

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8393 of 2005

SURENDRA PRASAD SINGH son of Late Nath Jee Singh, resident of Mohalla-Mohanpur Devi Sthan, West Punaichak, District-Patna

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR through the Secretary, Water Resources (Irrigation) Development, Bihar, Patna
2. The Secretary, Department of Personnel and Administrative Reforms, Old Secretariate, Patna
3. The Deputy Secretary, Department of Personnel and Administrative Reforms, Old Secretariate, Patna
4. The Accountant General, Bihar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Choudhary Mr. Jai Shankar Pathak Mr. Nagendra Kumar
For the Respondent/s	:	Mr. Neeraj Kumar, AC to GA-10

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 29-08-2018

The present writ petition has been filed by the writ petitioner for quashing the order dated 26.02.2005, whereby and where under the petitioner has been inflicted with the punishment of being debarred from drawing his full pension. The petitioner has further prayed for quashing the enquiry report dated 24.06.2002 and for payment of entire pension amount which has been forfeited. The brief facts of the case are that a charge sheet dated 27.07.1996 was issued to the petitioner and a departmental proceeding was initiated on the allegation that the petitioner had passed forged bills for a sum of Rs.6,05,578/- and further it was alleged that the petitioner had been unauthorizedly absent from service for six days. The petitioner had then participated in the departmental enquiry and thereafter the



enquiry officer had submitted his enquiry report dated 24.06.2002 finding the charges nos.1, 2 and 3 to have been proved during the course of the enquiry. Thereafter, the petitioner was issued a second show cause notice dated 31.01.2005 & then the impugned order dated 26.02.2005, has been issued whereby and where under the petitioner has been inflicted punishment of withholding of 100% pension.

The learned counsel for the petitioner has submitted that firstly the present case is a case of no evidence inasmuch as the prosecution has failed to produce any witness and moreover none of the documents have been proved by department. It is next submitted that the petitioner had disputed the signatures made on the so called forged bills which are alleged to have been passed by the petitioner illegally and despite the petitioner having made a request for verifying the signature by a handwriting expert, the enquiry officer had not paid any heed to such request of the petitioner and had instead proceeded to himself examine the signatures and give his own finding, hence in such view of the matter the enquiry report is perverse and is fit to be set aside.

The learned counsel for the petitioner has relied on a judgment of the Hon'ble Delhi High Court rendered in the case



of *State Bank of India, New Delhi Vs. J.R. Surma* reported in *2003 ILLJ 450 Del.* to contend that the Hon'ble Delhi High Court had gone a step further and held that in a case where the signatures were disputed and a handwriting expert was called upon to examine the same, non-examination of the said handwriting expert as a witness vitiates the entire enquiry and on the said ground alone the enquiry report was set aside.

The learned counsel for the petitioner has placed reliance on the celebrated judgment rendered by the Hon'ble Apex Court in the case of *Khem Chand Vs. Union of India & ors.* reported in *1958 AIR 300*, relevant portion whereof is reproduced herein below:

To summarise: the reasonable opportunity envisaged by the provision under consideration includes-

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant. In short the substance of the protection provided by rules, like r. 55 referred to above, was bodily lifted out of the rules and together with an additional



opportunity embodied in [s. 240\(3\)](#) of the Government of India Act, 1935 so as to give a statutory protection to the government servants and has now been incorporated in [Art. 311 \(2\)](#) so as to convert the protection into a constitutional safeguard. We find support for our above mentioned conclusion in the judgment of the Judicial Committee in I. M. Lall's case (1). It is true that after quoting a portion of the passage from the judgment of the majority of the Federal Court set out above their Lordships at page 242 stated that they agreed with the view taken by the majority of the Federal Court, but their Lordships did not stop there and went on to say: " In their opinion, sub-s. 3 of [s. 240](#) was not intended to be, and was not, a reproduction of r. 55, which was left unaffected as an administrative rule. , Rule 55 is concerned that the civil servant shall be informed " of the grounds on which it is proposed to take action ", and to afford him an adequate opportunity of defending himself against charges which have to be reduced to writing; this is in marked contrast to the statutory provision of " a reasonable opportunity of showing cause against the action proposed to be taken in regard to him ". In the (1) L.R. (1948) 75 I.A. 225 at 241.

opinion of their Lordships, no action is proposed within the meaning of the sub-section until a definite conclusion has been come to on the charges, and the actual punishment to follow is provisionally determined on. Before that stage, the charges are unproved and the suggested punishments are merely hypothetical. It is on that stage being reached that the statute gives the civil servant the opportunity for which sub-s. 3 makes provision. Their Lordships would only add that they see no difficulty in the statutory opportunity being reasonably afforded at more than one stage. If the civil servant has been through an inquiry under r. 55, it would not be reasonable that he should ask for a repetition of that stage, if duly carried out, but that would not exhaust his statutory right, and he would still be entitled to represent against the punishment proposed as the result of the findings of the inquiry."

The above passage quite clearly explains that the point on which their Lordships of the Judicial Committee agreed with the majority of the Federal Court is that a further opportunity is to be given to the government



servant after the charges have been established against him and a, particular punishment is proposed to be meted out to him. The opening sentence in the above passage, namely, that [s. 240](#) (3) was not a reproduction of r. 55 and that r. 55 was left unaffected as an administrative rule does seem to suggest that [s. 240](#) (3) is not at all concerned with the enquiry into the charges which comes at the earlier stage, but a close reading of the rest of that passage will indicate that in their Lordships' view the substance of the protection of r. 55 is also included in [s. 240](#) (3) and to that is superadded, by way of further protection, the necessity of giving yet another opportunity to the government servant at the stage where the charges are proved against him and a particular punishment is tentatively proposed to be inflicted on him. Their Lordships referred to "statutory opportunity being reasonably afforded at more than one stage", that is to say, that the opportunities at more stages than one are comprised within the opportunity contemplated by the statute itself. Of course if the government servant has been through the enquiry under r. 55, it would not be reasonable that he should ask for a repetition of that stage, if duly carried out, which implies that if no enquiry has been held under r. 55 or any analogous rule applicable to the particular servant then it will be quite reasonable for him to ask for an enquiry. Therefore, in a case where there is no rule like r. 55 the necessity of an enquiry was implicit in [s. 240\(3\)](#) and is so in [Art. 311\(2\)](#) itself. Further their Lordships say that an enquiry under r. 55 "would not exhaust his statutory right and he would still be entitled to make a representation against the punishment proposed as the result of the findings of the enquiry ". This clearly proceeds on the basis that the right to defend himself in the enquiry and the right to make representation against the proposed punishment are all parts of his "statutory right" and are implicit in the reasonable opportunity provided by the statute itself for the protection of the government servant.

The learned counsel for the petitioner has also relied upon a judgment rendered by the Hon'ble Apex Court in the case of ***State of Uttar Pradesh vs. Saroj Kumar Sinha*** reported in ***(2010) 2 SCC 772***, paragraph nos. 27, 28 and 29 whereof are reproduced herein below:-



- “27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.*
- 28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.*
- 29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.”*

In nutshell, the argument of the learned counsel for the petitioner is that the enquiry report suffers from the vice of no evidence and the present case is fully covered by the judgments referred to hereinabove, hence the entire enquiry is vitiated. Consequently, it is submitted that the punishment order



based on the perverse enquiry report is also fit to be set aside.

Per contra, the learned counsel for the State has relied upon the judgment rendered by the Hon'ble Madras High Court dated 01.04.2014 in the case of ***Chelladurai Vs. Velmurugan*** passed in ***S.A. No. 653 of 2006*** to contend that the court can also compare the disputed signatures with the original signatures and come to a finding, although the Court has been cautioned to make a cautious approach. The learned counsel for the State has further relied upon a judgment rendered by the learned Single Judge of Hon'ble Delhi High Court in ***W.P.(C) No. 4813 of 1998 (Amar Singh Verma Vs. Union of India and others)***, paragraph nos. 5, 6 and 11 whereof are reproduced herein below:-

5. Before proceeding further, It is necessary at this stage to refer to the ratio of the recent judgment of the Supreme Court in the case of State Bank of India and Ors. Vs. Narendra Kumar Pandey 2013 (2) SCC 740. In this judgment the Supreme Court has held that once the record comes before the Enquiry Authority, there is no formal need to prove the said record. Supreme Court has observed that strict rules of [Evidence Act](#) do not apply in departmental proceedings. It was held that in ex parte proceedings charges would stand proved from the documents which were maintained in the normal course of business and no oral evidence is necessary to prove those documents. Putting it differently it is held that uncontroverted documentary evidence in such



situation is sufficient to prove the charges. On the facts of that case Supreme Court held that documents which were not controverted by the charged official were sufficient in themselves to prove the charges against the officer concerned. Supreme Court has reiterated that in departmental enquiries, Disciplinary Authority is expected to see that the charges are proved not beyond all reasonable doubt but only on preponderance of probabilities.

6. *The Supreme Court in the case of Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Ors. (1991) 2 SCC 716 has held that strict rules of [Evidence Act](#) and the standards of proof envisaged therein do not apply to departmental proceedings in a domestic Tribunal and it is open to the authorities to receive and place on record documents and acceptable materials which are strictly not in conformity with the [Evidence Act](#). It has also been held that there is no requirement of Enquiry Officer writing a judgment like a Judge of a Court. Supreme Court further clarifies in this judgment that when facts are not in dispute then recording of reasons in support of the conclusions does not violate the principles of natural justice.*

11. *Reliance is also placed by the petitioner upon paras 27 and 28 of the judgment of the Supreme Court in the case of State of Uttar Pradesh and Ors. Vs. Saroj Kumar Sinha (2010) 2 SCC 772 and which read as under:-*

"27. A bare perusal of the aforesaid sub-Rule shows that when the respondent had failed to submit the explanation to the charge sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the Government servant despite notice of the date fixed failed to appear that the enquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the enquiry officer to record the statement of witnesses mentioned in



the charge sheet. Since the Government servant is absent, he would clearly lose the benefit of cross examination of the witnesses. But nonetheless in order to establish the charges the department is required to produce the necessary evidence before the enquiry officer. This is so as to avoid the charge that the enquiry officer has acted as a prosecutor as well as a judge.

28. An inquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents."

The reliance upon the judgment in the case of Saroj Kumar Sinha (supra) by the petitioner is misconceived because in the present case the Enquiry Officer has perused the record with respect to the Article of Charges and has held the petitioner guilty on the basis of the record of the respondent No.2. It is not therefore as if the Enquiry Officer has arrived at a finding without considering the evidence in the case. Necessary evidence has been produced. The necessary evidence being the record of the respondent No.2 has been considered. Only thereafter the Enquiry Officer has given his report and thus it cannot be said that the Enquiry Officer in the present case has acted both as a prosecutor and the Judge. Enquiry Officer has given his report only after referring to the evidence which has established the charge against the petitioner and more so keeping the vital fact in mind that petitioner admitted that he could not file any proof of his powers exercised by him and which he did not have as stated in the Articles of Charges."

In nutshell, the contention of the learned counsel for



the respondents is that in case the documents are admitted, there is no requirement of leading of any oral evidence or for proving the documents by any other mode. It is further submitted that since the enquiry officer has himself notched the signature made on the forged bills with the earlier signature made by the petitioner in other records and has found both to be same, no suspicion can be raised against the Enquiry Officer in his conduct, hence the entire enquiry report is fit to be upheld, hence there is no procedural irregularity in the conduct of the departmental proceeding.

I have heard the learned counsel for the parties and gone through the materials on record. First issue is as to whether the disputed signatures ought to have been sent to the handwriting expert for the purposes of verifying as to whether the same was made by the delinquent or not. In this regard, taking into account the judgments relied upon by both the parties, I find that it would have been proper and beyond all reasonable doubt to have got the disputed signatures verified by a handwriting expert so that the matter could have come to an end beyond any doubt. However, in the present case the Enquiry Officer has doned unto himself, the role of a handwriting expert and as such has become the judge of his own cause, thus



vitiating the entire enquiry. I further find that though the prosecution has produced documents in support of its case and therefore, the respondents might be correct to some extent to contend that the present case is based on documents but then the judgment of the Hon'ble Apex Court, rendered in the case of Saroj Kumar Sinha (Supra), mandates leading of evidence by the prosecution in order to buttress its case, as has been quoted hereinabove. Hence, the present case cannot be said to be a case where any documentary evidence, having any value, was led by the prosecution specially in light of the failure of the prosecution to prove the documents by way of oral evidence. Thus, I find that the present case is a case where no evidence of any worth was adduced by the prosecution to prove its case beyond reasonable doubt as against the petitioner herein.

Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, I find that the enquiry report dated 24.06.2002 is based on no evidence, hence the same cannot be sustained in the eyes of law, thus the same is quashed. As a result of quashing of the enquiry report dated 24.06.2002, the order of punishment dated 26.02.2005, based on the said perfunctory enquiry report can not stand, hence is set aside.



The writ petition stands allowed on the aforesaid terms.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	01.06.2019
Transmission Date	N/A

