

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.554 of 2018

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Pradeep Kumar, Son of Late Hari Lal, Resident of Village- Kagaji Mohalla, P.S.-
Biharsharif, District- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Finance Department, Old Secretariat, Govt. of Bihar, Patna.
3. Joint Secretary, Finance Department cum Conducting Office, Old Secretariat, Govt. of Bihar, Patna.
4. Additional Secretary, Finance Departmental Old Secretariat, Govt. of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pratap Sharma

For the Respondent/s : Mr. Anil Kr Singh No. 6

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 06-04-2018

The present petition has been filed for quashing the Memo. No. 32 dated 03.01.2018, whereby and whereunder the State Government has taken a decision for giving the major penalty of dismissal from service to the petitioner herein.

The short facts of the case are that an FIR bearing Vigilance Case No. 097 of 2014 dated 09.12.2014 was registered under Section 7 and Section 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act on the allegation of the petitioner demanding bribe of a sum of Rs. 20,000/- from the daughter of the complainant of the said case. Subsequently, a departmental proceeding was initiated against the petitioner herein by Memo No.



9939 dated 02.11.2015 whereafter the petitioner had filed his reply dated 19.04.2016 before the Conducting Officer. The Enquiry Officer had submitted his enquiry report finding that charge no. 1, i.e. as to whether the bribe amount was demanded or not, was not proved but the Enquiry Officer found the charge nos. 2 and 3 regarding the petitioner having been caught red handed while taking a bribe of Rs. 20,000/- and recovery of money from him during the course of search, to have been proved. The petitioner was served with a copy of the Enquiry Report along with the second show cause notice dated 28.09.2016, asking the petitioner herein to submit his reply within 15 days. The petitioner had then submitted his reply to the second show cause notice on 21.10.2016 demanding certain documents. However, the disciplinary authority found the reply to the second show cause notice unsatisfactory and came to the conclusion that the petitioner was fit to be dismissed from service but since the petitioner had been appointed by the Bihar Public Service Commission, hence concurrence was sought from the B.P.S.C. and after the B.P.S.C. gave its concurrence, the final decision was taken for dismissing the petitioner from service and consequently by a resolution dated 03.01.2018 the competent authority has awarded the punishment of dismissal as against the petitioner herein.

The short issue raised by the learned counsel for the petitioner



is that the resolution dated 03.01.2018, by which the petitioner has been inflicted the punishment of dismissal is fit to be set aside on the sole ground that the disciplinary authority, while passing the punishment order of dismissal, has relied on extraneous materials and evidence which was never produced before the Enquiry Officer. In this regard, the learned counsel refers to paragraph no. 7 of the impugned order of punishment of dismissal dated 03.01.2018 whereby and whereunder the disciplinary authority has stated that upon consideration of the enquiry report, it has been found that the charges leveled on the petitioner herein have been found true on the basis of the statement/deposition of the Deputy Superintendent of Police-cum-In-charge of the raiding party, namely, Paras Nath Singh who has proved the pre trap memorandum and the post trap memorandum as also upon the facts stated therein but the fact is that the Enquiry Officer, in his enquiry report, to the contrary, has stated that none of the officials of the Vigilance Department appeared during the course of the enquiry whereas the witnesses produced on behalf of the defence have stated that the pre trap memorandum and post trap memorandum were not prepared at the place of occurrence by the Vigilance Department since no independent witnesses were present at the place of occurrence and the same was prepared subsequently.

The learned counsel for the respondents has not been able to



controvert the aforesaid submission made by the learned counsel for the petitioner.

I have heard the learned counsel for the parties and gone through the records and I find that it is true that the disciplinary authority, while passing the punishment order of dismissal dated 03.01.2018, as against the petitioner herein, has relied on extraneous materials which had never been either put or made known to the petitioner herein during the course of the enquiry being conducted by the Enquiry Officer nor are part of the enquiry proceedings/the enquiry report. It is further clear from the records that none of the officials of the Vigilance Department had appeared before the Enquiry Officer to depose as witnesses, hence the reliance of the disciplinary authority on the evidence/statement of the Deputy Superintendent of Police, Paras Nath Singh, In-Charge of the raiding party of the Vigilance Department to come to a conclusion that the petitioner is guilty of the alleged charges, is wholly erroneous and apparently the disciplinary authority has taken into consideration the inadmissible evidence i.e. the one which was never adduced during the course of the enquiry and the same has influenced the finding of the disciplinary authority resulting in dismissal of the petitioner herein and, therefore, the dismissal order cannot be sustained in the eyes of law. In this connection, it would be apt to quote paragraph nos. 12 to 15 of a judgment of the Hon'ble Apex Court reported in



2015(2) SCC 610 (Union of India and ors. vs. P. Gunasekaran):-

“.....The High Court, in exercise of its powers under [Article 226/227](#) of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence .

Under [Article 226/227](#) of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the



same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience.

14. In one of the earliest decisions in [State of Andhra Pradesh and others v. S. Sree Rama Rao](#)[1], many of the above principles have been discussed and it has been concluded thus: (AIR pp. 1726-27, para 7)

"7. ... The High Court is not constituted in a proceeding under [Article 226](#) of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under [Article 226](#) to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the



delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under [Article 226](#) of the Constitution."

[In State of Andhra Pradesh and others v. Chitra Venkata Rao](#)[2], the principles have been further discussed at paragraph-21 to 24, which read as follows: (SCC pp. 561-63)

"21. The scope of [Article 226](#) in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in [State of A.P. v. S. Sree Rama Rao](#). First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that[]an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If



that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under [Article 226](#) of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under [Article 226](#) over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on



which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under [Article 226](#).

22. Again, this Court in *Railway Board, representing the Union of India, New Delhi v. Niranjan Singh* said that the High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding. In *Niranjan Singh* case this Court held that the High Court exceeded its powers in interfering with the findings of the disciplinary authority on the charge that the respondent was instrumental in compelling the shut-down of an air compressor at about 8.15 a.m. on May 31, 1956. This Court said that the Enquiry Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the General Manager to do so and he was not bound by the conclusion reached by the committee. This Court held that the conclusion reached by the disciplinary authority should prevail and the High Court should not have interfered with the conclusion.[pic]

23. The jurisdiction to issue a writ of certiorari under [Article 226](#) is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact



reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. [See Syed Yakoob v. K.S. Radhakrishnan.](#)

For the reasons aforesaid as also considering the law laid down by the Hon'ble Apex Court, as discussed hereinabove, I am of the view that the punishment order of dismissal dated 03.01.2018 as contained in Memo. No. 32 passed by the Additional Secretary, Finance Department, Government of Bihar, cannot be sustained since the same has been erroneously passed by the disciplinary



authority by (i) considering inadmissible evidence, which has influenced the impugned finding; (ii) by disabling itself from reaching a fair conclusion by taking into account considerations extraneous to the evidence and merits of the case and (iii) by allowing itself to be influenced by irrelevant and extraneous evidence which were never part of the departmental enquiry/enquiry report, hence the punishment order of dismissal dated 03.01.2018 is hereby quashed, however, with liberty to the disciplinary authority to pass a fresh order considering the reply of the petitioner herein to the second show cause notice dated 28.09.2016 as also the enquiry report submitted by the Enquiry Officer, in its true perspective.

The writ petition is allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

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CAV DATE	13.02.2018
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