

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.620 of 2018

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Moti Lal, Son of Late Baijnath Prasad, resident of- Ward No. 11, Bhabhua, Police Station- Bhabhua, District- Kaimur (Bhabhua).

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Home (Prison), Govt. of Bihar, Patna.
2. The Inspector General, Prisons & Correctional Services, Bihar, Patna.
3. The Joint Secretary-cum- Director (Prison), Prisons & Correctional Services, Bihar, Patna.
4. The Departmental Enquiry Commissioner, Bihar, Patna.
5. The District Magistrate, Nalanda, Bihar.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Satya Prakash

For the Respondent/s : Mr. P.K. Verma-AAG-3

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 14-05-2018

1. The petitioner, by way of the present writ petition, has prayed for quashing of the findings of the departmental proceeding bearing no. 26 of 2016 issued by the Departmental Enquiry Commissioner, Bihar, Patna contained in letter no. 595 dated 14.10.2016 and for quashing of the final order of punishment dated 17.07.2017, whereby and whereunder the petitioner has been subjected to the punishment of compulsory retirement. It is further prayed that the order dated 06.10.2017, whereby the review petition of the petitioner has been dismissed, may also be quashed.



2. The brief facts of the case are that a news item was published in the daily newspaper namely *Dainik Bhaskar* on 23.03.2016 about an M.L.A. of Nawada namely Rajballabh Yadav having provided colours and *kheer-puri* to all the prisoners of *Mandal Kara*, Bihar Sharif on 22.03.2016 and that mutton was going to be provided on 23.03.2016. Thereafter, the District Magistrate, Nalanda constituted a joint inquiry team and directed them to conduct an instant inspection/ raid in the said *Mandal Kara*, Bihar Sharif on 23.03.2016 and submit a report. The said team after conducting surprise inspection, submitted a report dated 23.03.2016, wherein it was stated that the news item published in the daily newspaper was true. Thereafter, the petitioner herein and the Assistant Jail Superintendent, Bihar Sharif were put under suspension and a departmental inquiry was initiated against them. As far as the petitioner is concerned, a departmental proceeding was initiated against him vide resolution dated 26.03.2016 issued by the Joint Secretary-cum-Director (Prison), Prison and Correctional Services, Bihar, Patna on the charges of preparing special food in the jail by calling a special cook, not maintaining important jail registers, entry of huge quantity of goods without any gate entry being made and provided DTH connection in the ward of M.L.A. The Inquiry Officer had conducted the inquiry and submitted the inquiry report dated



14.10.2016, whereby and whereunder the charges no. 1 to 3 and 5 to 8 were found to have been fully proved while charge no.4 was found to have been partly proved. Thereafter, second show cause notice was issued to the petitioner vide letter dated 23.11.2016 and after the petitioner filed a reply to the same, the order of punishment dated 17.07.2017 was passed by the disciplinary authority subjecting the petitioner to the punishment of compulsory retirement. The petitioner had then preferred a review petition which was also rejected by an order dated 06.10.2017.

3. The learned counsel for the petitioner has argued that a bare perusal of the inquiry report dated 14.10.2016 would demonstrate that the Inquiry Officer has found the petitioner guilty of the charges leveled against him only on the basis of the inquiry report submitted by the District Magistrate, Nalanda dated 25.03.2016. The learned counsel further submits that paragraph no. 2.3 at page no.2 of the inquiry report would show that no oral evidence was adduced in connection with the charges leveled against the petitioner, hence it is clear that the present case is a case of no evidence, especially since the inquiry report dated 25.03.2016 submitted by the District Magistrate, Nalanda has also not been proved. Nonetheless, it is submitted that had the prosecution examined the members of the inquiry team/ District Magistrate, Nalanda as witness to the present case, the



petitioner would have got the chance to cross-examine them, hence the non-examination of the said witnesses has caused prejudice to the petitioner herein, resulting in the entire inquiry being a nullity and *non est* in the eyes of law. It is also submitted that a bare perusal of the analysis done by the inquiry officer charge-wise would show that the entire basis of coming to a finding of guilt, as against the petitioner herein, is the inquiry report dated 25.03.2016, which has not been proved by tendering any witness during the course of the departmental inquiry. The learned counsel for the petitioner has relied on a judgment reported in **(2009) 2SCC 2270 (Roop Singh Negi v. Punjab National Bank)** to contend that the entire findings of the inquiry officer being based on no evidence, is *non est* in the eyes of law, hence the order of punishment and the review order is fit to be set aside.

4. *Per contra*, the learned counsel for the respondents, relying on the inquiry report, has submitted that a detailed inquiry was made and only thereafter, the Inquiry Officer has submitted his report dated 14.10.2016 which amply goes to prove the charges against the petitioner herein. However, the learned counsel for the respondents has not been able to show from the inquiry report that either any oral evidence was led or even the inquiry report dated 25.03.2016 was proved during the course of the departmental inquiry.



5. I have heard the learned counsel for the parties and gone through the materials on record. From a bare perusal of the inquiry report dated 14.10.2016, it is apparent that the entire findings of the Inquiry Officer is based on no evidence. Infact, no witnesses had appeared either to prove the allegations leveled by the prosecution or to prove the inquiry report of the District Magistrate, Nalanda dated 25.03.2016. Infact, the inquiry officer himself has admitted in paragraph no. 2.3 of his inquiry report that no oral evidence has been produced in support of the charges leveled against the petitioner.

6. Having regard to the facts and circumstances of the present case, the instant case being a case of no evidence, squarely covered by the judgment of the Hon'ble Apex Court rendered in the case of ***Roop Singh Negi (supra)***, it is evident that the department has utterly failed to prove the charges as against the petitioner herein. As such, the order of punishment dated 17.07.2017, which is just a narration of the sequence of events and is founded on a perverse inquiry report dated 14.10.2016, based on no evidence, which does not even remotely proves the charges leveled against the petitioner herein, apart from the same being based on mere *ipse dixit* as also surmises and conjunctures, is fit to be set aside, being not tenable in the eyes of law.



7. It is a trite law that the order passed by the disciplinary authority has severe civil consequences, hence appropriate reasons are required to be assigned while passing the order of punishment, which are clearly missing in the present case. Moreover, the decision must be arrived at on the basis of some evidences which are legally admissible. Furthermore, the order of punishment dated 17.07.2017 is based on a perverse inquiry report, is not based on any evidence muchless discusses any material found against the petitioner herein during the course of departmental enquiry, hence the same is fit to set aside being not supported by any reason or evidence for punishing the petitioner.

8. For the reasons mentioned hereinabove, the order of punishment dated 17.07.2017 is set aside and quashed. Since the order of punishment dated 17.07.2017 has been quashed, the order dated 06.10.2017 by which the review petition of the petitioner has been rejected is bound to fall, as such, the order dated 06.10.2017 is also set aside.

9. The writ petition is allowed.

(Mohit Kumar Shah, J)

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CAV DATE	-
Uploading Date	08.06.2018
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