

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12103 of 2014

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Shambhu Nath Das, S/O Late Hari Mohan Das, resident of Village- Dhoni,
P.O. and P.S.- Tarapur, District- Munger

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Home Department,
Government of Bihar, Patna
2. Principal Secretary, Home Department, Government of Bihar, Patna
3. Director General of Police, Bihar
4. Inspector General, Prisons and Reforms Service, Bihar, Patna
5. Inspector General (Prisons), Bihar, Patna
6. Deputy Inspector General (Prisons), Bihar, Patna
7. Superintendent, Hajipur Jail, Hajipur, District Vaishali
8. Superintendent, Beur Jail, Patna, District- Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Siddhartha Prasad, Adv, Mr. Kaustubh, Adv, Mr. Om Prakash Kumar , Adv, Mr. Sumit Kumar, Adv.
For the Respondent/s	:	Mr. Prasahant Kumar, AC to SC-5

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 08-05-2019

Heard the parties.

2. Writ petition under article 226 of Constitution of
India has been filed for issuance of writ of certiorari to quash
the order dated 12.03.2014 passed by Inspector General, Prison,



and Reforms Service, Government of Bihar, Patna by which petitioner has been dismissed from the service, however, subsequently by order dated 20.03.2014, the order of punishment has been modified under Bihar Pension Rules and entire pension of petitioner has been forfeited, as well as order dated 14.07.2014, passed by the Appellate Authority, Principal Secretary, Department of Home, Govt. of Bihar, dismissing the appeal of the petitioner. Petitioner has further prayed that period of suspension be treated as period spent on duty and to pay the differential amount of salary for the period petitioner remained under suspension.

3. Briefly stated, the facts of the case is that petitioner was appointed on the post of Warder in the year 1972 and has unblemished record except the present one. On the relevant date i.e. 11.11.2011 petitioner was posted at Mandal Jail, Hajipur as Warder when one under trial prisoner namely Mansoor Khan escaped from the Jail. Petitioner was given charge of In-Charge Head Warder of the Jail due to absence of Head Warder namely Sri Mithilesh Singh.

4. One under trial prisoner namely Mansoor Khan escaped from Jail on 11.11.2011 at about 6:00 P.M. for which an inquiry was conducted by A.I.G (Prisons) Bihar, Patna and



according to inquiry report dated 19.11.2011 conducted by him, petitioner along with three others were found *prima facie* to be responsible for said lapses and departmental inquiry was recommended against these four persons.

5. Superintendent, Mandal Jail, Hajipur also conducted a separate inquiry and submitted his inquiry report dated 19.11.2011 in which petitioner was not held responsible for the escape of said under trial prisoner Mansoor Khan.

6. On the information of the Superintendent, Hajipur Jail to Officer In-charge Hajipur Sadar Police Station an FIR being Sadar Hajipur P.S. Case No. 330 of 2011 was instituted on 12.11.2011 in which time of escape has been stated to be about 6:00 P.M. Escape of inmate (under trial) was detected at the time of head count which is done at the time of sunset that is around 6:00 P.M., however, alarm was raised at 9:00 P.M. i.e. 3 hours after the occurrence.

7. Petitioner was suspended on 28.12.2011 and vide order dated 21.06.2012 departmental proceeding was initiated on two charges of misconduct i.e. dereliction (negligence) of duty on 11.11.2011, which led to escape of under trial prisoner Mansoor Khan.

8. Inquiry Officer and Presenting Officer were



appointed by the disciplinary authority. In the memo of charge served upon petitioner in which two charges were framed and in support of charge no. 1 photocopy of duty register was enclosed as a documentary evidence to prove charge no. 1, and in support of charge no. 2 statement recorded of under trial prisoner Mansoor Khan, was enclosed as a documentary evidence to prove charge no. 2. No list of oral witnesses or any other documents have been enclosed upon which the department proposed to prove the charges against petitioner.

9. Subsequently show cause dated 25.06.2012, was issued to petitioner to submit his written statement and petitioner submitted his reply on 06.07.2012, however, same was never considered by the disciplinary authority and enquiry proceeding continued against the petitioner.

10. Petitioner participated in the regular inquiry and filed his detailed W.S. on 12.12.2012 denying all charges however, in the inquiry report prepared by the inquiry officer defence of petitioner has not at all been considered and same does not find place in the inquiry report dated 07.01.2013 in which both the charges framed against petitioner have been held to be proved by the Inquiry Officer. The finding which has been recorded against petitioner by the Inquiry Officer is that



petitioner at around 5:00 P.M. to 5:15 P.M. came around the place from where the under trial prisoner Mansoor Khan escaped and saw that no guard was on duty still petitioner did not take care to post someone at that place as a result of which under trial prisoner Mansoor Khan escaped, however, petitioner in his statement given on 12.12.2012, in the departmental proceeding has categorically stated that as soon as petitioner saw that the area was unmanned he immediately informed the Jailor but the Jailor took no action and taking advantage of the situation under trial prisoner Mansoor Khan climbed on the roof and when it was dark, he jumped outside and fled away.

11. Altogether five oral and documentary evidences were produced by the Presenting Officer before the Inquiry Officer to prove the charges but none of them disclosed any dereliction or negligence of duty of petitioner leading to alleged occurrence. Statement of Mansoor Khan dated 22.11.2011 does not in any way interdicts any role of petitioner in his escape and preliminary report of the A.I.G. (Prisons) dated 19.11.2011, no role is attributable to petitioner leading to escape of Mansoor Khan. It has been submitted that although inquiry officer has based his finding and has held charges to be proved on the basis of statement of Mansoor Khan dated 22.11.2011 as well as



report dated 19.11.2011 prepared by A.I.G. (Prisons), but they were never produced by the Presenting Officer before the Inquiry Officer nor petitioner was granted any opportunity to cross-examine them by the Inquiry Officer. As such no reliance can be placed on such documents for proving the charges against petitioner.

12. A show cause notice dated 05.03.2013 was served upon petitioner along with inquiry report dated 07.01.2013 and petitioner filed reply to the second show cause pointing out several irregularities and discrepancies in the inquiry report but same was not considered by the disciplinary authority.

13. Counter affidavit have been filed on behalf of State of Bihar and its authorities in which they have supported the order of punishment imposed upon petitioner and have further stated that departmental inquiry was conducted as per procedure prescribed under the Bihar (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'Rules-2005').

14. After hearing the parties and considering the materials available on record, this court finds that the order dated 20.03.2014 passed by the I.G. (Prisons) cum Disciplinary Authority forfeiting the entire pension of petitioner under Bihar Pension Rules as well as order dated 14.07.2014 passed by the



Appellate Authority, Principal Secretary, Department of Home Government of Bihar, dismissing the appeal of petitioner are not sustainable either in law or on facts for the following reasons:-

(i) Memo of charge dated 16.05.2012 in *Prapatra* 'Ka' as contained in Annexure-6 of writ petition issued by disciplinary authority I.G. Prisons, Bihar, Patna, who also appointed Superintendent of Central Jail, Patna, as Inquiry Officer and Clerk in Mandal Jail, Hajipur as Presenting Officer. Two charges have been framed against petitioner, which is not in conformity with the provisions of Rules-2005. The Disciplinary Authority is also obliged to give statements/imputations of misconduct under Rule-17 of the said Rules-2005, which is absent in memo of charge dated 21.06.2012, as served upon petitioner. The relevant Rule-17 reads as follows:-

“17. Procedure for imposing major penalties. -

(1) -----

(2) -----

(3) Where it is proposed to hold an inquiry against a government servant under this Rule, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission



or confession made by the Government Servant;

(b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government Servant a copy of the articles of charge, such statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government Servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(5) (a) On receipt of the written statement of defence, the disciplinary authority may himself inquire into such of the articles of charge which are not admitted, or, if it thinks necessary to appoint, under sub-rule (2) of this Rule, an inquiry authority for the purpose he may do so and where all the articles of charges have been admitted by the Government Servant in his written statement of defence, the disciplinary authority shall record his findings on each charge after taking such evidence as it may think fit and shall take action in the manner laid down in Rule 18.

(b) If no written statement of defence is submitted by the Government Servant, the disciplinary authority may itself inquire into the articles of charge or may, if it thinks necessary to appoint, under sub-rule (2) of this Rule an inquiry authority for the purpose, it may do so.

(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."

(ii) From the proceedings as adopted and conducted by the Disciplinary Authority, it does not appear that Disciplinary Authority has considered or had granted any opportunity to the delinquent to file written statement either



denying or admitting the charges. It is for the Disciplinary Authority after receipt of the written statement of delinquent and after considering his reply to decide whether to proceed in the matter or drop it. If the written statement of delinquent is not satisfactory then he can either conduct the enquiry himself or appoint an Enquiry Officer and Presenting Officer to conduct the enquiry against the charges as framed by him, as such the Rules as prescribed for conduct of departmental enquiry has not been followed by the Disciplinary Authority and on this account alone whole proceeding stands vitiated and is fit to be set aside. A Division Bench of this Court in the case of **Rama Shankar Choudhary Vs. State of Bihar** since reported in **2018(1) PLJR 91**, in para 8 has held as follows:-

“Rule 17(3) of "the Rules" casts an obligation on the Disciplinary Authority to draw a charge against a delinquent Government servant or cause it to be drawn up against the officer delinquent. Sub-rule (4) thereof further mandates the delivery of such charge memo so drawn up either through the Disciplinary Authority or through an officer duly authorized. The obligation cast on the Disciplinary Authority does not stop here rather he has yet to satisfy himself whether the explanation so forwarded by a delinquent on the proposed charge, requires an enquiry by the Enquiry Officer or requires a closure. This power exclusively vested in the Disciplinary Authority under Rule 17(4) cannot be delegated.

In the present case this mandatory obligation cast on Disciplinary Authority has been flouted as confirmed



from the letter dated 1.2.2008 (Annexure-2) issued by the Enquiry Officer directing the petitioner to file his reply on the charges before him. This is a gross statutory violation and has been commented upon by a Division Bench of this Court in a judgment reported in 1996 (2) PLJR 95 (Ravindra Nath Singh vs. Bihar State Road Transport Corporation) when the Division Bench has expressed the following opinion at paragraph 6 of the judgment:

"6.The Enquiry Officer is not the competent authority to consider the reply to the charges. It is for the disciplinary authority to consider the reply to charges and on consideration of the causes shown in the reply to decide as to whether to close or to continue with the proceedings by holding domestic enquiry into the charges."

(emphasis is mine).

The Apex Court in **Bilaspur Raipur Kshetriya Gramin Bank and Ors Vs. Madanlal Tandon**, since reported in **(2015) 8 SCC 461** in para 5 and 9 has held as follows:-

“5. Aggrieved by aforesaid decision, the appellants preferred writ appeal, wherein Division Bench of the High Court, after perusing the record, found that although the show cause notice was served along with 17 charges, but no documents were supplied along with the show cause to the respondent. Even the list of documents sought to be relied during the inquiry was not supplied along with the show cause. The Division Bench opined that it is trite law that when a delinquent employee is facing disciplinary proceeding, he is entitled to be afforded with a reasonable opportunity to meet the charges against him in an effective manner. If the copies of the documents are not supplied to the concerned employee, it would be difficult for him to prepare his defence and to cross-examine the witnesses and point out the inconsistencies with a view to show that the allegations are false or baseless. 9. Indisputably, no



documents were supplied to the respondent along with the charge-sheet on the basis of which charges were framed. Some of the documents were given during departmental inquiry, but relevant documents on the basis of which findings were recorded were not made available to the respondent. It further appears that the list of documents and witnesses were also not supplied and some of the documents were produced during the course of inquiry”.

(iii) The Enquiry Officer has held the charges to be proved on the basis of (i) enquiry report of A.I.G.(Prison), (ii) enquiry report of Jailor dated 12.11.2011, (iii) statement of escaped under trial prisoner Mansoor Khan, (iv) U.T. Register dated 11.11.2011, (v) and statement of charge-sheeted employees. However, copies of said documents were never proved before the Enquiry Officer nor the same was supplied to the petitioner. Escaped prisoner statement was not recorded by the Enquiry Officer with liberty to cross-examine him. Answers of petitioner to the questions put by Enquiry Officer has been used against them. No person can be forced to give statement against him which has been done in the present case.

The Apex Court in case of **Roop Singh Negi Vs. Punjab National Bank & Ors**, since reported in **(2009) 2 SCC 570**, has 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. 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 selfsame 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.”

(emphasis is mine)

(iv) In the present case alongwith the memo of charge as framed against the petitioner, statements/imputations of misconduct has not been given which is a mandatory requirement under Rules-2005 and violation of which makes the initiation of proceeding bad in law. The two charges as framed is completely vague and unspecific and in absence of statement of facts/imputation of misconduct makes the entire proceeding



vulnerable and susceptible.

The Apex Court in the case of **Anant R. Kulkarni Vs. Y.P. Education Society and Ors** since reported in (2013) 6 SCC 515, has held as follows:-

“16. Where the charge-sheet is accompanied by the statement of facts and the allegations are not specific in the charge-sheet, but are crystal clear from the statement of facts, in such a situation, as both constitute the same document, it cannot be held that as the charges were not specific, definite and clear, the enquiry stood vitiated. Thus, nowhere should a delinquent be served a charge-sheet, without providing to him, a clear, specific and definite description of the charge against him. When statement of allegations are not served with the charge-sheet, the enquiry stands vitiated, as having been conducted in violation of the principles of natural justice. The evidence adduced should not be perfunctory; even if the delinquent does not take the defence of, or make a protest that the charges are vague, that does not save the enquiry from being vitiated, for the reason that there must be fair play in action, particularly in respect of an order involving adverse or penal consequences. What is required to be examined is whether the delinquent knew the nature of accusation. The charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges”.

(v) The Enquiry Officer has adopted a procedure to conduct the Departmental Proceeding against the petitioner which does not find place in the procedure Rules-2005. The Enquiry Officer has directed for personal hearing of delinquents and has questioned them and noted their answers to prove



charges. He has assumed the role of Presenting Officer ignoring that he is performing duty of a Quasi Judicial Authority and is not representative of the Department or the Disciplinary Authority. The charges are to be proved by the department on the basis of oral and documentary evidence as enclosed in memo of charge which has to be placed by the Presenting Officer before the Enquiry Officer. In the present case, the charges against petitioners have been held to be proved on the basis of question put by the Enquiry Officer and answered by the petitioner which is not permissible.

(vi) Enquiry Officer has to conduct enquiry in a fair and impartial manner. The burden to prove charges is on Presenting Officer who represents department. The Apex Court in case of **State of Uttar Pradesh Vs. Saroj Kumar Sinha** since reported in **2010 (2) SCC 772** in paragraph No. 28 has outlined the role of enquiry officer in departmental proceeding.

“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.”

(vii) The Enquiry Officer has held petitioner guilty of charges on the basis of preliminary enquiry dated 19.11.2011 conducted by A.I.G (Prisons) in which petitioner was found to be *prima facie* guilty of the misconduct. A preliminary enquiry is conducted by the Disciplinary Authority only to ascertain whether there are sufficient materials against the delinquent to conduct regular departmental enquiry for his lapses or not and same cannot be considered as an evidence against the delinquent in the regular departmental enquiry. Moreover, said preliminary enquiry was conducted by an authority who is higher to the Enquiry Officer and Enquiry Officer being subordinate to said authority it cannot be expected that he will overrule the finding of his superior authorities as such there is violation of principles of natural justice, while conducting the departmental enquiry against the petitioner. If the Enquiry Officer has taken into account the report dated 19.11.2011 of the A.I.G (Prisons) which is against petitioner, he should also take the report conducted by the Superintendent of Jail, in which petitioner was not found guilty. The Enquiry Officer has relied upon preliminary enquiry dated 19.11.2011, then a copy of said preliminary enquiry is to



be given to the delinquent otherwise the whole proceeding stands vitiated.

This Court in case of **Hari Sharan Thakur Vs. State of Bihar & Ors** since reported in **2008(2) PLJR 49** in para 8 has held as follows:-

“8. Is settled law in service jurisprudence that in a departmental enquiry and/or a departmental proceedings, if there be any preliminary or primary investigation on basis of which a departmental enquiry or departmental proceedings is taken, the delinquent is mandatorily required to be given a copy of such preliminary or primary investigation report, failing which the entire proceedings are vitiated. It has been held that in that event serious prejudice is caused to the delinquent that he does not have full information of the case that he is required to meet. If an authority be needed for the purpose, reliance may be placed upon the judgment of the Apex Court reported in Union of India and Ors. V. Md. Ibrahim”.

(viii) In the report of A.I.G (Prison) dated 19.11.2011, there is a clear finding that Home Guard Ramadhar Singh, was not present at the place of his duty as a result of which under trial prisoner Mansoor Khan got the opportunity to flee away from the Jail. Surprisingly, the person who is alleged to have been responsible for escape of under trial prisoner was not chargesheeted and there is nothing to show that said Home Guard Ramadhar Singh was departmentally proceeded. The authority has also referred Jail Manual 102-in the event of an escape taking place Head Warders shall be held primarily



responsible unless he can satisfactorily prove that the escape was due to no laxity of duty on their part. He has also referred Jail Manual-384 and 180 Clause-1 which explains difference between willfully or negligently permitting an escape. In the present case, there is no allegation that petitioner had connived or conspired or was instrumental in escape of under trial prisoner. Department could not explain that what was the negligence or reckless act committed by the petitioner leading to escape of under trial prisoner. No Rules or Circular has been cited by the department against petitioner in support of said laxity or non observance of any Rule or instruction or guideline by the petitioner. It was not within his duty or responsibility to post the Warder at a particular place and his duty was only to inform the Jailor if during inspection of the Jail premises in morning/evening he finds lapses on part of any Warder and in present case Home Guard Ramadhar Singh, was not found at his place of posting and same was reported to the Jailor and thereafter, petitioner had other duties to be discharged by him till the evening by which time the under trial prisoner Mansoor Khan had escaped.

(ix) The under trial prisoner Mansoor Khan, who had escaped was accused of committing theft and was aggrieved



as his family members were not taking any interest for his bail, otherwise most likely he would have been enlarged on bail. He was sick and was undergoing treatment in hospital ward and also appears to be mentally unsound and made an attempt to escape on earlier occasion also and his hands and legs were cuffed but subsequently due to his illness and medical and physical conditions those cuffs were removed by order of higher authorities.

(x) The Enquiry Officer has relied upon the statement of under trial prisoner Mansoor Khan who had escaped but he was never produced before the Enquiry Officer or examined by him with an opportunity to petitioner to cross-examine him, as such same cannot be relied upon by the Enquiry Officer to prove the charges against petitioner.

15. The nature of allegation is not very grave. Allegation is of negligent act and not of a willful act, as such, even charges were held to be proved did not warrant extreme punishment of dismissal from service or 100 per cent forfeiture of pension which amounts to snatching away the right of livelihood of a retired Govt. employee and his family and to make him starve particularly who are in the lowest rung of the service cadre. The manner in which the departmental proceeding



has been conducted it appears that authorities were predetermined to punish him as he had blamed senior officers of Jail Administration for their lapses and latches for escape of under trial and imposed extreme punishment which was totally uncalled for, unjustified and unwarranted in view of nature of allegations and charges.

16. For the reasons as stated above, the order dated 12.03.2014 passed by Inspector General Prison and Reforms Service, Government of Bihar, Patna, order dated 20.03.2014, and 14.07.2014 passed by the Appellate Authority, Principal Secretary, Department of Home, Govt. of Bihar, is set aside and since petitioner has retired from the service, he is directed to be granted all post retiral benefits i.e. 100 per cent pension, 100 per cent gratuity and all other retiral dues from the date of superannuation as well as difference of salary during the period petitioner remained under suspension and same to be paid to the petitioner within three months from the date of production/receipt of a copy of the order passed by this Court.

17. Since, petitioner has retired from service and in order to save him from any further humiliation and harassment, this Court does not find that nature of charges are grave enough to grant respondent-authorities to initiate fresh proceedings



against the petitioner.

The writ petition is allowed.

(S. Kumar, J)

Rajiv/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	18.06.2019
Transmission Date	NA

