

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2771 of 2018

Niraj Kumar Son of Late Upendra Prasad, Resident of Village P.O.- Husaini,
Via- Keshariya, P.S.- Dumaria, Ghat, District- East Champaran.

... .. Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Director Secondary Education, Department of Education, Government of Bihar, Patna.
4. The Director Administration, Department of Education, Government of Bihar, Patna.
5. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur.
6. The District Education Officer, Muzaffarpur.
7. The District Programme Officer Establishment, Muzaffarpur.

... .. Respondents

Appearance:

For the Petitioner/s	:	Mr.Brisketu Sharan Pandey
For the Respondent/s	:	Mr.M.P. Yadav (GP 23)
	:	Mr.Sanjay Kumar (AC to GP 23)

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

4 26-10-2021 This is yet another example where disciplinary action has been taken in the nature of imposition of punishment of dismissal from service of a Government servant on the charge of corruption, without any evidence adduced during the departmental proceeding.

The petitioner has assailed an order dated 27.10.2014 passed by the Regional Deputy Director of Education, Tirhut Division, Muzaffarpur whereby he has been dismissed from service after having held guilty of misconduct in the present writ



application filed under Article 226 of the Constitution of India. The petitioner's appeal has been dismissed by an order dated 01.09.2017 passed by the Director, Secondary Education, Department of Education, Government of Bihar, which has also been assailed in the present case.

The admitted facts of the case are that at the relevant point of time the petitioner was working as a Clerk in the office of District Superintendent of Education, Muzaffarpur. A complaint petition was filed by one Dhanesh Kumar in 2008 alleging therein that the petitioner was demanding from him illegal gratification to ensure his appointment on compassionate ground in the concerned office. On the basis of the said complaint made to the Vigilance Department, allegedly upon verification of the complaint a raiding party was constituted. The raiding team of the Vigilance Investigation Bureau conducted a raid. The petitioner was apprehended by the raiding party, allegedly while accepting bribe on 25.09.2008. An F.I.R. bearing Vigilance P.S. Case No. 74 of 2008 was registered for the offence punishable under Sections 8, 7, 13(1) and 13(2) of the Prevention & Corruption Act, 1988. The petitioner was placed under suspension consequent upon his arrest. A departmental proceeding was subsequently initiated against him



with the issuance of charge sheet and appointment of the Enquiring Authority on 13.12.2008. There were three charges framed against him:-

(i) The petitioner was arrested on 25.09.2008 on the allegation of bribery.

(ii) Arrest of the petitioner while taking bribe.

(iii) Registration of F.I.R. against the petitioner bearing Vigilance P.S. Case No. 74 of 2008.

Two documents were cited in the charge sheet on the basis of which the charges framed against the petitioner were proposed to be sustained. No name of any witness on whose evidence the Department proposed to sustain the charges was furnished with the charge sheet. The petitioner was asked to submit his written statement of defence before the Enquiring Authority, which he did. He denied the allegation against him of demand of bribe and acceptance of the bribe money by him.

The Enquiring Authority on the basis of the materials before him in the said departmental enquiry submitted a report on 03.12.2009, addressed to the Regional Deputy Director Education Department. He did not record any finding in respect of charge framed against him. He rather opined that the petitioner's order of suspension should be revoked. The order of



suspension was subsequently revoked by an order dated 26.03.2010 issued by the Regional Deputy Director Education Department.

Nearly three and a half years thereafter, the Regional Deputy Director came out with an office order dated 27.01.2014 notifying appointing a new enquiring authority and a presenting officer. The second Enquiring Authority submitted its report on 02.05.2014 which has been brought on record by way of Annexure P/11 to the writ application. The second Enquiring Authority recorded his finding that all the charges against the petitioner stood proved. The said report of the Enquiring Authority was supplied to the petitioner by the Disciplinary Authority asking him to submit his representation thereon. The petitioner submitted his representation, again denying the charge against him and taking specific plea that the finding recorded by the Enquiring Authority should not be accepted, as no evidence at all was adduced in support of the charges, except the police papers. He had taken specific plea that in the absence of any evidence to support the allegation that the petitioner had demanded bribe or had accepted bribe, the finding recorded by the Enquiring Authority should not be accepted. The Disciplinary Authority, however, passed the impugned order of



dismissal dealing with the said report of the Enquiring Authority. As has been noticed above, the petitioner's appeal has been rejected by the appellate authority by an order dated 31.04.2017 issued vide Memo No. 2102 dated 01.09.2017.

Mr. Brisketu Sharan Pandey, learned counsel appearing on behalf of the petitioner has drawn my attention to the charge sheet to submit that registration of F.I.R. against the petitioner on the allegation of demand and acceptance of bribe is the only basis for initiation of departmental proceeding. He has contended that the petitioner's arrest itself cannot constitute a misconduct. The petitioner was allegedly arrested while accepting bribe. There was no allegation in the charge sheet that the petitioner had demanded bribe or had accepted bribe. He has further submitted that neither the complainant nor any member of the raiding party was cited as witness to the charge sheet to substantiate the charge of corruption against the petitioner. Referring to the finding recorded by the Enquiring Authority, he has submitted that the same is merely based on police papers and no other evidence. He submits that the Disciplinary Authority completely failed in his duty to duly consider the petitioner's representation on the finding recorded by the Enquiring Authority before recording his agreement with the



said findings of the Enquiring Authority. He accordingly contends that the said findings recorded by the Enquiring Authority and that of the Disciplinary Authority patently suffer from perversity. He has accordingly argued that it being a case of no evidence, the order of dismissal requires interference by this Court.

Mr. Sanjay Kumar, learned AC to GP 23 has submitted that the Enquiring Authority had perused all the materials which were produced before him including the First Information Report and the communication made by the Deputy Superintendent of Police, Vigilance Investigation Bureau. There being clear allegation that the petitioner was caught red-handed by a raiding party as emerging from the pretrap and post trap memoranda based on which the F.I.R. was registered, the Enquiring Authority rightly reached a conclusion that the charges against the petitioner stood proved. He has submitted that considering the seriousness of the charge of corruption against the petitioner, the Disciplinary Authority rightly imposed punishment of dismissal from service by a reasoned and speaking order. He has also submitted that the order of the appellate authority is also speaking and reasoned. According to him, none of the orders, which are under challenge in the



present writ application, require interference. According to him, since the order of dismissal has been passed after due compliance of principles of natural justice, this Court exercising power of judicial review may not interfere with the impugned orders.

On perusal of the admitted facts on record, I find substance in submission made on behalf of the petitioner that it is a case of no evidence at all adduced during the course of the departmental enquiry to substantiate the charges framed against the petitioner in the disciplinary proceeding. He is correct in his submission that registration of the F.I.R. in itself is not a misconduct, albeit, the allegation against the petitioner of demand of illegal gratification and acceptance of bribe, constitute a misconduct. It was incumbent upon the Department, therefore, to have substantiated this part of allegation by adducing cogent evidence during the departmental enquiry even on the standard of preponderance of probabilities. The nature of allegation of misconduct i.e. demand and acceptance of bribe, since it was denied by the petitioner, could not have been established during the departmental enquiry without adducing any oral evidence. The complainant was not cited as a witness in the charge memo. No member of the raiding party was cited as



witness. No person present at the place of occurrence was cited as witness. No oral evidence admittedly was adduced during the departmental enquiry to support the charge. Apparently, the finding of the Enquiring Authority is based on pre-trap memorandum, post-trap memorandum, First Information Report and a communication of the Deputy Superintendent of Police dated 06.11.2008.

In the Court's opinion, merely on the basis of the said documents, charge against the petitioner of demand of bribe and acceptance of the same could not be established. The finding recorded by the Enquiring Authority is apparently perverse. The decision of the Disciplinary Authority based on such finding recorded by the Enquiring Authority without any evidence cannot be sustained. Further, on perusal of the order of the Disciplinary Authority, it transpires that he has not at all dealt with the representation filed by the petitioner explaining as to why the report of the Enquiring Authority should not be accepted containing findings based on no evidence. The order of the appellate authority is also not sustainable, as in the Court's opinion, the very basis of passing of the impugned order of dismissal by the Disciplinary Authority cannot be sustained.

For the foregoing reasons, the impugned order dated



27.10.2014 is set aside. The order of the appellate authority is also set aside. Consequent upon quashing of the order of dismissal, the petitioner shall be required to be reinstated forthwith. Since the Court has interfered with the impugned order of dismissal on the ground that the finding is based on no evidence produced during the course of departmental enquiry, the petitioner shall be entitled to full salary for the entire period during which he has remained out of service because of the illegal order of dismissal which has been set aside by the present order being illegal.

This application is accordingly allowed.

The respondents shall proceed to determine the petitioner's entitlements, as if no order of dismissal was ever passed against him. All back wages must be paid to the petitioner within three months from the date of receipt/production of a copy of this order.

Before parting with the present order, the Court records with disgust its anguish over the manner in which the Disciplinary Authorities are passing orders in departmental proceedings containing serious charges of corruption against employees under the State Government. No effort is made to establish such charge even on preponderance of probabilities



during the departmental proceeding by adducing cogent and adequate evidence. The Disciplinary Authorities are just doing the formality of passing orders in the nature of disciplinary action in defiance of statutory rules and principles of natural justice.

Whether the Disciplinary Authorities who fail to adhere to mandatory requirements under the provisions of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 may also be liable to a disciplinary action, is a question, which needs to be addressed and shall be addressed in appropriate case.

(Chakradhari Sharan Singh, J)

AKASH/-

U			
---	--	--	--

