

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25057 of 2019

Brija Singh Son of Late Dudheshwar Singh, Resident of Kusumpuram Colony
Road, Jagdevnagar, P.S.-Rupaspur, P.O.-Danapur Cant, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Building Construction Department, Government of Bihar, Patna.
2. The Joint Secretary, Building Construction Department, Government of Bihar, Patna.
3. The Additional Secretary, Building Construction Department, Government of Bihar, Patna.
4. The Chief Engineer (South) Building Construction Department, Government of Bihar, Patna.
5. The Planning Engineer, in the Office of Chief Engineer (North), Wing, Building Construction Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ranjeet Kumar, Advocate
For the Respondent/s : Mr.Manoj Kr. Ambastha (Sc26)

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV JUDGMENT

Date : 28-09-2021

The petitioner initially filed the present writ application for setting aside the order of dismissal dated 26-08-2019 vide Notification No. 7682 (as contained in Annexure 6 to the writ petition) whereby the petitioner was dismissed from service and further for setting aside the enquiry report submitted by the enquiry officer dated 08/08/2018 on the ground that the same is based upon no evidence. However, during the pendency of the writ application the petitioner filed an interlocutory application bearing I.A. No. 1 of 2019 challenging the order dated 3-12-2019 vide Memo No. 10509 (as contained in Annexure 8 to the interlocutory application) by which the appeal filed by the petitioner against the order of dismissal has been rejected.



2. Taking into consideration the nature of relief sought for in the I.A., the same is allowed and the statements and prayer made in the interlocutory application would form part of this writ application.

3. The facts of the case in brief is that while the petitioner was posted as Assistant Engineer in the Building Construction Department, Rajendra Nagar Sub Division Office, Patna, one Rajesh Kumar (Contractor) submitted a written complaint on 28.02.2017 before the Vigilance Investigation Bureau alleging demand of Rs. 25,000/- by the petitioner for clearing a bill of Rs. 4,76,310/-. On the basis of the said complaint a vigilance trap was laid and the petitioner was arrested on 02.03.2017 allegedly while accepting Rs. 25,000/- as bribe from the complainant and accordingly a First Information Report in this regard was lodged vide Vigilance P.S. Case No. 18 of 2017 against the petitioner for offences under Section 7/13 (2) read with Section 13 (1)(D) of the Prevention of Corruption Act, 1988. On the basis of institution of the vigilance case a disciplinary proceeding was initiated against the petitioner and memo of charge dated 31/07/2017 was served upon him containing two charges:-

(i) that the petitioner demanded from the contractor – Rajesh Kumar 5% of the bill amount of Rs. 4,76,310/-; and



(ii) that the petitioner was caught red handed by the vigilance sleuths while accepting bribe of Rs. 25,000/- from the contractor – Rajesh Kumar.

4. In the memo of charge the letter no. 669 dated 15-03-2017 of the Superintendent of Police, Vigilance Investigation Bureau, Bihar, Patna and letter no. 2922 dated 06-03-2017 of the Superintending Engineer, South, Bihar Circle, Building Construction Department, Patna are mentioned as documentary evidences.

5. The enquiry officer after completion of enquiry submitted enquiry report at Annexure 3 dated 08/08/2018 and the disciplinary authority being satisfied with the findings of the enquiry officer imposed the punishment of dismissal vide notification dated 26/08/2019 at Annexure-6 to the writ petition and the same has been upheld by the appellate authority by order dated 3.12.2019 at Annexure 8 to the interlocutory application.

6. Learned counsel for the petitioner in support of the writ application argued that the basis of the present enquiry against the petitioner is that the Vigilance Investigation Bureau arrested the petitioner red handed while accepting bribe of a sum of Rs. 25,000/- from the contractor in question but the memo of charge does not mention the name of any witness to be produced



during the course of enquiry by the Department in order to prove the charges except the two letters which have been made the basis of the enquiry i.e. letter dated 15-03-2017 bearing letter no. 669 of the Superintendent of Police, Vigilance Investigation Bureau, Bihar, Patna and letter dated 06-03-2017 bearing letter no. 2922 of the Superintending Engineer, South, Bihar Circle, Building Construction Department, Patna and the copy of the FIR which formed a part of the letter dated 15/03/2017. He further submits that during the course of enquiry no oral evidence was produced to prove the charges against the petitioner and further no witness was examined to prove even the said documents which formed the basis of enquiry. He further submitted that neither the complainant nor the Investigating Officer nor the alleged witnesses to the occurrence were examined as oral witnesses in the disciplinary proceeding. The charges have been upheld simply accepting the letter of Superintendent of Police, Vigilance Investigation Bureau dated 15-03-2017 by which the Principal Secretary, Building Construction Department, Govt. of Bihar, Patna was informed by the S.P., Vigilance Investigation Bureau, Patna about institution of FIR against the petitioner while accepting a bribe of Rs. 25,000/- along with the copy of the FIR. He next submits that the present case is a case of no evidence but the enquiry officer without any



cogent evidence came to the conclusion that charges against the petitioner are proved. Referring to page- 76 of the writ petition which is the conclusion arrived at by the enquiry officer, he submits that the enquiry officer recorded his conclusion erroneously stating that the delinquent did not produce any evidence during the course of enquiry by which the action of the raiding party of the Vigilance Investigation Bureau could be treated as illegal.

7. Learned counsel further submits that the enquiry officer instead of proving the charges based upon evidence produced by the Department / Presenting Officer has shifted the onus upon the petitioner-delinquent to show his innocence by producing his evidence, which is not permissible in law. To substantiate his arguments he relies upon judgments of the Hon'ble Apex Court reported in **(2009) 2 Supreme Court Cases 570 Roop Singh Negi versus Punjab National Bank And Others, (2010) 2 Supreme Court Cases 772 State of Uttar Pradesh And Others versus Saroj Kumar Sinha** and judgment of a Single Bench of this Court on similar point rendered in CWJC No. 280 of 2016 (*Anil Kumar versus The State of Bihar & Ors.*) dated 05-12-2016 which has been upheld by Division Bench of this Court in LPA No. 63 of 2017.



8. *Per contra*, learned counsel for the State argued that departmental proceeding was conducted in accordance with the provisions of law and the petitioner was given opportunity to put his defence and accordingly the petitioner submitted his defence statement and after proper enquiry, the enquiry report vide letter no. 1199 dated 08/08/2018 was submitted by the Chief Engineer (South), Building Construction Department, Govt. of Bihar, Patna wherein the enquiry officer came to the conclusion that no evidence or material was produced by the petitioner which could establish that the action of the raiding party was not proper and as such the charges were proved. He next submits that after giving opportunity to the petitioner to submit his second show cause, the disciplinary authority passed the order of dismissal and the appellate authority upheld the order of the disciplinary authority of dismissal from service and rejected the appeal filed by the petitioner. He further submits that punishment in the departmental proceeding is guided by the principle of preponderance of probability and documentary evidences and facts were produced during the course of enquiry which could not be rebutted by the petitioner. The argument of the petitioner that no officer of the Vigilance Department was examined during departmental proceeding is misconceived inasmuch as in view of the fact that



disciplinary proceeding is not a trial, rather an enquiry at the level of Department as such, the letter as well as other documents so given by the Vigilance Department were *prima facie* proved.

9. I have heard learned counsel for the parties and have carefully gone through the materials available on record. It appears that on the basis of complaint made to the Vigilance Investigation Bureau by one Rajesh Kumar, Vigilance raiding team instituted an FIR against the petitioner for allegedly accepting bribe money of Rs. 25,000/- which the petitioner has denied in his statement of defence submitted during the course of enquiry and the case is still pending before the Vigilance Court.

10. From perusal of the memo of charge and the enquiry report it is not in dispute that the letter dated 15-03-2017 of the Superintendent of Police, Vigilance Investigation Bureau, Patna and the letter dated 06.03.2017 of the Superintending Engineer (South), Bihar Circle, Building Construction Department, Patna were made the basis of the enquiry as documentary evidence including the FIR which formed part of the letter dated 15.03.2017. It is also not in dispute that no witness was examined to prove the aforesaid documents. Accordingly the contents of the documents relied upon by the Department remained unproved.



11. From the enquiry report it appears that the enquiry officer relied upon the letter dated 15/03/2017 of the Superintendent of Police (Vigilance) and the statements made in the FIR including the pre-trap memo and post-trap memo which formed part of the First Information Report and arrived at the conclusion that the charges against the petitioner have been proved. It is admitted position that the complainant - Rajesh Kumar, the Investigating Officer or the witnesses to the pre-trap memo, post-trap memo or the witnesses to the occurrence were not examined and the charges against the petitioner have been proved by the Enquiry Officer accepting the allegations made in the FIR as true after coming to the conclusion that petitioner did not produce any evidence during the course of enquiry satisfying that the action of the raiding team constituted by the Vigilance Investigation Bureau was bad.

12. Accordingly, this much is clear that no witness was produced to prove the documents or the allegations levelled against the petitioner as such, I find force in the arguments of learned counsel for the petitioner that no evidence was led or produced during the course of enquiry in order to prove the charges inasmuch enquiry report basically rests upon the letter of the Superintendent of Police, Vigilance Investigation Bureau and



the allegations made in the Vigilance FIR forwarded to the Principal Secretary, Building Construction Department, Govt. of Bihar, Patna by the S.P. (Vigilance).

13. In a judgment reported in Roop Singh Negi Case (Supra) the Hon'ble Apex Court recorded its conclusion in paras- 14, 15 & 23 which are being reproduced hereinbelow for ready reference:-

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.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the



enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally



admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.

14. In Roop Singh Negi case (Supra) only evidence available with the disciplinary authority was the confession of the delinquent and the FIR. Like the present case, no witness was examined in the said case to prove the documents and the management witnesses merely tendered the documents as in the present case and the Hon'ble Supreme Court held that the materials brought on record pointing out the guilt are required to be proved and the decision must be arrived at on some evidence, which is legally admissible and also held that the allegation made in the FIR simpliciter unless proved by leading evidence, by itself can not be treated as evidence.

15. In (2010) 2 Supreme Court Cases 772 State of Uttar Pradesh And Others *versus* Saroj Kumar Sinha, the Hon'ble



Supreme Court in paras- 27 & 28 of the aforesaid judgment has held as follows:-

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 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.

16. The Hon'ble Apex Court in the aforesaid judgment has defined the role of the enquiry officer, who acts as a quasi judicial authority while holding enquiry and is in a position of an independent adjudicator. His function is to examine the evidence presented by the Department, even in absence of delinquent-official to see as to whether the un rebutted evidence is sufficient to hold the charges as proved but in the present case the the enquiry officer instead of examining the witnesses / evidences presented by the Department came to the conclusion that the petitioner failed to produce any evidence during the course of enquiry in order to establish the action of raiding team as illegal and accordingly held the charges as proved. The enquiry officer without examining any witness and / or any oral evidence to prove the documents and without recording the statement of the witnesses in support of the



charges has arrived at the conclusion that the charges against the petitioner stand proved.

17. Hon'ble Single Bench of this Court in Anil Kumar Case (supra) on similar facts in which the Presenting Officer except for relying upon two documentary evidences led no evidence to prove the documents or the charges in order to bring home the allegations set aside the order of initiation of disciplinary proceeding, punishment order as well as the appellate order. The aforesaid judgment of the Hon'ble Single Bench in Anil Kumar Case (supra) has been upheld by Division Bench in LPA No. 63 of 2017.

18. In view of the aforesaid discussions based upon the relevant facts and laws, I come to the conclusion that the enquiry officer held the charges to be proved without any evidence and only relied upon the letter of the Superintendent of Police, Vigilance Investigation Bureau, Patna and the FIR which could not have been treated as evidence. The disciplinary authority did not appreciate the facts in its correct legal perspective and merely accepted the enquiry report and passed order of punishment of dismissal, which has been upheld by the appellate authority also in a mechanical way. As a result, the enquiry report dated 07-08-



2018, impugned order of dismissal and the appellate order can not sustain and are accordingly set aside.

19. The writ application is allowed and the petitioner is directed to be reinstated with all consequential benefits.

20.However, this order will not preclude the respondents to proceed afresh in the matter from the stage of enquiry.

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	AFR
CAV DATE	06-09-2021
Uploading Date	28-09-2021
Transmission Date	NA

