

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15965 of 2015

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Chitranjan Prasad Singh, Son of Late Muneshwar Prasad Resident of Village-
Madarma, P.S. + District- Vaishali

.... **Petitioner**

Versus

1. The State of Bihar
2. The District Magistrate, Sitamarhi
3. The Deputy Development Commissioner, Sitamarhi
4. The Circle Officer, Dumra, Sitamarhi

.... **Respondents**

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Appearance :

For the Petitioner : Mr. Arun Kr. Sinha, Advocate and
Mr. Amit Narayan, Advocate

For the State : Mr. Kumar Alok, SC 7 & V.Bharti, AC to SC 7

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 19-07-2018

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

2. The petitioner is aggrieved by order dated 23.7.2015
(Annexure 12), passed by the Collector, Sitamarhi by which 50% of
the pension of the petitioner has been withheld in purported
exercise of power under Rule 43B of the Bihar Pension Rules.

3. Short issue, raised by learned counsel for the petitioner,
which strikes at the root of the matter, is that the charges, which
were levelled against the petitioner, under charge memo dated
28.1.2014 (Annexure 2), could not be established by the Presenting
Officer. It is his submission that even though the charges could not
be established, the punishment has been awarded to the petitioner.

4. For better appreciation of the submissions, a brief
substance of the allegations may recorded. The petitioner came to



be posted as Halka Karmachari on 17.7.2012. Prior to that, in the month of February, 2012, mutation case of the allegationist had been allowed and the rent receipts were to be issued for his land. Nearly one and half years after petitioner's joining on 17.7.2012, a complaint was lodged by the allegationist, Devendra Prasad Singh, on 19.12.2013 that the rent receipt was not issued to the allegationist as the petitioner was demanding a bribe of Rs.20,000/- through his middleman. The complaint was referred to the Sub Divisional Officer, Sitamarhi who after preliminary enquiry, directed for institution of FIR against the middleman and the petitioner since the middleman was caught red handed while accepting bribe of Rs.20,000/-.

5. In the circumstances, charge memo was issued against the petitioner on 28.4.2014. First allegation in the charge memo was that the allegationist, Devendra Prasad Singh, has alleged that the petitioner had demanded and accepted a bribe of Rs 20,000/- through his middleman, Chandeshwar Singh @ Chandeshwar Mahto. On such allegation, the proceeding was initiated against the petitioner. The petitioner submitted his response to the charge memo. The charge memo reveals that neither the complaint forming the part of allegation against the petitioner nor the complainant, Devendra Prasad Singh, were referred to in the list of evidence, which was submitted along with charge memo. The



enquiry, however, commenced and was concluded by submission of enquiry report, which is dated 14.2.2015. As regards, charge against the petitioner of having demanded and received a bribe of Rs.20,000/- through a middleman, the Enquiry Officer has recorded as follows:-

“जहाँ तक दलाल के माध्यम से 20,000 रुपया मांगने का आरोप है के संबंध में यह स्पष्ट है कि घटना की तिथि को आरोपी कर्मि घटना स्थल पर मौजूद नहीं थे। श्री चन्दे”वर सिंह इनके दलाल के रूप में कार्य करते थे, उपस्थापन पदाधिकारी द्वारा स्पष्ट नहीं किया गया है। दिनांक 17.07.2012 से 18.12.2013 तक रसीद निर्गत नहीं करना इस आरोप को प्रमाणित करता है कि आवेदनकर्ता श्री देवेन्द्र प्रसाद सिंह से नाजायज राशि की अपेक्षा की गयी होगी।”

6. At another place, while considering charge no.3, which is offshoot of the charge, observation of the Enquiry officer is as follows:-

“आरोपी लिपिक का स्पष्टीकरण एवं उपस्थापन पदाधिकारी के मंतव्य से स्पष्ट है कि आरोपी कर्मि घटना के समय घटना स्थल पर मौजूद नहीं थे। यह भी प्रमाणित नहीं किया जा सकता है कि श्री चन्दे”वर सिंह इनके दलाल के रूप में कार्यरत थे। परन्तु दाखिल खारिज एवं भुद्धि पत्र निर्गत करने के प”चात् 17.07.2012 से 18.12.2013 तक रसीद निर्गत नहीं करना आरोप की पुष्टि करता है। आरोप पूर्णतः प्रमाणित नहीं होता है।”

7. Clearly, fact of Chandeshwar Singh, being a middleman, could not be established in the proceedings and even the Enquiry Officer has concluded that the charge to this effect is not established. While recording so, the Enquiry officer has concluded as follows:-

“उपस्थापन पदाधिकारी के मंतव्य से यह आरोप प्रमाणित नहीं होता है कि श्री चन्दे”वर महतो इनके दलाल के रूप में कार्य करते थे। आरोप सं० 1 से 3 तक एक ही आरोप



से संबंधित है। श्री चितरंजन प्रसाद सिंह आरोपी राजस्व कर्मचारी को श्री चन्दे"वर महतो उर्फ चन्दे"वर सिंह के माध्यम से 20,000 रुपये रसीद निर्गत करने हेतु मांगने के आरोप में रंगे हाथ चन्दे"वर सिंह को गिरफ्तार कर प्राथमिकी दर्ज की गयी है। श्री चितरंजन प्रसाद सिंह का यह कहना कि रेंट रसीद के अनुपलब्धता के कारण रसीद निर्गत नहीं किया गया सही नहीं है। इनके द्वारा एक वर्ष तक रसीद निर्गत नहीं करना इनकी म"ा को स्पष्ट करता है एवं आरोप की पुष्टि करता है। अतः इनके विरुद्ध लगाया गया आरोप प्रमाणित होता है।"

8. Conclusion of the Enquiry Officer, therefore, are that the charges have been proved, whereas it is his own finding that the fact of Chandreshwar Prasad Singh, being an agent or dalal of the petitioner, could not be established in the proceedings. When the link between the petitioner and said Chandeshwar Prasad Singh could admittedly not been established in the enquiry proceeding, the conclusion regarding petitioner's guilt is prima facie unsustainable, perverse and defies logic. Conclusions of the Enquiry Officer are clearly presumptive.

9. The Disciplinary Authority has proceeded to issue second show cause to the petitioner, which is dated 25.3.2015, wherein he has also communicated a copy of the enquiry report. Thereafter the petitioner has submitted his response to the show cause notice on 9.4.2015. It has been observed by the Enquiry officer that the said Chandeshwar Prasad Singh had link or relation with the petitioner could not be established. However, the findings have been recorded of the charge being proved that through the said Chandeshwar Prasad Singh, the petitioner has received the alleged



bribe of Rs.20,000/- for issuance of rent receipt. Clearly, the findings are perverse and unsustainable and the same cannot be made the basis of visiting the petitioner with civil consequence.

10. Learned counsel for the State has supported the order of punishment. It has been submitted that even though various receipt books were issued to the petitioner during this period, he has failed to issue rent receipt to the allegationist. He submits that one of the charges regarding non-availability of rent receipt volume is therefore clearly untenable.

11. Submission made on behalf of the State *prima facie* appears to be attractive, but at best lead to an inference, or give rise to a suspicion, which cannot take the place of proof. Whether the rent receipt was issued or not issued, whether the allegationist had approached the petitioner for issuance of rent receipt and what has occasioned failure in issuing rent receipt, are issues which were required to be seen in the proceedings with reference to some material before the Enquiry Officer. Same has not been done. Conclusions based on assumptions and presumptions or surmises and conjectures cannot be sustained on the touchstone of fairness. Suspicion however strong cannot *per se* be relied upon to conclude delinquent's guilt. It is well established that even though strict rules of evidence do not apply to departmental proceedings, there has to be some material available on record in the proceedings to support



the conclusion even on basis of preponderance of probability. This has not been done in the instant case.

12. In view of the law as considered by the Hon'ble Apex Court in the case of **Roop Singh Negi Vs. Punjab National Bank** and others, reported in **(2009) 2 SCC 570**, the punishment being based on no evidence, is unsustainable.

13. Perverse findings of the Enquiry officer and the Disciplinary Authority without any material in support thereof in the facts and circumstances of the instant case cannot be sustained so as to visit the petitioner with civil consequence of withholding 50% of his pension. The impugned order is unsustainable and is hereby quashed.

14. The writ petition is allowed with all consequential benefits.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	NAFR
CAV DATE	NA
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