

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 1747 of 2003

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Om Prakash Singh, son of Sri Suresh Singh, resident of Village – Mura Majhawa,
PS – Darauli, District - Siwan

.... Petitioner/s

Versus

- 1 The State of Bihar
- 2 Director General –cum- Inspector General of Police, Bihar, Patna
- 3 Deputy Inspector General of Police, Railway, Patna
- 4 Superintendent of Police (Rail), Muzaffarpur
- 5 Sri Bhudeo Tiwary, Rail Deputy Superintendent of Police, Sonapur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr Y V Giri, Sr Advocate with
M/s Sunil Kr Jha & Sanjay Kr Singh, Advocates

For the S t a t e : Ms Shilpa Singh, GA XII with
Mr Ranjan Kr, AC to GA XII

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 22-02-2018

Heard Senior Counsel Mr Y V Giri on behalf of the
petitioner as well as the counsel for the State.

2 The brief facts giving rise to the instant writ petition is
that the petitioner, while posted as Constable in the GRP at Rail
Police Station, Sonapur, was served with a charge memo (Annexure
6) dated 23.01.2001 wherein it was alleged that in the night of
11.12.2000 at about 1.15 am, he, along with one Jai Shankar Prasad
Trivedi, after returning from escort duty on a train, had enticed a
female by the name of Munni Khatoon and took her to the police
barrack and tried to physically abuse the said female and that on alarm



being raised, other Constables came to the spot where after the incident could have been averted. It is alleged that thereafter on information, the Officer-in-charge had come to the police barrack, recovered the said female and recorded the *Fardbayan* of the said Munni Khatoon wherein she has stated that the petitioner as well as Jai Shankar Prasad Trivedi had allured her into the police barrack with bad intentions. In support of the charge memo, the two *Sanha* entries bearing 243 and 244 of the said date have been relied upon as evidence in the proceedings. Another document being Memo No 1181 dated 27.12.2000 that is the recommendation made by the Deputy Superintendent of Police (Rail) (for brevity, *Dy S P*) for proceeding against the petitioner and the other Jai Shankar Prasad Trivedi, has also been referred as evidence in support of the charges. The charge memo also discloses name of seven witnesses in support of the charges, all of them but one are Police Constables. Shri Bhudeo Tiwary, Dy S P (Rail), who had issued Memo No 1181 dated 27.12.2000, which is one of the documentary evidence, has also been named as a witness in support of the charges against the petitioner.

3 It may be noted here that the charge memo is based on the two *Sanhas* bearing *Sanhas* No 243 and 244. However, from perusal of the same, it appears that the only mention of the instant petitioner's name in either of the two *Sanhas* is that, while one



Constable Jai Shankar Prasad Trivedi is alleged to have allured the said female to accompany him to his barrack, in respect of the petitioner, it is alleged that he was walking in front of the said Jai Shankar Prasad Trivedi while they were returning to their barrack after completing escort duty. By no stretch of imagination, the said *Sanhas* in any way supports or substantiates the charges leveled against the petitioner in the charge memo.

4 The petitioner has submitted his response to the charge memo. He has elaborated his response. He has raised various issues in the said response which are to the extent that the allegations in the *Sanha* did not support the charge, that the victim herself has not been examined and neither the said Officer-in-charge Shri Thakur, who is said to have recorded the statement of the victim, has been examined. It is also submitted that three witnesses were examined and their statements were recorded behind the petitioner's back. In respect of two other witnesses, the petitioner has pointed out that both of them have not supported the charges. In fact, they have denied even accompanying the Officer-in-charge to the barrack. The said two persons are Bindeshwari Mandal and Anil Kumar Singh.

5 The enquiry officer, without considering the aforesaid submissions made on behalf of the petitioner, has submitted the enquiry report holding the charges proved against the petitioner.



Thereafter, the petitioner was given an opportunity to make his representation against the findings of the enquiry Officer. The petitioner has again reiterated the aforesaid ground before the disciplinary authority vide his representation dated 04.07.2001. The disciplinary authority has accepted the recommendations made by the enquiry officer and recorded the punishment of dismissal with immediate effect against the petitioner vide order dated 04.03.2002 which is Annexure 1 to the writ petition. For the period of suspension that is 02.01.2001 to 31.01.2001, it has been held that the petitioner would not be entitled to any benefit and that the same would be adjusted against his earned leave.

6 The learned Senior Counsel has pointed out from the order passed by the disciplinary authority that the findings recorded therein are perverse inasmuch as none of the aforesaid submissions made on behalf of the petitioner have been considered and only relying upon the *Fardbyan* (two Sanhas) and the statement of witness recorded behind the back of the petitioner, the disciplinary authority has concluded the guilt of the petitioner and inflicted the punishment against him. The nature of the order passed by the disciplinary authority is cryptic and shows total non-application of mind as none of the aforesaid assertions have been considered and dealt with. The opportunity of making representation against the enquiry report before



the disciplinary authority has been reduced to empty formality.

7 The petitioner, being aggrieved by the said order, approached the appellate authority by filing the appeal. The appellate authority, being the Deputy Inspector General (Rail), has disposed of the petitioner's appeal by order dated 06.05.2002. the appellate authority also has taken into consideration the statements recorded behind the back of the petitioner. He too has failed to consider that other than the two *Sanhas* bearing *Sanhas* No 243 and 244 and the Memo No 1181 dated 27.12.2000 that is the recommendation for initiation of proceeding against the petitioner, there was no evidence against the petitioner whatsoever before the enquiry officer. The appellate authority has found the submission of petitioner to be correct that neither the victim Munni Khatoon has been examined; nor the Officer-in-charge of Sonapur Rail Police Station, who is said to have recorded the statement of Munni Khatoon which forms the basis of entire proceeding against the petitioner, has been examined. The appellate authority seems to have been swayed by the two *Sanhas* which, as noticed above, *prima facie* do not disclose any charge against the petitioner. The appellate authority has failed to consider the fact that *Sanhas* 243 and 244 cannot be taken into consideration as they cannot constitute evidence in respect of the charges. In this connection, Senior Counsel for the petitioner has placed reliance on



the judgment of the Apex Court in the case of *Roop Singh Negi – Versus- Punjab National Bank & Others*, (2009) 2 Supreme Court Cases 570.

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.”

8 This case appears to be a case of no evidence and total non-consideration of the defence of the delinquent petitioner. None of the points urged by the petitioner have been considered. The enquiry officer has conducted the proceedings without there being any material in support of the petitioner. Needless to say that this Court is conscious that in a departmental proceeding, the charges are to be proved on preponderance of probabilities. In the instant case, the very charge is not made out as the same is based upon the two *Sanhas* 243 and 244 which prima facie do not disclose any charge against the petitioner. By relying upon the same, the authorities have come to a



finding of guilt and have inflicted grave punishment of dismissal from service against the petitioner. All the procedural requirements seem to have been thrown to the winds. There is total lack of consideration of the petitioner's case and on the basis of conjectures, all the authorities, right from the Enquiry Officer onwards, have given a finding of the charges being proved and have inflicted the impugned punishment by order dated 04.03.2002 bearing Memo No 378.

9 On behalf of the State, it is submitted that all the procedural requirements have been followed inasmuch as charge memo has been issued, the enquiry report has been made available to the petitioner and petitioner has been given an opportunity to make his representation against the same. It is also submitted that the petitioner has availed of his opportunity of appeal and the memorial which has been disposed of by order dated 05.10.2002 and is Annexure 3 to the writ petition.

10 The said procedural requirements are coupled with the duty of the adjudicatory authority such as the disciplinary authority to give a detailed consideration to the points raised by the delinquent (petitioner). That, as noticed above, has not been done in the instant case. It is also a requirement of law that there has to be some material/evidence so as to satisfy the truthfulness of allegations for arriving at the conclusion of the guilt of the petitioner in the



proceedings. In the instant case, as noticed above, there is no evidence whatsoever. Even the witnesses, who have been examined, have either been examined, behind the back of the petitioner or have not supported the allegations.

11 In view of the aforesaid situation, this Court would quash the order of punishment dated 04.03.2002 bearing Memo No 378 issued by the Superintendent of Rail Police, Muzaffarpur. As a result of quashing of the order for punishment, the order passed by the appellate authority dated 06.05.2002 and all consequential orders passed must also fail. The test of reasonableness and fairness are also quashed in view of quashing of the order of punishment. Petitioner would be reinstated and entitled to all consequential benefits.

12 The writ petition stands allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.02.2018
Transmission Date	NA

