

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16048 of 2016

Harakhnandan Chaudhary, aged about 54 years, Son of Tunur Chaudhary, permanent resident of village- Khidarchak, P.O.- Soh Saharai, P.S.- Rahui, District- Nalanda, at present Residing at Mohalla- Krishnapuri, Khandakpar, P.O. Bihar Sharif, P.S. Bihar Sharif, District- Nalanda.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Revenue and Land Reforms, Govt. of Bihar, Patna.
3. The Divisional Commissioner, Patna Division, Patna.
4. The Collector and District Magistrate, Nalanda.
5. The Sub-Divisional Officer, Hilsa, Nalanda.
6. The Sub-Divisional Officer, Rajgir, Nalanda.
7. The Additional Collector, Departmental Enquiry - cum- Conducting Officer, Nalanda.
8. The Additional Collector, Nalanda.
9. The Circle Officer, Hilsa, Nalanda.
10. The Circle Officer, Giriyak, Nalanda.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Yogesh Chandra Verma, Senior Advocate Mr. Satish Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Sajid Salim Khan- SC-25 Ms. Prakritita Sharma, A.C. to S.C.-25

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date : 10-07-2019

Heard learned counsel for the petitioner and
learned counsel for the State.

2. In this case, the petitioner is challenging the order contained in memo no. 2732 dated 25.09.2013, passed by the



Collector-cum-District Magistrate, Nalanda, whereby and whereunder the petitioner has been dismissed from service. The same was challenged before the Divisional Commissioner, Patna, in Service Appeal No.142 of 2014, who vide order dated 26.04.2015, dismissed the appeal filed by the petitioner.

3. The petitioner was working as Halka Karamchari, while he was posted at Hilsa, a trap was conducted and he was caught red-handed of taking bribe, that led to institution of Vigilance P.S. Case No.53 of 2003 (Special Case No.13 of 2003) and later on, led to initiation of departmental proceeding and altogether five charges have been levelled against the petitioner and he was asked to appear in the departmental proceeding. The Additional Collector was appointed as the Inquiry Officer and accordingly, the departmental proceeding was started. The petitioner, at the initial stage, has taken plea for staying the proceeding on account of fact that identical matter is pending for trial in the Criminal Court, but the Inquiry Officer refused to pay any attention to the objection raised by the petitioner, accordingly, the inquiry proceeding was continued.

4. The Inquiry proceeding shows that the charges have been found to be proved on *ipse dixit* manner as the foundational evidence to prove the charge is missing from the



record. It is the fundamental duty of the prosecution either in a criminal case or a departmental proceeding to prove the charge as in the criminal case, the charge has to be proved beyond reasonable doubt, but in the departmental proceeding, it is based on preponderance of probability, meaning thereby, there should be sufficient material to arrive to a finding of the guilt. In the Judicial Review, the Court will see the decision making process whether the departmental proceeding has been conducted in a proper manner having any material to substantiate the allegation and in the event, failure of the prosecution to bring on record the legal evidence, the person cannot be punished.

5. It has been pointed out by learned counsel for the State that first departmental proceeding with regard to vigilance case was dropped and a fresh departmental proceeding was initiated by issuance of "Prapatra-K", in which five allegations have been made, which are as follows:-

(i) To remain absent from his working area.

(ii) Disobeying the order of the higher authority or controlling authority

(iii) Creation of Jamabandi at his own manner.

(iv) Issuance of rent receipt to different persons with regard to the same piece of land.



(v) Even after the approval of Dakhil Kharij, failure to make necessary correction in the register or the record.

6. The Inquiry Report itself depicts that the charges have been proved without any material evidence, inasmuch as neither any witness has been examined nor any documentary evidence has been brought to prove the charges made against the petitioner and the finding has been recorded without any material evidence. Merely on the basis of allegation as well as reply submitted by the present petitioner, who in his show-cause always contradict the allegation made against him, the charges have been found proved against the petitioner.

7. The law in this line is very much clear that for proving of charge, oral and documentary evidence requires to be brought on record, failure to bring the same violates the basic principle of the departmental inquiry. Reference can be made to the decision of the Hon'ble Supreme Court rendered in the case of *Roop Singh Negi vs. Punjab National Bank and Ors.* reported in (2009) 2 SCC 570 and *State of Uttar Pradesh Vs. Saroj Kumar Sinha* reported in (2010) 2 SCC 772. In both the cases, the Hon'ble Supreme Court has elaborately discussed the manner the inquiry is to be conducted and the charge is to be



proved. In this regard, reliance can also be made to the decision of the Hon'ble Supreme Court in the case of *B.C. Chaturvedi vs. Union of India* reported in *A.I.R. 1996 S.C. 484*, wherein the Hon'ble Supreme Court has held that while exercising the power of judicial review the Court has to see the decision making process not the decision, in the event the finding is based on no evidence or the finding is perverse, then the Court would interfere with the order.

8. This Court finds that the present case is covered by the aforesaid judgments, as in the present case it appears that the finding has been recorded without any material evidence as neither any documentary evidence has been brought nor any witness has been examined to prove the charge levelled against the petitioner.

9. In such view of the matter, the order contained in memo no. 2732 dated 25.09.2013 passed by the Collector-cum-District Magistrate, Nalanda, is set aside. In consequence, the order of the Divisional Commissioner dated 26.4.2016 passed in Service Appeal No.142 of 2014 is also set aside. The matter is remanded back for fresh inquiry in accordance with law. The respondents are directed to complete the inquiry proceeding within a period of six (6) months from the date of



receipt/production of a copy of this order in terms of the law laid down by the Hon'ble Supreme Court in the above judgments as indicated hereinabvoe. Any payment will be subject to result of the departmental proceeding.

10. With the aforesaid observations and directions, this writ petition is allowed to the above extent.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	15.07.2019
Transmission Date	

