

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.517 of 2005

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Awadhesh Kumar Dubey son of late Ramdhani Dubey resident of village Barigawan, P.O. Nawgarha P.S. Bishrampur Dist. Palamue Jharkhand.

.... Petitioner/s

Versus

1. The State of Bihar.
 2. The Inspector General (Prison) Bihar, Patna.
 3. The Assistant Inspector General of Prison, Bihar, Patna.
 4. The District Magistrate, Samastipur.
 5. The Superintendent, District Jail, Samastipur.
 6. The Superintendent, District Jail Darbhanga.
 7. The Superintendent, Shahid Khudi Ram Bose Central Jail, Muzaffarpur
- Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr. Asif Kalim, Advocate
Mr. Binod Kumar : Mr. Majid Mahboob Khan, Advocate

For the Respondent/s : Mr. Apurv Harsh, AC to SC 28

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 20-02-2018

Heard counsel for the petitioner and the respondents.

2. Three inmates of the District Jail, Samastipur had escaped from the prison on 18.10.1998 in the evening. The petitioner who was posted as the head Warder in the said Jail has been inflicted punishment of withholding of five increments with cumulative effect, denial of promotion for five years and for non-payment of anything other than subsistence allowance during the period of suspension.

3. Being aggrieved by the said order, the petitioner had filed appeal before the Inspector General, Prison, Bihar (for short 'I.G.). When the same was not being disposed off, the petitioner has filed the writ petition seeking quashing of the order of punishment and



for issuance of appropriate order to I.G to dispose off the appeal filed by him. The appeal was disposed off by the I.G during pendency of the writ petition by order dated 29.09.2010 and is Annexure A to the second supplementary counter affidavit filed on behalf of the respondents.

4. It appears that immediately after the occurrence on 18.10.1998, the District Magistrate, Samastipur vide Annexure 2 has directed the Assistant Inspector General (for short 'A.I.G') to enquire into the said incident of inmates escaping from prison. Pursuant thereto A.I.G undertook an enquiry and submitted a report which is Annexure 4 dated 03.11.1998.

5. The counsel for the petitioner points out from the same that the A.I.G has primarily found the head warder to be responsible for the lapse though in the said order it has been noted that the petitioner was also present in the premises of the Jail.

6. Annexure 3 is an order dated 23.10.1998 whereby the petitioner has been placed under suspension. Perusal of the said order dated 23.10.1998 shows that the same has been issued recording the petitioner's *prima facie* guilt in respect of the same incident for which he was not found responsible in the report dated 03.11.1998 of the A.I.G.

7. Enquiry report dated 03.04.2001 which is Annexure A to the counter affidavit has been submitted to the Superintendent,



Khudi Ram Bose Central Jail by the Superintendent of Divisional Jail, Darbhanga. The enquiry report is based on a report of the Collector, Samastipur and does not record any definite finding in respect of the petitioner's complicity and involvement in the said incident. Report is to the effect that negligence on the part of the petitioner cannot be denied. The same does not refer to any specific charge. In fact no charge memo has been issued against the petitioner. At this juncture it would be relevant to notice that the copy of the enquiry report was also not made available to the petitioner. It appears that the authorities were proceeding arbitrarily and in total disregard to the Principles of Natural Justice and fair play.

8. As a result of such an exercise the Disciplinary Authority i.e., Superintendent, Khudiram Bose Central Jail has punished the petitioner by order dated 14.03.2002, agreeing with the report of the Enquiry Officer.

9. The petitioner filed his appeal being aggrieved by the acceptance of the enquiry report and imposition of the penalty as noted above. The appeal filed by the petitioner is Annexure 12 to the writ petition.

10. In the appeal the petitioner has specifically raised a grievance that there is no definite finding with respect to any charge made in the enquiry report by the disciplinary authority. He has further pointed out that neither copy of the documents relied upon by



the Enquiry Officer, such as report of Collector, nor copy of the enquiry report was made available to the petitioner. The petitioner has prayed that the appellate authority may drop the penalty imposed upon the petitioner. The appeal has been disposed off vide order dated 29.09.2010 which is Annexure A to the second supplementary counter affidavit filed on behalf of the State. The same has also not considered these infirmities pointed out by the petitioner with respect to the proceedings leading to issuance of the order of punishment against the petitioner.

11. From perusal of the counter affidavit and other documents placed on record by both the parties, it is clear that there is no charge memo disclosing any charges which were to be proved against the petitioner. Non-supply of documents relied upon by the Enquiry Officer as also non supply of the enquiry report as noticed above has also vitiated the proceedings.

12. It is an established law that in order to ensure fairness in such matter before imposing any penalty against an employee, the employee would be entitled to an adequate opportunity of defending himself. It is not possible for any delinquent to prepare his defence without a charge memo.

13. When the authorities wish to embark upon a formal enquiry, it is established law that the substance of the imposition has to be drawn into the articles of charges. Though charge-sheet is not



expected to be a record of evidence, so long as it communicates the acts or omissions constituting the misconduct alleged, proceedings can be conducted. It is a fundamental essence of the concept of fair play and justice that a person should know why he is being charged. A formal charge-sheet communicates to the government servant the fact that a formal departmental enquiry has been initiated against him on those charges, the charge-sheet must contains some accusation of misconduct against the government servant.

14. In this regard the supreme Court in the case of *Surath Chandra Chak vs. the State of West Bengal* reported in (1970) 3 SCC 548 has held as under :

“5. ...The grounds on which it is proposed to take action have to be reduced to the form of a *definite charge* or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated. This rule embodies a principle which is one of the specific contents of a reasonable or adequate opportunity for defending oneself. If a person is not *told clearly and definitely* what the allegations are on which the charges preferred against him are founded, he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him.”

15. Apart from that the conclusions of the disciplinary authority being based on material which were not supplied to the petitioner, also stands vitiated. All these things could be point out to



the disciplinary authority if the opportunity had been granted to the petitioner to make his representation against the enquiry report as at this stage the petitioner has vital opportunity. Even this opportunity has been denied to the petitioner.

16. The decision making process therefore does not inspire any confidence whatsoever and suffers from infirmity which strike at the root of the entire proceedings. The conclusions arrived as a result of such a procedure cannot be sustained. The order of punishment dated 14.03.2002 (Annexure 11) as also the order dated 20.09.2010 passed in service appeal by I.G. Prison, Bihar Patna (Annexure A to the second supplementary affidavit) is therefore, quashed. As a result of quashing of the order of punishment, the petitioner would be entitled to all consequential benefits.

17. The writ petition is allowed to the extent indicated above.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	AFR
CAV DATE	
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