

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 6762 of 2018

Sujeet Kumar Yadav son of Sri Maan Singh Yadav, Resident of Mohalla-Ramdhani Road, Sahdara, P.O.- Madho Mills, P.S.- Malsalami, District-Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police Sahabad Range, Dehri-on-Sone.
4. The Superintendent of Police, Bhojpur at Ara.
5. The Deputy Superintendent of Police cum-Inquiry Officer, Jagdishpur, Bhojpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : M/s Sanjay Kr Singh, Amaresh Kr, Advocates

For the Respondent/s : Mr Suman Kr Jha, AC to AAG III

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 10-10-2022

Heard learned counsel for the petitioner and the respondents.

2 This writ petition has been filed for quashing the order dated 26.11.2003 passed by the Superintendent of Police, Bhojpur



(Disciplinary Authority) whereby and where under, the petitioner has been dismissed from service. The order passed by the Deputy Inspector General of Police, Sahabad Range on 28.04.2006, affirming the order in appeal, has also been assailed. The same has been brought on record by way of supplementary affidavit filed in the instant proceedings. The order passed by the Director General of Police (for brevity, **DGP**) on 18.09.2017 rejecting the petitioner's Memorial has also been assailed.

3 The parties have addressed the Court with reference to the original records of the enquiry which have been produced. The facts, which are not in dispute, are that the petitioner has been proceeded against on three charges while he was posted as a Guard at the gate of the Ara Jail along with some other Constables. It is alleged that certain persons, who had come to meet the prisoners, were smuggling **Ganja** in some "sattu" powder which the petitioner discovered and, thereafter, it is alleged that he has allowed them to pass through on assurance of illegal gratification; or sharing of **Ganja**. The second charge is that as a result of this illegal act at the Ara Jail Gate, later on, on the same date, one Constable has been shot at by two other persons leading to lodging of Town Police Station (for brevity, **PS**) Case No 58 of 2001. There is also an allegation that the petitioner, along with others,



who were posted at the Ara Jail Gate, had misbehaved with females.

4 The petitioner's counsel has submitted that the proceedings have been conducted in gross violation of principles of natural justice as well as in violation of procedural prescription contained in the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. Factually, it is submitted that no recovery has been alleged or made from the petitioner and, therefore, the first charge is unsustainable. The fact that petitioner has not been made accused in Town PS Case No 58 of 2001 is indicative of the petitioner's disconcern with the later incident of firing, on the same date. In so far as misbehaviour with any female, he submits that no complaint of such nature has been brought on record.

5 The entire proceeding is vitiated for various procedural infirmities which start right from issuance of the charge memo which does not indicate the date on which the misconduct is alleged. The submission is that the petitioner was not given any prior intimation regarding examination of the three witnesses in the enquiry as per the enquiry report. It is submitted that it is only the statements of these three witnesses, which have been referred to and relied on by the Enquiry Officer, for holding the charges



proved. The said witnesses were not examined in presence of the petitioner and he was not given any opportunity to cross-examine the witnesses. This procedural infirmity in itself is sufficient to vitiate the findings.

6 It is also submitted that the order of the Disciplinary Authority shows total non-application of mind as it is a cryptic order without assigning any reason. The only reason, which has been assigned for holding the charges proved, is also perverse and unsustainable. The Disciplinary Authority has based his conclusion on the fact that the petitioner has not been able to give any satisfactory reply. Apparently, the onus of disapproving the allegations has been relied on by the Disciplinary Authority rather than considering whether the Department has been able to bring home the charges even on preponderance of probability.

7 The learned State Counsel, on the other hand, submits that at least three persons have supported the allegations against the petitioners. The Enquiry Officer has examined three persons, namely, Uday Kumar, Video Kisku and Surendra Lal Das. The petitioner has throughout abstained in the enquiry. In spite of repeated summons and notices, he has not appeared in the proceedings. He has also chosen not to cross-examine these three witnesses and in view of the deposition of these three witnesses in



the enquiry before the Enquiry Officer, the Enquiry Officer has held the charges to be proved and submitted an enquiry report to this effect on 11.08.2002. The Disciplinary Authority has issued a second show cause to the petitioner which is dated 05.10.2002. After considering the entire matter, the Disciplinary Authority, agreed with the findings of the Enquiry Officer and directed for delistment of the petitioner from the Force under punishment order dated 26.11.2003.

8 The petitioner has availed the remedy of appeal against the order of punishment dated 26.11.2003 which has been rejected on 28.04.2006. The petitioner has also moved Memorial and the same has been rejected on 18.09.2017 by the DGP, Bihar, Patna. The order of the Appellate Authority as well as the order passed on the Memorial has also been assailed by way of this instant proceeding.

9 The learned State Counsel further submits that the witnesses were examined in presence of the petitioner. Referring to the original records, which have been produced before this Court, he submits that the petitioner was very much present when witness Surendra Lal Das was being examined on 23.05.2002 and he has chosen not to cross examine the said witness. From the original records, however, he is not in a position to show that any



notice was given to the petitioner as to the proposed date on which the other two witnesses Video Kisku and Uday Kumar were to be examined. It is also apparent that their examination was not in presence of the petitioner. He has tried to sustain the conclusion of the Disciplinary Authority by submitting that the Enquiry Officer has submitted a detailed enquiry report containing the statement of three witnesses, therefore, agreement of the Disciplinary Authority, after examining the records, cannot be, in any manner, faulted with.

10 This Court is required to consider the rival submissions within the settled parameters of judicial review in such matters. The scope of judicial review in respect of a disciplinary enquiry or any quasi judicial decision is normally confined to the decision making process, and not the decision itself. The parameters of judicial review has been elaborated by the Apex Court in various decisions including decision in the case of *Union of India & Others -Versus- P Gunasekaran, (2015) 2 Supreme Court Cases 610*. Paragraph 12 of the decision of the Apex Court in the case of P Gunasekaran (supra), relevant to the scope of exercise of jurisdiction under Article 226/227 of the Constitution of India is being reproduced herein:

“12. Despite the well-settled position, it is painfully disturbing to note that the High



Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;



(i) the finding of fact is based on no evidence.”

11 In Paragraph 13 of the said judgment, the Hon’ble Apex Court has laid down the normal limitations to exercise of writ jurisdiction in the case of disciplinary proceedings, which reads as follows:

“13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.”

12 Keeping in background the settled scope of review of disciplinary proceedings under judicial review, this Court would find that the entire proceedings, conducted against the petitioner, is vitiated for lack of fairness in the procedure. The principles of



natural justice have been violated by the authorities in the proceedings as is evident from the following facts.

13 At the very initiation of the proceedings against the petitioner, the Authority has not indicated the date of the alleged misconduct.

14 The finding of the Enquiry Officer holding the charges proved is based on statement of three witnesses recorded in the course of the proceedings.

15 From the records of the proceedings, it is obvious that there is no indication in the records that the petitioner was intimated by any notice recording the proposed date on which two out of three witnesses, namely, Video Kisku and Uday Kumar were to be examined. Examination of these two witnesses, whose statements have been relied upon by the Enquiry Officer, was in absence of the petitioner and without any opportunity of cross-examination. The third witness, namely, Surendra Lal Das, who was examined on 23.05.2002, is a Deputy Superintendent of Police who had submitted a report dated 12.03.2001 under Memo No 203 of 2001 into the allegations levelled against the petitioner. From his statement, it is evident that he has only identified the said report submitted by him. He has not claimed to be a witness to the alleged misconduct.



16 Another infirmity in the disciplinary proceeding is that the Disciplinary Authority, after submission of the enquiry report, has relied upon the conclusions of the Enquiry Officer holding the charges proved, based on consideration that the petitioner has, in spite of notice, chosen not to appear in the proceedings, or cross-examine the witnesses. The conclusion, on the very face of it, is wholly arbitrary and capricious that no person could have arrived at such conclusion. The records of the proceedings manifests that there was no intimation to the petitioner regarding examination of two witnesses, namely Video Kisku and Uday Kumar. The third witness has merely identified a report, submitted by him earlier, in relation to the incident forming the basis of alleged misconduct. He has not supported the allegations as a witness to the occurrence or based on any personal knowledge. He had, in his official capacity, earlier submitted a report. He has only identified his report before the Enquiry Officer. His statement, therefore, was irrelevant and extraneous.

17 The Disciplinary Authority, while agreeing with the Enquiry Officer and while imposing the punishment vide order dated 26.11.2003, has based his conclusion on unsatisfactory explanation, submitted by the petitioner, rather than recording his conclusion with reference to any material on record in the



proceeding, in support of the allegations. The conclusion is contrary to the established requirement in a proceeding that the Department is required to bring home the charge based on some material which suffices the preponderance of probability.

18 The impugned order dated 26.11.2003 is apparently a cryptic order, showing total lack of consideration of the various issues raised by the petitioner, noted above and without assigning any reason. On this ground also, the order of punishment is held to unsustainable in the eyes of law.

19 In view of the above noted procedural infirmities, coupled with the fact that the conclusions of the Enquiry Officer are based on irrelevant material, or no material, the order of punishment dated 26.11.2003 is unsustainable in the eyes of law as being violative of principles of natural justice, vitiated on account of procedural infirmity and being based on irrelevant, or no material whatsoever in support of the charge. The order dated 26.11.2003 is, therefore, quashed.

20 The order dated 28.04.2006 passed by the appellate authority is an order showing no consideration whatsoever and is an order without assigning any reason. The cryptic order of the appellate authority reads as follows:

**“अपील अभ्यावेदन की बातों, विभागीय
कार्यवाही में गठित आरोपों, संबंधित प्रदर्शों,**



संचालन पदाधिकारी द्वारा दिये गये मंतव्य एवं गवाहों का लिये गये बयान तथा आरक्षी अधीक्षक द्वारा पारित किये गये बर्खास्तगी का आदेश का मैंने सम्यक विचार किया। विचारोपरांत पाया गया कि आरोपित आरक्षी/534 सुजीत कुमार यादव के विरुद्ध लगाये गये सभी आरोप गंभीर प्रकृति के हैं, जो घोर अनुशासनहीनता, उदासीनता को प्रदर्शित एवं प्रमाणित करता है। वह बिल्कुल उनके नैतिक एवं आरक्षी के चारित्रिक आचरण के प्रतिकूल है और उनके विरुद्ध अभियुक्त के प्रभाव में आकर भ्रष्ट आचरण करने, एक अच्छे आरक्षी के चारित्रिक गुणों के प्रतिकूल आचरण करने, महिलाओं के साथ दुर्व्यवहार करने जैसे गंभीर आरोप प्रमाणित होते हैं तथा आरक्षी अधीक्षक द्वारा दिये गये इन्हें सेवा में बर्खास्तगी का आदेश गंभीर आरोपों के अनुरूप है, अतः इनके अपील अभ्यावेदन को अस्वीकृत किया जाता है।"

21 The order of the appellate authority is, thus, clearly unsustainable in the eyes of law. The forum of appeal has been rendered meaningless by non-consideration of the appeal by the appellate authority. The same is in violation of the settled law regarding the requirement of recording of reasons, as elaborated by the Hon'ble Apex Court in the case of *Kranti Associates Private Limited & Another -Versus- Masood Ahmad Khan & Others*, (2010) 9 Supreme Court Cases 496. The order of the Appellate Authority dated 28.04.2006 is also quashed.

22 The order of affirmation of these two illegal orders, passed by the DGP on the petitioner's Memorial dated 18.09.2017,



thus, is also unsustainable and must collapse. The order of the DGP is also quashed.

23 This writ petition is allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
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