

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12657 of 2021

Vinod Kumar, aged about 58 years, Male, son of Late Vindhyachal Prasad
Resident of Road No. 22, Flat No. 144, Sri Krishna Nagar, Patna, P.S.- Budha
Colony, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Additional Chief Secretary, Home Police Department, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Darbhanga Range, Darbhanga.
4. The Deputy Inspector General, Darbhanga Range, Darbhanga.
5. The Superintendent of Police, Katihar.
6. The Superintendent of Police, Samastipur.
7. The Superintendent of Police, Madhubani.
8. The Sub Divisional Officer, Samastipur Sadar, Samastipur.

... .. Respondents

Appearance :

For the Petitioner	:	Mr.Ranjeet Kumar, Adv.
For the State	:	Mr. Dhurendra Kumar AC to GP-5

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 24-11-2022

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

2. On 03-12-2016, the petitioner was arrested on allegation of receiving Rs. 11,000/- (Eleven Thousand) bribe. The same led to lodging of Vigilance PS Case No. 132 of 2016. It is based on this incident that a charge memo has been served on the petitioner. The charge memo is dated 07-01-2017 (Annexure-5). Proceeding thereafter, have been conducted leading to issuance of the order of punishment of dismissal dated 31.12.2020



(Annexure-14) passed by the Superintendent of Police, Katihar.

The same is assailed by way of the instant writ proceedings.

3. During pendency of the instant writ petition, petitioner's appeal has also been rejected. The order, rejecting the appeal of the petitioner, is dated 19-10-2022, issued by the State Government, as contained in Annexure -D to the counter affidavit, is also impugned in the instant writ petition.

4. The two Interlocutory Applications bearing I. A. Nos. 1 of 2022 and 2 of 2022 whereby, the petitioner seeks incorporation of the prayer for setting aside of the Appellate order and impleadment of Appellate Authority as Respondent No.9, are allowed.

5. The petitioner's counsel submits that the procedure adopted by the Enquiry Officer manifests unfairness in the proceedings. The petitioner has specifically averred in his writ petition that the Superintendent of Police, Katihar, who, acted as a conducting officer, was carrying out the proceedings on his own without any Presenting Officer. He has specifically averred that for examining witnesses from the Vigilance Bureau the Superintendent of Police, Katihar, has also gone to the office of the Vigilance Bureau. He has kept the venue of enquiry shifting and embarked upon examination of witnesses as if he is the Presenting



Officer. The averment appears to be correct from bare perusal of the Enquiry Report. These facts are not in dispute, as the counter affidavit does not deny or dispute these facts. When the Enquiry Officer assumes the role of the Presenting Officer, then such procedure cannot be said to be fair. The law in this regard is well settled by now. From the decision of the Apex Court in the case of ***State of Uttar Pradesh and others vs. Saroj Kumar Sinha (2010) 2 SCC 772***. The said infirmity strikes at the root of fairness. The resultant order of the punishment, therefor, is clearly unsustainable.

6. It is apparent from pleadings that in his reply to second show cause the petitioner has raised this issue. The disciplinary Authority, however, has passed the impugned order of punishment without even considering this vital procedural infirmity. The counter affidavit, in fact, purports to cast the onus of establishing his innocence, on the petitioner. Para No.11 of the counter affidavit reads as follows:-

“11. That it is further submitted that the memorial appeal submitted by the petitioner was examined in the light of the opinion rendered by the Police Headquarter and the material available on the record. It was found that the aforesaid departmental proceeding initiated against the petitioner has been conducted according to the rules and procedure without any legal infirmity. The petitioner had been given



sufficient opportunity to place his defence but he has failed to produce any clinching evidence in support of his claim and refute the allegations levelled against him.”

7. The procedure adopted by the respondents, therefore, cannot be sustained. The resultant order of punishment also stands vitiated. The impugned order of punishment dated 31.12.2020 by the Superintendent of Police Katihar (Annexure-14), therefore is quashed. The order of the Appellate Authority dated 19-10-2022 (Annexure-D to the counter affidavit), being an affirmation of such illegal order, therefore, must also collapse. The same is also quashed. The matter is remitted to the Superintendent of Police, Katihar (Respondent No.5) from carrying out the proceedings from the stage of charge memo, in accordance with law. The petitioner shall appear within a period of four weeks to facilitate the Enquiry.

8. The writ petition is allowed.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	14-12-2022
Transmission Date	

