

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21812 of 2014

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Sadanand Yadav Son of Kapildeo Yadav Resident of village- Kajichanu,
Police Station- Bariyarpur, District- Munger.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary-cum-Commissioner, Department of Home, Govt. of Bihar, Patna.
3. The I.G. Jail and Reforms, Govt of Bihar, Patna
4. The Joint Secretary-cum-Director Administration Department of Jail and Reforms.Home,Govt.of Bihar,
5. The Superintendent-cum-Conducting Officer, Central Jail, Motihari East Champaran

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh Mr.Ram Binod Singh
For the Respondent/s	:	Mr.Dev Kumar Pandey, AC to GP2

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 27-08-2019

Heard counsel for the petitioner and counsel for the
respondents-State.

Petitioner was posted as reserved guard at the gate in Sub-Division jail, Bettiah, West Champaran. By issuance of charge memo, he has been proceeded against upon an allegation that while he was on duty in jail, one under trial prisoner Gorakh Thakur was allowed to carry a battery inside the ward. Petitioner failed to detect the same and did not make any search or report the same. It is alleged that one pistol and seven cartridges were kept inside the battery. The battery had subsequently been broken open.



Pistol and seven cartridges had been taken out by the said inmates inside the jail, which had been detected in an inspection.

Petitioner's defence in the enquiry was that battery had been allowed inside the jail with specific permission of the Jailer.

Mr. Singh, counsel appearing for the petitioner submits that though permission for carrying battery inside the jail is attributed to the Jailer by the petitioner, Jailer was made Presenting Officer in the proceedings initiated against the petitioner on the basis of charge memo dated 24.07.2012.

Petitioner along with another warder and one Sudarshan Singh who was also posted as gate warder was proceeded against on the basis of different charge memo containing the same allegation. Enquiry report submitted by the Enquiry Officer in respect of all three persons is common. The report of the Enquiry Officer is dated 09.01.2013. Charge against the petitioner has been proved. Consequence is also one and the same as the petitioner has been dismissed from service like other two co-delinquents.

Mr. Singh further submits that proceedings against the petitioner being one and the same as that against co-delinquent Sudarshan Singh. Infirmities in the process are same. No evidence or witness has been produced in support of charge. Presenting Officer did not discharge his obligation and in fact, Enquiry



Officer assumed role of Presenting Officer to himself consider the charge and recorded finding that charge was proved. The procedural infirmity regarding Presenting Officer not performing duty by producing evidence or witness and assuming role of the Presenting Officer in view of decision of the Apex Court in the case of State of Uttar Pradesh vs. Saroj Kumar Sinha reported in (2010) 2 Supreme Court cases 772 is also found in the instant proceedings. After considering such procedural infirmity in the procedure adopted by the respondent-authorities, this court in the writ petition filed by Sudarshan Singh (co-delinquent) has quashed the order of punishment and granted consequential benefit to that petitioner with liberty to the respondent-authorities to proceed afresh against the petitioner as per extant rule and if law so permits.

In view of the aforesaid submissions, this court had earlier granted time to the State counsel to examine the issue whether there was any distinction in case of the petitioner with that of Sudarshan Singh. Time was also allowed to find out whether appeal has been preferred against the order dated 01.03.2019 passed in CWJC no. 21186/2014 in the case of Sudarshan Singh (co-delinquent). The specific stand of the State in the supplementary counter affidavit is that the authorities have taken a



decision that they would proceed afresh in light of order of this court dated 01.03.2019 passed in CWJC no. 21186/2014.

In consideration of the aforesaid facts, this court would observe that enquiry report holding charge proved against the petitioner is product of common exercise undertaken against the petitioner as well as Sudarshan Singh (co-delinquent). Enquiry report further suffers from same infirmities as in respect of charge against the petitioner also, no witness or evidence has been produced in the enquiry.

Failure on the part of Presenting Officer to discharge his duty in the instant case is also violative of the law requiring fairness from the Enquiry Officer as per decision of the Apex Court in the case of Saroj Kumar Sinha (supra).

Process is same. Enquiry Officer is the same. Enquiry report is same and infirmities are also same in case of the petitioner as has been found in the case of Sudarshan Singh in CWJC no. 21186/2014 which as per stand of the respondent-authorities has not been assailed. In fact, there is specific assertion that the authorities are only going to avail liberty to proceed afresh in compliance of order dated 01.03.2019 passed in CWJC no. 21186/2014.



Admitted position is therefore, that the authorities upon going through the order passed in CWJC no. 21186/2014 and findings therein, in respect of infirmities in the process, took a decision to proceed afresh against Sudarshan Singh (co-delinquent). That being so, no further adjudication is required in the instant proceedings. Common enquiry report in respect of the petitioner suffering from same infirmities therefore, is also quashed. Petitioner as a result of quashing of enquiry report and the order of punishment dated 11.03.2014 as well as order dated 24.10.2014 whereby appeal of the petitioner has been rejected would be entitled to all his consequential benefits.

However, it will be open for the respondents-authorities in terms of liberty granted in the case of Sudarshan Singh to proceed against the petitioner, as permissible in law.

(Madhuresh Prasad, J)

s.hassan/-

AFR/NAFR	NAFR
CAV DATE	NA
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