

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8464 of 2017

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Samrendra Narayan Jha, Son of Late Amrendra Narayan Jha, Resident of
Mohalla- Adarsh Colony, Meera Bhawan, West Patel Nagar, P.S. Shastrinagar,
District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Home (Special) Department, Government of Bihar,
Patna.
3. The Principal Secretary, General Administration Department, Government of
Bihar, Patna.
4. Joint Secretary, General Administration Department, Government of Bihar,
Patna.
5. The Deputy Secretary, General Administration Department, Government of
Bihar, Patna.
6. Under Secretary, General Administration Department, Government of Bihar,
Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satish Chandra Jha-3, Adv.
Mr. Mukesh Kumar, Adv.

For the Respondent/s : Mr. Mrigendra Kumar, AC to GA-4

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 08-03-2018

The brief facts of the case are that the petitioner was initially appointed as an Assistant in the Government service and he joined in the Road Construction Department on 16.12.1980. In the month of June 2000, the service of the petitioner was transferred from the Road Construction Department, Government of Bihar, Patna to the Home (Special) Department, Government of Bihar, Patna and the petitioner had joined the said place of posting in the month of June, 2000 itself. The petitioner was posted in the Freedom Fighter Directorate, State Advisory Committee, Bihar in the month of



November, 2000.

2. In the interregnum period it had come to light that many freedom fighter persons were being granted pension illegally, hence this Court decided to monitor the cases of the forged freedom fighters in a writ bearing C.W.J.C. No. 10638 of 2001 wherein altogether 251 cases of freedom fighters were sought to be monitored.

3. It appears that on a complaint made, pre-trap report was prepared on 9.12.2006 and a committee was constituted for the purposes of verifying the contents of the complaint and on 9.12.2000 itself one Shri Baidya Nath Singh along with Shri Tripurari Saran Singh, Member of the Freedom Fighter Pension Committee had come to the petitioner while the petitioner was busy in some departmental work and had asked him as to when their work could be done. The petitioner had then told the said persons that the work would be done by the higher authority upon verification on a priority basis, however, since the said people who had come to the petitioner, were not satisfied, they started giving threat to the petitioner and had kept some rupees at his place, but in the meantime, the petitioner was forcefully trapped by the persons of the Vigilance Department, hence a Vigilance Case No. 90 of 2006 was registered against the petitioner which is still pending.

4. The petitioner is said to have been in judicial custody,



hence he was placed under suspension vide order dated 15.1.2007 and after he was released on bail, the petitioner had submitted his joining on 31.1.2007 whereafter his suspension was revoked w.e.f. 31.1.2007 by an order dated 20.2.2007. The Disciplinary authority by Memo No. 428 dated 2.2.2007 had initiated a departmental proceeding against the petitioner herein and charge sheet was issued with a direction to the petitioner to submit his written defence within a fortnight.

5. It would be relevant to state here that primarily the allegation against the petitioner was regarding him taking a bribe of Rs. 1200/- from an outsider while he was posted as Assistant and being caught red handed by the Vigilance Department. The Enquiry Officer had submitted his enquiry report dated 23.7.2008 exonerating the petitioner from all the charges. Thereafter, it seems that the disciplinary authority was not satisfied with the enquiry report, as such a fresh enquiry officer was appointed for conducting enquiry de novo. Subsequent to the appointment of second Enquiry officer, a number of enquiry officers were changed and finally Shri Rajeev Ranjan Sinha, the then Special Secretary, Home Department, Bihar, Patna was appointed as the enquiry Officer to conduct the pending departmental enquiry as against the petitioner herein. The said enquiry officer submitted his enquiry report dated 3.4.2014 finding the allegation to be true as against the petitioner herein, however, not a



single witness was examined during the course of said departmental proceeding.

6. The Disciplinary authority had thereafter by a letter dated 6.6.2014 forwarded a copy of the said enquiry report. The petitioner had then submitted his reply to the said show notice dated 6.6.2014 whereafter, the impugned order dated 5.8.2014 has been passed by the disciplinary authority whereby and whereunder the disciplinary authority has inflicted the punishment of withholding of entire pension of the petitioner herein. It may be relevant to point out here that the said punishment order dated 5.8.2014 has been passed under Rule 43(B) read with 139 of the Bihar Pension Rules, 1950 since the petitioner had retired on 30.11.2010. The aforesaid order of punishment dated 5.8.2014 is under challenge in the present proceedings.

7. The learned counsel for the petitioner while assailing the impugned order of punishment dated 5.8.2014 has submitted that during the course of departmental enquiry, not a single witness was examined, much less the witnesses to the pre-trap memorandum. It is further submitted that bare reading of the impugned order dated 5.8.2014 would show that the said merely narrates the sequence of events which have taken place right from the date of initiation of the departmental proceeding culminating into the submission of the



enquiry report dated 3.4.2014 by the last enquiry officer. The learned counsel for the petitioner further submits that the impugned order dated 5.8.2014 would show that there is no application of mind whatsoever for coming a conclusion, as far as the petitioner herein is concerned. In this regard, the learned counsel for the petitioner has referred to a judgment reported in 2000(3) PLJR-10 (**Kumar Upendra Singh Parimar vs. B.S. Co-Opt Land Dev. Bank Ltd. & Ors.**). It is next contended by the learned counsel for the petitioner that even if the findings of the enquiry officer are of any worth, then also the petitioner would not have been inflicted with such a severe punishment of stoppage of 100% of the pension and the quantum of the punishment is not commensurate with the charges levelled against the petitioner herein. It is further submitted that no show cause notice has been issued to the petitioner as far as the mode and manner of the punishment is concerned.

8. Per contra, the learned counsel for the respondents has submitted that serious and grave charges have been levelled against the petitioner and the enquiry officer by its enquiry report dated 3.4.2014 has found the entire charges levelled against the petitioner herein to have been proved beyond all reasonable doubts. It is further submitted by the learned counsel for the respondents that though none of the witnesses, who were present at the time of trap, have been



examined, but there are certain documentary evidence against the petitioner.

9. I have heard the learned counsel for the parties and have gone through the materials on record. Firstly, it would be relevant to state that during the course of enquiry not a single witness was examined, who were relevant for the purposes of coming to a finding of guilt of the petitioner herein. In fact, the allegations in the present case pertain to the petitioner having taken a bribe of Rs. 1200/- and having been caught red handed by the Vigilance person, hence it was imperative on the part of the prosecution to examine all the witnesses of pre-trap memorandum or a part of the raiding team or the witnesses to the alleged seizure of the marked notes but unfortunately, in the present case none of such witnesses have been examined. I also find that the enquiry Officer could not have held the petitioner herein guilty of the charges levelled against him merely on the basis of the documents inasmuch as the onus to prove the charges is on the department and it is for the department to produce their witness in support of their case against the delinquent employees. It is a trite law that in case the respondent authority has failed to prove the charges against the delinquent employee, the enquiry report loses all its importance and punishment order cannot be sustained. I also find from the records that the enquiry officer has merely based his findings



on the premise that the petitioner was caught red handed by the Vigilance Department and a Vigilance Case No. 90 of 2006 has been lodged which is pending. I find that the said consideration by the enquiry officer is entirely misplaced inasmuch as the factum of the petitioner having been caught red handed while taking bribe has not been proved during the course of departmental enquiry by examination of the relevant witness, hence the findings of the enquiry officer pointing to the guilt of the petitioner is based on no evidence.

10. It is also apparent from the materials on record that there is no material except the pendency of the vigilance case to conclusively prove the charges against the petitioner herein. I find that the first information report is only a piece of information against the accused persons, on the basis of which the investigation is conducted and in case any material is found against the accused person, charge sheet is submitted and thereafter the allegations against the accused persons have to be proved. Hence, merely lodgment of the first information report does not lead to the conclusion that the delinquent is guilty of the charges in a departmental proceeding, hence, I find that the findings of the enquiry officer is neither tenable in the eye of laws nor sustainable, specially in view of the fact that the same is based on no evidence. At this juncture it would be relevant to refer to the judgment referred to by the learned counsel for the petitioner, reported



in 2000(3) PLJR 10, paragraph 12, 15, 16, 18 and 19 whereof are quoted herein below:-

“12. Under those rules there are detailed provisions for holding regular departmental enquiry. In holding of a departmental enquiry it is required to prove the charges against the delinquent employee by producing the departmental witnesses and by examining them by the enquiry officer. If the delinquent employee does not attend the enquiry even then the department has to prove the charge by examining the witnesses in support of its own documents. In the departmental enquiry no onus is cast upon the delinquent employee to prove the charges. The charges have to be proved by the department. If no witness is called by the department in support of the charges in that case it should be held that the department has not proved its case and in such a situation the enquiry officer cannot record the findings with regard to guilt against the delinquent employee just because the delinquent employee is absent.

15. Reference in this connection may be made to the Constitution Bench Judgment of the Apex Court in the case of Union of India vs. H.C. Goel, reported in A.I.R. 1964 S.C. page 364.

His Lordships Gazendra Gadkar, J. His Lordship's then was, summarised the law in this respect as follows:-

"It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules."

16. Since the aforesaid principle laid down by the Constitution Bench of the Supreme Court has been



subsequently followed in many other cases, and has not been departed from till today, this Court cannot accept the bald statement urged by the learned counsel for the respondent that since the charges are based upon the documents so no witnesses need be examined to bring home the charges.

18. This Court cannot accept this argument for the reasons already indicated when an enquiry has been ordered by the disciplinary authority and an enquiry officer has been appointed it is not for the petitioner to demand that the department must produce witnesses to prove its case. The onus is never on the delinquent employee, on the other hand, onus is on the department to prove the charges and it is for them to produce their witnesses in support of his case against the delinquent employee.

19. Therefore, in the facts of this case, this Court is constrained to hold that by not producing any evidence in support of its case, the respondent authorities have failed to prove the charges against the delinquent employee. Where charges have not been proved the enquiry report loses all its importance and the punishment imposed on the petitioner cannot be sustained. When a person is thrown out of employment, it must be on the basis of a procedure which is reasonable, just and fair. (See D.K. Jadav vs. J.M.A. Industries Ltd., reported in (1993)3 SCC page 259 : 1994(2) PLJR (SC)55.”

11. Lastly, coming to the impugned order dated 5.8.2014, it is apparent that the same is merely a narration of events which had taken place right from the initiation of the departmental proceeding till the submission of the final enquiry report dated 3.4.2014, however the same nowhere discusses the materials on the basis of which the disciplinary authority can be said to have formed



an opinion about the guilt of the petitioner. Therefore, the punishment order dated 5.8.2014 is based on non-consideration of the materials on record, is perverse, smacks of non-application of mind and is based on no evidence, whatsoever. In such view of the matter, the punishment order dated 5.8.2014 cannot be sustained and is liable to be set aside.

12. In view of the petitioner having succeeded on merits, I do not find it appropriate to discuss the issue of quantum of punishment.

13. The writ petition is allowed and the order of punishment dated 5.8.2014 is hereby quashed.

(Mohit Kumar Shah, J)

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