IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16204 of 2016

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Dr. Rakesh Kr. Panjiyar, son of Shri Brahmdeo Panjiyar, resident of Flat No. 401, Amar Kunj Apartment, Vivekanand Path, North Shri Krishna Puri, P.S. Shri Krishna Puri, District - Patna

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna
2. Principal Secretary, Animal and Fisheries Resources Department, Bihar, Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Abhinav Srivastava, Advocate
For the Respondent/s	:	Mr.Dhurjati Kumar Prasad, GP-14

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT
Date : 06-10-2021

The petitioner is seeking quashing of a resolution issued vide Memo No. 243 dated 30.06.2015, by the Animal and Fisheries Resources Department, Government of Bihar under the signature of its Additional Secretary, whereby punishment of dismissal from service has been imposed upon him, in exercise of power under Bihar Government Servants (Classification, Control and Appeal), Rules, 2005 [for short BGS(CCA) Rules]. He had preferred a review application against the said resolution of the State Government before the competent authority, which was rejected, as communicated to him through letter dated 05.05.2016 (Annexure-38). The said decision communicated to the petitioner through letter dated 05.05.2016 has also been challenged in the present writ application filed under Article 226 of the constitution of India.

2. I have heard Mr. Abhinav Srivastava, learned counsel for the petitioner and Mr. Dhurjati Kumar Prasad, learned GP-14 for the State of Bihar.

3. Briefly narrated, facts of the case are that at the relevant point of time the petitioner was posted as Block Veterinary Officer at Fatuha Block. An allegation was made by the Secretary of School Education Committee, Bali under Fatuha Block that the petitioner was demanding money to ensure that the said committee was not dissolved. On a complain made in this regard to the State Vigilance, a trap was laid by a vigilance team. Allegedly, the petitioner was arrested red-handed by the vigilance team while accepting bribe money from the complainant on 23.11.2006. This led to registration of FIR bearing Vigilance P.S. Case No. 82 of 2006 for the offence punishable under Sections 7/13(2) read with Section 12(1)(d) of the Prevention of Corruption Act, 1988 (for short PC Act). The petitioner was put under suspension because of his arrest in the criminal case. After he was released on bail, he was allowed to join his post. However, he was again placed under suspension by a separate order on the ground of pendency of the criminal case against him. A

disciplinary proceeding was also initiated against him with the issuance of charge-sheet through Memo No. 76 dated 14.03.2008 (Annexure-7) with respect to the self-same allegation for which the criminal case was instituted. In the charge-sheet, a communication of the Vigilance Department dated 27.02.2008 was cited as the only evidence on which the charge of misconduct was based. No list of witness was attached/ supplied along with the charge-sheet. The petitioner was asked to submit his explanation within ten days.

4. Responding to the said communication, the petitioner outrightly denied the allegation of having demanded or accepted bribe from the complainant. He took a plea that the FIR registered by the Vigilance Investigation Bureau was the only evidence which was being cited to establish the charge against the petitioner, which did not have any evidentiary value. He also took a plea that it was not mentioned in the charge-sheet as to when the demand of bribe was made and as to when petitioner had accepted the bribe. He accordingly took a stand that the charge was vague and non-specific and, therefore, unsustainable. He asserted that he was maliciously implicated by way of a conspiracy, for ulterior reasons. Further, he requested supply of certain documents, which, according to him, were germane for

preparation of effective explanation in his defence.

5. Responding to the petitioner's request for supply of documents, the Department wrote a letter addressed to the Deputy Inspector General of Police, Cabinet Vigilance Department (Investigation Bureau) on 27.05.2008 requiring him to make available such relevant documents as were being demanded by the petitioner which were not available with the Department. From letter dated 27.05.2008, it appears that the Department was not of the view that the documents, which the petitioner was demanding, were irrelevant and not germane for preparation of effective defence. Subsequently, by letter dated 25.07.2008, the Department asked the petitioner to contact the Special Court, Vigilance to obtain the documents which were required by him, for submitting his explanation. The petitioner again made a request for supply of documents through letter dated 05.06.2009. The petitioner was, however, asked through letter dated 30.06.2009 issued by the Department to submit his explanation within ten days. It was mentioned in the letter that copy of the FIR etc. were being sent to the petitioner as evidence in support of the charge framed against him.

6. The petitioner again reiterated his demand for supply of those documents. He approached this Court by filing a writ

application giving rise to CWJC No. 13355 of 2009, which was disposed of by an order dated 14.10.2009. In relation to the petitioner's grievance that the relevant documents were not being supplied to him despite being repeatedly demanded for preparation of effective defence in his support, this Court while disposing of the writ petition by an order dated 14.10.2009 observed that if the authorities were of the opinion that the documents were not germane to the inquiry, they were at liberty to pass appropriate orders. The Court further clearly observed that if the documents were asked for, non-supply of the same without reasons that they are not germane, might vitiate the departmental inquiry. This Court further observed that if the petitioner asked for specified documents, the same was required to be considered by the respondents in the manner discussed in the order. On the point of suspension of the petitioner, the respondents were directed to reconsider the same keeping in mind that criminal trials are inordinately delayed. The petitioner through his letter dated 05.11.2009 again made request for demand of certain documents.

7. By an order dated 05.03.2010, issued by the Department, the suspension of the petitioner was revoked. Nearly four years thereafter, the Department decided to appoint an

Inquiring Authority and a Presenting Officer under a resolution issued vide Memo No. 48 dated 24.01.2014. The petitioner was asked to submit his written statement of defence before the Inquiring Authority by 17.02.2014. While denying the allegation made in the FIR, the petitioner again reiterated requirement of supply of documents in the light of the observations of this Court made in the order dated 14.10.2009, passed in CWJC No. 13355 of 2009.

8. The stand of the Department in the inquiry proceeding, as taken by the Presenting Officer, has been brought on record by way of Annexure-24 to the writ application. The Presenting Officer simply stated before the Inquiring Authority that it could not be denied that the petitioner was arrested red-handed while accepting bribe and the bribe money was recovered from his pocket. Beyond that no material was produced by the Presenting Officer in support of the charge. The Presenting Officer had submitted his report on 03.03.2014. On 10.03.2014, the petitioner filed a representation before the Inquiring Authority requesting him to summon 18 witnesses, whose names figured in the FIR as eye-witnesses, since the FIR was the only document on which the Department intended to establish the charge of misconduct against the petitioner. The Inquiring Authority submitted his

report on 07.03.2014 holding charge against the petitioner as proved. A copy of the said inquiry report was made available to the petitioner through letter dated 14.03.2014, issued by the Department seeking his response on the report, by way of second show cause notice.

9. The petitioner submitted his reply on 31.03.2014 asserting that had the witnesses been examined and cross-examined during departmental inquiry, he would have been in a position to disprove the charge. He asserted that the Inquiring Authority did not act fairly and ensured that no witness was examined and cross-examined during the inquiry as they could have demolished the baseless charge framed against the petitioner. He further asserted that the petitioner did not have any role to play in dissolution of the concerned School Education Committee. There is reference to subsequent communications made by the petitioner to the Department for expeditious conclusion of the departmental proceedings after examining the witnesses and thereby giving an opportunity to cross-examine them.

10. The disciplinary proceeding initiated against the petitioner culminated with issuance of final order dated 30.06.2015, whereby the Department accepted the report of the

Inquiring Authority and imposed punishment of dismissal from service.

11. The petitioner had made an application for review of the impugned order, which has been dismissed as communicated to the petitioner through letter dated 05.05.2016 (Annexure-38). The petitioner has brought on record a copy of the order-sheet of the entire proceeding before the Inquiring Authority, by way of annexure.

12. Mr. Abhinav Srivastava, learned counsel appearing on behalf of the petitioner has submitted that the finding of the Inquiring Authority, as recorded in the inquiry report, is based on no evidence. He contends that except for the documents which was the basis for registration of FIR, no evidence at all was adduced to establish the charge against the petitioner in the departmental inquiry. He has further submitted that the documents, which the petitioner was demanding, were germane to effectively prepare his defence which aspect was not dealt with or casually dealt with by the Department and the Inquiring Authority without assigning any reason as to why those documents were irrelevant. He urges that the Inquiring Authority and the Disciplinary Authority have failed to follow the mandatory requirements under BGS(CCA) Rules. He has placed reliance on

the Supreme Court's decisions in case of ***Roop Singh Negi vs. Punjab National Bank and others*** reported in ***(2009) 2 SCC 570*** and ***Union of India and others vs. Gyan Chand Chattar*** reported in ***(2009) 12 SCC 78*** to bolster his argument. He has argued that mere proof of registration of FIR cannot be treated to be proof of the contents therein, which was the basis for initiation of departmental proceeding against the petitioner.

13. Mr. Dhurjati Kumar Prasad, learned GP-14, on the other hand, has submitted that the charge in a departmental proceeding is not to be established like a charge in a criminal case. He has further submitted that the petitioner's arrest by the Vigilance Investigation Bureau is an admitted fact. The Inquiring Authority, according to him, on careful examination of all the materials on record including the documents made available by the Vigilance Investigation Bureau, rightly reached a conclusion that the charge against the petitioner of demanding and accepting bribe stood proved. He has placed reliance on a coordinate Bench decision of this Court in case of ***Vikramaditya Singh vs. The State of Bihar and others*** reported in ***2020(1) PLJR 95*** (Paragraphs 16 and 17).

14. I have perused the pleadings and other materials brought on record on behalf of the parties in the present case

carefully and have given my anxious consideration to the rival submissions made on behalf of the parties. In view of the nature of submissions advanced on behalf of the parties, I consider it apt to notice the charge-sheet, which is at Annexure-7 of the writ petition which has three columns but only two are relevant. In one of these two columns, article of charge is mentioned which reads, 'arrest by Vigilance Investigation Bureau in a trap case while accepting bribe'. The second column has a heading, 'brief description of the charge'. At the bottom of the two columns, a letter of the Vigilance Investigation Bureau issued vide letter No. 483 dated 27.02.2008 has been mentioned as the evidence on which the charge is based. For better appreciation of the allegation against the petitioner in the departmental inquiry, it is considered appropriate to mention the accusation against the petitioner as noted in 'brief description of the charge' which can be stated with clarity as under :-

> *"(i) A demand of Rs. 20,000/- as bribe was made from Braj Kishore Singh, Secretary, School Education Society, Primary School, Bali, Fatuha Block, District-Patna so as to ensure that the said committee was not dissolved.*
>
> *(ii) On request, the petitioner agreed to accept Rs. 10,000/- as bribe, out of which Rs. 3,000/- was decided to be paid as first instalment.*
>
> *(iii) This fact was verified by a*

constable Prakash Kuzur who was present maintaining anonymity, when said Braj Kishore Singh and the petitioner were discussing about the said transaction.

(iv) Thereafter a team led by Deputy Superintendent of Police, Sri Amzad Ali apprehended the petitioner while taking a sum of Rs. 25,00/- as bribe from Braj Kishore Singh. The notes recovered from the petitioner's possession were tallied with the numbers mentioned in the pre-trap memorandum.

(v) The petitioner remained in custody from 23.11.2006 to 17.10.2007 consequent upon his arrest in the trap case while accepting bribe.

(vi) By an order contained in letter No. 44 dated 18.01.2007, the petitioner was placed under suspension for the period during which he remained in custody.

(vii) After release on bail, the order of suspension was revoked and again he was placed under suspension by an order contained in letter No. 334 dated 26.12.2007 because of pendency of the criminal case."

15. The brief description of charge as noted above, which relates to the petitioner's arrest and suspension etc. [from (v) to (vii) as above], cannot be said to be constituting a misconduct. The charge-sheet does not disclose list of witnesses on whose evidence the Department proposed to sustain the charge. It is evident thus that the Department did not intend to establish the

charge against the petitioner on the basis of oral evidence of any witness. The Department intended to rely on the First Information Report and police papers only to substantiate the allegation of corruption in the nature of demand and acceptance of bribe against the petitioner, a public servant. Consequently, the complainant was not examined. The constable, who had verified the allegation that the petitioner was demanding money, was not examined. The Deputy Superintendent of Police, who had led the trap team was not examined. No member of the Vigilance team was examined and no person present at the place of occurrence was examined. The petitioner had admittedly made request to the Inquiring Authority for examination of the persons whose names were mentioned in the First Information Report as witnesses so that he may have an opportunity to cross-examine them in the disciplinary proceeding in respect of the charge levelled against him, which was not acceded to.

16. On careful perusal of the report of the Inquiring Authority it appears that the petitioner's request to supply the documents for preparation of his defence was declined on the ground that the charge against him was based on the letter No. 483 dated 27.02.2008 of the Vigilance Investigation Bureau and he was demanding such documents which were not the basis for

framing of the charge. Further, the Inquiring Authority declined the petitioner's request for examination of such witnesses who were shown in the report of the Vigilance Investigation Bureau to be the eye-witnesses on the ground that the same was not required. The petitioner had taken a plea that in his capacity as Block Veterinary Officer he did not have any role to play in constitution of dissolution of the School Education Committee. The Inquiring Authority rejected this plea that generally the officers posted in Block maintained mutual coordination. It recorded a specific finding that though the work in question was not related with the petitioner, the demand made by the petitioner as bribe cannot be factually incorrect. It accordingly held the petitioner guilty of the charge of misconduct framed against him.

17. It is reiterated that the finding of the Inquiring Authority is based on the papers of the Vigilance Investigation Bureau only and nothing else. The order imposing punishment is nothing but recital of events from registration of FIR till submission of the report of the Inquiring Authority and subsequent correspondences made by the petitioner. The order imposing punishment dated 30.06.2015 does not disclose at all any application of mind as to why the petitioner's representation against the finding recorded by the Inquiring Authority ought not

to have been accepted. The impugned order further discloses that the same has been passed after getting concurrence of Bihar Public Service Commission.

18. Having noticed the factual aspects of the matter as mentioned hereinabove, I find substance in submission made on behalf of the petitioner that the finding recorded by the Inquiring Authority holding the petitioner guilty of charge framed against him in the departmental proceeding is based on no evidence and, therefore, perverse. The reliance placed by Mr. Prasad, learned GP-15 on a coordinate Bench decision of this Court in case of ***Vikramaditya Singh*** (supra) cannot be applied in the present case which relates to allegation against the petitioner of demand and acceptance of bribe which was allegedly given by a person in place of others. Such serious charge of corruption, in the Court's opinion, cannot be said to have been established in a disciplinary proceeding on the basis of only police papers without any evidence to substantiate the allegation.

19. It is true that charge of misconduct in a departmental inquiry need not be proved on the standards of 'beyond all reasonable doubts'. The technical Rules, which govern a criminal trial, do not apply in domestic inquiries. Nevertheless, even in such proceedings a scrupulous care is essential to establish such

charge on the basis of some evidence. There cannot be any quarrel over the legal proposition that this Court in exercise of power under Article 226 of the Constitution of India should not reappreciate evidence and substitute its own view in place of the view of the Inquiring Authority or the disciplinary Authority. However, if this Court exercising jurisdiction of judicial review notices that the conclusion of the Inquiring Authority or Disciplinary Authority is based on no evidence, such findings would surely require interference in such jurisdiction. The High Court under Article 226 of the Constitution of India has a duty to inquire whether the finding of the Inquiring Authority on which the impugned order of dismissal rests is supported by any evidence or not.

20. In my opinion, if the police papers submitted in a trap case can be treated to be adequate evidence for taking disciplinary action of imposition of punishment of dismissal from service, there would be no need of any departmental inquiry and the procedure prescribed under the BGS(CCA) Rules for establishing a charge against a government servant would be meaningless in such cases. It is reiterated that for the same set of allegation/ charge a criminal case and departmental proceeding can be allowed to continue parallel to each other but to bring home the

charge in departmental proceeding, the onus is on the Department to establish the charge, though on the standards of preponderance of probabilities.

21. Mr. Srivastava, learned counsel for the petitioner has rightly placed reliance on the Supreme Court's decision in case of ***Roop Singh Negi*** (supra) wherein it has been clearly held in paragraph 14 as under :-

> *"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."*

22. In case of ***Union of India vs. Gyan Chand Chattar*** (supra) the Supreme Court has categorically held that serious

charge of corruption is to be proved to the hilt and the same cannot be proved on mere probabilities.

23. In view of the admitted factual aspects of the matter and judicial pronouncements as noted hereinabove, in my opinion, the report of the Inquiring Authority recording finding to the effect that charge against the petitioner stood proved without any proof is unsustainable. The order of the Disciplinary Authority is vulnerable on two counts. Firstly, the finding recorded by the Inquiring Authority, which is without evidence, has been accepted. Secondly, the Disciplinary Authority has not taken into account the petitioner's reply submitted in response to the report of the Inquiring Authority which was supplied to him. The Supreme Court in case of ***Punjab National Bank and others vs. K.K. Verma*** reported in ***(2010) 13 SCC 494*** has held that a delinquent employee prior to 42nd Amendment was entitled to two representations to make representation : (i) To defend himself against the charge against him and prove his innocence, which opportunity is to be given by giving him the inquiry report against him and (ii) Opportunity to make representation on the proposed punishment. The right to represent against the finding of the Inquiring Authority is not disturbed in any way and denial thereof will make the final order vulnerable, the Supreme Court has

noted. It was, therefore, obligatory for the Disciplinary Authority to have applied its mind on the petitioner's response to the report of the Inquiring Authority, in his order imposing punishment. Non-application of mind by Disciplinary Authority on the petitioner's response to the report of the Inquiring Authority amounts to denial of his right to represent against the said report, which remained protected even after 42nd Constitutional Amendment, as held in case of ***K.K. Verma*** (supra).

24. For the reasons discussed hereinabove, the impugned action requires this Court's interference.

25. Accordingly, the impugned order of dismissal dated 30.06.2015 (Annexure-35) and subsequent order dated 05.05.2016 rejecting the petitioner's review application are hereby set aside. Consequences of setting aside of the impugned orders shall follow. The petitioner shall be required to be reinstated in service forthwith.

26. Since the order of dismissal is based on perverse finding without any evidence, it is held that the petitioner shall be entitled to all back wages for the period during which he remained out of service by virtue of order of dismissal which has been set aside. The order of dismissal shall have no consequence right from the date when it was passed. Payment of back wages

shall depend upon the petitioner making out a case before the authorities that he was not gainfully employed elsewhere during the period in question.

27. It goes without saying that the respondents shall be at liberty to take appropriate action in accordance with law depending on the outcome of the criminal case instituted against the petitioner.

28. This application is accordingly allowed.

29. There shall be no orders as to costs.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.10.2021
Transmission Date	NA