

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10024 of 2003

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Akhilesh Bharti, s/o Sri Basan Manjhi, r/o vill+PO Chapar, PS- Gopalpur, Dist- Bhagalpur

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Government of Bihar, Patna
2. The D.G. of Police cum I.G. of Police Bihar, Patna
3. The I.G. of Police, Bhagalpur Zone, Bhagalpur
4. the D.I.G. of Police, Range Bhagalpur
5. The S.P. Bhagalpur

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 10498 of 2003

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Anand Kumar Sinha, s/o late Tarni Pd. Sinha, r/o vill- Bagraha, PO-Kancha, PS- Dalsinghsarai, Dist-Samastipur

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Government of Bihar, Patna
2. The D.G. of Police cum I.G. of Police Bihar, Patna
3. The I.G. of Police, Bhagalpur Zone, Bhagalpur
4. the D.I.G. of Police, Range Bhagalpur
5. The S.P. Bhagalpur

.... Respondent/s

with

=====

Civil Writ Jurisdiction Case No. 4808 of 2006

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Madan Paswan, S/o Ganga Bishnu Paswan, r/o vill-Bondoh, PS- Rahui, Dist- Nalanda

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Government of Bihar, Patna
2. The D.G. of Police cum I.G. of Police Bihar, Patna
3. The A.D.G. of Police, Bhagalpur Zone, Bhagalpur
4. the D.I.G. of Police, Eastern Range Bhagalpur
5. The S.P. Bhagalpur
6. The Commandant B.M.J.A.P. 5 Deoghar

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 15460 of 2005

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Ashok Kumar, s/o Sri Prabhu Chaudhary, r/o vill-Lakhma, PS+PO- Kajra, Dist- Lakhisarai

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Government of Bihar, Patna
2. The D.G. of Police cum I.G. of Police Bihar, Patna
3. The I.G. of Police, Bhagalpur Zone, Bhagalpur
4. the D.I.G. of Police, Bhagalpur Range Bhagalpur
5. The S.P. Bhagalpur
6. The Commandant B.M.P.15 new J.A.P. 5 Deoghar

.... Respondent/s



Appearance :

(In CWJC No.10024 of 2003)

For the Petitioner/s : Mr. Awadhesh Kumar Mishra
: Mr. Ram Hriday Prasad
: Mr. Ajay Kumar
: Mr. Sandhya Sharma
: Mr. Kumar Priyadarshi
: Mr. Ujjwal Kumar
: Mr. Bishwok Sen Mishra
: Mr. Maruti Kumari

For the Respondent/s : Shilpa Singh (GP-12)

(In CWJC No.10498 of 2003)

For the Petitioner/s : Mr. Awadhesh Kumar Mishra
: Mr. Ram Hriday Prasad
: Mr. Ajay Kumar
: Mr. Sandhya Sharma
: Mr. Kumar Priyadarshi
: Mr. Ujjwal Kumar
: Mr. Bishwok Sen Mishra
: Mr. Maruti Kumari

For the Respondent/s : Abhanjali (AC to GA-12)

(In CWJC No.4808 of 2006)

For the Petitioner/s : Mr. Awadhesh Kumar Mishra
: Mr. Ram Hriday Prasad
: Mr. Ajay Kumar
: Mr. Sandhya Sharma
: Mr. Kumar Priyadarshi
: Mr. Ujjwal Kumar
: Mr. Bishwok Sen Mishra
: Mr. Maruti Kumari

For the Respondent/s : Mr. Avinash Shekhar (AC to SC 6)

(In CWJC No.15460 of 2005)

For the Petitioner/s : Mr. Awadhesh Kumar Mishra
: Mr. Ram Hriday Prasad
: Mr. Ajay Kumar
: Mr. Sandhya Sharma
: Mr. Kumar Priyadarshi
: Mr. Ujjwal Kumar
: Mr. Bishwok Sen Mishra
: Mr. Maruti Kumari

For the Respondent/s : Mr. Mrigendra Kumar (AC to GA-4)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 15-02-2018

1. The aforesaid writ petitions arise out of the same set of facts/ charges and the question of law involved in the



present cases are same hence, the same have been heard together with the consent of the parties and are being disposed of by the present common order.

2. The petitioners of the aforesaid writ petitions have challenged the inquiry report, the order of dismissal, Appellate orders passed by the Deputy Inspector General and Inspector General of Police as well as the order passed in Memorial Appeal by the Director General of Police.

3. The short facts of the case are that the petitioners of the aforesaid cases are Constables who were proceeded departmentally and charge-sheet was issued to them. The departmental proceeding was initiated primarily on the charges that they had indulged in beating the *rickshaw walas*, Block Development Officer and others. Infact, the charge sheet was issued against two Havalgars besides the petitioners herein and regular departmental proceedings were initiated as against them as well. It would be relevant to depict the various dates on which the inquiry report was submitted, the order of punishment was issued and Appellate orders were passed against the petitioners herein by way of the following chart :-

Name of the petitioners	Date of submission of inquiry report	Order of punishment i.e. dismissal from service	Appellate order passed by the D.I.G.	Appellate order passed by the I.G.	Memorial order passed by the D.G.
Akhilesh Bharti	05.03.2002	19.06.2002	04.09.2002	10.04.2003	15.07.2005
Ashok	25.03.2002	30.04.2002	29.07.2002	10.04.2003	15.07.2005



Kumar					
Madan Paswan	25.03.2002	30.04.2002	29.07.2002	10.04.2003	11.07.2005
Anand Kr. Sinha	30.01.2002	30.04.2002	24.07.2002	10.04.2003	-

4. The charge-sheet, inquiry, report, Appellate orders and the Memorial orders are more or less identical in the aforesaid cases hence, for the purpose of the present judgment, the facts of the first case i.e. CWJC 10024 of 2003 are being taken up for consideration.

5. The petitioner of CWJC no. 10024 of 2003, while posted as a Constable along with other constables, is said to have engaged in assaulting *rickshaw wallas*, B.D.O. and others. In pursuance thereof, three FIRs were lodged on 21.08.1996 bearing Jermundi PS case no. 100 of 1996, Jermundi PS case no. 101 of 1996 and Jermundi PS case no. 103 of 1996. The police had submitted final form in Jermundi PS cases no. 100 of 1996 and 101 of 1996 whereafter, the Court below did not proceed with the matter and the case was dropped. As far as Jermundi PS case no. 103 of 1996 is concerned, all the accused persons were acquitted of the allegations leveled against them.

6. The charge sheet was issued against the petitioner of CWJC no. 10024 of 2003 vide letter dated 20.10.1997 and a departmental proceeding was initiated for the same set of charges which were leveled against him in the aforesaid FIR. The Inquiry officer submitted the Inquiry report dated 05.03.2002, *inter alia* observing therein that none of the witnesses had turned up on account of being busy in their official work



hence, no evidence could be recorded but nonetheless the enquiry officer came to the conclusion that all the charges have been proved, merely on the fact that the FIR has been lodged against the petitioner herein and others and the offences alleged are serious. Thereafter, a second show-cause dated 30.04.2002 is said to have been issued to the petitioner of CWJC no. 10024 of 2003 calling upon him to file a reply, whereupon the petitioner had filed a reply to the second show-cause denying all the allegations. Nonetheless, the disciplinary authority by an order dated 19.06.2002 passed the order of dismissal with regard to the petitioner herein and in the said order dated 19.06.2002, it was observed that from the evidence of the witnesses, the allegations leveled against the petitioner herein has been proved beyond doubt and the charges levelled were grave in nature. The petitioner had then filed an appeal but the same was dismissed by the D.I.G. by an order dated 04.09.2002 whereafter, the petitioner had preferred an appeal against the said orders of dismissal and Appellate order before the Inspector General of Police, Bhagalpur and the I.G. of Police vide order dated 10.04.2003, while dismissing the appeal of the petitioner herein, had categorically observed that neither any police official nor any *rickshaw* puller were examined by the Inquiry officer and no evidence whatsoever was led by the prosecution in the ongoing departmental proceeding. It was further observed by the I.G. in the said order that severe irregularities have been found in the ongoing departmental proceeding but nonetheless, the Inspector General of Police dismissed the appeal of the petitioner herein. The petitioner had then filed a Memorial appeal before the D.G. and the Director General of Police, Headquarter, Bihar, Patna by an order dated 15.07.2005, without any



application of mind and merely considering the findings of the Appellate authorities, dismissed the Memorial appeal.

7. This is how the present writ petitions have come into being challenging the aforesaid order of dismissal as also the Appellate and Memorial order passed by the D.G. Headquarters.

8. The learned counsel for the petitioners have submitted that firstly the dismissal order passed by the disciplinary authorities has been passed on the basis of an Inquiry report which is based on no evidence hence, this Court is fully empowered to go into the merits of the Inquiry report and since no evidence could be led during the course of inquiry by the prosecution, the findings of the Inquiry officers are *non est* in the eyes of law and he could not have come to a perverse finding of guilt of the petitioners herein. It is next contended that the order of dismissal takes into consideration extraneous materials which could not have been looked into since the same were not put to the petitioners herein while considering their replies to the second show-cause hence, on this ground alone, the order of dismissal is fit to be set aside. It is further contended that even the appellate authority has observed that the present case is a case of no evidence and the Inquiry officers as well as disciplinary authorities have engaged in irregular conduct of inquiry proceedings, however the appellate authority without any cogent reason, has dismissed the appeal instead of setting aside the inquiry report and the dismissal order. It is also the contention of the learned counsel for the petitioners that as far as the criminal cases are concerned, all of them have come to a naught in as far as the petitioners herein have been found to be innocent. Lastly, it is contended that the other



two delinquents i.e. the Havalgars who were also part of the alleged occurrence and who were also departmentally proceeded against in similar fashion as has been done with the petitioners herein, have been virtually acquitted and have only been granted the punishment of Censure. The said two Havalgars are Jagdish Paswan and Ramashanker Kumar.

9. *Per contra*, the learned counsel for the State has submitted that there is no illegality in conducting the departmental proceeding hence, this Court cannot re-appreciate the evidence and sit over the decision of the disciplinary authority as an Appellate authority hence, the present writ petitions are liable to be dismissed.

10. I have heard the learned counsel for the petitioners and perused the materials on record. I find that the Inquiry officer himself has recorded in the Inquiry report that no evidence whatsoever could be led by the prosecution hence, the present case is a case of no evidence but nonetheless, the enquiry officer proceeded to hold the petitioners guilty merely on the basis that FIR has been lodged against them and serious allegations have been leveled without considering the fact that the petitioners have been acquitted of the criminal charges. In this regard, it would be relevant to refer to the judgments reported in *AIR 1999 Supreme Court 677 (Kuldeep Singh v. The Commissioner of Police and others)* and *2001(1) PLJR 116 (S.K. Verma v. The State of Bihar & ors.)*. It would be relevant to quote paragraphs no. 9 and 10 of the judgment rendered by the Hon'ble Apex Court in the case of Kuldeep Singh (Supra) hereinbelow :-

“9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the



domestic enquiry but if the finding of “guilt” is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, however compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.

11. In view of the aforesaid judgment rendered by the Supreme Court in case of **Kuldeep Singh (supra)**, since the findings arrived at by the Inquiry Officer is based on no evidence, the same is a perverse finding and therefore, the Inquiry Report is fit to be set aside on this ground alone.

12. Coming to the next issue, I find that the disciplinary authority, in its punishment order dated 19.06.2002, has taken into consideration the statements of the witnesses made against the petitioners herein, which are said to have been recorded by the enquiry officer but the enquiry officer, in his enquiry report has nowhere referred to such evidence being recorded, hence there was no occasion to put the said materials before the petitioners herein for the purposes of recording their defense.



In such view of the matter, I find that the disciplinary authority while passing the order of dismissal has relied on some extraneous materials, which were never part of departmental enquiry, i.e. the evidence said to have been led during the course of inquiry and has thus erroneously admitted an inadmissible evidence which has influenced the findings against the petitioners herein. Reference in this regard be had to the judgment reported in **2015 (2) Supreme Court Cases 610 (Union of India and others v. P. Gunasekaran)**; paragraphs no. 12, 13, 14 and 15 are reproduced herein below :

“ 12. Despite the well-settled position, it is painfully disturbing to note that the high Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether :

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in*



conducting the proceedings;

(d) the authorities have disabled themselves from reading a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could even have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear



to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.

14. In one of the earliest decisions in State of A.P. v. S. Sree Rama Rao, many of the above principles have been discussed and it has been concluded thus: (AIR pp 1726-27, para 7)

“7.... The High Court is not constituted in a proceeding under Article 226 of the Constitution as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant” it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in



violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.”

15. In State of A.P. v. Chitra Venkata Rao, the principles have been further discussed at paras 21 and 24 which read as follows : (SCC pp. 561-63)

“ 21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule



followed i criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities



have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

13. In view of the aforesaid admitted fact that the disciplinary authority has taken into consideration inadmissible evidence which was never adduced during the course of the inquiry, I find that the same has influenced the findings of the disciplinary authority resulting in dismissal of the petitioners herein and therefore, the dismissal order cannot be sustained and is accordingly, quashed.

14. Lastly, it is seen that though the same charges were leveled against the Havalgars who are said to be the controlling officers of the petitioners herein who are constables, they have been left lightly with a mere punishment of Censure, hence it is a clear case of discrimination as far as the petitioners of the present cases are concerned. On this ground also, the impugned orders are fit to be set aside.



15. In the facts and circumstances of the case and considering the materials on record as also the law laid down by the Hon’ble Apex Court and this Court, I find that the Inquiry report, the punishment order of dismissal, the Appellate orders and Memorial orders, as set out in paragraph no. 3 hereinabove, are fit to be quashed.

16. Accordingly, the aforesaid writ petitions are allowed.

(Mohit Kumar Shah, J)

rinkee/-

AFR/NAFR	NAFR
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