

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.4448 of 2016**

Prakash Kujur, Son of Late Dhanjit Uraon, Resident of Rambagh, Driver  
Tola, P.O.- Purnea, P.S.- Sadar Purnea, District- Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Vigilance Department, Government of Bihar, Patna.
3. The Director General of Police, Vigilance Bureau of Investigation, Bihar, Patna.
4. The Deputy Inspector General of Police, Vigilance Investigation Bureau, Bihar, Patna.
5. The Superintendent of Police, Vigilance Investigation Bureau, Bihar, Patna.
6. The Deputy Superintendent of Police, Vigilance Investigation Bureau, Bihar, Patna.

... .. Respondent/s

**Appearance :**

|                      |   |                                                                             |
|----------------------|---|-----------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Tej Bahadur Singh, Sr. Advocate<br>Mr. Brisketu Sharan Pandey, Advocate |
| For the Vigilance    | : | Mr. Deepak Sahay Jamuar, Advocate                                           |
| For the State        | : | Mr. SC-16                                                                   |

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

**ORAL JUDGMENT**

**Date : 13-09-2019**

The petitioner was a Constable in the Vigilance Department and was a member of the team which had conducted a raid on 10.08.2011 to trap an official of the State Food Corporation (hereinafter referred to as 'the SFC'), against whom there was allegation of demand of bribe. The said official was caught red-handed by the Vigilance Team. It subsequently surfaced that the petitioner had, thereafter, in connivance with the said official of the SFC, who was arrested in the trap, had taken from him his two ATM cards and had withdrawn a sum of Rs. 2,40,000=00. Treating



the same to be an act of grave misconduct, a departmental proceeding was initiated against him, with the issuance of charge-sheet. He was put under suspension. An Inquiry Officer was appointed to conduct the departmental enquiry. The Inquiry Officer submitted his report holding the petitioner guilty of the charge.

2. It is noteworthy that a criminal case was also registered as Vigilance Case No. 75 of 2011 dated 01.10.2011 against the petitioner and a Deputy Superintendent of Police, who were part of the raiding party. The said criminal case, it seems, is pending after submission of charge-sheet.

3. The report of the Inquiry Officer was served on the petitioner for his comments. The petitioner had submitted his response to the report of the Inquiry Officer controverting the findings recorded by him. A second show cause notice was issued to him thereafter on 12.02.2013, to which the petitioner had responded.

4. Finally, the Disciplinary Authority decided to impose upon the petitioner punishment of dismissal from service by order dated 12.04.2013. The petitioner's appeal against the said order of dismissal dated 12.04.2013 has been rejected by the Deputy Inspector General of Police, Vigilance Investigation Bureau, Bihar



by an order dated 09.04.2015. His memorial against the orders of the Disciplinary Authority and the Appellate Authority has been dismissed by an order dated 03.11.2015 by the Director General of Police, Vigilance Bureau of Investigation, Bihar. The aforesaid orders dated 12.04.2013, 09.04.2015 and 03.11.2015 have been put to challenge in the present writ application.

5. I have heard Mr. Tej Bahadur Singh, learned Senior Counsel appearing on behalf of the petitioner and Mr. Deepak Sahay Jamuar, learned counsel representing the Vigilance Investigation Bureau. The State of Bihar is represented by learned Standing Counsel No.16.

6. Learned Senior Counsel appearing on behalf of the petitioner, while assailing the impugned action of imposition of punishment of dismissal from service, has made various submissions on the issues of non-consideration of relevant facts by the Inquiry Officer before holding the petitioner guilty of the charge framed against him. A supplementary counter affidavit has been filed on behalf of the Respondents-State of Bihar, which has been taken on record. He has further submitted, with reference to a supplementary affidavit filed in course of hearing of the present writ application, that no presenting officer was ever appointed in course of departmental enquiry and thus there was no person



present in course of departmental enquiry to prove the charge framed against the petitioner by adducing evidence. He has referred to Rule 17(5)(c) of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules') to submit that since an Inquiry Officer was appointed by the Disciplinary Authority to conduct enquiry, it was imperative for the Disciplinary Authority to have appointed a presenting officer to present on its (Disciplinary Authority's) behalf the case, in support of the articles of charge. He has relied on a decision of this Court in case of *Most. Sharda Devi vs. The Patliputra Central Co-operative Bank Ltd. & Ors.* reported in *2017(1) PLJR 859*. He has submitted that in the present case, the Inquiry Officer has failed to act as a quasi-judicial functionary and, as a matter of fact, became a prosecutor on behalf of the Disciplinary Authority to establish charge against the petitioner.

7. A supplementary counter affidavit has been filed on behalf of State of Bihar wherein the fact that there was no presenting officer appointed to present the case of the Disciplinary Authority has not been disputed. It has, however, been submitted that requirement of appointing a presenting officer under Clause(c) of sub-rule (5) of Rule 17 of the Rules is not mandatory in view of the use of word 'may' in the said Rule.



8. Since the specific stand taken on behalf of the petitioner that the absence of a presenting officer in the departmental enquiry goes into the root of the matter and vitiates entire disciplinary proceeding, appears to be convincing, I have considered it apt to consider the said aspect first.

9. Section 17 of the Rules lays down a detailed procedure for imposition of penalties. Clause (c) of sub-rule (5) of Rule 17 of the Rules, being relevant for adjudication, is being reproduced hereinbelow :-

*“17(5)(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry about such charge, it may, by an order, appoint a government servant or a legal practitioner to be known as the ‘Presenting officer’ to present on his behalf the case in support of the articles of charge.”(underlining mine)*

10. It is evident from the provisions under Rule 17 including Clause-(c) of sub-rule-(5) that an enquiry into the articles of charge can be made either by the Disciplinary Authority or by an Inquiry Authority to be appointed by him. It is evident from the language of Clause-(5), as quoted above, that a government servant or legal practitioner to be known as the presenting officer may be appointed to present the case in support



of the articles of charge. The expression ‘on his behalf’ occurring in Clause-(c) (supra), in my opinion, is of much significance to give a just and purposive interpretation of Clause-(c). The Disciplinary Authority has, under the Rules, jurisdiction to initiate and take disciplinary action against a government servant subject to the provisions of the Rules. Once he decides to get the charges enquired into by any other officer, known as the Inquiry Officer, the Inquiry Officer is supposed to proceed in a manner discharging functions of a quasi-judicial authority. This view is in consonance with the principles of natural justice, as has been held by the Supreme Court in case of ***State of Uttar Pradesh vs. Saroj Kumar Sinha*** reported in ***(2010) 2 SCC 772***, paragraph 28 of the said decision reads thus :-

*“28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been*



*taken into consideration to conclude that the charges have been proved against the respondents.”*

11. The Supreme Court has categorically held in case of ***State of Uttar Pradesh vs. Saroj Kumar Sinha*** (supra) that an Inquiry Officer holds the position of an independent adjudicator, whose function is to examine evidence presented by the department. In absence of any presenting officer available in a departmental enquiry to prove the charge, the report of the Inquiry Officer, on the basis of evidence collected by himself, in my view, cannot be sustained in the light of the Supreme Court’s decision.

12. Learned Senior Counsel has rightly relied on a decision of this Court in case of ***Most. Sharda Devi*** (supra) wherein, following the Supreme Court’s decision in case of ***State of Uttar Pradesh vs. Saroj Kumar Sinha*** (supra) this Court has held that the single infirmity of absence of presenting officer would render the entire disciplinary proceeding invalid. Similar view was taken in case of ***Panchanan Kumar vs. Bihar State Electricity Board*** reported in ***1996(1) PLJR 401***, paragraph 11 of which lays down thus :-

*“11. Considering the rival contentions of the parties, this Court is of the opinion that in the instant case the inquiry has been vitiated inasmuch as the enquiry officer himself has acted as the*



*presenting officer even though the presenting officer was appointed by the Electricity Board. There is no explanation why the said presenting officer did not appear before the enquiry officer to present the case of the department. In the peculiar facts of this case, the action of the enquiry officer to present the case himself on behalf of the department and also to take upon himself the duty of enquiring the correctness or otherwise of the said case clearly show that the enquiry officer, in the instant case, has failed to discharge his duty as a fair and impartial enquiry authority. He has rolled up within himself the role of both the presenting officer and the enquiry officer and as such has acted in a manner which is not consistent with the principles of natural justice.....”*

13. Reference may be made to Supreme Court’s decision in case of ***Union of India & Ors. vs. Prakash Kumar Tandon*** (***AIR 2009 SC 1375***) wherein it has been unambiguously held that an Inquiry Officer is a quasi-judicial authority and, therefore, he must perform his functions fairly and reasonably, which are essential requirements of the principles of natural justice. Similar view has been taken by the Supreme Court in case of ***M.V. Bijlani vs. Union of India & Ors.*** reported in (***2006***) 5 SCC 88.

14. In the background of the law clearly laid down in case of State of ***Uttar Pradesh vs. Saroj Kumar Sinha*** (supra),



*Union of India vs. Prakash Kumar Tandon* (supra) and *M.V. Bijlani* (supra) I do not have any hesitation in arriving at a definite conclusion that an Inquiry Officer appointed under Rule 17 of the Rules to enquire into the charges framed in a departmental proceeding discharges the functions of a quasi-judicial authority and he is expected to have the same level of impartiality which any functionary must have, while exercising quasi-judicial function. He cannot become a representative of the department or the employer of the Disciplinary Authority in a departmental enquiry. He cannot summon the documents and the witnesses for evidence unless he is requested for. The requirement of appointment of a presenting officer under Clause (c) of sub-rule (5) of Rule 7, in my view, is a requirement to adhere to principles of natural justice and fairplay, and, therefore, mandatory. The said requirement cannot be held to be either 'discretionary' or directory.

15. Learned Senior Counsel, in my opinion, has rightly submitted that the entire departmental proceeding stands vitiated because of the manner in which the Inquiry Officer has submitted his report holding the petitioner guilty of charge in the absence of any presenting officer appointed to prove the charge.

16. I am, therefore, constrained to interfere with the impugned action of the Disciplinary Authority. The impugned



order of dismissal from service dated 12.04.2013 is accordingly set aside. Subsequent orders passed by the Appellate Authority and the Director General of Police, Vigilance Investigation Bureau dated 09.04.2015 and 03.11.2015 stand set aside, consequently.

17. Before I part with the present judgment and order, I must indicate that I have taken note of the manner in which the Disciplinary Authority has passed order imposing punishment of dismissal from service on the basis of the report of the Inquiry Officer. It is evident from the materials on record that the petitioner was supplied the report of the Inquiry Officer whereafter he had submitted his response to the Disciplinary Authority so as to convince him that the report of the Inquiry Officer did not deserve to be accepted. The Disciplinary Authority, in my opinion, was duty bound to consider the petitioner's response to the report of the Inquiry Officer before accepting the report. Consideration is completely lacking. This observation I have made to forewarn the Disciplinary Authority to be cautious if any decision is to be taken again against the petitioner in the present departmental proceeding, which is being remanded back to the Disciplinary Authority to proceed in the departmental proceeding afresh after appointing a presenting officer.



18. Consequent upon quashing of the order of dismissal, the petitioner will be required to be reinstated in service forthwith. It will be, however, open for the Disciplinary Authority to treat the petitioner under suspension under Rule 9(5) of the Rules for the purpose of conclusion of the departmental proceeding. The Disciplinary Authority is directed to ensure that the departmental proceeding is concluded expeditiously and in no case beyond a period of two months from the date of receipt/ production of a copy of this order. If, in the meanwhile, the criminal case concludes, it shall be open for the Disciplinary Authority to pass appropriate orders in accordance with law.

19. This application is allowed with the aforesaid direction and observation.

**(Chakradhari Sharan Singh, J)**

Rajesh/-

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