

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20117 of 2016

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Arvind Kumar Sinha, Son of Late Nem Narayan Prasad, resident of Mohalla - Khara, Police Station-Uda Kishanganj, District-Madhepura, Dismissed Revenue Karamchari, Sour Bazar, Anchal, Saharsa, District-Saharsa

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms, Bihar, Patna
2. The Divisional Commissioner, Kosi Division, Saharsa, Bihar
3. The District Magistrate-Cum-Collector, Saharsa
4. The Circle Officer, Sour Bazar, Saharsa

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr. Mukeshwar Dayal, Advocate
		Mr. Lala S.N. Rais, Advocate
For the State	:	Mr. Mukul Prasad, A.C. to G.P.-18

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 20-07-2022

Hard copy of the counter affidavit, earlier filed through electronic mode, is being placed on record.

2. Heard learned counsel for the petitioner and learned State Counsel.

3. The petitioner was working as a Revenue *Karamchari* in the Sour Bazar Circle in Saharsa District. On 08.08.2009, charge memo has been served on the petitioner in respect of seven charges. The first four charges are alleging certain lapses, like not putting up the files and proposals and misappropriation of certain advances. Charge Nos.5 to 7 are based on petitioner's arrest on the allegation of having accepted Rs.5,000/- as illegal



gratification. The said arrest has led to lodging of an F.I.R. also. Vigilance Case No.67 of 2009 was lodged on the basis of the petitioner's arrest.

4. After a due enquiry in respect of the charges, the enquiry officer has found the first four charges not proved. In respect of Charge Nos.5 to 7 arising out of the alleged illegal gratification accepted by the petitioner, no specific finding has been returned. The enquiry officer was of the view that since criminal proceedings in Vigilance Case No.67 of 2009 are pending, it may not be proper to express any opinion in respect of the same.

5. Later on, the authorities have again decided to proceed against the petitioner in view of the fact that the enquiry officer had not returned any finding in respect of Charge Nos.5 to 7. However, the proceedings have been conducted in respect of all the charges.

6. Upon perusal of the enquiry report, as a result of the second exercise undertaken by the authority as well as the appellate order, it is obvious that the petitioner has only been proceeded against for charge in respect of accepting Rs.5000/- as illegal gratification, which has been held to be proved. There is no finding of the enquiry officer in respect of the remaining



charges being proved.

7. The petitioner's counsel submits that the findings in respect of the charge of accepting illegal gratification are based on no material whatsoever. The petitioner had earlier submitted his written statement denying the charges in detail (Annexure 5).

8. During the later/second exercise being undertaken by the authority, the petitioner has taken a stand that he has nothing to add to his earlier written statement and that the same was required to be considered as his defence. The enquiry officer, as per established procedure under Rule 17 (14) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as "the 2005 Rules") was required to bring home the charge of accepting illegal gratification based on some material in support of the charge.

9. From the enquiry report, however, it appears that relying upon the complaint of one Hare Krishna Kumar, which led to lodging of the vigilance case, preparation of the pre-trap memorandum and post-trap memorandum and being overwhelmed by the accusations against the petitioner in the vigilance case, the enquiry officer has returned a finding that the charge in so far as accepting illegal gratification is concerned, is



proved.

10. The petitioner has availed the remedy of appeal against the said order, assailing the finding in respect of the allegation regarding illegal gratification, based on which he has been visited with the extreme punishment of dismissal. The appeal of the petitioner has also been rejected.

11. Counsel for the State has tried to sustain the findings arrived at in the proceedings. It is submitted that the petitioner was caught red-handed and therefore after giving due opportunity to the petitioner in compliance with the procedure established under the 2005 Rules proceedings have been conducted. Since petitioner indulged in such corrupt practices, the authorities have rightly passed the order of punishment of dismissal.

12. The order of the appellate authority dated 19.09.2016 (Annexure 2) passed in Service Appeal No.240 of 2014 shows total lack of consideration and from the same, it is manifest that the order is based only due to the fact that the petitioner has been arrested, pre-trap and post-trap memorandum has been prepared; and based on the chargesheet and other documents, which form part of the criminal case against the petitioner. The order of the appellate authority dated 19.09.2016 thus suffers



from the same infirmity, which is found in the order of the enquiry officer and has been taken note of above.

13. In support of the allegation of accepting illegal gratification, there is no material whatsoever on the record. Neither documentary nor any oral evidence has been produced in the enquiry or considered by the appellate authority before sustaining the findings of the enquiry officer. Based on the F.I.R., chargesheet, pre-trap and post-trap memorandum, the charge of illegal gratification could not have been held to be proved as the documents are yet to be examined and proved in a criminal trial.

14. The legal position in this regard is settled based on decision of the Apex Court in the case of ***Roop Singh Negi Vs. Punjab National Bank & Ors.***, reported in ***(2009) 2 SCC 570***, where the Apex Court has held that based on the documents in the criminal trial, a charge cannot be held to be proved. It is required to be sustained by documentary/oral evidence at the enquiry. This Court would consider it useful to quote para 14 of decision of the Hon'ble Apex Court in the case of Roop Singh Negi (supra) which reads as follows:-

“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. In view of the settled legal position, and from perusal of the order of the disciplinary authority dated 28.06.2014 and the appellate order dated 19.09.2016 passed in Service Appeal No.240 of 2014, it is apparent that the same are unsustainable as they suffer from infirmity, as taken note of above. The same are accordingly quashed.

16. As a result of quashing of the impugned orders, the



petitioner will be entitled to all consequential benefits.

17. The writ application is allowed.

(Madhuresh Prasad, J)

PNM/Shashank

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

