

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1474 of 2023

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Sant Om Prakash Son of Late Sadho Prasad Resident of Vilalge- Bakaur, P.S.-
Islampur, District-Nalanda. Bihar-801303

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secreary, Animal and Fish Resources Department, Government of Bihar, Patna.
2. The Joint Secretary, Animal and Fish Resources Department, Goernment of Bihar, Patna.
3. The Additional Secretary, Animal and Fish Resources Department, Govvernment of Bihar, Patna.
4. The Director, Dairy Development Directorate, Bihar, Patna.
5. The Enquiry Officer, Cum Deputy Director (Dairy) Dairy Development Directorate, Headquarter, Bihar, Patna.
6. The Presenting Officer Cum District Dairy Development Officer, Madhubani.
7. The Complainer Sri Kranti Kumar, S/o Kameshwar Kamiti, Village and P.O.-Simera, Jhanjharpur, Madhubani, Bihar-847404.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjeet Kumar, Advocate Mr. Yogesh Kumar, Advocate Mr. Ayush Kumar, Advocate Mr. kanishk Kaustubh, Advocate Mr. Shikhar Mani, Advocate
For the State	:	Mr. Raj Kishore Roy, GP- 18 Mr. Mukul Prasad, AC to GP-18

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 28-06-2023

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

2. Charge Memo was issued to the petitioner on
29.08.2016, containing three (3) Charges.

3. Charge No. 1 alleged that the petitioner was caught



red handed, while accepting a bribe of Rs. 4,000/- by the vigilance team. At the relevant point of time, the petitioner was posted as Dairy Field Officer in the office of District Development Office, Madhubani. The second Charge is alleging unauthorized absence from 27.12.2011; and the third Charge is a Charge ancillary to the first Charge, alleging that the petitioner has misused his official capacity, and thereby committed misconduct in terms of Bihar Government Servant's Conduct Rules, 1976.

4. The inquiry report has been submitted by the Inquiry Officer on 27.04.2017. Charge Nos. 1 & 3 have been held proved. Charge No. 2 has not been found to be proved because in the inquiry, it was accepted that the petitioner's absence during the alleged period was on account of his arrest pursuant to his being trapped by the vigilance team on 27.12.2011.

5. The petitioner was issued a second show-cause on 09.05.2017, and he submitted his reply on 29.05.2017, whereafter the order of dismissal has been passed. The order of dismissal was, however set aside on account of the issue raised by the petitioner in C.W.J.C. No. 13200 of 2017, that the Deputy Director was not competent to be the inquiry officer.



6. This Court, therefore, in C.W.J.C. No. 13200 of 2017 remanded the matter after setting aside the order of dismissal for enabling fair consideration of the inquiry report by a new Disciplinary Authority. The order passed by the writ Court was affirmed in intra court appeal arising out of L.P.A. No. 462 of 2019, whereafter another Disciplinary Authority came to be appointed on 11.06.2019. The petitioner, however was dismissed, thereafter on 19.03.2020, by order of the new Disciplinary Authority.

7. Thereafter, the petitioner filed a review by way of a memorial under Rule – 24 (2) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for brevity ‘the CCA Rules, 2005’), which too came to be rejected on 26.08.2022.

8. The petitioner has approached this Court in the instant writ proceedings assailing the conduct of proceedings based on the Charge Memo dated 29.08.2016, and the order of dismissal dated 19.03.2020, as well as its affirmation by order passed of the Reviewing Authority on 26.08.2022.

9. Learned counsel for the petitioner submits that the findings of the Inquiry Officer, which forms the foundation of the petitioner’s order of dismissal, are unsustainable within the



parameters of judicial review. Referring to the inquiry report (Annexure -15), it is submitted that in respect of Charge No.1, alleging acceptance of illegal gratification (Rs. 4,000/-), the petitioner had made a specific request for examining the complainant and members of the raiding team of the inquiry. The request, however, has not been heeded to.

10. The Inquiry Officer, as per his findings, was apparently overwhelmed by the petitioner's arrest, and the fact that he was accused in the vigilance case. The Inquiry Officer has taken note of the fact that documents were made over to the petitioner in the criminal proceedings, as required under Section 207 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C.'). Thereafter, the Inquiry Officer has proceeded to record findings of Charge No. 1 being proved, merely on the basis of surmises and conjunctures. In fact, the infirmity in the procedure adopted by the Inquiry Officer has gone to the extent of shifting the onus of proof on the petitioner, to establish his innocence, which is apparent from the findings of the Inquiry Officer.

11. It is also submitted that not a single witness or evidence was presented by the Presenting Officer. No opportunity of cross-examination was afforded to the petitioner,



and therefore, the proceedings are contrary to the mandate of Rule 17 (14) of the CCA Rules, 2005.

12. The findings are also perverse, as the same are based on surmises and conjunctures, and not based on any material whatsoever. In view thereof, the findings of the Charge No. 3 being proved, which was an ancillary Charge to Charge No. 1 are also unsustainable.

13. Learned counsel for the State submits that this is a serious matter, where the petitioner has been caught red handed by the vigilance team. Referring to averments made in paragraph No. 8 of the counter affidavit, a stand has been taken that since the petitioner was arrested red handed in a trap after constituting a raiding team, the same cannot be considered as a case of no evidence. The procedure having been followed, this Court should not interfere with the findings in exercise of jurisdiction under article 226 of the Constitution of India, having regard to the scope of judicial review, which is confined to the procedural aspect.

14. On consideration of rival submissions and on going through the inquiry report, the submissions advanced by the petitioner's counsel are apparently correct. Not a single witness has been examined in the inquiry. The petitioner's



specific request for the complainant and members of the raiding team to be examined has been recorded by the Inquiry Officer, but no action has been taken on such request. In fact, the Inquiry Officer has relied upon communications made by the Presenting Officer on 20.03.2017, about 14 days after the last date in the inquiry, which document was also not relevant to issue for holding the Charge No. 1 proved. The fact that Inquiry Officer was overwhelmed by the petitioners accusation in the vigilance case and his arrest, is apparently the only reason for holding the Charge No. 1 proved.

15. It is trite law that the Charges have to be established on the standard of preponderance of possibilities and in accordance with procedural prescription contained in Rues 17 of the CCA Rules, 2005. Apparently, the same has been violated. There is no witness examined in the inquiry to prove the Charge, even the allegationist, who claims to have given a bribe, has not been requisitioned or called in the proceedings. Otherwise, also no material has been relied upon relevant to the Charge to sustain the Charge No. 1 or ancillary Charge No. 3.

16. Placing reliance on petitioner's accusation, in the criminal case arising out of Vigilance P.S. Case No. 91 of 2011, is insufficient for recording a finding of the Charge being



proved, as per settled law based on decision of the Apex court in the case of *Roop Singh Negi Vs. Punjab National Bank* reported in *(2009) 2 SCC 570*.

17. The findings of the Inquiry Officer, therefore are unsustainable on the above noted grounds. The consequent order of dismissal dated 19.03.2020, and its affirmation by order of the Reviewing Authority under order dated 26.08.2022, therefore are unsustainable, as being devoid of any substance or legal foundation. The order of dismissal dated 19.03.2020 (Annexure- 22) and the order dated 26.08.2022 (Annexure- 25) is liable to be quashed and are therefore quashed.

18. The writ petition stands allowed.

19. The petitioner will be entitled to all consequential benefits.

(Madhuresh Prasad, J)

Raj kishore/-

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

