

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.4050 of 2016**

=====

Sikandar Jha S/o Late Mangal Jha resident of Village- Baijudih, P.S.-  
Amarpur, District- Banka. at present working as Warden, Shahib Khudi Ram  
Bose Central Jail, Muzaffarpur, District- Muzaffarpur.

... .. Petitioner

Versus

1. The State Of Bihar through the Principal Secretary, Govt. of Bihar, Patna
2. The Principal Secretary, Home, Govt. of Bihar, Patna.
3. The Home Commissioner, Government of Bihar, Patna.
4. The Inspector General Prisons and Reform Services, Bihar, Patna.
5. The Jail Superintendent, Adarsh Central Jail, Beur, Patna.

... .. Respondents

=====

**Appearance :**

For the Petitioner/s : Mr. Subodh Kumar Jha  
Mr. Krishna Kumar

For the Respondent/s : Mr. H.S.Roy, AC to AG

=====

**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD**  
**ORAL JUDGMENT**

**Date : 19-06-2019**

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

2. The petitioner along with one Lady Warder, namely  
Runi Devi, were deputed at PMCH as one lady prisoner Rekha  
Devi was referred for treatment by the jail doctor. The said inmate  
Rekha Devi escaped on 21.6.2007 at 9.30 PM from the bathroom  
of the hospital. Charge memo dated 20.7.2007 was served on the  
petitioner alleging that petitioner had failed to perform his duties  
with due diligence and due to lapse on his part the lady inmate had  
escaped from the hospital.



3. Proceedings were conducted upon the said charge memo and enquiry report dated 19.7.2010 was sent to the I.G. Prisons. On finding the same to be suffering with infirmity in the process adopted, the matter was remanded to the Enquiry Office on 22.10.2010 to submit enquiry report afresh after affording due opportunity to the petitioner and other lady warder.

4. On premise of the aforesaid admitted facts, Counsel for the petitioner submits that in spite of the matter having been considered afresh pursuant to direction dated 22.10.2010 issued by the I.G. Prisons, the authorities have again committed grave procedural lapses in the enquiry.

5. It is submitted that no evidence, documentary or oral, was adduced in support of the charges before the Enquiry Officer. The proceedings were concluded in absence of the Presenting Officer and conclusions of the enquiry report are without assigning reasons in support thereof. The said procedural lapses were raised by the petitioner before the Disciplinary Authority in his response to the second show cause (Annexure 8). However, without considering the aforesaid lapses the Disciplinary Authority by order dated 29.12.2014 has proceeded to award the petitioner punishment of withholding four annual increments.



6. Aggrieved by the said order the petitioner approached this Court earlier in CWJC No. 4546 of 2015. The writ petition was disposed of with liberty to the petitioner to avail remedy of appeal.

7. Drawing attention of the Court towards order passed by the Appellate Authority, it is submitted by Counsel for the petitioner that the Appellate Authority has failed to take into consideration the aforesaid lapses. In a most mechanical manner order of the Disciplinary Authority has been affirmed without even considering the various issues of grave procedural lapses raised by the petitioner.

8. Learned State Counsel has appeared. He has submitted that the procedure prescribed under the Bihar CCA Rules 2005 has been followed. Adequate opportunity has been granted to the petitioner. It is also submitted that the petitioner has committed serious lapse in allowing the said inmate to escape from custody. In the circumstances, State Counsel submits that this Court should not grant any relief to the petitioner.

9. The enquiry report dated 24.12.2012 clearly shows that no evidence, documentary or oral, was produced before the Enquiry Officer. It is also apparent from the enquiry report that proceedings were adjourned on several occasions such as



10.3.2011, 19.5.2011, 30.5.2011 as well as 15.6.2011.

Adjournments were granted to ensure that the Presenting Officer participated in the proceedings and present the case on behalf of the department. In spite of several adjournments, from perusal of the enquiry report, it is evident that the Presenting Officer had never appeared in the proceeding. The proceedings therefore were conducted by the Enquiry Officer himself discharging the duties of the Presenting Officer. Such conduct of the Enquiry Officer itself would vitiate the proceedings for want of fairness.

10. In this regard, this Court would refer to judgment of the Apex Court in the case of *State of Uttar Pradesh Vs, Saroj Kumar Sinha* reported in *(2010) 2 SCC 772*. The fairness required from the Enquiry Officer while discharging quasi judicial functions has been emphasised by the Apex Court in the said judgment. Situation, such as in the instant case, where the Enquiry Officer arrogated upon himself responsibility of Presenting Officer would result in injustice to the delinquent.

11. Apex Court has laid down the law in this regard that Enquiry Officer acting as an independent adjudicator is not supposed to be a representative of the department. Enquiry Officer has to conduct the proceedings in such a manner that justice is not only done, but is manifestly seen to be done. Conduct of the



Enquiry Officer in the instant case is contrary to the law laid down in the case of *Saroj Kumar Sinha (Supra)*. By performing the duties and discharging the role of the Presenting Officer, the Enquiry Officer in the instant proceedings has given rise of a reasonable likelihood of bias. He, on his own had gone on to record the statement of the petitioner (delinquent) and concluded his guilt without any evidence whatsoever.

12. It is clear from the enquiry report that no evidence whatsoever has been produced in the enquiry. There appears to be total violation of procedure prescribed under Rule 17(14) of the Bihar CCA Rules 2005 as also violation of law as emphasised by the Apex Court in the case of *Saroj Kumar Sinha (supra)*. The proceedings before the Enquiry Officer thus stands vitiated on the aforesaid grounds.

13. The Disciplinary Authority in the order dated 29.12.2014 has miserably failed to consider the aforesaid aspect highlighted by the petitioner in his response to second show cause notice. Punishment as a result therefore is dehors the procedure prescribed for conduct of the proceedings. The order of the Disciplinary Authority dated 29.12.2014 is thus grossly unjust and unsustainable. The punishment dated 29.12.2014 is therefore quashed.



14. The order of the Appellate Authority dated 31.7.2015 is a mere affirmation of the illegal order passed by the Disciplinary Authority which suffers from grave procedural lapses as taken note of hereinabove. In the circumstances, the order of the Appellate Authority dated 31.7.2015 rejecting petitioner's appeal and affirming order of the Disciplinary Authority is also unsustainable and must collapse. The order dated 31.7.2015 issued by the Appellate Authority is also quashed.

15. As a result of quashing of the impugned orders petitioner would be entitled to consequential benefits in accordance with law.

16. The writ petition stands allowed.

**(Madhuresh Prasad, J.)**

SNkumar/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | NAFR       |
| CAV DATE          | N/A        |
| Uploading Date    | 22.06.2019 |
| Transmission Date | N/A        |

