

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8373 of 2014

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1. Deo Kishun Singh son of late Chandrika Singh Resident of village - Wazidpur,
P.S. Belaganj, District - Gaya

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Home, Government of Bihar,
Patna
2. The Joint Secretary Cum - Director (Administration) of Home Prison Bihar,
Patna
3. The Inspector General Prison Government of Bihar, Patna
4. The Jai Superintendent Nawada

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rupak Kumar, Advocate

For the Respondent/s : Mr. GP25- Ramadhar Singh

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 24-08-2017

Heard both sides.

2. The petitioner has assailed the order dated 11.11.2013 as contained in Memo No. 5512(Annexure-6) issued by the Inspector General of Jail, (Prison) Government of Bihar, Patna and the appellate order dated 13.09.2014 passed by the Principal Secretary, Department of Home, Government of Bihar whereby the order of the disciplinary authority has been confirmed.

3. The brief facts is that while the petitioner was posted as Assistant Jailor in Sub-Jail, Buxar he was departmentally proceeded on the charge that on 10.02.2011, Bablu Mishra under trial prisoner died due to his negligent act and dereliction of his duty. The preliminary enquiry was held by the District Magistrate, Nawada and S.P., Nawada. In preliminary enquiry, it was found that the petitioner was *prima facie* found guilty for death of the prisoner. The second charge was that he committed negligence in discharge of his duty. The enquiry



officer found that the petitioner was not guilty of any charge and submitted his report. Upon receipt of the enquiry report, the I.G. Prison asked second show cause adding new charges which were not the subject matter of departmental enquiry. The petitioner submitted his show cause but the I.G., Prison vide order dated 11.11.2013 inflicted following punishments; (a) Censure, (b) Reduction to the basic scale for indefinite period and (c) Petitioner would not get salary and other allowance for the period of his suspension except, subsistence allowance already paid. The petitioner preferred appeal and during the pendency of this writ petition the appellate authority also dismissed the appeal without considering the grounds taken by the petitioner in the appeal.

4. Learned counsel for the petitioner submits that during course of enquiry, the presenting officer did not adduce any evidence save and except the preliminary enquiry report held by the District Magistrate, Nawada and the S.P., Nawada. The District Magistrate and the S.P., Nawada were not examined on the facts of the enquiry nor allowed to be cross-examined. During the course of enquiry, the enquiry officer did not find the petitioner guilty of any charge but, the disciplinary authority asked the show cause adding new charges which were not the subject matter of the departmental enquiry and inflicted following punishments; (a) censure, (b) reduction to the basic scale and (c) the petitioner will not be entitled to get any payment during the suspension period except subsistence allowance. It is further submitted that the preliminary enquiry report cannot be looked into and on the basis of the supplementary charge stated in the second show cause, the petitioner cannot be found guilty unless departmental enquiry is held on the new charges added in the second show cause.

It is submitted that Rule 18 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 enabled the disciplinary authority



to differ with the finding of the enquiry officer on the basis of the evidence available therein but there is absolutely no evidence and the finding of disciplinary authority differing with the finding of the enquiry officer is based on no evidence or material if any brought on record and therefore the order inflicting punishment is absolutely bad.

5. Learned counsel for the State submits that it is admitted fact that the mental condition of prisoner was reported to the Assistant Jailor but, he did not take any care for treatment and on account of his negligence under trial prisoner Bablu Mishra died. It is further submitted that the I.G., Prison did not agree with the enquiry report and therefore, asked for second show cause stating new charges.

6. Having considered submissions and perusal of the record, this Court find that once the enquiry officer submitted report and did not find the petitioner guilty, the disciplinary authority may differ with the findings of the enquiry officer on the basis of the evidence available on record but serve the enquiry report with the point of his difference to the government servant so that the proceedee in his show cause may give detail reply that point of difference is reasonable or tenable on the evidence on record. Admittedly, the presenting officer did not examine any witness nor produce any document during course of enquiry in order to prove the charges against the petitioner and thus finding of the disciplinary authority differing with the finding of the enquiry officer is based on no evidence. Rule 18 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the 'CCA Rules 2005') empowers the disciplinary authority to act on enquiry report. This rule and its sub-rules does not permit the disciplinary authority to give point of difference on no evidence or ask second show cause from the proceedee adding new charges



which were not the subject matter of departmental enquiry already held. It is evident that finding of the disciplinary authority is based on preliminary enquiry report of the District Magistrate, Nawada and the S.P., Nawada but the District Magistrate, Nawada and the S.P., Nawada were not examined during departmental enquiry as such the preliminary enquiry report was not brought on record in accordance with law and the punishment on such preliminary enquiry report cannot be sustained.

The appellate authority also exercised quasi judicial function while hearing appeal of the petitioner and the appellate authority is bound and obliged to take independent view on the grounds in appeal of the petitioner but it appears that the appellate authority also without looking into the grounds of appeal summarily dismissed the appeal in most mechanical and perfunctory manner. Thus, both the orders are not sustainable.

7. In view of the discussions made above, I find that the order dated 11.11.2013 as contained in Memo No. 5512 (Annexure-6) and the appellate order dated 13.09.2014 passed by the Principal Secretary, Department of Home, Government of Bihar (Annexure-8/a) are not at all sustainable. Accordingly, both the orders are set aside and this writ petition is allowed.

(Prabhat Kumar Jha, J)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.09.2017
Transmission Date	NA

