

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4854 of 2017

Ashok Paswan, son of Shital Paswan, Resident of Village- Kashipur, P.S.-
Samastipur, District- Samastipur.

... .. Petitioner

Versus

1. The State of Bihar through the Commissioner, Darbhanga Division, Darbhanga.
2. The Commissioner, Darbhanga Division, Darbhanga.
3. The District Collector, Samstipur.
4. The District Panchayat Raj Officer, Samastipur.
5. The Conducting Officer-cum- District Panchayat Raj Officer, Samastipur.
6. The Block Development Officer, Dalsinghsarai.
7. The Presenting Officer-cum- Block Development Officer, Dalsinghsarai.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Sanjeet Kumar, Advocate
For the State	:	Mr. Ajay-G.A.-5
		Mr. Pratik Kr. Sinha, A.C. to G.A.-5

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 27-09-2021

Heard learned counsel for the parties.

2. There are certain undisputed facts of this case.

The petitioner, at the relevant point of time, was working as Upper Division Clerk and was posted as Nazir in the block office, Dalsinghsarai. A complaint was lodged by one Acharya Kritbodhanand against the petitioner alleging demand of bribe to the tune of Rs.76,000/- for clearing the final bill in connection with *Kaushal Unnayan Prashikshan*. This led to raid



conducted by the Vigilance team on 13.11.2009. The petitioner was apprehended and subsequently an F.I.R. being Vigilance P.S. Case No. 112 of 2009 was instituted for the offence punishable under Sections 7/13(2) read with 13(1)(2) of Prevention of Corruption Act, 1988 on 14.11.2009. He was released on bail subsequently on 06.07.2011. Thereafter, the District Magistrate, Samastipur -cum- the Disciplinary Authority, issued a chargesheet (Annexure- P/7) with the only charge that the petitioner had been arrested by the Vigilance team on the allegation of accepting bribe from an N.G.O. The said memo of charge did not contain any list of document or the witness on whose evidence the Department intended to establish the said misconduct against the petitioner.

3. By an order dated 16.07.2013, the order of suspension, which was earlier passed, was revoked under the orders of the District Magistrate, Samastipur. By a subsequent order dated 25.01.2014, the District Magistrate, Samastipur decided to place the petitioner under suspension again because of institution of criminal case against him. It transpires that the District Magistrate subsequently realized that the charge which was framed against him was not sufficient and therefore, he issued another chargesheet on 05.02.2014 giving in detail the



circumstance in which the petitioner was apprehended by the Vigilance team while accepting the bribe. In the column of evidence, only document which was referred to in the charge memo was the action taken report of the Superintendent of Police, Vigilance Bureau, Patna, containing 13 pages. The charge memo did not contain any list of witnesses. An Inquiring Authority was appointed. A Presenting Officer was also appointed.

4. It is the petitioner's case that the said document as referred to in the charge memo i.e. the action taken report of the Superintendent of Police, Vigilance Investigation Bureau, Patna, was not supplied to him though he had made a request through his letter dated 25.02.2014 addressed to the Conducting Officer for supply of the said document. The request of the petitioner was declined and, on 25.02.2014 itself the Inquiring Authority submitted his report which has been brought on record by way of Annexure-14 to the writ application. The Inquiring Authority held the charge against the petitioner to have been proved. The petitioner was asked to submit his response to the finding of the Inquiring Authority by the Disciplinary Authority. The District Magistrate-cum-Disciplinary Authority after accepting the report of the Inquiring



Authority has passed the final order dated 21.05.2015 imposing upon the petitioner punishment of dismissal from the service. The petitioner had preferred an appeal against the order of the Disciplinary Authority, which came to be dismissed by an order dated 14.12.2016 passed in Service Appeal No. 10 of 2015 by the Divisional Commissioner, Darbhanga.

5. The petitioner has put to challenge in the present writ application the order dated 21.05.2015 passed by the District Magistrate -cum- Disciplinary Authority, whereby the petitioner has been dismissed from the service and the order dated 14.12.2016 passed by the Appellate Authority whereby, his appeal against the order of dismissal has been rejected.

6. Mr. Sanjeet Kumar, learned counsel appearing on behalf of the petitioner has submitted that the entire process of departmental enquiry right from the stage of framing of charge till passing of the impugned order by the Disciplinary Authority is vitiated. He has submitted that the charge itself is defective for the reason that the only allegation against the petitioner, which has been mentioned in the charge memo, is that the petitioner was apprehended by the Vigilance team on the allegation that he was accepting bribe from the complainant. No charge was framed against the petitioner to the effect that the



petitioner had demanded bribe and thereafter accepted the same, in the charge framed in the departmental proceedings. He has contended that registration of FIR with the allegation that the petitioner was apprehended on certain allegation relating to acceptance of bribe money can itself be not constitute a misconduct, he contends. The charge against the petitioner in the criminal case is of demanding bribe money and accepting the same. On the basis of same allegation, the petitioner could have been departmentally proceeded against. However, the Department was under obligation to establish during the departmental proceeding that the petitioner had in fact indulged in such misconduct. He has further submitted that no evidence at all was laid before the Inquiring Authority by the Presenting Officer to substantiate the allegation that the petitioner had ever demanded any bribe or had accepted the same. He contends that neither the complainant was produced for examination nor any member of the Vigilance team was there to adduce the evidence to substantiate the allegation of demand or acceptance of bribe against the petitioner. He has thus contends that the finding recorded by the Inquiring Authority is without any evidence. He has, accordingly, submitted that the finding of the Disciplinary Authority to the effect that the charge against the petitioner is



perverse. It is also submitted that the Appellate Authority also has not gone into the different aspects of the matter and has dismissed the petitioner's appeal without taking into account the relevant materials available on record of the departmental proceeding.

7. Mr. Pratik Kumar Sinha, learned A.C. to G.A.-5 appearing on behalf of the State, on the other hand, has submitted that admittedly the petitioner was arrested by the Vigilance team on serious charge of acceptance of bribe in respect to which a complaint was made. He has contended that charge in a departmental proceeding is not required to be proved like a charge in the criminal case. He has submitted that considering the materials available on record, the Inquiring Authority rightly reached a conclusion that the charge against the petitioner is proved. He has added that the finding of the Inquiring Authority cannot be said to be perverse requiring this Court's interference. He has also urged that in view of the nature of allegation which has been found to be proved by the Inquiring Authority and the Disciplinary Authority, imposition of punishment of dismissal from the service, cannot be said to be unjustified.

8. I have carefully examined the documents



available on record. I have also carefully perused the charge memo which was issued on 30.01.2012 (Annexure- P/7). By no stretch of imagination, the said charge can be considered to be charge of misconduct in a departmental enquiry. It simply refers to the fact of petitioner's arrest by the Vigilance team on the allegation of accepting the bribe from an "NGO". It has been mentioned in the charge dated 30.01.2012 that it cannot be disputed that an F.I.R. was registered against the petitioner and that he was arrested. There was no allegation against the petitioner of having accepted the bribe. There is no charge in the charge memo dated 30.01.2012 that the petitioner had demanded bribe or had accepted the bribe. When the Disciplinary Authority subsequently became wiser, he issued another chargesheet nearly two years thereafter on 05.02.2014 as according to him the facts disclosed in the earlier charge memo were not complete. On 05.02.2014, the District Panchayati Raj Officer was appointed as Inquiring Authority and Block Development Officer, Dalsinghsarai was appointed as Presenting Officer. For the first time, in the revised charge memo dated 05.02.2014, the Disciplinary Authority referred to report of the Superintendent of Police, Vigilance Investigation Bureau, Patna, as the documentary evidence on which the



department intended to rely to establish the charge of misconduct against the petitioner. The entire process conducted by the Inquiring Authority has been brought on record by way of Annexures - P/11 & P/14 to this writ application. From various orders passed by the Inquiring Authority dated 07.02.2014 and 18.02.2014, it appears that notices were issued to the complainant, the Superintendent of Police, Vigilance Investigation Bureau, Patna, Nazir, District Panchayat Office, District Magistrate, Samastipur as well as Deputy Collector, Establishment, regarding the said departmental enquiry. The report of the Inquiring Authority (Annexure- P/14) goes to suggest that no witness turned up to support the charge against the petitioner of demand of bribe or acceptance of bribe. The complainant did not turn up in support of the allegation against the petitioner. It is curious to note that the Disciplinary Authority did not consider it proper to supply the list of witnesses on whose evidence the charge against the petitioner was intended to be proved. Even the complainant was not shown as a witness, in the charge memo.

9. The authorities empowered to take disciplinary action, on the allegation of misconduct and more particularly when such misconduct constitutes criminal liability also, must



keep in mind the fact that institution of a criminal case itself is not a misconduct. The allegation which constitutes a criminal offence can certainly be a basis for initiation of departmental enquiry, simultaneously. A charge in the criminal case is to be strictly proved on the standard of “beyond all reasonable doubts”. At the same time, if the Disciplinary Authority decides to take disciplinary action in respect of the same charge, it is incumbent upon the Department to establish the said charge before the Inquiring Authority atleast on the standards of preponderance of probabilities. Mere fact that a criminal case has been registered leading to arrest of a Government servant can itself not be a basis for imposition of punishment under the Rules governing imposition of punishment against Government servant.

10. The Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for short “CCA Rules, 2005) lays down exhaustive procedure for imposition of major and minor penalties. Rule-17 of the C.C.A. Rules, 2005, which lays down the procedure for imposition of major penalty mandates in sub Rule-4 that the disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, such statement of the imputations



of misconduct or misbehaviour and “a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person”. A charge containing allegation of demand or acceptance of bribe ordinarily cannot be proved in the absence of any oral evidence, unless such charge has been proved earlier in any other judicial or quasi judicial proceeding. It is against basic logic and comprehension that a charge relating to demand or acceptance of bribe can be established by a Department against a Government servant without any witness before the Inquiring Authority unless specifically admitted by the delinquent. As no witness was examined before the Inquiring Authority on behalf of the Department to establish the charge of demand or acceptance of bribe against the petitioner, the petitioner did not have any opportunity to cross-examine.

11. It is settled legal position that the technical rules which govern the criminal trials in Court may not necessarily apply to the disciplinary proceeding, nevertheless, the principle that in punishing the guilty, scrupulous care must be taken to see that the innocent are not punished, applies as



much to regular criminal trials as to the disciplinary proceeding. The law propounded in case of ***Union of India vs. H.C. Goel (AIR 1964 SC 364)*** holds the field even today. Reference may usefully be made to decision in the case of ***Roop Singh Negi vs. Punjab National Bank*** reported in ***(2009) 2 SCC 570*** wherein, referring to decision in case of ***H.C. Goel*** (supra), the Supreme Court has held in paragraph 14 as under:-

“14. Indisputably, a departmental proceeding is a quash-judicial proceeding. The enquiry officer performs a quashi-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.



12. In case of ***Union of India vs. Gyan Chand Chattar*** reported in (2009) 12 SCC 78, the Supreme Court has laid down that a serious charge of corruption requires to be proved to the hilt as it brings civil and criminal consequences upon the employee concerned. Observations made in paragraphs 21 and 22 of the decision in case of ***Gyan Chand Chattar*** (supra) are of immense significance which are being reproduced hereinbelow:-

“21. *Such a serious charge of corruption requires to be proved to the hilt as it brings civil and criminal consequences upon the employee concerned. He would be liable to be prosecuted and would also be liable to suffer severest penalty awardable in such cases. Therefore, such a grave charge of quasi-criminal nature was required to be proved beyond any shadow of doubt and to the hilt. It cannot be proved or mere probabilities.*

22. *Witnesses were examined before the enquiry officer that they have heard that the said respondent was asking but none of them was able to point out who was that person who had been asked to pay 1% commission. One of such witnesses deposed that some unknown person had told him. Learned Single Judge came to the conclusion that the knowledge of the witnesses in this regard was based on*



“hearsay statement of some unknown persons whom they did not know”. This was certainly not legal evidence to sustain such a serious charge of corruption against an employee.

13. In such view of the matter, I find substance in submissions made on behalf of the petitioner that finding of the Inquiring Authority that the charge of misconduct against the petitioner stood proved in the departmental enquiry is without any evidence and therefore perverse. The Disciplinary Authority in such circumstance, could not have have passed the impugned order agreeing with such report of the Inquiring Authority. Therefore, the impugned order dated 21.05.2015 passed by the District Magistrate, Samastipur, whereby the punishment of dismissal from the service has been imposed upon the petitioner and order dated 14.12.2016 passed by the Divisional Commissioner, Darbhanga in Service Appeal No. 10 of 2015, whereby the appeal of the petitioner has been rejected cannot be sustained and are accordingly, set aside. Consequent upon quashing of the impugned order of dismissal from the service, the petitioner is required to be reinstated.

14. Learned counsel for the State, at this juncture, has submitted that the Disciplinary Authority may be given a



liberty by this Court to invoke Rule-18 (1) of the C.C.A. Rules, 2005 which permits the Disciplinary Authority to remit the case to the Inquiring Authority for further inquiry. It is observed that the Disciplinary Authority shall be at liberty to proceed in accordance with law.

15. The consequence of quashing of the impugned orders shall follow. The petitioner shall be at liberty to approach the Disciplinary Authority for payment of backwages for the period during which he remained out of service because of the orders which has been set aside by the present order. If any claim is received by the Disciplinary Authority, he shall be under obligation to consider the same. He may however, deny such claim on the ground that the petitioner was gainfully employed during the aforesaid period.

16. At this stage, learned counsel for the State of Bihar has informed that another departmental enquiry has also been initiated against the petitioner in September, 2014, in which also the charge against the petitioner has been proved by the Inquiring Authority. It goes without saying that the Disciplinary Authority shall be at liberty to take any decision in the said departmental enquiry but after the petitioner is reinstated in service in compliance of present order of this



Court.

17. This writ application is, accordingly, allowed with the aforesaid observations and directions.

(Chakradhari Sharan Singh, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	05.10.2021
Transmission Date	N/A

