subsequently, the Enquiry Officer failed to follow proper procedure, has acted as a prosecutor as well as adjudicator, inasmuch as, no documentary evidence was produced through the witnesses, no oral evidence has been recorded, the entire finding of enquiry officer is based on the preliminary enquiry conducted by the Director (Probation). It has further been submitted that during regular departmental enquiry, the prosecution was required to bring the witnesses in order to prove the charges but, failed to follow the due procedure of holding departmental enquiry. He has further submitted that the petitioner was singularly sent to departmental enquiry when the Director (Probation) has found that the Warder as well as the Superintendent and Jailor were also responsible for escaping of the prisoners but, they were not proceeded departmentally and, selectively, the petitioner was picked up, proceeded with and



punishment order has been passed against him.

Learned counsel for the petitioner has placed reliance on the order dated 10.08.2017 in C.W.J.C. No. 18300 of 2010, there also in a similar situation, the proceeding was not conducted in the proper manner, the Court interfered in the matter and set aside the enquiry and remanded back the matter for fresh consideration. He has further submitted that the departmental enquiry must not only be conducted but should also reflect that the delinquent has been given fair opportunity to defend. The enquiry officer should not act as a prosecutor as well as adjudicator rather the presenting officer is required to bring the essential materials through oral witness or documentary evidence but, in the present case, no such procedure has been followed.

Learned counsel for the State has tried to justify the action of the State and submitted that proper procedure was followed, resulted into passing of order of punishment, that too, has been affirmed by the appellate authority. In the judgment passed in C.W.J.C. No. 18300 of 2010 (Ran Bahadur Sharma Vs. The State of Bihar & Ors.), the Co-ordinate Bench of this Court has place reliance on the judgment in the case of *Anil Kumar Vs. Presiding Officer* reported in *AIR 1985 SC 1121* wherein the Hon'ble Apex Court has laid down the manner of holding departmental enquiry is required to be



conducted. In the case of *Roop Singh Negi Vs. Punjab National Bank & Ors.* reported in (2009) 2 SCC 570, the Hon'ble Apex Court has laid down the manner the departmental proceeding has to be conducted wherein it has been held that the enquiry officer should be independent arbiter assisted by presenting officer, inasmuch as, the prosecution should bring the evidence, oral and documentary, to prove the charges, applying this principle, admittedly, from the record, it appears that the enquiry has not been conducted in the manner stated herein above. It appears that no presenting officer was appointed, the charges have not been proved by oral or documentary evidence through the witnesses, no oral witness has been examined in the present case but, the Enquiry Officer, on his own, on the basis of material that was collected during preliminary enquiry, has arrived to a finding of holding him liable of committing misdemeanor.

This Court finds that the enquiry proceeding suffers from inherent defect, cannot be upheld in the court of law which resulted into the passing of illegal order, affirmed by the appellate authority. In that view of the matter, the order dated 6.11.2007 passed by the Principal Secretary (Home), the appellate authority, and the order dated 27.2.2007 passed by the Inspector General of Jail, Bihar are set aside, the enquiry proceeding itself is vitiated and the same cannot be sustained. Similarly, the enquiry report is also quashed. The



respondents, if so advised, may hold a fresh enquiry in accordance with law.

In the result, this writ application stands allowed to the extent indicated above.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.12.2017
Transmission Date	NA

