

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21186 of 2014

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Sudarshan Singh Son of Late Kauleshwar Singh R/o Village Fakarpur, P.S.
Arwal, District Arwal

... .. Petitioner

Versus

1. The State Of Bihar
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, Patna
5. The Superintendent cum Conducting Officer, Central Jail, Motihari East Champaran
6. The Superintendent Divisional Jail, Bettiah West Champaran

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh Mr. Prashant Sinha Mr. Ram Binod Singh
For the Respondent/s	:	Mr. Birju Prasad, GP 13 M/s Ajit Anand, Anand Kumar, Ashok Kumar & Sweta Prasad All AC to Gp 13

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 01-03-2019

Heard learned Counsel for the petitioner and the learned
Counsel for respondent State

2. The petitioner was on gate duty at Divisional Jail, Bettiah, West Champaran. He was Gate Warder and the allegation is that on 24.7.2012 when the prisoners returned from their court production, then one prisoner Gorakh Thakur was allowed to carry a battery inside the jail. A show cause was issued to the petitioner



in this respect on 25.7.2012. The same was responded on the same day by the petitioner.

3. It is submitted by Counsel appearing for the State, with reference to Annexure 'C' of the supplementary counter affidavit, that in the said response to show cause the petitioner had admitted the fact that he had allowed the battery to be taken inside the jail premises. On basis of such alleged admission of the petitioner he was not visited with any penal consequence. The respondents on the contrary chose to initiate a proceeding against the petitioner.

4. Charge memo was served on the petitioner on *prapatra ka* dated 20.10.2012. The charge were the same that on 24.7.2012 while the petitioner was on duty as Gate Warder between mid-day till evening he had not performed his duties diligently and that he had allowed one Gorakh Thakur, prisoner, to carry a battery inside the jail premises. The allegation was also that by breaking upon the battery inside the jail premises, inmate Gorakh Thakur had taken out country made pistol and seven bullets smuggled inside the battery, which had subsequently been seized during a search operation. The smuggling of the country made pistol and the bullets in the battery was the second part of the allegation. In the charge memo it is also alleged that the



petitioner had not informed the Jailor about the fact of allowing the battery to be carried inside the jail premises.

5. The petitioner before the Enquiry Officer took a defence that one Jagat Narayan Paswan, who was Jailor at that point of time, had in fact permitted the battery to be carried within the jail. Since defence of the petitioner was that the battery had been allowed inside the jail with permission of the Jailor, the petitioner raised objection regarding very same Jailor being appointed as the Presenting Officer in the enquiry which was being conducted against him.

6. The Enquiry Officer, by his enquiry report dated 9.1.2013 has held the charge against the petitioner to be proved.

7. A second show cause notice was issued by the Joint Secretary -cum- Director, Administration, Bihar in the Home Department along with copy of the enquiry report. The petitioner submitted his second show cause on 1.12.2013 (Annexure 13 of the writ petition). After submission of the petitioner's response to the second show cause the petitioner has been visited with punishment of dismissal from service under Order dated 11.3.2014 contained in Memo No. 1300 issued by Inspector General, Jail & Reforms (Department of Home) Bihar, Patna.



8. Against the order of dismissal, petitioner has preferred an appeal before the State Government. Principal Secretary, Department of Jail and Reforms (Home) Government of Bihar under order dated 16.10.2014 contained in Memo No. 5446 has rejected the appeal filed by the petitioner.

9. The writ petition has been filed in the aforesaid background challenging the entire proceedings from the stage of issuance of charge memo dated 25.10.2012 up till order issued by the Appellate Authority dated 16.10.2014.

10. The brief submissions advanced on behalf of the petitioner is that the proceedings were conducted in a manner contrary to the provisions of the Bihar CCA Rules 2005. Right from issuance of charge memo the authorities have committed violation of principles of natural justice and fairness by not observing the procedure prescribed under the Bihar CCA Rules 2005. At the very outset while submitting the charge memo the authorities have violated Rule 17(13) & (14) of the Bihar CCA Rules as they have not enumerated any witness in support of six documents which have been enclosed along with the charge memo as evidence in support of the charges.

11. Referring to the provisions contained in Rule 17(3) (4) of the Bihar CCA Rules 2005, Counsel for the petitioner



submits that under the said provision it was incumbent upon the authority issuing the charge memo to place along with the same a list of witnesses by whom all articles of charges were proposed to be sustained. In absence of such details the petitioner is deprived of his opportunity of preparing his defence properly. Non compliance with the aforesaid provision strikes at the root of fairness in the proceedings conducted against the petitioner.

12. Even though no evidence or witness has been produced by the Presenting Officer, the Enquiry Officer assuming the role of Presenting Officer has admitted documents mentioned in the charge memo and by relying upon the same in absence of any witness has proceeded to hold the petitioner guilty of the charges. Such procedure is also in violation of Rule 17(14) of the Bihar CCA Rules 2005. The objection in this respect raised by the petitioner before the Disciplinary Authority have not been considered and the Appellate Authority also has rejected the petitioner's appeal without considering the aforesaid infirmities in the procedure adopted in course of enquiry. In the aforesaid manner, Counsel for the petitioner submits that he has been visited with sever punishment of dismissal from service without compliance of the prescribed procedure under Bihar CCA Rules



2005 entire proceedings are vitiated as being violative of principles of natural justice and fair play.

13. Counsel for the respondent State, on the other hand, submits referring to the enquiry report, that witnesses have been examined in course of proceeding. It is also submitted that the petitioner was under an obligation to enter all articles being carried by the prisoners inside the jail in the Gate Register. All other articles brought by the various inmates including Gorakh Thakur have been entered in the Gate Register but surprisingly the petitioner has omitted to enter the battery which was carried inside the jail by the said inmate. It is also submitted that the battery being a prohibited article containing Acid, the petitioner should not have allowed the same inside the jail premises.

14. Referring to the petitioner's response to the earlier pre enquiry show cause dated 25.7.2012, it is submitted that even prior to initiation of the proceeding, the petitioner in response to the said show cause had actually admitted to the lapse of allowing the battery inside the jail premises.

15. It is also submitted by Counsel for the State that entire aspect of the matter has been considered by the Disciplinary Authority. The Disciplinary Authority has taken note of the fact that the plea of being deprived of opportunity to cross-examine the



witnesses is baseless as no requisition was made for such cross-examination. By making the aforesaid submission and reiterating gravity of the allegations, it is submitted by the State Counsel that the petitioner is not entitled to any leniency in the matter. In view of nature of the misconduct committed by the petitioner, the award of punishment of dismissal is fully justified.

16. In reply to submissions made on behalf of the State, petitioner's Counsel has submitted that the petitioner's response to show cause dated 25.7.2012 was never produced in the enquiry.

17. The said documents in the opinion of the Court were required to be produced in the enquiry after serving copy on petitioner and looked into by the Enquiry Officer if the same was to be relied upon for inflicting any penal consequences upon the petitioner. The same having not been done, the respondents cannot be permitted to place reliance on the said response dated 25.7.2012 to sustain the illegal conclusion arrived at in course of the proceedings *dehors* the procedure prescribed under the Bihar CCA Rules 2005.

18. In this connection reference is made to the judgment in the case of ***Subodh Kumar Prasad vs. State of Bihar reported in 2001 (3) PLJR 187 (SC)***. There also the Enquiry Officer had formed the conclusion without looking into actual nature of letter



of appointment issued to the appellant. By looking at the Dispatch Register and because the same did not record issuance of appointment letter in favour of the petitioner, the authorities had concluded that the appointment letter of the petitioner was forged. The Apex Court in the said judgment was pleased to hold as follows:-

"What should have been really examined in the case is the letter of appointment itself and not the mere registers which indicate dispatch of letters. If the letter of appointment issued to the appellant was a fake one there was certainly a cause for disciplinary action, but not by merely looking to the register such conclusion could be inferred for numbers noted therein may have been as a result of mistake. Therefore, the inquiry should have been as to the actual nature of the order of the letter of appointment issued to the appellant. That inquiry was not done by the learned Single Judge."

19. The petitioner's specific plea of the battery having been allowed with the permission and order of the Jailor was required to be looked into. For the purpose of concluding the petitioner's guilt and awarding punishment, the authorities have relied upon the petitioner's response dated 25.7.2012 made pursuant to same show cause at the pre enquiry stage prior to initiation of the proceedings in question. The petitioner has never been confronted with the said response which is attributed to him.



The respondents have placed reliance on the same without confronting the petitioner with the said response. The fact whether the response was his, and what is the nature of admission thereunder was required to be considered in the proceedings after giving a copy of the same to the petitioner.

20. The Court would find that none has appeared in support of the documents or the charges made in the charge memo. From perusal of enquiry report (Annexure 6) it is evident that the same does not take into consideration any witness in support of the allegations. From perusal of the enquiry report, it is also apparent that the Presenting Officer did not in any manner discharge his duties cast upon him under Rule 17(14). The Presenting Officer has not produced any evidence or witness in support of the charges. Procedure adopted by the Enquiry Officer, by assuming the role of Presenting Officer is also in violation of law laid down by Apex Court in the decision of *State of Uttar Pradesh vs. Saroj Kumar Sinha*, reported in (2010) 2 SCC 772.

21. For the reasons indicated hereinabove, this Court would conclude that the order of punishment dated 11.3.2014 issued by the Inspector General, Jail Reforms (Department of Home), Bihar, Patna is not sustainable in law in view of various procedural lapses noticed by this Court. As a consequence of



quashing of the said order by the Disciplinary Authority the order dated 16.10.2014 dismissing the petitioner's appeal against the said order, which has been issued by the Principal Secretary, Department of Jail & Reforms (Home), Bihar, Patna, is also unsustainable as the appellate authority has failed to consider the said procedural infirmities. Both the said orders are quashed. The petitioner as a result of quashing of the impugned orders would be entitled to grant of consequential benefits.

22. The order of this Court, however, would not preclude the respondent authorities from proceeding against the petitioner as the extant rules and law permit.

23. The writ petition is allowed.

(Madhuresh Prasad, J.)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	06-03-2019
Transmission Date	N/A

