

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1498 of 2018

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Anand Kumar Singh S/o Yogendra Singh R/o Village P.O. Baligaon, P.S.
Ayer, District Bhojpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Deputy Inspector General, Shahabad Range, Dehri On Sone, Rohtas.
3. The Superintendent of Police, Kaimur, Bhabua, Bihar.
4. Officer in Charge, Mohania Police Station, District Kaimur , Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjee Kumar
For the Respondent/s : Mr. Ajay Kumar, AC to GP 4

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

Date : 17-08-2021

The petitioner has filed the present writ application for quashing of the order, dated 30.12.2017, passed, in the departmental appeal, arising out of Departmental Enquiry No. 35 of 2015, by the Deputy Inspector General of Police, Sahabad Range, Dehri-On-Sone, (Annexure-12) whereby the appeal filed by the petitioner has been rejected and also the order of punishment, dated 10.07.2017, passed, in Departmental Enquiry No. 35 of 2015, by the Superintendent of Police, Kaimur (Bhabhua) (Annexure-10), by which the petitioner has been dismissed from service.



2. The petitioner was appointed on the post of Constable on 03.12.2015 and was posted in the Mohania Police Station , in the district of Kaimur. On the complaint filed by one Deepak Choubey before the Superintendent of Police, Kaimur (Bhabhua) that Inspector of Mohania has demanded bribe and directed him to meet the petitioner and the petitioner demanded bribe of Rs. 10,000/-, whereupon a trap team was constituted and on 06.10.2015, the petitioner was caught with Rs. 1,000/- and was sent to jail. The petitioner remained in custody up till 18.03.2016 and he was suspended with effect from 06.10.2015 and remained suspended until he was dismissed from service on 10.07.2017. On 18.03.2016, the petitioner was released from jail and on 02.05.2017, the petitioner appeared before the Enquiry Officer and found that no Presenting Officer was appointed by the Department and the Enquiry Officer himself was acting as Presenting officer in favour of the Department.

3. Learned Counsel for the petitioner, without going into the detail facts of the case, at the outset, submits that the departmental enquiry conducted against the petitioner is vitiated inasmuch as no Presenting Officer was appointed and the Enquiry Officer himself assumed the role of Presenting Officer and examined all the witnesses, as such, the Enquiry Officer has not



acted like an independent adjudicator. Accordingly, the submission is that the departmental enquiry was held in violation of the provisions of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the 2005 Rules') as well as principle of natural justice and principle of bias.

4. In support of his submissions, learned Counsel for the petitioner relies upon the judgment of the Supreme Court, in the case of **Union of India and Others v. Ram Lakhan Sharma**, reported in (2018) 7 SCC 670.

5. On the other hand, learned Counsel appearing on behalf of the State submits that the Enquiry Officer did not assume the role of the Presenting Officer and the witnesses appeared themselves before the Enquiry officer and in certain circumstances, the Enquiry Officer can act like the Presenting Officer also. Referring to paragraph 14 of the counter affidavit, he submits that the departmental proceeding can be conducted by the Enquiry Officer and the Presenting Officer being the same person and the petitioner had full knowledge about the departmental proceeding against him and was fully aware about the same and he even cross-examined the witness Dilip Kumar, A.D.M., Kaimur in the departmental proceeding.



6. I have heard learned Counsel for the petitioner and learned Assistant Counsel to Government Pleader No. 4 for the State.

7. Rule 17 (5) (c) of the 2005 Rules prescribes appointment of a Presenting Officer by the disciplinary authority. Sub-Rule (14) thereof requires the Presenting Officer to lead evidence on which the department seeks to rely in order to prove the charge(s).

8. The Supreme Court, in the case of **Ram Laxhan Sharma** (supra), in paragraphs 24, 25, 26, 27, 28, 36, 37 and 38, has held as follows:

“24. The disciplinary proceedings are quasi-judicial proceedings and Inquiry Officer is in the position of an independent adjudicator and is obliged to act fairly, impartially. The authority exercises quasi-judicial power has to act in good faith without bias, in a fair and impartial manner.

25. Rules of natural justice have been recognised and developed as principles of administrative law. Natural justice has many facets. Its all facets are steps to ensure justice and fair play. This Court in *Suresh Koshy George vs. University of Kerala and others* (AIR 1969 SC 198) had occasion to consider the principles of natural justice in the context of a case where disciplinary action was taken against a student who was alleged to have adopted malpractice in the



examination. In paragraph 7 this Court held that the question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of Tribunal and the rules under which it functions. Following was held in paragraphs 7 and 8:

“7. ...The rules of natural justice are not embodied rules. The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions.

8. In Russel v. Duke of Norfolk, Tucker, L. J. observed:

"There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case."



26. A Constitution Bench of this Court has elaborately considered and explained the principles of natural justice in *A. K. Kraipak and others vs. Union of India and others* (AIR 1970 SC 150). This Court held that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. The concept of natural justice has undergone a great deal of change in recent years. Initially recognised as consisting of two principles that is no one shall be a judge in his own cause and no decision shall be given against a party without affording him a reasonable hearing, various other facets have been recognised. In paragraph 20 the following has been held:

“20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (1) no one shall be a judge in his own case (*nemo debet esse judex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably....”



27. In *State of Uttar Pradesh and others vs. Saroj Kumar Sinha*, reported in 2010 (2) SCC 772, this Court had laid down that inquiry officer is a quasi-judicial authority, he has to act as independent adjudicator and he is not a representative of the department/ disciplinary authority/ Government. In paras 28 and 30 following has been held:

“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 un rebutted 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.

* * *

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are



required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”

28. When the statutory rule does not contemplate appointment of Presenting Officer whether non-appointment of Presenting Officer ipso facto vitiates the inquiry? We have noticed the statutory provision of Rule 27 which does not indicate that there is any statutory requirement of appointment of Presenting Officer in the disciplinary inquiry. It is thus clear that statutory provision does not mandate appointment of Presenting Officer. When the statutory provision does not require appointment of Presenting Officer whether there can be any circumstances where principles of natural justice can be held to be violated is the broad question which needs to be answered in this case. We have noticed above that the High Court found breach of principles of natural justice in Inquiry Officer acting as the prosecutor against the respondents. The Inquiry Officer who has to be independent and not representative of the disciplinary authority if starts acting in any other capacity and proceed to act in a manner as if he is interested in eliciting evidence to punish an employee, the principle of bias comes into place.

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36. Thus, the question as to whether Inquiry Officer who is supposed to act independently in an inquiry has acted as prosecutor or not is a question of fact which has to be decided on the facts and proceedings of particular case. In the present case we have noticed that the High Court had summoned the entire inquiry proceedings and after perusing the proceedings the High Court came to the conclusion that Inquiry Officer himself led the examination in chief of the prosecution witness by putting questions. The High Court further held that the Inquiry Officer acted himself as prosecutor and Judge in the said disciplinary enquiry. The above conclusion of the High Court has already been noticed from paragraphs 9 and 10 of the judgment of the High court giving rise to Civil Appeal No.2608 of 2012.

37. The High Court having come to the conclusion that Inquiry Officer has acted as prosecutor also, the capacity of independent adjudicator was lost which adversely affecting his independent role of adjudicator. In the circumstances, the principle of bias shall come into play and the High Court was right in setting aside the dismissal orders by giving liberty to the appellants to proceed with inquiry afresh. We make it clear that our observations as made above are in the facts of the present cases.

38. In result, all the appeals are dismissed subject to the liberty as granted by the High Court that it shall be open for the appellants to proceed with the inquiry afresh from the stage as directed by the High



Court and it shall be open for the appellant to decide on arrear pay and allowances of the respondents.”

9. A Constitution Bench of the Supreme Court, in the case of **Managing Director, ECIL, Hyderabad v. B. Karunakar (AIR 1994 SC 1074)**, while answering the question framed therein, held in paragraph 7 (v) as under:

“7. (v) The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non- furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and



circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to a "unnatural expansion of natural justice" which in itself is antithetical to justice.

Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court, Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not



setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Courts/ Tribunals find that the furnishing of the report would have made a difference to the result in the case that should set aside the order of punishment **Where after following the above procedure the Courts/Tribunals sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority, management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled.** The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report should be treated as a



reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.”

(Emphasis is added)

10. Learned Counsel for the State has not been able to dispute the submission advanced on behalf of the petitioner and has accepted the fact that no Presenting Officer was appointed to conduct the departmental proceeding on behalf of the department.

11. In view of the discussions held herein above and the law laid down by the Hon’ble Supreme Court, it is evident that no Presenting Officer was appointed by the department to conduct the enquiry and lead evidence, which was collected against the petitioner before the Enquiry Officer and the Enquiry Officer could not have assumed the role of the Presenting Officer also by examining the witness and collecting the evidence against the petitioner in order to prove the charge(s).

12. I, therefore, come to the conclusion that the failure to appoint the Presenting Officer in the departmental enquiry violates the statutory rules, the principle of natural justice and reflects bias. As such, in my opinion, the impugned order of punishment as well as the appellate order are not sustainable in the eyes of law and are accordingly set aside.



13. However, the respondent authorities would be at liberty to hold fresh inquiry from the stage of appointment of Presenting officer.

14. In view of the fact that the impugned order of punishment has been set aside, the concerned authorities are directed to reinstate the petitioner in service with opportunity to them to proceed with the enquiry by placing the petitioner under suspension and continuing the enquiry from the stage of appointment of the Presenting Officer.

15. The question whether the petitioner would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement in service shall be decided by the respondent authorities in accordance with law after culmination of the proceeding and depending on the final outcome of the departmental enquiry. If the petitioner succeeds in the fresh departmental enquiry and he is reinstated in service, the respondent authorities shall be at liberty to decide according to law how they would treat the period from the date of dismissal till the date of reinstatement in service and to what benefits, if any, and the extent of the benefits the petitioner will be entitled to.

16. This writ application is allowed to the extent mentioned herein above.



17. However, there shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N/A
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