

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20163 of 2013

Sumitra Devi W/o Late Sidheshwar Prasad R/o village Satrajabagh, P.S. Karai
Parsurai, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through The Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Department Of Home (Police), Govt. of Bihar, Patna.
3. The Director General of Police, Government of Bihar, Patna.
4. The Superintendent Of Police (Security), Special Branch, Govt. of Bihar, Patna.
5. The Deputy Inspector General of Police, Shahabad Range Dehri - on – Sone.
6. The Superintendent of Police, Bhojpur.
7. The Superintendent of Police, Buxar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Hemendra Prasad Singh, Sr. Advocate
	:	Mr. Diwakar Prasad Karn, Advocate
	:	Mr. Chandra Shekhar Anand, Advocate
For the Respondent/s	:	Mr. Ajay Bihari Sinha, G.A.- 8
	:	Mr. Neeraj Raj, A.C. to G.A. 8

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 27-06-2018

Heard the parties.

2. This writ petition under Article 226 of the Constitution of India has been filed for quashing the order dated 03.10.2012 passed by Director General of Police, Bihar, Patna by which punishment of dismissal from service has been passed against petitioner in Buxar District Departmental proceeding No. 6/11.



3. During pendency of writ petition original petitioner Sidheshwar Prasad died on 11.09.2015 and he was substituted by his widow Sumitra Devi who is pursuing this case.

4. Petitioner was posted as Inspector of Police, Dumraon Circle under Buxar District. He was supervising officer of Sikraul P.S. Case No. 41 of 2010 and he demanded bribe from informant of the case. He submitted his supervision note dated 16.07.2010. He was arrested by the Vigilance Department on 20.07.2010 accepting bribe of Rs. 8000/- giving rise to Vigilance P.S. Case No. 52 of 2010 under Prevention of Corruption Act and was sent to Judicial Custody and he was put under suspension on 22.07.2010 by the order of D.I.G., Shahabad Region, Dehri on sone and a direction was also issued to initiate departmental proceeding against him and for preparing draft of memo of charge.

5. Petitioner was granted regular bail on 15.09.2010 by Patna High Court and after his release he submitted his joining on 26.09.2010. He thereafter submitted an application for the revocation of suspension order and suspension was revoked on 15.02.2011.

6. A preliminary objection has been taken that both criminal proceedings and departmental proceeding cannot



continue simultaneously where the charges in departmental proceeding as well as criminal proceeding are identical and are to be established by same set of evidence. However, now it is well settled that departmental proceeding as well as criminal proceeding can continue simultaneously, even the charges in both proceedings are similar and are to be proved by same set of evidence, as charges in criminal proceedings is to be proved beyond shadow of doubt whereas in departmental proceeding charges has to be proved on basis of preponderance of probabilities. However, during pendency of writ petition petitioner died as such criminal case will abate.

7. Memo of charge dated 15.02.2010 was framed against petitioner by the D.I.G. Police, Shahabad Region, Dehri-on-sone. Superintendent of Police, Bhojpur was appointed as Enquiry Officer and memo of charge was served upon him and petitioner was directed to submit his preliminary explanation to the Enquiry Officer and next date was fixed on 04.05.2011 at 10.30 AM and on said date petitioner and witnesses did not appear and case was adjourned for 26.07.2011 at 10.30 AM. Petitioner filed a petition dated 26.07.2011 that he has not received any documents relating to Vigilance Case No. 52 of 2010 as such, he is not in a position to file effective preliminary



defence statement/explanation, as such the documents as demanded shall be made available to him.

8. The charge against petitioner is that on 20.07.2010 he was arrested by the Vigilance Bureau accepting bribe of Rs. 8000/- on the basis of complaint made by complainant Rangnath Dubey. In support of charge P.W.1 Krishna Murari was examined on 24.10.2011 in which he has stated that he was deputed in the crime branch as Crime Reader, Vigilance Department, Bihar, Patna and he reported about institution of a Vigilance Case being Case No. 52 of 2010 dated 20.07.2010 with respect to demanding and accepting bribe by the petitioner and he was arrested by the raiding party and sent to jail. He has further stated that all these information were sent to police head quarter and Superintendent of Police, Buxar on 28.07.2010. He has proved letter dated 28.07.2010.

9. PW-2, Anil Kumar Reserve Sub-Inspector, Buxar in his deposition on 01.08.2011 has stated that correspondence was made vide letter dated 21.07.2010 addressed to D.I.G. Police Shahabad Range, Dehri-on-sone by which decision to initiate departmental proceeding against petitioner was taken. He has proved this letter dated 21.07.2010.

10. PW-3 Assistant Sub-Inspector Satyendra Narain



Singh, Crime Reader-cum-Confidential Reader posted in the office of D.I.G. Shahabad Range has deposed that memo of charge was issued vide memo No. 769 dated 22.07.2010 issued by D.I.G. police, Shahabad Range, Dehri-on-sone and he has proved this letter dated 22.07.2010. There is no statement of witnesses on the record which is said to be recorded by the Enquiry Officer during proceeding on 24.10.2011 and 01.08.2011.

11. The Enquiry Officer thereafter dealt with defence of petitioner in which it has been stated that in Sikraul P.S. Case No. 41/10 instituted under Sections 147, 341, 323, 379 of IPC was supervised by petitioner on 16.07.2008 and investigating officer was directed to submit final form as case to be true but accusation false. The informant of said case Santosh Dubey on account of land dispute had lodged the FIR against his opponents and he was infuriated when petitioner made a supervision note as accusation to be false and thereafter in connivance with his uncle Rangnath Dubey has falsely implicated petitioner in this case in connivance with his relative in Vigilance Department.

12. Rangnath Dubey is in habit of lodging false cases against his opponents and previously also he had lodged Sikraul



P.S. case No. 12 of 2008 and made his opponents as accused. After supervision of said case he found the case to be false and directed to institute case against Rangnath Dubey under Section 182/2011 of IPC. Petitioner has further stated in his defence that due to supervision note dated 16.07.2010 made in Sikraul P.S. Case No. 41/10 against complainant, he has been falsely implicated in this case and once he had submitted supervision note on 16.07.2010 there was no occasion for him to demand any bribe from complainant. There were many loopholes in the Vigilance Case and mandatory provision was not followed at the time of institution of case or during pre-trap memorandum and post-trap memorandum.

13. The Enquiry Officer has lastly concluded that on the basis of materials available on record and after considering evidence of witnesses and explanation submitted by petitioner he has come to a finding that the charge against the petitioner of accepting bribe of Rs. 8000/- from complainant Rangnath Dubey is established and sent his enquiry report dated 28.10.2011 to the Disciplinary Authority, D.I.G., Police, Shahabad Range, Dehri-on-sone.

14. The records contains a letter dated 15.10.2011 issued by the D.I.G., Shahabad region, Dehri-on-sone to the



Superintendent of Police, Bhojpur (Enquiry Officer) directing to complete the proceeding by 15.11.2011 and to submit his enquiry report alongwith finding within time.

15. After going through the records of the case and enquiry proceeding this Court does not find that any evidence oral or documentary was recorded in presence of petitioner. No opportunity was granted to the petitioner to cross-examine the witnesses produced on behalf of department. The witnesses which have been produced on behalf of department does not prove acceptance of bribe of Rs. 8000/- by the petitioner from the complainant Rangnath Dubey. The witnesses who have been examined by the department are only formal witnesses and they have proved the letter of correspondence and none of the witnesses are material witnesses or eye witnesses with respect to charge. There are no evidence either oral or documentary on basis of which the charge framed against petitioner is proved or deemed to be proved. The evidences led by the department in no way establishes the charge as framed against petitioner, as such, the finding recorded by the enquiry officer that charge is proved is based on no legal evidence. There is procedural infirmity in conducting the proceeding and same is in contravention of Bihar Government Servants (CCA Rules, 2005) or Police Manual, as



such, enquiry proceeding stands vitiated and cannot be sustained.

16. The enquiry report was sent by the enquiry officer to the Disciplinary Authority and Disciplinary Authority without issuing any 2nd show cause notice alongwith enquiry report has directed the Superintendent of Police to issue a notice to the petitioner with respect to punishment of dismissal from service. The enquiry report was not given to petitioner nor any reply was asked from him with respect to findings of enquiry officer and without compliance of this mandatory provision the Disciplinary Authority has decided to dismiss petitioner from the service and for which show cause notice was issued to him and as such, the proceeding at the 2nd stage of enquiry is also vitiated which is in flagrant violation of prescribed procedure and natural justice.

17. The charge was framed against petitioner by the D.I.G. and he appointed Superintendent of Police as Enquiry Officer and on conclusion of enquiry proceeding and receiving of enquiry report he issued show cause notice to the petitioner with respect to punishment of dismissal from service. Petitioner submitted a detailed reply against the show cause of punishment to the D.I.G. but he did not pass any order of punishment and



file was sent to the D.G.P. who passed the final order of dismissal from service after considering the materials available on record.

18. The petitioner died during pendency of writ petition and his widow has been substituted in his place. The Vigilance Case will also abate against him (deceased employee). This Court has set aside the entire enquiry proceeding including the order of dismissal passed by the D.G.P. as such there is nothing adverse against deceased employee. Widow of deceased employee (petitioner) is entitled for all retiral benefits i.e. family pension and gratuity, G.P.F., leave encashment and all other retiral dues payable to deceased employee. Since the employee has died this Court cannot order any fresh proceeding or de novo proceeding or to initiate proceeding from the stage it stood vitiated. The respondents particularly respondent No. 5 the Deputy Inspector General of Police, Shahabad Range, Dehri-on-sone is directed to pay family pension and gratuity, G.P.F., leave encashment and all other retiral dues for which petitioner is entitled within three months from date of production/receipt of copy of this order.

19. The original records of departmental proceeding produced before this Court by the counsel for the State is



directed to be returned forthwith.

20. The writ petition stands allowed.

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	30.01.2018
Uploading Date	26.07.2018
Transmission Date	N.A.

