

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5500 of 2019

=====

Avinash Kumar Singh son of Late Mundrika Singh resident of Molana
Bigha,P.S- Sare, District- Nalanda at Biharsharif

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Old Secretariat, Patna
2. The Principal Secretary, General Administration Department, Government of Bihar, Secretariat Building, Patna
3. The Joint Secretary, General Administration Department, Bihar Secretariat Building, Patna
4. The Commissioner, Tirhut Division, Muzaffarpur, Bihar
5. The District Magistrate, Sitamarhi ,Bihar

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Manoj Priyadarshi
For the Respondent/s : Mr. Manish Kumar (GP-4)

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
CAV JUDGMENT

Date : 08-07-2019

1. Heard the learned counsel for the parties.

2. The petitioner, who at the relevant time was posted as Incharge Jail Superintendent, Sitamarhi, has challenged the order dated 09.11.2017 issued by the General Administration Department, contained in memo no. 4196, whereby the petitioner has been awarded the punishment of censure and stoppage of three increments with cumulative effect as also for challenging the order dated 29.08.2018, contained in Memo No. 11623, whereby the review application



of the petitioner has been rejected and the order of the disciplinary authority imposing punishment upon him has been affirmed and upheld.

3. The petitioner has prima facie challenged the aforesaid orders on the ground that the major punishment was awarded to him and his review petition was rejected without the charges being proved against him. The further ground of challenge is that the entire departmental proceeding is based on an enquiry report submitted by the SDO and SDPO, Sitamarhi, who had conducted an inspection of Sitamarhi jail behind the back of the petitioner and they were not presented before the disciplinary authority for proving their report or for the petitioner to subject them to any cross-examination. The other grounds of challenge are that the whole proceeding is based on inference, and without specifically denying the explanation offered by the petitioner. He has been held guilty for not having discharged an obligation for which he was only indirectly responsible. Lastly, it has been submitted that the charges levelled against him are vague, intertwining with each other and several allegations have been made in one charge



with an inference from several acts of omissions and commissions.

4. Before appreciating the contentions of the petitioner, it would be necessary to refer to the charges levelled against him in the departmental proceeding. The first charge relates to the SDO and SDPO having found certain impermissible articles in the jail at the time of surprise raid. In the same charge, it has been alleged that a temple was found to be under construction inside the jail premises and construction materials were found strewn all over. Those construction materials could possibly have been used as weapon of assault in case of any internecine conflict between the groups of prisoners. The aforesaid charge further indicates that it was confidentially/reliably learnt that the temple was being constructed by one Madhav Chaudhary, a prisoner confined in Ward No. 6 of Sitamarhi Jail. During the month of Ramjan, another prisoner, namely, Santosh Jha had thrown an Iftaar party and Madhav Chaudhary had distributed clothes on the occasion of Ramjan. A generator also was found to be installed inside the jail at the instance of an NGO, about which



no enquiry had been made by the petitioner. Several new fans were also found to have been installed and on enquiry it was found that those had not been purchased by the jail administration. It was, thus, found that two of the prisoners, namely, Santosh Jha and Madhav Chaudhary were using their money power which led to creation of groups inside the jail, which had the potency of fomenting conflict. For these reasons, the aforesaid charge indicates, recommendation was made for transfer of Santosh Jha and Madhav Chaudhary to another jail.

5. The other charge practically reiterated the elements of the first charge, namely, a dispute having erupted on the decision of the government to transfer Madhav Chaudhary and Santosh Jha from Sitamarhi Jail to another jail. Had the aforesaid two prisoners been reigned-in, the possibility of such a situation would not have arisen and, therefore, the petitioner was responsible for the same as he had the responsibility to maintain discipline in jail.

6. From the perusal of the charges, it becomes clear that many grounds have been incorporated in each of the charges and a departmental proceeding has been initiated



primarily on the basis of a report submitted by the SDO and SDPO after a surprise inspection of the jail. The responsibility of the petitioner for maintaining discipline in the jail and which function does not seem to have been discharged effectively, is the charge under both the heads.

7. It has been submitted on behalf of the petitioner that he filed his reply to the aforesaid charge and also furnished several documents depicting his innocence and that he performed his functions to the best of his ability.

8. The sum and substance of the reply of the petitioner is that apart from being the Incharge Jail Superintendent, he was also carrying on other responsibilities of Provident Fund Officer and Nodal Officer for one block. Apart from this, he was also involved in MGNREGA work and occasionally had to perform SECC inspection. The other explanation offered by the petitioner is that the responsibility of maintaining security of jail is not the exclusive responsibility of the Superintendent of Jail but of the Superintendent Incharge of Administration and Security also which is delineated in Rule 800 of the Jail Manual, 2012. All the failings in the jail



administration was promptly reported by the petitioner to the IG, Prisons.

9. With respect to the installation of Generators inside the Jail by NGO, the response of the petitioner is that no permission was granted at his level. The dispute between two groups took place on 09.08.2014 because of the decision of the government to transfer two of the inmates of the Jail and nothing would have happened if on the request of the petitioner, sufficient/additional force would have been provided. The request of the petitioner for providing additional force in jail was never acceded to.

10. Learned counsel for the petitioner has submitted that no Presenting Officer was assigned and the Enquiry Officer merely rested his opinion on the analysis of the enquiry report, referred to above. The Enquiry Officer has but categorically stated that whatever unauthorized articles were found in the jail, the responsibility for that could not have been exclusively saddled on the petitioner but on others as well. The report of the Enquiry Officer, therefore, was that the petitioner was not very alert and responsible and possessed somewhat lesser



administrative control of the jail. With respect to the second charge, the enquiry officer has stated that the petitioner is indirectly responsible for the occurrence which took place in jail.

11. Relying on the aforesaid report, by resolution dated 09.11.2017, contained in Memo No. 4196, the petitioner was subjected to a punishment of censure and stoppage of three increments with cumulative effect. The revision filed by the petitioner has also been rejected by the order dated 29.08.2018 contained in memo no. 11623. Both the orders, therefore, have been challenged on the ground that they do not take note of the explanations offered by the petitioner with respect to the charges and that they have relied only on the inspection report, whose author was never examined during the proceeding.

12. The challenge to the aforesaid orders are also on the ground that no second show-cause notice has been issued to the petitioner.

13. It has also been alleged that the inspection report of jail though was supplied to him but the documents which



were relied upon in the aforesaid report was never furnished to the petitioner despite his repeated request. On these grounds, it has been urged, the orders be set aside.

14. As opposed to the aforesaid contentions raised on behalf of the petitioner, the learned counsel for the State has stated that all the procedural formalities have been complied with and during the enquiry it has conclusively been found that the petitioner soft-peddled the safety requirements in the jail premises and, therefore, the orders impugned in the present writ petition ought not to be disturbed.

15. A deeper probe and analysis of the materials placed before this Court, it appears that a surprise inspection was made in the jail when the petitioner was not present. There is substance in the contention of the petitioner that the charges are primarily based on the inspection report which also finds echo in the enquiry officer's report as also in the order of the disciplinary authority and revisional authority. What cannot be disputed is that the documents which were relied upon in the inspection report have not been furnished to the petitioner. The charge memo was prepared in the year 2014 but the



departmental proceeding was initiated in the year 2016. In the departmental proceeding, no witness has been examined. The Presenting Officer also has not been examined and the orders are based upon the joint inspection report and the explanation offered by the petitioner. The Jailor and other persons ought to have been examined for proving the charge against the petitioner. The charges, though had been put under two heads, but the ingredients overlapped and several factors have been coalesced in one charge, making it vague and difficult to answer head-wise.

16. It is no doubt true that this Court in the writ jurisdiction would be slow in interfering with the findings recorded in departmental enquiry by the disciplinary authority or the enquiry officer; nonetheless it would only be an empty formality if it is not analyzed properly and in case of necessity, be not interfered with. There has to be link evidence between the charges and the conclusions arrived at and only one report cannot be the basis for holding a government servant guilty. Even though this Court would not like to view the proceedings as if it were sitting in appeal over such orders; nonetheless the



power of judicial review would lose its efficacy, if no interference in any circumstances is made.

17. In ***Nand Kishore Prasad Versus State of Bihar [(1979) 3 SCC 366]***, it has been held that a disciplinary proceeding is in the nature of a quasi judicial function and therefore it is necessary that disciplinary authority must arrive at its conclusion on the basis of such evidence which has some definiteness and points to the guilt of the employee and does not leave the matter in a suspicious state. Mere suspicion cannot take the place of proof even in domestic inquiries (*Also refer to State of A.P. Versus Rama Rao [AIR 1963 SC 1723]; Central Bank of India Ltd. Versus Prakash Chand Jain [AIR 1969 SC 983]; Bharat Iron Works Versus Bhagubhai Balughai Patel [AIR 1976 SC 98]; Rajinder Kumar Kindra Versus Delhi Administration [AIR 1984 SC 1805]; and Kuldeep Singh Versus Commissioner of Police & Others [(1999) 2 SCC 10]*).

18. In *State of Uttaranchal and Others Versus Kharak Singh [(2008) 8 SCC 236]*, the Supreme Court has held that in an enquiry, the employer / department should take steps first to lead evidence against the delinquent charged and



give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the delinquent be asked whether he wants to lead any evidence.

19. In *Roop Singh Negi Versus Punjab National Bank and Others [(2009) 2 SCC 570]*, the Supreme Court has in paragraph 14, 15 and 23 held as follows:

"14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the



FIR which could not have been treated as evidence.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by



any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."



20. Thus, for the reasons, namely, (a) the documents relied in the inspection report of jail premises not having been furnished/supplied to the petitioner (b) no second show-cause notice having been given to the petitioner (c) the Presenting Officer not appointed in the department proceeding (d) complete reliance on the inspection report without the same having been proved (e) No evidence having been led on behalf of the department and (f) the explanation offered by the petitioner to the several heads of charges though categorized under two broad heads not having been taken into account in correct perspective, the orders impugned in the present writ petition is wholly unsustainable.

21. The orders impugned therefore are set aside.

22. The matter is remitted to the disciplinary authority to write out a fresh order in accordance with law, after giving the complete inspection report to the petitioner and giving him an opportunity to defend his case.

23. The departmental proceeding shall be concluded within a period of four months from the date of production/communication of a copy of this order.



24. With the aforesaid observation / direction, this
petition stands allowed to the extent indicated above.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	AFR
CAV DATE	07.05.2019
Uploading Date	08.07.2019
Transmission Date	

