

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1290 of 2018
In
Civil Writ Jurisdiction Case No.14168 of 2013

Rama Prajapati, Son of Late Mangal @ Mangal Prajapati, Resident of Village-Badra Bandalpur, P.S.-Mufassil, District-Gaya.

... .. Appellant/s

Versus

1. The Additional Commandant General Home Guard and Fire Services, Bihar, Patna.
2. The State of Bihar, through Director General of Police, Bihar, Patna.
3. The Deputy Commandant General, Home Guard and Fire Services Bihar, Patna.
4. The Commandant, Home Guard, Bihar, Patna.
5. The Officer-Cum-District Commandant, Home Guard, Bhagalpur, Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rajnandan Kumar, Advocate
For the Respondent/s	:	Mr. Prabhat Kumar Verma -AAG-3
		Mr. Saroj Kumar Sharma, AC to AAG -3

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date : 03-12-2018

The Present Intra Court Appeal seeks to place a challenge to an order dated 08.08.2018 passed by the Single Judge in C.W.J.C. No. 14168 of 2013, whereby the writ petition preferred by the Appellant has been dismissed, and the prayer for



issuance of writ in the nature of *certiorari* for quashing the order dated 29.05.2012 passed by the Appellate Authority confirming the dismissal order of the Disciplinary Authority, has been declined by the writ Court. Further, the prayer for reinstatement of the writ petitioner by means of mandamus with all back wages and consequential benefits, has also been refused.

2. It was submitted by learned counsel for the Appellant that the writ petitioner was working as a Company Commandant (Home Guard) in Bhojpur district when the complaint was lodged.

3. Shorn of unnecessary details, the facts are that the petitioner was proceeded against, pursuant to a trap set up by the Vigilance on the complaint lodged by two Home Guards, namely, Jai Bahadur Singh and his colleague Karu Singh stating that the appellant had demanded Rs. 4,000/- (Rs. 2000/- from each) to allocate them duty. On the basis of such complaint, the trap was conducted and he was caught red-handed accepting the bribe of Rs. 4000/- for sending Jai Bahadur Singh on duty. The Criminal Case No. 7/11 dated 03.02.2011 under Section 7/13(2) read with Section 13(1) (D) was filed against the appellant and, the appellant was also proceeded against departmentally by issuance of charge sheet as contained in



Memo No. 1768 dated 19.07.2011. A proceeding was thus, started against him under the provision of Bihar Government CCA Rules 1976 (Rule 3 (iii)) and the memo of charge was issued by the Commandant (Home Guard).

4. Learned counsel pointed out that the Home Guard is a voluntary organization and persons enrolled as home guard are trained in various duties and, such persons are allotted duties as and when, they offer themselves for performing duty. In order to regulate such allotment of duty, an office order No. 1/2005 was issued by the Director General, Home Guard wherein such volunteers were requested to enter their names in the register maintained for the purpose, but the two complainants had not entered their names in the register for over six months. Thus, they were not entitled for grant of any duty. It was submitted that this fact was totally ignored by the Vigilance Department before conducting the raid against the appellant and on the basis of such mala fide complaint, a trap was set up and he was allegedly caught red-handed accepting the bribe.

5. Pointing to several anomalies in the charge sheet issued against the appellant, learned counsel for the appellant submitted that the impugned order stood vitiated as neither the Enquiry Officer nor the Presenting Officer has been



named in the charge sheet and the charge sheet itself has been issued by the Commandant (Home Guard) who is not the disciplinary authority of the appellant. The enquiry was conducted by the officer without any Presenting Officer by one Shri Pratap Singh, District Commandant Home Guard, Bhagalpur, who submitted his report and though no reliable document was presented in course of enquiry against the appellant, enquiry report was submitted and the same was forwarded to the appellant by the Commandant, Home Guard, Patna on 15.11.2011 (Annexure-2) for final explanation. It was further submitted that the Appellant submitted his reply vide Annexure 7 dealing with the flaws in the report drawn by the Enquiry Officer, in which, he also reiterated that the GC notes number were not found in the post trap memorandum and that the names of the complainant were not in the waiting roster. As such, the entire allegations were false and mischievous and even the defence witnesses presented by the appellant were altogether ignored. It was further contended that the Disciplinary Authority failed to consider the facts stated in the representation of the petitioner-appellant and passed the order of dismissal dated 26.04.2012 which was challenged by the appellant in an Appeal to the Commandant General, Home Guard, Patna. In the Appeal



(Annexure-9) preferred by the appellant, it was pointed out that a criminal case was pending against him and, therefore, holding him guilty at the stage is not fair. Moreover, no independent witness had been brought forth, during the trap and there was no mention of currency notes in the post trap memorandum. The statement of independent witnesses produced by the appellant would go to prove the falsity of the charges which were also ignored. However, the said Appeal before the Commandant General was also turned down vide order dated 29.05.2012 and the Revision preferred against him before the Director General of Home Guards, also met with a similar fate.

6. Learned counsel for the appellant submitted that the learned Single Judge without appreciating the ground raised by the petitioner-appellant has also dismissed the writ petition on the premise that the writ petitioner has not been able to demonstrate any procedural infirmities in the conduct of the Enquiry Officer and, therefore, the order of dismissal does not warrant interference.

7. We have heard learned counsel for the Appellant and learned counsel for the State.

8. The main ground urged by the appellant for assailing the order of the learned Single Judge is that the



disciplinary proceeding was conducted without a Presenting Officer, which was a clean violation of the CCA Rules and rendered the enquiry bad ab initio. In this context, learned counsel for the appellant has drawn the attention of this Court at paragraph nos. 4 to 6 of a decision reported in **2018(2) PLJR, 68, (Rajendra Prasad Vs. The State of Bihar through the Secretary, Cooperative Department & Ors.)** wherein another decision of this Court was relied upon, reported in **2017 (4) PLJR, 286**, for setting aside the order of dismissal. It is submitted that the action of the Presenting Officer is also not free from malice, as he failed to consider the independent witnesses, who were presented before him to support the defence of the petitioner. Furthermore, the enquiry report which was given without considering such evidence, would be termed as perverse and that, in absence of any Presiding Officer, no document was produced by members in course of enquiry and the Enquiry Officer himself conducted the same on the basis of office records, which remained to be explained in the enquiry. In this context, learned counsel for the appellant has also referred to a decision of this Court reported in 2017 (3) PLJR, 500 to support his contention.

9. We have examined the aforementioned



citation and have tested them in the wake of the facts and circumstances of the present case. This necessarily includes a perusal of the enquiry report which was marked as Annexure-2. A perusal of the said report indicates that the witnesses, who were examined had been duly cross-examined by the advocate of the delinquent and the material which was produced by the delinquent did not suffice to disprove the charges as made against him. Such evidences which were produced were immaterial and did not alter/diffuse the gravity of the charge. The witnesses were none other than those home guards who were allotted work by him. The other contention raised by the delinquent, that the pre-trap memorandum containing the numbers of the GC notes, does not tally with the post trap memorandum, also stands falsified by the finding of the enquiry officer, who has found the numbers to be the same (page 24 of the enquiry report). Both the memorandums have been produced before the Enquiry Officer and the same has been proved by the Investigating Officer of the Vigilance Bureau, namely, Mahesh Kumar, Enquiry Officer. The said Mahesh Kumar has also been duly cross-examined by the delinquent/his advocate, wherein the numbers have been found to have tallied.

10. Furthermore, the Enquiry Officer has also



noted in his report that the delinquent had a previous history of such allegation as one Kalamuddin had filed a complaint against the delinquent which was also placed on record. Thus, the Enquiry Officer had found the charges as against the delinquent to have been substantially proved, which led the Enquiry Officer to report the grave acts of misdemeanor of the delinquent. In view of the seriousness of the charges, which involves grave offence of moral turpitude, the Enquiry Officer reported that the conduct of the Petitioner-Appellant was unbecoming to a member of the Home Guard Force and would cast a shadow on its image. The Enquiry Officer while submitting his report, had recommended strict actions against the delinquent and pursuant thereto, the impugned order of dismissal was also passed against the delinquent after affording him an opportunity to explain and based on such findings. The Appellate Authority as also the Revisional Authority has framed its decision on the findings arrived at by the Enquiry Officer. Thus, in the considered opinion of the Court, the impugned order cannot be said to be perverse or against the settled principles of law. It has also been noticed that the delinquent participated in the enquiry actively and had also cross-examined the witnesses and was thus, precluded from raising any grievance at a later stage.



11. Moreover, the reference to the citation placed before this Court by the appellant, does not find favour with us, as the appellant has been unable to prove that such a procedural lapse had occasioned any prejudice to him as he has all along participated in the enquiry, cross-examined the witnesses through an advocate and his explanation has been wholly unsatisfactory in view of the evidences, which has come before the Enquiry Officer.

12. Moreover, this Court has noticed that the appellant has also been guilty of *suggestio falsi* as the grounds which have been raised before this Court by means of the supplementary affidavit filed, are wholly against the findings, which surfaced in the enquiry report. It is important to notice that the Vigilance Authority in Vigilance Case No. 7/2011, Shri Mahesh Kumar has been examined during the course of the enquiry and, also cross-examined by the appellant. Thus, there was no occasion for any bias. Such misleading statements made in the supplementary affidavit also disentitles the appellant from any relief. Furthermore, the appellant has been held guilty of moral turpitude under Rule 3(iii) of the CCA Rules 1976 and he has also had a history of such complaint against him, which has been pointed out by the Enquiry Officer. Thus, the Disciplinary



Authority and the Appellate Officer have rightly awarded punishment and, proceeded to pass order of dismissal against the appellant.

13. For the forgoing reasons, this Court does not find fault in the reasoning of the Single Judge in rejecting the prayer of the Petitioner-Appellant and the order of dismissal passed against the appellant as contained in order dated 26.04.2012 and other orders which have emanated therefrom including order date 29.05.2012 as contained in Memo No. 1495.

14. The Appeal stands dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

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Uploading Date	03/12/2018
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