

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1661 of 2018

In
Civil Writ Jurisdiction Case No.620 of 2018

-
1. The State of Bihar through the Principal Secretary, Department of Home (Prison), Government of Bihar, Patna.
 2. The Inspector General, Prisons & Correctional Services, Bihar, Patna.
 3. The Joint Secretary-cum- Director (Prison), Prisons & Correctional Services, Bihar, Patna.

... .. Appellant/s

Versus

Moti Lal, Son of Late Baijnath Prasad, resident of- Ward No. 11, P.S. Bhabhua, Police Station- Bhabhua, District- Kaimur (Bhabhua).

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. P.K. Verma, Sr. Advocate Mr. Saroj Kumar Sharma, (AC To AAG 3)
For the Respondent/s	:	Mr. Bindhyachal Singh, Advocate Mr. Satya Prakash, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 02-01-2019

I.A. No.8834 of 2018

Heard Sri P.K. Verma, learned A.A.G. 3 for the State of Bihar and Sri Bindhyachal Singh for the respondent-petitioner.

The delay of 160 days has been explained and we are satisfied to allow this application as sufficient cause is on record.

The appeal shall be treated to be within time.

L.P.A. No.1661 of 2018

This appeal arises out of the impugned judgement dated 14th May, 2018 whereby the learned Single Judge has quashed the punishment order dated 17th July, 2017 and also the order on the



review petition dated 6th October, 2017, as a consequence whereof the respondent-petitioner is to be extended all consequential benefits. The challenge raised is that the learned Single Judge has committed an error in allowing the writ petition in spite of the fact that there was ample material on record, including evidence, which remained unrebutted and, therefore, once the charges had been found to be proved and there was no procedural error, there was no occasion to allow the writ petition and set aside the punishment order of compulsory retirement.

Sri Verma has urged that all the charges that were part of the charge-sheet were made known to the respondent-petitioner and he had full opportunity to contest the same, yet he did not choose to lead any evidence so as to demolish the gravity of the charges or the contents thereof and, even otherwise, the reply given by the respondent-petitioner to the 1st and 2nd show cause notices clearly demonstrates that the respondent-petitioner had practically admitted the occurrence of the incident and which reflects that the respondent-petitioner was clearly involved in the incident. As such, no interference was called for. Sri Verma submits that the disciplinary authority having found the charges to be proved on the basis of a valid enquiry report, there was no justification for interference by the learned Single Judge. He has



further invited the attention of the Court to the judgement of the Apex Court in the case of Managing Director ECIL Hyderabad vs B. Karunakar Etc., (1993) 4 SCC 727 (para-31) to urge that the learned Single Judge has also overlooked the ratio of the aforesaid decision and has, thus, arrived at an incorrect conclusion.

As a corollary to his argument, he also submits that even assuming for the sake of argument that the absence of any oral enquiry did call for a consideration of the argument on procedural error, then too, the learned Single Judge ought to have remitted back the matter for holding of the enquiry from the stage it was required under law and for that he also relies on the provisions of Rule 9(5) of the Bihar Government Servants (Classification, Control and Appeal) Rules 2005 (hereinafter referred to as 2005 Rules,) extracted hereinunder :

“(5) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government Servant is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold further inquiry against the government servant to meet a situation where the court has passed an order purely on technical grounds without going into the merits of the case, on the allegations on which the penalty of dismissal, removal or compulsory



retirement was originally imposed, the government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.”

Responding to the said submissions, Sri Bindhyachal Singh for the writ petitioner submits that once the fact that no oral enquiry was held is established, the entire enquiry proceedings stood vitiated and, therefore, the learned Single Judge rightly allowed the writ petition with consequential benefits to which the respondent-petitioner is entitled. He contends that failure on the part of the appellants to conduct oral enquiry does not shift the burden on the respondent-petitioner to lead any evidence or defense so as to demolish the allegations which were without any proof. It is, therefore, his submission that, as a matter of fact, the charges were not even proved, which is essential, by holding oral enquiry in support of the charges, particularly on facts of the present case and, in such circumstances, in spite of a specific objection having been raised before the disciplinary authority, no heed was paid to the same and the orders punishing the respondent-petitioner were passed in flagrant violation of procedure. He, therefore, submits that the learned Single Judge has not committed any error and, even otherwise, if the enquiry



proceedings are clearly vitiated, then the order of punishment cannot be allowed to continue nor can the respondent-petitioner be kept under suspension. He submits that apart from this, the disciplinary authority, while proceeding to impose punishment, overlooked the defense of the respondent-petitioner on the issue of responsibility which, according to the respondent-petitioner, was that of the Deputy Superintendent of Jail and there were specific allegations made by the respondent-petitioner to that effect which have been ignored and, hence, even otherwise the charges were not proved on merits. He, therefore, contends that the entire enquiry proceedings were vitiated and, consequentially, the allowing of the writ petition does not suffer from any infirmity, much less a legal infirmity.

Having considered the submissions raised, the argument on behalf of the respondent-petitioner that non-holding of an oral enquiry vitiates the enquiry proceedings has to be accepted and which has been rightly found, in our opinion, by the learned Single Judge as well while relying on the judgement of the Apex Court in the case of *Roop Singh Negi v. Punjab National Bank*, (2009) 2 SCC 2270.

On the facts of the present case, what we find is that the allegations against the respondent-petitioner were that he, while



working as a Jail Superintendent of the jail at Biharsharif, had allowed the passage of food items on the occasion of Holi festival at the instance of an inmate who was facing a trial for a heinous offence. Not only this, the upkeep of the registers relating to the entry and exit of personnel inside the jail premises was clearly breached and cooks were allowed entry from outside for preparing food inside the jail premises. Apart from this, the charges of allowing a Colour T.V. being operated upon with a 'Direct To Home' connection for favouring a particular inmate was also against the Jail norms and, in such circumstances, when the said news was flashed in Newspapers, a three member committee was set up with the District Magistrate, Biharsharif for looking into the same. The three member committee submitted a preliminary enquiry report and, on that basis, a disciplinary enquiry came to be instituted against the respondent-petitioner. A charge-sheet was issued, to which a reply was given by the respondent-petitioner, whereafter a proposal was made for awarding a major penalty and for that the respondent-petitioner was put to a second show cause to which he replied. After consideration thereof and after holding an enquiry, the enquiry report was submitted. Thereupon, the disciplinary authority passed the impugned order.



From the charge-sheet and the show cause notice, it is evident that the column of oral enquiry is clearly blank and, as a matter of fact, no oral enquiry was conducted at all. It is, thus, evident that these facts relating to the entry of food items and individuals working as cooks or, even otherwise, the gates of the jail being porous enough to accommodate outsiders was a matter of oral enquiry. It was necessary for the enquiry officer to have named the witnesses in whose presence such activities were allowed to be carried out inside the jail and after recording their evidence and giving an opportunity to the respondent-petitioner, the enquiry ought to have been proceeded in accordance with law. This procedure, therefore, has been clearly violated, particularly on the facts of the present case, as is borne out from the records.

Consequently, in view of the aforesaid background of the case and the findings arrived at by the learned Single Judge, we find that even though the learned Single Judge has not issued any directions for proceeding with the enquiry from the stage of leading of oral evidence, yet he has found that the procedural lapses vitiate the enquiry. We agree with this part of the judgement that the procedural lapses are clearly evident and, consequently, the enquiry should be held from the stage of the leading of oral evidence on behalf of the appellants.



In view of what has been concluded by us herein above, we partly allow this appeal and set aside the impugned judgement to the extent that the enquiry proceedings shall re-commence from the stage of leading of oral evidence by the appellants and the respondent-petitioner shall be given an opportunity to rebut the same and lead his defense in whatever possible manner he may so choose to in the enquiry proceedings. For this, the matter stands remitted to the enquiry officer who shall conduct the enquiry expeditiously and conclude the same, but not later than three months from today. The respondent-petitioner shall cooperate in the enquiry so that the enquiry is concluded within the time as directed above.

One of the submissions raised by Sri Verma, learned counsel for the State of Bihar, is that in view of Rule 9(5) of 2005 Rules, the respondent-petitioner should not be allowed any consequential benefits. On this, Sri Bindhyachal Singh, learned counsel for the respondent-petitioner, contends that the re-commencement of the enquiry should not deprive the respondent-petitioner of his service benefits to which he is entitled inasmuch as the punishment order has been set aside by the learned Single Judge. Ordinarily, the consequences of the setting aside of a punishment order does result in all the consequential benefits to



which an employee may be entitled, but in this regard, we find that the procedural lapses on the part of the respondents has led to the conclusions drawn by us hereinabove and in which situation Rule 9(5) of 2005 Rules is clearly attracted. We, therefore, clarify that the respondent-petitioner shall remain under suspension till the conclusion of the enquiry and shall be entitled to receive subsistence allowance only. The respondent-petitioner shall be entitled to his arrears of subsistence allowance as well, keeping in view the provisions of Rule 9(5) of the 2005 Rules. In the event it is ultimately found on the conclusion of the enquiry that the respondent-petitioner is entitled to any such consequential relief, it shall be open to the disciplinary authority to pass appropriate orders in this regard as may be necessary after the enquiry concludes and at the time of passing of the final orders by the said authority. The appeal is, therefore, allowed, subject to the directions herein above.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/N.H.

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	07.01.2019
Transmission Date	N/A

