

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.11612 of 2014**

=====

Shila Chandra Kumar S/O Late S. Dass R/O - 87/B, Road No. 1, New  
Patliputra Colony, P.S. - Patliputra, District - Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Govt. of Bihar Patna.
2. The Principal Secretary, Home Department, Govt. of Bihar, Patna.
3. Special Secretary, Home Department, Govt. of Bihar, Patna.
4. Dy. Secretary, Home Department, Govt. of Bihar, Patna.
5. Sri Abhay Kumar Upadhayay, Addl. Director General of Police cum  
Conducting Officer, Special Vigilance Unit, Bihar Patna
6. The Director General of Police, Bihar, Patna.
7. Chairman, B.P.S.C., Patna.

... .. Respondent/s

=====

**Appearance :**

|                      |   |                                                                     |
|----------------------|---|---------------------------------------------------------------------|
| For the Petitioner/s | : | Mr.Chitranjan Sinha, Sr. Advocate<br>Mrs. Rina Sinha, Advocate      |
| For the BPSC         | : | Mr. Ratnesh Kumar Singh, Advocate                                   |
| For the State        | : | Mr. Rishi Raj Sinha, Sc 19<br>Mr. Akhilesh Kumar Sinha, AC to SC 19 |

=====

**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD**  
**ORAL JUDGMENT**

**Date : 05-04-2019**

I.A. No. 6500 of 2018 has been filed with a prayer for assailing the order dated 09.11.2013 passed in the Departmental proceedings whereby the punishment of deducting of 50 % pension of the petitioner has been imposed upon approval of the same by the Bihar Public Service Commission (hereinafter referred to as the 'BPSC').

2. I.A. No. 6500 of 2018 is allowed.

3. The writ petition was originally filed assailing the order



dated 09.11.2013 passed in the departmental proceedings by the Deputy Secretary, Home Department, Government of Bihar, Patna recommending the punishment of deducting 50 % pension of the petitioner for approval of the BPSC.

4. Heard learned Senior counsel for the petitioner, the respondent State and learned counsel for the BPSC.

5. The matter arises out of departmental proceedings. The nature of submissions advanced by the parties are such that the Court would confine itself to see whether the petitioner has been meted out procedural fairness in the conduct of proceedings.

6. Charge memo was issued to the petitioner on 05.06.2007. Substance of the charges were some irregularity in maintaining stock register and shortage of 39 bails of Teri Cotton Cloth from the Central Cloth Store. Petitioner at that time was posted as In-Charge of the Central Cloth Store and therefore, the allegations have been levelled against him. The issue arose after the petitioner had handed over charge of the store. The successor in the office had raised the issue of shortage on the basis of an inspection dated 29.07.2009. The matter thereafter, was enquired. The petitioner had appeared before the Enquiry Officer.

7. Submission made by learned senior counsel are that



though five witnesses had been named in the list of witnesses along with the charge memo, none of them have deposed in favour of the charges in the proceedings.

8. The petitioner has also asserted that as per report dated 30.04.2004 of the joint inspection committee, the alleged shortage was baseless in as much as the committee, had found the alleged shortage of 39 bails of Teri Cotton cloth to be lying just outside the go-down and next to the guard room. The fact that the 39 bails were recovered next to the guard room itself demolishes the charge of shortage of 39 bails. Submission made by learned senior counsel is that the facts were such that the guard of the central cloth store at the relevant point of time between 06.11.1995 to 28.10.1998 was an essential and material witness but he was never examined in the proceedings, in spite of repeated request made by the petitioner.

9. The statement of Shri N.N. Jha which is relied upon by the petitioner's counsel is that the petitioner had all along cooperated with the inspection and therefore, that part of charge no. 3 which alleged non-cooperation from the petitioner also could not be substantiated at the enquiry. It is submitted by learned senior counsel that though the petitioner had participated in the proceedings, the order of punishment records



that the proceedings were conducted *ex parte*. This is a clear indication of preconceived notion by which the proceedings have been conducted before the Enquiry Officer with a closed mind.

10. Learned counsel for the State and BPSC have submitted that it was the duty of the petitioner to produce the guard Shri Ramchandra Singh as the petitioner wished to rely upon his deposition. It is also submitted that the manner in which the 39 bails of Teri Cotton cloth which were missing as per the report dated 29.07.1999, which had all of a sudden resurfaced in the subsequent report dated 30.04.2000 is a circumstance which creates a strong suspicion of some foul play. The said circumstance having regard to the standard of evidence/proof required in a departmental proceeding are by itself sufficient indication that the petitioner is guilty of the said 39 bails of Teri Cotton cloth being missing from the store. Respondent counsels have also pointed to the other documents on record including the depositions of witnesses in the proceedings. It is also submitted that since the various registers maintained in the Central Cloth store had been produced in the enquiry, the charges to the extent that there was irregularity in maintaining of the stock register is *prima facie* evident from the



documents produced in the enquiry itself.

11. This Court has been taken through the various documents and annexures referred to by the parties. From the charge memo, it is obvious that the same indicates the list of evidence and witnesses who were to be examined in support of the charge. None of the witnesses had deposed in favour of the charge or in support of the documentary evidence. In fact the record reveals that the report of the joint inspection committee dated 30.04.2000 as well as the deposition of one of the departmental witnesses namely, Shri N.N.Jha only belie much less support the charges and run contrary to the allegations made against the petitioner.

12. The circumstances giving rise to a strong suspicion are relied upon by the counsel for the respondents. The law in this regard however, is well established. Suspicion, however strong it may be, cannot take place of proof.

13. Even though the departmental proceedings are not to be conducted on the strict standard of proof by the rules of evidence, the charges are required to be brought home on basis of some material on standard of preponderance of probability. Even in domestic enquiries suspicion cannot be allowed to take the place of proof as per decision of the Apex Court in the case



of **Union of India Vs. H.C. Goel** reported in **AIR 1964 SC 364**.

In the instant case the records are clear that no witnesses have deposed in support of the charges. These procedural lapses having regard to the long line of precedents would vitiate the findings. This Court would conclude that such infirmity in the procedure before the Enquiry Officer itself is sufficient to interfere with the punishment awarded to the petitioner.

14. Additional grounds urged by the petitioner regarding non-examination of the Guard is also a relevant factor which can only be held in favour of the petitioner as the Guard was a material witness and his non-examination or refusal to examine by the authorities has severely caused prejudice to the petitioner's case.

15. It is only the guard who could have explained why and how the 39 bails of cloth were lying outside the godown and next to the guard room. In this connection this court is reminded of judgment in the case of **Haridwari Lal vs. State of U.P. and Others** reported in **(1999) 8 SCC 582**. Relevant extract from the judgment is :

“3. Before us the sole ground urged is as to the non-observance of the principles of natural justice in not examining the complainant, Shri Virender Singh, and witness, Jagdish Ram. The Tribunal as well as the High Court have brushed aside the grievance made by the appellant that



the non-examination of those two persons has prejudiced his case. Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the Tribunal and the High Court were justified in thinking that non-examination of these two persons could not be material. In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant.”

16. In the circumstance, the Apex Court held that there was no proper enquiry. However, considering the fact that the Tribunal as well as the High Court erred in not attaching importance to such a lapse, the Apex Court was of the opinion that petitioner remained out of service for such a long time even after order of dismissal by the respondent authorities for which responsibility or blame could not be attributed to the respondents and thus allowed 50% back wages only.

17. That is not the case here as petitioner in the instant case has been deprived of 50% pension on account of the impugned order in violation of fairness, responsibility of which can only be attributed to the respondent authorities.

18. The submission of the respondents that the affidavit of the Guard submitted in the parallel criminal proceedings was on



the record in the proceedings also cannot be used against the petitioner. The affidavit is dated 01.11.2002 and even if the same is accepted on its face value in absence of the deponent it only indicates that the 39 bails which are alleged to have been missing during the petitioner's charge of the store are in fact not corroborated. The specific stand in the affidavit filed by the Guard in the criminal proceedings is that the same were lying there.

19. For the reasons indicated herein above, this Court would find that the procedure adopted by the Enquiry Officer in concluding the charges proved in absence of any witness in support of the charges and on basis of strong suspicion is a serious flaw in the proceedings giving rise to miscarriage of justice. The findings of the Enquiry Officer in the circumstances is based on no evidence. The impugned order 19.11.2013 and 02.06.2014 are hereby quashed. The petitioner as a result of quashing of the order of punishment is entitled to all consequential benefits including arrears of 50% of pension amount which has wrongly been withheld. Respondents should calculate and pay the arrears 50% within a period of 3 months from the date of receipt/production of a copy of this order.



20. Writ petition is allowed.

(Madhuresh Prasad, J)

Prakash/-

|                   |     |
|-------------------|-----|
| AFR/NAFR          | AFR |
| CAV DATE          |     |
| Uploading Date    |     |
| Transmission Date |     |

