

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11374 of 2011

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RAM DAHIN YADAV , son of Late Dharichan Yadav r/o village Birpur Nagma, PS
Naubatpur, District Patna

... .. Petitioner

Versus

1. THE STATE OF BIHAR through Secretary Home (Prison) Government of Bihar,
Patna
2. The Inspector General Prison Government of Bihar Patna
3. The Superintendent of Aadrass Beur Jail Patna

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Asif Kalim

For the Respondent/s : Mr. Ajay Kumar Ojha, JC to SC 14

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 15-07-2019

Petitioner has approached this Court assailing the punishment inflicted upon him on account of procedural lapses conducted by the authorities in course of enquiry arising out of charge memo dated 16.3.2004.

The petitioner was Warder at Sub Jail, Danapur. He was served with a charge memo in relation to an occurrence dated 13.2.2004 when certain outsiders had entered the jail gate, hurled bombs, resorted to firing and facilitated fleeing away of some inmates from the jail. The petitioner was also attributed responsibility in respect of the said occurrence. The charge memo alleged that at a time the petitioner had brought 20 – 25 inmates for “*Mulakati*”. Allegation is that the petitioner had not obtained the orders/permission of the competent authority and that 20 – 25 inmates had been brought for *mulakati* without having their forms filled up.

The proceedings were conducted by Superintendent of Divisional Jail, Bihar Sharif namely Udai Kumar Kushwaha who was the enquiry officer.



Counsel for the petitioner submits that no material whatsoever was brought on record in support of the allegation. No evidence, oral or documentary, was placed on record after giving copies to the petitioner. In fact the petitioner's demand for certain documents, which he had made in response to the charge memo as well as in his reply to the second show cause, was not exceeded by the authorities. Entire procedure was unfair and in violation of principles of natural justice. The authorities have also flouted the procedure prescribed under Rule 17(14) of the Bihar CCA Rules 2005. In the proceeding before the Enquiry Officer, there was no Presenting Officer. In fact, the Enquiry Officer has proceeded with the enquiry arrogating upon himself the role and responsibility of Presenting Officer.

Such conduct of the Enquiry Officer is a glaring proof of the fact that the proceedings were not conducted fairly. This Court would refer to decision of the apex court in the case of *State of Uttar Pradesh vs. Saroj Kumar Sinha* reported in (2010) 2 SCC 772. Status of the Enquiry Officer while discharging a quasi judicial duty requires that he should maintain complete fairness. The Enquiry Officer by no standards of fairness can be permitted to act as an agent of the department as has been done in the instant case. The petitioner has not been given a fair treatment at the enquiry which was conducted without any Presenting Officer on behalf of the department. On the basis of such a proceeding the petitioner had been visited with punishment reverting him to his initial scale of pay by order of the Disciplinary Authority dated 17.12.2004.

The order dated 17.12.2004 was modified by the Inspector General Prisons, i.e. Appellate Authority. Upon modification, the punishment that has been inflicted upon the petitioner is for withholding of five



increments with cumulative effect and the petitioner has also been deprived of all dues other than subsistence allowance for the period of suspension.

The fact that the petitioner was not allowed copies of the documents requested by him, which have been relied upon by the Enquiry Officer and the fact that the Enquiry Officer has proceeded to consider the matter in absence of the Presenting Officer by acting as a agent of the department, cannot be countenanced. The procedure adopted by the Enquiry Officer is in violation of settled principle of law with regard to conduct of departmental proceedings.

The order dated 17.12.2004 is therefore quashed. The order dated 8.11.2006 issued by the Appellate Authority upholding conclusion of the Disciplinary Authority and toning down the punishment must therefore collapse. The same is also quashed. As a result of quashing of the punishment order the petitioner would be entitled to consequential benefits in accordance with law.

The writ petition stands allowed.

(Madhuresh Prasad, J)

SNkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
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