

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1861 of 2020

Vijay Kumar Yadav (Male) aged about 58 years, Son of Late Lateshwar Prasad Yadav, Resident of Village + P.O.- Khutaha, P.S.- Lodipur, District-Bhagalpur, Bihar- 812005.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Director General of Police, Government of Bihar, Patna.
3. The Principal Secretary, Home Department, Government of Bihar, Patna.
4. The Inspector General of Police, Patna Division, Patna.
5. The Deputy Inspector General of Police, Central Region, Patna.
6. The Senior Superintendent of Police, Patna.
7. The Additional Superintendent of Police, Barh, Patna-cum-Inquiry Officer.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Kumar Kaushik, Advocate Mrs. Namrata Dubey, Advocate
For the Respondent/s	:	Mr. Ajay Kumar, A.C. to G.P.4

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 20-02-2021

The writ petition has been filed for the following reliefs:-

(I) For issuance of an order, direction or a writ of *certiorari* for quashing and setting aside the order contained in Memo No. 17 dated 10.01.2018 passed by the respondent number 5 whereby and where under the petitioner has been inflicted with the punishment of dismissal from service and it has further been directed that the salary of the petitioner



for the period spent in Jail/ suspension stands forfeited on the principle of '*no work and no pay*'.

(II) For issuance of an order, direction or a writ of *certiorari* for quashing and setting aside the order contained in Memo No. 2221 dated 23.07.2018 whereby and where under the respondent number 4 has rejected the appeal filed by the petitioner against the aforesaid order of punishment.

(III) For issuance of an order, direction or a writ of *certiorari* for setting aside the order contained in Memo No. 786 dated 26.08.2019 whereby and where under the respondent number 2 has rejected the memorial of review filed by the petitioner against the order of punishment.

(IV) For issuance of an order, direction or a writ of *mandamus* for directing the respondent authorities to reinstate the petitioner with all consequential benefit including the arrears of salary for the period during which the petitioner has been kept out of employment due to the operation of the illegal order of punishment.



(V) For issuance of an order, direction or a writ of *mandamus* for directing the respondent authorities to make payment for full salary to the petitioner for the period has been in Jail as well as for the period during which the petitioner was suspended.

2. Short facts of the case are that while the petitioner was posted at Khusrupur Police Station, on 07.08.2015, a First Information Report was registered against the petitioner, bearing Vigilance P.S. Case No. 63/2015 dated 07.08.2015 for offence under Section 07/ 13 (2) read with Section 13 (1)(d) of the Prevention of Corruption Act, 1988. Petitioner was caught red handed, while taking a bribe of Rs. 22,000/- (twenty two thousand) from Ashok Singh, by the Vigilance Police. Pursuant to which, the petitioner remained in jail from 07.08.2015 to 06.08.2016 and thereafter, released on bail. In the meantime, the respondent no. 6 issued a charge-sheet, vide Memo No. 10250 dated 24.08.2015 (Annexure-P1 to the writ petition), and departmental proceeding was initiated against the petitioner while he was in custody. Thereafter, on being released on bail on 06.08.2016, the petitioner appeared in the proceeding on 25.11.2016 and filed an application



before the Enquiry Officer to cross-examine the witnesses in the departmental proceeding. Petitioner also asked for certain documents, but the same was not supplied to him. The petitioner submitted a written statement of defence and denied all the charges levelled against him, vide application dated 15.06.2017 and again, another written application was filed by petitioner on 25.07.2017. Thereafter, the Enquiry Officer submitted his report to the Senior Superintendent of Police, Patna, who issued second show cause notice asking the petitioner to file show cause against dismissal from service alongwith enquiry report. The same was replied by the petitioner and after considering the enquiry report and written statement, order of dismissal was passed by respondent no. 5, vide Memo No. 17 dated 10.01.2018 (Annexure-P17 to the writ petition). Petitioner thereafter preferred an appeal before the respondent no. 4, which too was rejected, vide Memo No. 2221 dated 23.07.2018 (Annexure-P18 to the writ petition). Subsequently, the petitioner filed a memorial of review before the respondent no. 2, but the same was also rejected, vide Memo No. 786 dated 26.08.2019 (Annexure-P19 to the writ petition).

3. The petitioner has challenged the aforesaid order of dismissal and the consequential orders on the ground that the same are in violation of principle of nature justice and in contravention



of provisions contained in Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as “CCA Rules”).

4. Learned counsel for the petitioner has questioned the impugned order on the following grounds:

“(i) The **1st ground** of challenge is that the petitioner was not given an opportunity to cross-examine the witnesses and thus, the enquiry is vitiated. It is submitted that enquiry officer has not given an opportunity to cross-examine the witnesses and taken the evidence behind back of the petitioner, while he was in custody. It is further submitted that two witnesses i.e. P.W.-1 (Ashok Singh) and P.W.-2 (Niranjan Mishra) were examined behind back of the petitioner, which is in gross violation of principle of natural justice and vitiates the enquiry. In support of the same, the petitioner has relied upon paragraph – 15 of a decision of Hon’ble Apex Court, reported in **(2008) 8 SCC 236 (State of Uttaranchal versus Kharak Singh)**.



(ii) The **2nd ground** of challenge is that no document was served upon the petitioner in support of the charges and on this score also the whole proceeding vitiates. It is submitted on behalf of petitioner that the enquiry against the petitioner was instituted while the petitioner was in custody and the documents, mentioned in the list of evidence in support of the charges, were never supplied to him. The petitioner, on being released on bail, also demanded the same, vide application dated 15.06.2017 (Annexure-P10 to the writ petition), but the same was never acted upon by the respondent authorities. In this connection, the petitioner has relied upon a decision of the Hon'ble Apex Court in **Bilaspur Raipur Kshetriya Gramin Bank and Ors. vs. Madanlal Tandon**, reported in **(2015) 8 SCC 461** and submits that non-furnishing of list of evidence and documents to the delinquent goes to the root of the proceedings and vitiates the entire proceedings.

(iii) The **3rd ground** of challenge is that in enquiry, no presenting officer was appointed and



enquiry officer has himself acted as presenting officer, which also vitiates the entire enquiry proceedings. It is submitted on behalf of the petitioner that sub-rule 5(c) and sub-rule 14 of Rule 17 of CCA Rules cast a mandatory duty on the presenting officer to lead evidence and examine the witnesses, but in this case, the enquiry officer has performed the duty of presenting officer. In this connection, the petitioner has relied upon paragraph – 35 of a decision of this Court in **Uday Pratap Singh vs. State of Bihar**, reported in **2017 (4) PLJR 195**.

(iv) The **4th ground** of challenge is that the disciplinary authority held the petitioner guilty and proposed the punishment of dismissal in the second show cause notice itself even before considering his reply and thereby prejudged the issue, which according to him is not permissible, in view of the decision of the Hon'ble Apex Court in **H.P.State Electricity Board Ltd. vs. Mahesh Dahiya**, reported in **2017 (1) SCC 768**.



(v) The **5th ground** of challenge is that the impugned order of punishment neither deals with the pleas taken by the petitioner nor assigns any reason for rejecting the defence of the petitioner in the show cause notice and hence, is violative of principle of natural justice. It is submitted that neither the disciplinary authority nor the appellate authority while passing the orders impugned have dealt with the grounds of defence taken by the petitioner and have not furnished any reason in support of their conclusion.”

5. *Per contra*, counsel for the respondent/State submits that petitioner was provided several opportunities to participate in the departmental proceeding, but even in spite of several notices, contained in Annexure-J series to the counter affidavit, he did not avail the opportunity of cross-examining the witnesses. It is further submitted that two other witnesses were examined, as P.W.-3 and P.W.-4, on 25.05.2017, but the petitioner remained absent on the ground that neither any notice was given to him nor any opportunity was given to cross-examine the witnesses.



6. It is further submitted on behalf of respondents that the appointment of presenting officer is not mandatory. The disciplinary authority has issued second show cause notice about the proposed punishment on the basis of the enquiry report and thus, it cannot be said that the disciplinary authority prejudged the issue.

7. Lastly, in reply to the contention of the petitioner, it is submitted by counsel for the respondent/State that the disciplinary authority, after going through the enquiry report and considering the show cause filed on behalf of the petitioner, has passed the order of dismissal, which is well-reasoned and does not require any interference by this Hon'ble Court.

8. Having heard learned counsel for the parties and after going through the materials on record, this Court finds substance in the submission of counsel for the petitioner. It is not in dispute that the enquiry was initiated while the petitioner was in custody and two of the witnesses, including complainant, were examined behind back of the petitioner. It is also undisputed that no presenting officer was appointed either to lead or to prove the evidence whatsoever collected against the petitioner. The enquiry officer in such circumstances could not have assumed this duty upon himself to examine the witness. Rule 17(14) of CCA Rules,



2005 casts a mandatory duty on presenting officer to lead the Evidence and examine the witness, which has been discharged by Enquiry Officer. From bare perusal of the orders impugned, it is apparent that the disciplinary authority as well as appellate authority, while passing the orders impugned, have not dealt with any of the grounds of defence taken by the petitioner and also failed to furnish reason in support of their conclusion, which is clearly violative of principle of natural justice.

9. The discussions made above would confirm that the orders impugned suffer from multiple statutory violations. The law is well settled that if the departmental proceeding defaults on the mandatory prescribed procedure, the entire proceeding stands vitiated. It is also settled law that once the initial order is found to be defective and not in consonance with law, the subsequent orders have to collapse.

10. For the reasons and discussions made above, the entire proceedings drawn against the petitioner beginning with order of dismissal, as contained in Annexure-P17 to the writ petition, order of appellate authority, contained in Annexure-P18 to the writ petition and order of memorial by the Director General of Police, Bihar, contained in Annexure-P19 to the writ petition, cannot be upheld and are accordingly quashed and set aside. The



matter is remanded back to the disciplinary authority to move afresh and pass order in accordance with law and in conformity with the procedure as laid down under the Disciplinary Rules.

11. The writ petition is allowed.

(Prabhat Kumar Singh, J.)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
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