

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3230 of 2017

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Ram Lakhan Yadav, Son of Sri Hari Prasad Yadav, resident of village -
Makanpur, Police Station Sahkund in the district of Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home,
Government of Bihar, Patna
2. The Principal Secretary, Department of Home, Government of Bihar, Patna
3. The Inspector General (Prison), Department of Home, Government of Bihar,
Patna
4. The Joint Secretary - Cum - Director (Admn.) (Jail), Home Department,
Government of Bihar, Patna
5. The District Magistrate - Cum - Collector, Nalanda
6. The District Development Commissioner, Nalanda
7. The Jail Superintendent, District Jail, Hajipur, Vaishali

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar
For the Respondent/s : Mr. Partha Sarthi -GA4

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 12-07-2018

Heard learned counsel for the petitioner and counsel for
the State.

In this case, the petitioner is challenging the impugned
Memo No. 6746 dated 4.11.2016 issued under the signature of
Inspector General, Jail, Bihar, Patna by which the petitioner has
been dismissed from service and has been held that he will not be
entitled to anything during the suspension except subsistence
allowance. Further prayer has been made to quash the memo no.
260 dated 18.1.2017 by which the appeal filed against the order of
dismissal dated 4.11.2016 has been rejected and the order of
punishment has been affirmed.



The petitioner at the relevant time was posted as Warden in the Bihar Sharif Jail. A news flashed in the newspaper “Dainik Bhaskar” dated 23.2.2016 under the heading Jail Me Sulekha Ne Khaya Rajballabh Ka Namak” giving details of festivity celebrated by the prisoners of jail organized by Rambhadra Yadav, an accused of rape of minor, was confined to the Bihar Sharif Jail, was nothing but had thrown a party in the jail premises, serving the vegetarian and non-vegetarian meal to the every inmates in the jail premises. The newspaper has given story the feast was organized with the help of jail authorities, huge quantity of materials for vegetarian and non-vegetarian were brought inside the jail but those were not entered in the register. When this news flashed, the district administration swung into action, in pursuance, the District Magistrate, Nalanda, vide Memo No. 1929 dated 23.3.2016, constituted a Three Men Joint Committee under the Chairmanship of Deputy Development Commissioner, Nalanda to enquire into the matter and submit enquiry report, the enquiry was conducted on the same day i.e. on 23.3.2016 and submitted enquiry report on 25.3.2016 for necessary action. The Committee recorded the statements of different persons, recorded findings of confirmation of news items published in the newspaper whereafter large number of jail officers and the staffs were put under suspension including



the present petitioner and directed to initiate a departmental proceeding against them.

The petitioner was put under suspension, was served charge-sheet vide no. 2091 dated 5.4.2016 issued under the signature of Joint Secretary-cum-Director (Admn.), Bihar, Patna, Manoj Kumar Sinha, Jail Superintendent, District Jail, Hajipur was appointed as Enquiry Officer, Sri Jalaj Kumar, Deputy Superintendent, Sub-Jail, Barh was appointed as Presenting Officer. Accordingly, the enquiry was conducted, found the allegation to be true, submitted the enquiry report and the enquiry officer recorded the findings against the present petitioner, the petitioner was also found involved in failure to make entry of material received by the Jail Authorities without proper recording the received materials and submitted the enquiry report to the Disciplinary Authority. In pursuance thereof, second show-cause was issued with the notes to give reply within fifteen days, whereafter, the petitioner filed the same and ultimately the punishment order was passed dismissing the petitioner from service. The petitioner filed an appeal which met with the same fate as it having been dismissed, did not find any merit therein.

It appears from the enquiry report that the petitioner was a Warden and used to be placed on duty from one place to another.



The gate register is maintained in every jail for entry and exit of articles, was kept by one Rama Nand Pandit, Assistant Jail Superintendent and the petitioner was not assigned the duty to maintain the register showing receipt of material and, as such, he was nothing to do with making of proper entry in the register showing receipt of materials from outside but, the petitioner was also found involved in making arrangement of feast sponsored by Rajballabh Yadav. The Warden is the lowest staff in jail at basic grade in hierarchy, whenever material comes from outside, the same has to be recorded in the material receipt register. As the feast was organized by Rajballabh Yadav, heavy quantity of vegetarian articles such as rice, Dal and vegetable including Khir were prepared, which requires heavy quantity of milk and for non-vegetarian, mutton in heavy quantity must have entered into the jail premises without making any entry in the receipt register. The petitioner was not maintaining the register, it was Rama Nand Pandit, Assistant Superintendent of Jail was personally responsible to make entry of material received by the register and it was also the responsibility of Jail Superintendent to ensure feast by an accused within the jail should not be organized and there should not have been a feast like occasion in the jail premises by an accused facing the criminal trial for sexual assault to a minor girl



but, the question in the present case has been raised that proper decision making process has not been followed as the Enquiry Officer served the copy of the memo of charge to the petitioner and received the comment and, without there being any oral or documentary evidence, has recorded the finding against him. Rule 17 of C.C.A. Rules, 2005 provides that the departmental proceeding should be conducted fairly and properly, the procedure has been provided in great detail, one of the items of the procedure is that the charge must be supported by oral and documentary evidence. In the present case, though the enquiry was conducted but, the member of the Committee, which conducted a surprise inspection, found story of the news was correct and submitted the report to the Collector, has not been examined by the Enquiry Officer in the decision making process which caused serious prejudice to the petitioner. The reason is in two fold, firstly, the entire episode happened in the Biharsarif jail, neither any person from jail has been examined during enquiry proceeding nor any one proved the duty of the petitioner on the day of feast and the enquiry report itself does not indicate any involvement of the petitioner in failure to record the material received from outside for organizing the feast arranged by Rajballav Yadav but, the finding in the enquiry report shows that he had only failed to



produce the register when he was called upon to present the same.

In the case of ***Roop Singh Negi vs. Punjab National Bank & Ors.*** reported in ***(2009) 2 SCC 570***, the Court has specifically held that the enquiry proceeding must be supported by oral and documentary evidence, in failure to bring on record the material which is essential for proving the charge will vitiate the enquiry proceeding itself.

Learned counsel for the State has submitted that the fair and proper departmental enquiry was conducted but, neither any person has been examined nor any relevant document, such as, entry register showing failure to maintain proper entry of the material brought inside the jail, was placed for consideration before the Disciplinary Authority. In such case, one's action is to be measured by the ratio of participation in the misconduct as it is a case where the jail authorities have made available the huge quantity of material to Rajballabh Yadav in organizing the party, certainly the persons who are in-charge of the jail, he is knowing all the activities going on in the jail premises. The Warden has a limited role to keep under watch the activity of the accused persons kept in the jail premises but, the entry and exit material register is maintained at gate, kept by fairly high authority but, in the present case, the Assistant Superintendent of Jail was making



entry in the register. It appears that the Assistant Superintendent of jail had actively as well as tacitly allowed celebration unhindered. The warden has a little role to play in such event, inasmuch as, the authority has not conducted the departmental enquiry as per the direction given in the different judgments as well as to the procedure of Rule 17 of the C.C.A. Rules. This aspect of the matter has not been disputed by the State that neither the documentary or oral evidence has been recorded during enquiry, merely on the basis of enquiry report of Three Men Committee and reply submitted by the petitioner, the findings have been recorded against the petitioner and there is no denial or the dispute the person who has conducted the internal enquiry has not been examined nor he was put to cross-examination to test the veracity of the statement recorded in enquiry report.

In that view of the matter, this Court has no hesitation but, would hold that the Departmental Enquiry was not conducted fairly and correctly rather the same has been conducted in a tainted manner and in another case in the case of Moti Lal Vs. The State of Bihar & Ors. (C.W.J.C. No. 620 of 2018), this Court has already declared the enquiry has not been conducted properly. This matter is arising from the same incident, the Court in the aforesaid order has recorded a finding that the enquiry proceeding has not been conducted



properly but, completely perfunctory. There is no doubt that whatever procedure was required by the Enquiry Officer was not followed and the enquiry proceeding has been conducted by the Enquiry Officer in a perfunctory manner as also the enquiry has been conducted by the Enquiry Officer dehors to the procedure laid down under Rule 17 of the C.C.A. Rules.

In view of the above, the order passed against the petitioner of dismissal does not survive. Accordingly, the Memo No. 6746 dated 4.11.2016 issued under the signature of Inspector General, Jail, Bihar, Patna is quashed and as a consequence, the appellate order contained in memo no. 260 dated 18.1.2017 is also quashed.

In the result, the present writ application stands allowed.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.08.2018
Transmission Date	NA

