

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.7006 of 2014**

---

1. Meena Pratap Wife of late Bhanu Pratap
  2. Apurva Daughter of late Bhanu Pratap
- Both residents of Mohalla- Flat No. A-4-B, Alakhraj Apartment,  
East Boring Canal Road, Police Station- Budha Colony, District-  
Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar Through Principal Secretary, General Administration  
Department
2. The Chairman - Cum - The Appellate Authority, Bihar Public Service  
Commission, Bihar, Patna
3. The Bihar Public Service Commission, Patna Through Its Secretary
4. The Members Of The Bihar Public Service Commission, Patna
5. The Secretary - Cum - The Disciplinary Authority, Bihar Public Service  
Commission, Bihar, Patna
6. The Joint Secretary - Cum - Inquiring Officer, Bihar Public Service  
Commission, Bihar, Patna
7. The Officer - On - Special Duty, Bihar Public Service Commission, Bihar,  
Patna

... .. Respondent/s

---

**Appearance :**

|                      |   |                                                    |
|----------------------|---|----------------------------------------------------|
| For the Petitioner/s | : | Mr. Sanjeev Kumar, Adv & Mr. Rajeev Shukla,<br>Adv |
| For the BPSC         | : | Mr. A.K. Singh, Sr. Adv                            |
| For the State        | : | Mr. AC to AAG-4                                    |

---

**CORAM: HONOURABLE MR. JUSTICE S. KUMAR**  
**ORAL JUDGMENT**

**Date : 29-06-2018**

Heard learned counsel for the parties.

2. This application under Article 226 of the Constitution



of India has been filed for quashing the order dated 19.03.2013 passed by the Secretary (Disciplinary Authority), Bihar Public Service Commission, dismissing petitioner from service as well as order dated 14.11.2013 passed by Chairman, Bihar Public Service Commission (Appellate Authority).

3. Briefly stated, the facts of the case is that petitioner was appointed on the post of Analyst Programmer in the office of Bihar Public Service Commission. Allegations were made about various acts of irregularities in respect of Bihar Administrative Service, 1<sup>st</sup> Limited Competitive Examination-2003. Various writ petitions were filed in Patna High Court leading to cancellation of said examination and also institution of Vigilance Case No. 19/2005, 10/2006 and 20/2006 in which 29 persons including petitioner were arrested. Documents, answersheets, computers and other articles relating to said examination were seized and chargesheet was submitted against 109 persons including the petitioner.

4. Petitioner was an Analyst Programmer in BPSC and was arrested on 29.12.2005 and he was suspended vide order dated 02.02.2006 w.e.f. date of his arrest on 29.12.2005 under Rule 99 of Bihar Service Code. Petitioner was granted bail and he submitted his joining on 26.02.2007 and his order of



suspension was revoked vide order dated 12.03.2007.

5. Sanction for prosecution was granted against petitioner vide order dated 20.10.2006 and he was again suspended vide order dated 12.03.2007 in accordance with provisions contained in Rule-9(i)(c) of Bihar Government Servant (Classification, Control & Appeal) Rules-2005 as he was an accused in Vigilance Case No. 19/2005 dated 29.12.2005 under various sections of IPC.

6. An explanation was asked from petitioner vide memo dated 29.10.2010 with enclosures on the basis of investigation in Case No. 19/2005 with respect to initiation of departmental proceeding. Petitioner vide letter dated 16.11.2010 demanded certain documents to file explanation. However, no documents were provided to petitioner.

7. The Disciplinary Authority by its letter dated 03.05.2012 initiated departmental proceeding against petitioner on the ground that in the Advt. No. 4/2003 published by BPSC in relation to first Administrative Service Limited Examination of 2003, candidates were held eligible in the said examination for appointment to the post of Deputy Collector. On the basis of complaints made regarding irregularities committed in said examination, Vigilance P.S. Case No. 19/2005 was instituted by



the Cabinet (Vigilance) Department, Bihar, Patna and in investigation by the Vigilance Department, petitioner (since deceased) was found guilty and after consideration of the aforesaid facts it was found that a departmental enquiry be initiated against petitioner under Rule-17 of Bihar Government Servants (Classification, Control & Appeal) Rules-2005.

8. The Disciplinary Authority i.e. Secretary of BPSC appointed Shri Abhimanyu Singh, Joint Secretary, BPSC as Enquiry Officer and Sectional Officer (Estb.) was appointed as Presenting Officer. Petitioner was directed to appear before the Enquiry Officer within 15 days and submit his statement of defence.

9. The Enquiry Officer after conducting the enquiry and on the basis of evidence placed before him found the charges against the petitioner to be proved and sent his enquiry report dated 30.08.2012 to the Secretary of BPSC (Disciplinary Authority).

10. The Disciplinary Authority issued a second show cause notice dated 21.09.2012 along with copy of enquiry report dated 30.08.2012 to the petitioner and asked to submit his reply to the second show cause notice. Petitioner filed his reply dated 25.10.2012 to his second show cause notice.



11. After considering the enquiry report and findings of Enquiry Officer and reply of petitioner against the findings of Enquiry Officer the Disciplinary Authority has held charge no. 1, 2, 3, 6 and 9 as proved. Charge No. 7 and 10 as partially proved and charge no. 8 as not proved.

12. Petitioner preferred appeal before the Chairman of the Commission on 24.09.2013, and after due consideration of the grounds raised by the petitioner and on the basis of materials available on record, the Chairman found that Charge Nos. 3 to 8 and 10 were not proved whereas Charge Nos. 1, 2 and 9 were fully proved and since proved charges were of serious nature, the order of punishment of petitioner was found to be justified by the Appellate Authority and rejected the appeal vide order dated 14.11.2013.

13. Charge No. 1 which has been found to be proved by the Enquiry Officer, Disciplinary Authority as well as Appellate Authority, reads as follows:-

“(a) Charge- “To keep OMR Sheets in custody of a lower grade employee in an arbitrary manner.”

(b) Statement of Facts-The OMR answer sheets of the 1<sup>st</sup> Bihar Administrative Service Examination-2003 (Advt. 4/2003 were scanned by you with the help of Vijay Kumar, Analyst Programmer and Sanjeev Kumar Information Officer, and after preparing a data base the result was prepared in the computer section of the Commission on the basis of model answers made available by the Commission.



The answer sheets of the candidates pertaining to the said advertisement were kept unnecessarily in the computer section under the custody of Shri Satyendra Kumar Choudhary a lower grade employee of the computer section till the publication of the result in your knowledge and with your consent where the result was prepared under your supervision. On the basis of the said act committed by you a charge of making meritorious candidates unsuccessful and less meritorious candidates successful by indulging in corrupt practices is made out.

(c) Evidence-Copy of Advertisement, recommendation of merit list and investigation report.”

14. It has been submitted that Article of charge and statement of facts are absolutely silent in respect of role of petitioner in alleged irregularity. There is no allegation that petitioner had any authority or role in taking out OMR Sheets from strong room and handing over to Satyendra Kumar Choudhary a lower grade employee of computer section or keeping the OMR Sheet in computer section till declaration of result. There is no evidence on record to establish that petitioner had given his consent or had knowledge about it. Nothing has been stated that what corrupt practice was adopted by petitioner or how petitioner was instrumental in making less meritorious candidates successful and meritorious candidates unsuccessful.

15. Enquiry Officer has held that in the list of recommendation dated 24.05.2005 by which BPSC had recommended names of successful candidates also contained



signature of petitioner but same does not support charge in any manner. It has further been held that names of 3 candidates, who were not eligible, found place in recommendation list. No such allegation is part of charge or statement of facts. Process of preparation of recommendation list is undertaken at various levels on the basis of different assignment/duties allotted to employees by BPSC. Petitioner has prepared final Merit List/Tabulation Register, as such charges are proved, is based on assumption and presumption drawn by Enquiry Officer. Charges are to be established on the basis of evidence produced before Enquiry Officer and same cannot be held to be established on the inference drawn by Enquiry Officer. Enquiry Officer has also relied upon investigation report of Dy. S.P. of Vigilance but said reports in absence of its author being examined by the department cannot be used as evidence against petitioner.

16. Surprisingly, the Enquiry Officer has relied upon Order No. 686 dated 07.12.2000 to prove the charges against petitioner although said document did not form part of Memo of Charge and was produced by petitioner along with his defence statement to demonstrate the duties and responsibility assigned to different employees in Computer Section by the Commission to show that scanning of OMR Sheet was not duty and work



assigned to petitioner.

17. The Enquiry Officer has observed that after scanning of answer sheets and data entry being made, the answer sheets ought to have been returned to strong room but same was not done as a result of which opportunity was utilized for tampering answer sheets. However, no allegation of tampering of OMR Sheets has been made against petitioner, as such charge no. 1 cannot be held to be proved.

18. Charge No. 2 found to be proved by Enquiry Officer, Disciplinary Authority and Appellate Authority, reads as follows:-

“(a) Charge-removal of the data of second paper from the computer.

(b) Statement of Fact- It was found during investigation that the data of the second paper were removed from the computer without the order of competent authority. It was also found that in the case of leaving entire OMR sheets blank by the candidates or filling three alternative boxes against one and the same question the related answer sheets was said to have been read by the computer. As such, answer sheets of many candidates who were found fit by the petitioner after scanning were not proper and said candidates should not have been selected. The answer sheets should have been carefully examined any error should have been placed before the competent authority but you did not do so which shows your wrong intention.

(c) Evidence-Copy of the report of NIC.”

19. Enquiry Officer has found that on the basis of NIC report only the data base of Paper-1 answer sheet and merger data are



available in the system. The Paper-2 answer data was not available on the system hard disk. The data of Paper-1 and merger data are available as such if there was any technical fault all the three datas would be lost as such charge against petitioner of criminal conspiracy that he removed the 2<sup>nd</sup> paper data is proved. The Enquiry Officer has also relied upon vigilance report to prove the charge.

20. It has been argued that to establish this charge NIC report has been enclosed as documentary evidence, however, said report does not in any way support the charge that petitioner is responsible for removal of data of second paper from the computer. There are many reasons by which data in computer can be deleted. It may be due to technical fault also. Nothing has been brought on record that data is to be kept even after declaration of final result as allegation is that without order of competent authority data of 2<sup>nd</sup> paper has been removed.

21. It was alleged that in some OMR Sheets which was left blank or in which more than three alternative boxes were marked, the related answer sheet was said to have been read by computer. Answer sheets of many candidates who were found fit by petitioner after scanning although said candidates were not to be selected which shows carelessness of petitioner with wrong motive.

22. It has been argued that no OMR Sheet which were



left blank or marked with more than one answer, forms part of Memo of Charge. In spite of request of petitioner to produce such OMR Sheets before Enquiry Officer, same were not produced, as such charge no. 2 cannot be held to be proved.

23. Charge No. 9 has been found to be proved by the Enquiry Officer, Disciplinary Authority as well as Appellate Authority, which reads as follows:-

“(a) To make changes in the qualifying marks.

(b) Statement of Facts-The candidates of the Advt. No. 04/2003-Bihar Administrative Service Limited Examination, 2003 were needed to obtain 40% marks, with a provision to a relaxation of 5% for the candidates of Scheduled Castes/Scheduled Tribes; but in a deliberate manner for personal gain you have made the Roll Numbers-112771, 111139 and 112627 selected despite having marks less than the qualifying marks, whereas no communicate was published for change in qualifying marks. Vigilance Investigation Bureau has charged you for conspiracy for personal gain and the same was held to be correct in investigation.

(c) Evidence-Investigation report by Vigilance.”

24. The charge no. 9 has been proved on the basis of investigation report and as held earlier same cannot be used as evidence to prove the charges. It was stated on behalf of petitioner that his job was preparation of merit list and was not concerned in respect to relaxation of marks or declaration of final result, as same was within the domain of Examination Controller. No allegation has been made against petitioner for



any specific act committed by him or omitted by him for personal benefit. As such charge no. 9 cannot be held to be proved.

25. It has been submitted that scanning is a process in which the answers and other particulars marked in the OMR sheets are read by the machine called OMR i.e. Optical Mark Reader. Scanning was done by Data Entry Operators. Data Entry Operators prepares a bundle of answer sheets and is kept at the platform of OMR Machine. The answer sheets entered into it one by one and the marks contained therein are read by it. The readings obtained from the answer sheets through scanning are automatically collected in a computer attached to the OMR Machine. This process is called scanning. The computer in which scanned data is collected is connected to the server of the computer section. The scanned data finally goes into the server.

26. The work of Analyst Programmer (petitioner) starts thereafter. They take the data from the server and process the same further. When the entire process of scanning is over, the Controller of Examination directs the Analyst Programmer to obtain the scanned data from the server and process the same. The data made available to the Analyst Programmers are properly tabulated and a merit list is drawn. Preparation of result



is done by Controller of Examination.

27. Departmental proceeding initiated against petitioner and articles of charge framed against petitioner is said to be proved on the basis of vigilance report prepared during investigation. On the basis of said vigilance report charges under departmental proceeding cannot be established unless and until the Investigating Officer or Vigilance Officer who has prepared the vigilance report is examined as a witness in support of charge before the Enquiry Officer with opportunity to petitioner to cross-examine him. The Apex Court in case of **Roop Singh Negi Vs. Punjab National Bank & Ors**, since reported in **(2009) 2 SCC 570**, has held as follows:-

“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.

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed



by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."

(emphasis is mine)

28. It has been submitted on behalf of the petitioner that

Article of charges were vague and indefinite and in the Statement of Facts also nothing has been alleged against petitioner to link or correlate him with the alleged irregularity.

In the Statement of Facts forming part of Article of charges only irregularities have been alleged to have been committed during the preparation of result but no specific allegation or act of petitioner which establishes charge against him forms part of Statement of Facts. The Apex Court in the case of *Sher Bahadur v. Union of India*, since reported in (2002) 7 SCC 142

in para 7 has held as follows:-

"7. It may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the



enquiry officer has noted in his report, “in view of oral, documentary and circumstantial evidence as adduced in the enquiry”, would not in principle satisfy the rule of sufficiency of evidence. Though, the disciplinary authority cited one witness Shri R.A. Vashist, Ex. CVI/Northern Railway, New Delhi, in support of the charges, he was not examined. Regarding documentary evidence, Ext. P-1, referred to in the enquiry report and adverted to by the High Court, is the order of appointment of the appellant which is a neutral fact. The enquiry officer examined the charged officer but nothing is elicited to connect him with the charge. The statement of the appellant recorded by the enquiry officer shows no more than his working earlier to his re-engagement during the period between May 1978 and November 1979 in different phases. Indeed, his statement was not relied upon by the enquiry officer. The finding of the enquiry officer that in view of the oral, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter duly signed by the said APO (Const.) was proved, is, in the light of the above discussion, erroneous. In our view, this is clearly a case of finding the appellant guilty of charge without having any evidence to link the appellant with the alleged misconduct. The High Court did not consider this aspect in its proper perspective as such the judgment and order of the High Court and the order of the disciplinary authority, under challenge, cannot be sustained, they are accordingly set aside.

(emphasis is mine)

29. Lastly, it has been submitted that Statement of Defence filed by petitioner against Memo of Charge is to be considered by the Disciplinary Authority and same cannot be delegated to Enquiry Officer. Upon receipt of Statement of



Defence in respect of Memo of Charge the Disciplinary Authority has to consider to continue the proceeding or enquiry should be closed. This Court relying upon several judgments of Apex Court and Division Bench of this Court in case of **Rama Shankar Choudhary Vs. State of Bihar** since reported in **2018(1) PLJR 91**, in para 8 relevant portion of which has been quoted hereinbelow:-

“Rule 17(3) of "the Rules" casts an obligation on the Disciplinary Authority to draw a charge against a delinquent Government servant or cause it to be drawn up against the officer delinquent. Sub-rule (4) thereof further mandates the delivery of such charge memo so drawn up either through the Disciplinary Authority or through an officer duly authorized. The obligation cast on the Disciplinary Authority does not stop here rather he has yet to satisfy himself whether the explanation so forwarded by a delinquent on the proposed charge, requires an enquiry by the Enquiry Officer or requires a closure. This power exclusively vested in the Disciplinary Authority under Rule 17(4) cannot be delegated.

In the present case this mandatory obligation cast on Disciplinary Authority has been flouted as confirmed from the letter dated 1.2.2008 (Annexure-2) issued by the Enquiry Officer directing the petitioner to file his reply on the charges before him. This is a gross statutory violation and has been commented upon by a Division Bench of this Court in a judgment reported in **1996 (2) PLJR 95 (Ravindra Nath Singh vs. Bihar State Road Transport Corporation)** when the Division Bench has expressed the following opinion at paragraph 6 of the judgment:

"6. ....The Enquiry Officer is not the competent authority to consider the reply to the charges. It is for the disciplinary authority to consider the reply to charges and on consideration of the causes shown in the reply to decide as to whether to close or to



continue with the proceedings by holding domestic enquiry into the charges."

(emphasis is mine)

30. In the counter affidavit filed on behalf of respondents they have accepted that petitioner cannot be exonerated despite absence of examination and cross-examination of witnesses. In paragraph no. 24 of the counter affidavit they have made out a different case of irregularity committed by petitioner for which petitioner was never charged or show caused. The relevant part of counter affidavit is quoted below:-

“So far the charge no. 1, 2 and 9 are concerned, there are sufficient documentary evidences with respect to misappropriation by the Accused Officer are available, e.g. i.e. keeping the OMR Answer Sheet in unauthorized way and alteration of answer after deleting these and so the delinquent Officer cannot be exonerated from these charges despite absence of examination and cross-examination of witnesses, if there are sufficient evidences of misappropriation by the Accused officer. It is quite manifest from the enquiry report that the Conducting Officer has elaborated these charges in his enquiry report. The statement of the petitioner that the Enquiry Officer had not considered the assignment and liabilities of the Accused Officer before proving the charges is wrong and hereby denied. Indeed the gravest charge against the Accused Officer is that being deviated from the assignments and liabilities in the capacity of Analyst Programmer, the Accused Officer against the character of Govt. Servant kept OMR Answer Sheet with himself and altered with the answer sheet in irregular and unauthorized way. As a result of which competent candidates got failed while the less competent candidates got passed. The statements of the petitioner that his second show-cause was not considered is absolutely wrong, baseless and hereby denied. In fact the second show cause submitted by the petitioner did not contain



any new fact and evidence which would have been considered.”

31. After hearing both the parties and considering the materials available on record, this Court finds that charges against the petitioner were vague and unspecific and even in the statement of facts nothing has been stated with respect to petitioner being associated with the alleged irregularities in the preparation of result by BPSC nor any role has been attributed to petitioner in respect of said irregularities, as such it was very difficult for the petitioner to file his defence statement controverting the charges. The reply of the petitioner against the charges were to be considered by the Disciplinary Authority and same cannot be delegated to the Enquiry Officer and as such the proceeding was vitiated from its inception. This Court also finds that whole departmental proceeding and article of charges were sought to be proved on the basis of vigilance report which is not legal evidence and as such the findings and conclusion based upon said documents cannot be sustained.

32. The charges in a departmental proceeding has to be established on the basis of evidence produced before the Enquiry Officer and charges cannot be presumed to be proved on the basis of inference drawn by the Enquiry Officer. The findings and conclusions must be supported by reasons. Suspicion can never take place of proof.



33. As a result, the order passed by the Disciplinary Authority, as well as Appellate Authority is set aside and writ petition is allowed. Since the employee petitioner died during the pendency of the writ petition substituted by his wife, as such there cannot be any order of fresh proceeding or *de novo* proceeding or any order of reinstatement of employee (deceased petitioner). As the enquiry proceedings and punishment orders have been quashed, the widow (substituted petitioner) is entitled for full salary of the deceased employee from the date of dismissal till his death. The widow petitioner is also entitled for all death-cum-retirement benefits which became due to her after death of her husband i.e. family pension, gratuity, leave encashment, G.P.F, Insurance and all other retiral dues for which she is entitled to be paid to her by respondent no. 3 Secretary, BPSC, within three months from the date of production/receipt of a copy of this order.

**(S. Kumar, J)**

ranjan/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | AFR        |
| CAV DATE          | N.A.       |
| Uploading Date    | 13.08.2018 |
| Transmission Date | N.A.       |

