

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19815 of 2018

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Sanjay Kumar Son of Late Phuldeo Prasad Resident of of Village-Maldah,
P.S.Barbiga, Distt.-Sheikhpura

... .. Petitioner

Versus

1. The State of Bihar
2. The Secretary, Department of Prohibition, Excise and Registration,
Government of Bihar, New Secretariat, Vikas Bhawan, Bailey Road, Patna.
3. The Joint Secretary, Department of Prohibition, Excise and Registration,
Government of Bihar, New Secretariat, Vikas Bhawan, Bailey Road, Patna.
4. The Bihar Public Service Commission, Through its Secretary, Bailey Road,
Patna

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Abhinav Srivastava, Advocate Mr. Binod Kumar Sinha, Advocate
For the Respondent State:		Mr. Sriram Krishna, AC to SC-11
For the BPSC	:	Mr. Devendra Kumar Sinha, Senior Advocate Mr. Anil Kumar Singh No.1, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT

Date : 03-03-2020

This case is yet another example, when the Court is constrained to interfere with the decision of the Government, whereby the petitioner has been dismissed from service on the allegation that he was arrested by the Vigilance sleuths, while accepting bribe, predominantly because of the profound failure on the part of the Department to adduce any evidence during the course of the departmental enquiry. The Court records, at the very outset, its displeasure for the grave lapse on the part of the respondents in pursuing a departmental action in accordance with



the disciplinary Rules, despite seriousness of misconduct alleged, for which the petitioner was proceeded departmentally. The lapse, in my view, is ominous and speaks either of connivance or absence of training of personnel charged with the duties of holding/conducting a departmental enquiry/presenting a case against the delinquent on behalf of the department.

2. I have heard Mr. Abhinav Srivastava, learned counsel appearing on behalf of the petitioner, and Mr. Sriram Krishna, learned A.C. to S.C.-11 representing the State. Mr. Devendra Kumar Sinha, learned Senior Counsel has appeared with Mr. Anil Kumar Singh No.1, learned counsel, on behalf of the Bihar Public Service Commission.

3. The undisputed facts of the case are that the petitioner was arrested by the personnel of Vigilance Investigation Bureau on the charge of accepting illegal gratification of a sum of Rs.10,000/-, leading to registration of Vigilance P.S. Case No. 69 of 2009 on 12.05.2009. Another Vigilance P.S. Case No.86 of 2009 was registered against him for having acquired assets, disproportionate to his all known sources of income, to the tune of Rs.75,53,981/-.

4. A disciplinary proceeding was initiated against the petitioner containing two charges, both akin to the allegations



made in the two criminal cases, as noted above. The Departmental Enquiry Commissioner was appointed as the Inquiring Authority. A Presenting Officer was also appointed to place the case of the department before the Inquiring Authority. The charge memo has been brought on record by way of Annexure-4 to the writ application, which was issued through letter dated 03.02.2010, under the signature of the Joint Secretary, Department of Registration, Excise and Prohibition, Government of Bihar. The petitioner, at the relevant point of time, was posted as Excise Superintendent at Muzaffarpur.

5. It can be easily noticed from the forwarding letter issuing charge sheet that except the charge memo, no other document was annexed therewith. It is also apparent from the charge-sheet in *Prapatra 'Ka'*, that in support of the charge of accepting illegal gratification, the departmental relied on letters dated 16.05.2009 and 25.06.2009 issued by the Vigilance Department (Investigation Bureau). To support the charge of acquiring disproportionate assets, the Department intended to rely on letter dated 10.11.2009, again issued by the Vigilance Department.

6. The petitioner was asked to explain. While denying the charges leveled against him, the petitioner had sought for



supply of certain documents for the purpose of effectively defending his case. This is not in dispute that not even a single witness was examined during the course of enquiry. The Inquiring Authority, on analysis of the materials, which were there on record, including pre-trap and post-trap memoranda and other documents, reached a definite conclusion that the complainant had got the petitioner implicated falsely, out of vengeance, leading to his arrest in the trap case. Dealing with the second charge, again in detail, the Departmental Enquiry Commissioner recorded his finding that the petitioner was required to explain disproportionate asset to the tune of Rs.6,43,473/- only as against the charge of disproportionate assets to the tune of Rs.75,53,981/- and recorded his finding that the petitioner had included the said amount of Rs.6,43,473/- in his income tax details. He, accordingly, reached a conclusion that no case of acquisition of assets disproportionate to known sources of income was made out for taking any disciplinary action against the petitioner. The enquiry report was submitted on 30.08.2012. It may also be noted that the petitioner was placed under suspension after his arrest.

7. The petitioner had approached this Court by filing a writ application giving rise to C.W.J.C. No. 21020 of 2012. The petitioner's suspension was revoked subsequently by an order



dated 22.04.2013, in the light of order of this Court dated 14.12.2012 passed in C.W.J.C. No. 21020 of 2012 and M.J.C. No. 1 of 2013. The said order dated 22.04.2013 has been brought on record by way of Annexure-7 to the writ application. It was mentioned in the said order that final decision shall be taken on the report of the Inquiring Authority after conclusion of the criminal cases lodged by the Vigilance Department. The part of the order dated 22.04.2013, 'that final decision shall be taken on the report of the Inquiring Authority after conclusion of the criminal case', was recalled and a corrigendum to this effect was subsequently issued on 14.03.2014.

8. It is further to be noted that the Disciplinary Authority appears to have differed with the report of the Inquiring Authority, which led to issuance of letter dated 12.02.2014 by the Department under the signature of Assistant Inspector General Registration, Bihar, recording the notes of disagreement with the findings of the Inquiring Authority. The petitioner was asked to explain as to why a major punishment be not imposed on him, on the charges of misconduct as a Government Servant, which were proved.

9. It is the petitioner's case that the said letter dated 12.02.2014 was issued without even supplying to the petitioner a copy of the enquiry report. He accordingly submitted his response



on 24.02.2014, pointing out therein the earlier decision, as contained in the order dated 22.04.2013, that final decision in the disciplinary proceeding was to be taken after conclusion of the criminal cases. The petitioner also sought for supply of a copy of the report submitted by the Inquiring Authority. Apparently, it was after objection taken by the petitioner, in his reply dated 24.02.2014, that clause (3) of the order dated 22.04.2014 was decided to be deleted by subsequent order dated 09.03.2014 in relation to the decision of the State Government to take a final decision in the disciplinary proceeding after conclusion of the criminal cases.

10. The enquiry report was thereafter supplied to the petitioner. The petitioner, afterwards, submitted his reply on 11.04.2014 supporting the findings recorded by the Inquiring Authority and taking a plea that the findings did not suffer from any infirmity. The Department, later, came out with a notification dated 27.06.2014, whereby and whereunder punishment of dismissal from service was imposed on the petitioner, under Rule 14((xi) of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005.

11. The petitioner challenged the order of dismissal before this Court by filing a writ application, which gave rise to



C.W.J.C. No. 18674 of 2015 (*Sanjay Kumar vs. The State of Bihar and Others*), which was allowed on 11.09.2017, in following terms :-

“8. From bare perusal of the aforesaid Rule, it appears that the disciplinary authority, after receipt of the enquiry report as per Rule 17(2) 23(ii) or as per sub-rule (1), shall, if it disagrees with the finding of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidence on record is sufficient for the purpose. The disciplinary authority may differ with the finding of the enquiry officer but for that the disciplinary authority has to record its reasons for such disagreement and also record its own finding on such charge, if the evidence on record is sufficient for the purpose. The Rule makes it clear that the finding of the disciplinary authority with regard to any point of charge differing with the finding of enquiry officer must be based on the evidence collected during the course of enquiry. Sub-rule (3) of Rule 18 of CCA Rules, 2005 provides that the disciplinary authority shall forward or cause to be forwarded a copy of the inquiry report, together with its own findings, if any, as provided in sub-rule (2), to the Government servant who may submit, if he or she so desires, his or her written representation or submission to the disciplinary authority within fifteen days. With regard to charge No.2 the disciplinary authority differed with the finding of enquiry officer but from perusal of Annexure-14, the second show cause



notice, which was given to the petitioner after differing with the finding of enquiry officer, with regard to amassing properties worth Rs. 75,53,981/-, which is disproportionate to known source of income of the petitioner, it appears that the disciplinary authority did not give any reason nor discussed any evidence for differing with the finding of enquiry officer. Thus, the finding of disciplinary authority on the point of amassing properties disproportionate to known sources of income of the petitioner is based on no evidence and the order of punishment is vitiated and bad in law and not sustainable as is in violation of principles of natural justice.

9. Having regard to the facts discussed above, this writ petition is allowed and the impugned order dated 27.06.2014 (Annexure-22) is set aside. The matter is remitted to the disciplinary authority to proceed afresh from the stage of asking second show cause and pass order in accordance with law within a period of four months from the date of receipt of this order.”

12. It is evident on reading of the judgment of this Court dated 11.09.2017 (supra), that the Court reached a final conclusion that the finding of the Disciplinary Authority, on the point of acquisition of properties disproportionate to known sources of income by the petitioner, was based on no evidence. In the light of this Court’s order dated 11.09.2017, the petitioner was reinstated in service. However, by notification dated 02.01.2019, the



petitioner was placed under suspension under Rule 9(1)(ka) and (ga) of the Rules.

13. The petitioner was again directed to submit his response through letter dated 02.01.2018, as, according to the Disciplinary Authority, the Inquiring Authority had failed to take note of certain facts in his report. The said letter dated 02.01.2018 has been brought on record by way of Annexure-17 to the writ application, which I shall be referring to later while dealing with the submissions advanced on behalf of the parties. The petitioner did submit his response on 19.01.2018. Thereafter, the impugned notification came to be issued vide Memo. No. 2966 dated 29.08.2018, by the Department, which is under challenge in the present writ application.

14. Counter affidavits have been filed on behalf of the State of Bihar and the Bihar Public Service Commission. The decision of the Government to impose punishment of dismissal from service has requisite concurrence of Bihar Public Service Commission. The action taken against the petitioner of imposition of punishment has been supported in the affidavits filed on behalf of the State of Bihar and Bihar Public Service Commission. I must note, at this stage itself, that there is absolutely no dispute in respect to the facts, which have been noted above.



15. Mr. Abhinav Srivastava, learned counsel appearing on behalf of the petitioner, has submitted that the finding, recorded by the Disciplinary Authority, of petitioner's guilt, is perverse for the reason that no evidence at all was laid before the Inquiring Authority to establish the charges against the petitioner. He has submitted that no witness was examined to establish the charge that the petitioner had ever demanded any illegal gratification or had received it. He has further submitted that even the complainant was not examined and, according to him, non-examination of complainant leaves a serious lacuna in the departmental proceeding inasmuch as the petitioner did not have any opportunity to cross examine the complainant. He has submitted that the department was not required to prove the factum of lodging of the criminal cases against him and the allegations made therein, rather they were required to establish the accusation of demanding or receiving illegal gratification and acquiring wealth disproportionate to his known sources of income, which could have been done only by adducing evidence.

16. Mr. Sriram Krishna, learned A.C. to S.C.-11, appearing on behalf of the respondent State of Bihar, has argued that a charge in a departmental proceeding is not required to be established with the same standard of proof as is required in a



criminal case. He has submitted that strict rules of evidence do not apply in a department enquiry for establishing a charge and has added that the Disciplinary Authority, after evaluating the materials on record and applying the rule of preponderance of probabilities, has rightly come to the conclusion that charge against the petitioner stood proved. He has further argued that, in any view of the matter, this Court, exercising power of judicial review under Article 226 of the Constitution of India, may not sit as an appellate authority and reappraise the evidence on record, which have been appreciated by the Disciplinary Authority. He has further submitted that considering the gravity of misconduct, decision to impose severest of the punishments has rightly been taken by the Disciplinary Authority.

17. When the matter was taken up on 18.02.2020, in order to find out the materials, which were available on the records of the disciplinary proceeding, the Court had directed learned A.C. to S.C.-11 to produce the original records of the proceedings. The original records were accordingly produced on 20.02.2020. The Court, however, expressed desire to peruse only such documents as are stipulated under Clause (ii) of sub-Rule (23) of Rule 17 of the Rules. Sub-rule (23)(i) requires preparation of record after conclusion of the enquiry.



18. Learned A.C. to S.C.-11 has miserably failed to point out any evidence, which was adduced by the Presenting Officer on behalf of the Department before the Inquiring Authority to establish the charge, other than the materials made available by the Vigilance Department, which were the basis for registration of the First Information Reports. Only those documents were analysed and discussed by the Inquiring Authority in his report, whereafter he had reached a conclusion that no charge against the petitioner could be said to have been proved.

19. I must come back, at this stage, to the finding earlier recorded by this Court on the petitioner's writ application, being C.W.J.C. No. 18674 of 2015, dated 11.09.2017, wherein this Court, in no uncertain terms, had recorded that the finding of the Disciplinary Authority, on the point of amassing property disproportionate to the known sources of income on the petitioner, is based on no evidence. Nothing has improved thereafter.

20. It is to be kept in mind that in a disciplinary proceeding against a Government Servants, a charge of corruption is required to be proved to the hilt as it brings civil and criminal consequences upon the employee, the Supreme Court has ruled in case of *Union of India v. Gyan Chand Chattar*, reported in (2009) 12 SCC 78.



21. In *Union of India v. H.C. Goel*, reported in (1964) 4 SCR 718, the Supreme Court was dealing with a case where H.C.Goel had joined Central Public Works Department and since he had some grievance in relation to his seniority, he had made a representation in that behalf to the Union Public Service Commission. During the pendency of his representation, he had met one Mr R. Rajagopalan, Deputy Director of Administration, so as to acquaint him to the merits of his case. H.S. Goel is said to have, in the course of his conversation with Mr Rajagopalan, apologized for not having brought “rasagullas” for the children of Mr Rajagopalan. Mr Rajagopalan, in response had frowned upon him and had expressed his displeasure over the implied suggestion. A little later, during the course of the said interview, it was alleged that H.C. Goel took out from his pocket a wallet and from it, what appeared to Mr Rajagopalan to be a folded hundred rupee note. Mr Rajagopalan had shown his stern disapproval of this conduct. The matter was reported to the higher authorities, whereafter a departmental enquiry was initiated against H.C. Goel. Dealing with a line of cases and the standard of evidence required for proving a charge in a disciplinary proceeding, the Supreme Court, in case of *H.C. Goel* (supra), held that it is not within the jurisdiction of the High Court, under Article 226 of the



Constitution of India, to consider the question about sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter, the Supreme Court held, which is within the competence of the authority, which deals with the question. The Supreme Court, however, laid down that the 'High Court can and must enquire that whether there is any evidence at all in support of the impugned conclusion'.

22. As I have already mentioned, there was no evidence adduced in support of the main allegation against the petitioner of having demanded illegal gratification or having accepted it. It is evident, on reading of the enquiry report, that no attempt ever was made to adduce oral evidence of such witnesses, who were present at the place of occurrence. Even the demand of gratification could not be proved by the Department.

23. In **Roop Singh Negi v. Punjab National Bank**, reported in **(2009) 2 SCC 570**, the Supreme Court held that a Departmental Proceeding is a *quasi* judicial proceeding, in which the charges leveled against the delinquent officer must be found to have been proved on the basis of and taking into consideration the materials brought on record by the parties. The purported evidence, collected during investigation by the Inquiring Authority against the delinquent officer, itself cannot be treated to be



evidence in disciplinary proceeding. Paragraph 14 of the said decision is reproduced hereinbelow, which is germane for the present purpose : -

14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

24. Same view has been reiterated by the Supreme Court in case of *State of U.P. v. Saroj Kumar Sinha*, reported in (2010) 2 SCC 772, paragraphs 26 to 28 whereof read as under: -

“26. The first inquiry report is vitiated also on the ground that the inquiry officers failed to fix any date for the appearance of the respondent to answer the charges. Rule 7(x) clearly provides as under:

“7. (x) Where the charged government servant does not appear on the date fixed in the inquiry or at any



stage of the proceeding in spite of the service of the notice on him or having knowledge of the date, the inquiry officer shall proceed with the inquiry ex parte. In such a case the inquiry officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged government servant.”

27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.

28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to



hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.”

25. Reference may also be made in this regard to the law laid down by the Supreme Court in case of *Commr. of Police v. Jai Bhagwan*, reported in **(2011) 6 SCC 376**.

26. Considering the undisputed facts, which have been noted above, and the consistent view taken by the Supreme Court in series of decisions, there is no scope of any doubt that the Inquiring Authority and the Disciplinary Authority under the disciplinary Rules of any establishment, which is ‘State’, within the meaning of Article 12 of the Constitution of India, perform *quasi* judicial functions. Though, strict rules of evidence do not apply in such domestic enquiries, they have a duty to record their findings on the basis of evidence available before them. Tendering of documents by the department cannot be said to be adequate to establish a charge in a departmental proceeding, unless the contents thereof are also proved.

27. Since I am of the considered view that this is a case of no evidence, findings recorded by the Disciplinary Authority,



holding the petitioner guilty of charge of demanding and accepting illegal gratification, in my considered opinion, are perverse. Similar is the case with the other charge of acquisition of assets disproportionate to known sources of income. A finding to the aforesaid effect has already been held to be without evidence by this Court. The said findings are evidently based merely on a report of the Vigilance Investigation Bureau, contents of which were not proved by adducing during the enquiry.

28. The impugned notification, issued vide Memo. No. 2966 dated 29.08.2018, is, therefore, unsustainable and is accordingly quashed. Consequences of quashing of the impugned order shall follow.

29. Since the impugned order has been interfered with on the ground of absence of evidence, the petitioner shall be entitled to all consequential benefits, including the back wages for the period during which he remained out of service because of the impugned order. The Department will have to proceed as if no order imposing punishment was ever passed against the petitioner.

30. It is, however, indicated that the respondents shall be free to take appropriate decision dependent upon the outcome of the criminal cases lodged against the petitioner.



31. This application is allowed with the aforesaid observations and directions.

32. No order as to costs.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05-03-2020
Transmission Date	N/A

