

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8400 of 2016

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Birendra Kumar Sinha Son of Late Prayag Narayan Sinha, Resident of Village Gilani, P.S. Sare, District Nalanda, at present residing at C/o Sri Shiv Lakhan Ram 7/MF/4/5 Bahadurpur Housing Colony, P.O. T.V. Tower, Patna-26, (Dismissed Block Statistical Supervisor Phulwari Sharif Block, Patna)

... .. Petitioner/s

Versus

1. The State Of Bihar, through its Secretary, Planning and Development Department, Govt. of Bihar, Patna.
2. The Secretary, Planning and Development Department, Govt. of Bihar, Patna.
3. The Special Secretary Planning and Development (Economic and Statistics) Department, Bihar, Patna.
4. The Director, Directorate of Economics and Statistics, Govt. of Bihar, Patna.
5. The Deputy Director (Establishment) Planning and Development Department (Directorate of Economic and Statistics), Govt. of Bihar, Patna.
6. The District Magistrate, Buxar.
7. The Deputy Collector, Buxar.
8. The District Statistical Officer, Patna/Buxar.
9. The Block Development Officer, Simri Block Buxar/ Phulwari Sharif Block, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dudh Nath Singh, Advocate
For the Respondent/s	:	Mr. Sunil Kumar Mandal, SC-3
		Mr. Bipin Kumar, AC to SC-3

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 11-12-2023

Heard Mr. Dudh Nath Singh, learned counsel appearing on behalf of the petitioner and Mr. Sunil Kumar Mandal, learned Standing Counsel No. 3 assisted by Mr. Bipin Kumar, learned AC to SC No. 3 appearing on behalf of the State.



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

“(i) For issuance of direction or order or writ in the nature of certiorari to quash the order dated 06.02.2014 contained in Memo No. 174 issued under the signature of Director Planning and Development Department (Economic and Statistics) Govt. of Bihar, Patna by which the petitioner has been dismissed from his service with immediate effect under the authority of provisions of Bihar Government Servant (Classification Control and Appeal) Rule-2005 as well as appellate order dated 14.08.2014 contained in Memo No. 1156 by which appellate authority rejected the Memo of Appeal preferred by the petitioner.

(ii) for issuance of direction or order or writ in the nature of Mandamus to reinstate the petitioner on the post of Block Statistical Supervisor from the date of order of dismissal with all consequential benefit after quashment of the impugned orders.

(iii) For any other incidental and consequential relief/reliefs for which the petitioner is found legally



entitled to under the facts and circumstance of the case.

3. Learned counsel for the petitioner submits that the petitioner was appointed as Statistical Supervisor while he was posted as Block Statistical Supervisor Phulwari Sharif Block. The petitioner was in-charge of Godown at Gonepura.

4. Subodh Kumar, Chairman of PACS Rampur Faridpur had lodged a complaint before the Superintendent of Police, Vigilance Investigation Bureau, Patna stating therein that the petitioner for providing wheat gunny bag has demanded Rs. 10,000/- as bribe and thereafter verification report raiding team was constituted and fulfilling the process of pre-trap and post trap memorandum Vigilance P.S. Case No. 52 of 2012 dated 19.07.2012 was instituted for the offences under Sections 7, 13(2) read with Section 13(1)(d) of Prevention and Corruption Act.

5. Learned counsel for the petitioner further submits that on the basis of aforesaid F.I.R. details report was submitted and accordingly two charges were framed against the petitioner; (i) For demand of bribe of Rs. 10,000/- in lieu of make available gunny bags with seal of Bihar State Food Corporation for purchase of wheat from complainant namely Subodh Kumar, and the petitioner was red handed which proved gross violation of Government



Servant Conduct Rules (ii) In the light of red handed arrest with bribe money Vigilance Case No. 52 of 2012 dated 19.07.2012 was instituted under Section 19 of the P.C. Act sanction was given by the Directorate vide Memo No. 1187 dated 07.09.2012 for prosecution.

6. Prima facie, aforesaid charges were found true and accordingly, the petitioner was suspended in the light of Rule 9(2) “Ka” of Bihar State Government Servant (Classification Control and Appeal) Rule, 2005. From perusal of ‘Prapatra Ka’ it is evident that the Special Secretary of the Department for proving the charges attached only two papers contained in Memo No. 1367 dated 24.07.2012 as evidence with the Memo of approval of sanction for prosecution and production-cum-forwarding in to custody to the petitioner.

7. On the aforesaid evidence for proving the aforesaid charges, a departmental proceeding was initiated against the petitioner vide Office order dated 12.12.2012 contained in Memo No. 308 and communicate to all concerned vide memo No. 2365 dated 12.12.2012. The Additional Collector, Patna was appointed as enquiry officer and Inspector Vigilance was appointed as a Presenting Officer for concluding the producing evidence in departmental proceeding and the petitioner was directed to file a



show cause before Enquiry Officer. The petitioner has filed his reply which he has pointed out deficiency of post trap memorandum as well as non mentioning the name of spot witness and made prayer for stay of departmental proceeding till the conclusion of criminal proceeding before the Enquiry Officer on 22.04.2013.

8. Learned counsel for the petitioner submits that thereafter, the petitioner has filed a supplementary show cause on 13.05.2013 in which the petitioner has specifically stated that as alleged date of occurrence i.e. 19.07.2012 for taking bribe of Rs. 2,000/- from the complainant before verifier, petitioner was on Magistrate duty in the Islamia B.Ed. College, Phulwari Sharif where Para Medical Examination was going on.

9. Departmental proceeding was conducted on seven sitting which start from 04.01.2013 and ends on 08.05.2013 but during entire period of proceeding nothing was produced by the Presenting Officer except his opinion contained in letter no. 1890 dated 04.05.2013 and thereafter the Enquiry Officer submitted his report on 13.05.2013 only relying on an opinion of Presenting Officer but during entire proceeding neither any witnesses were produced nor any documentary evidence which proved the charges levelled in the 'Prapatra Ka' by the Presenting Officer.



10. After receiving the enquiry report, the Deputy Director (Establishment) Planning and Development Department (Economic and Statistics) Govt. of Bihar (respondent no. 5) who is below the rank of Disciplinary Authority issued memo no. 1587 dated 19.08.2013 to the petitioner by which he asked second show cause from the petitioner. In compliance of the aforesaid show cause, petitioner has submitted his reply on 12.09.2013 in which the petitioner disclosed the discrepancy of departmental proceeding in respect of constitution of 'Prapatra Ka' issue of second show cause, non production of material witnesses incompetency of inquiry officer, violation of principle of natural justice as well as provisions of statutory rules of Bihar Government Servant (Classification Control and Appeal) Rules, 2005 and provisions of Article 311(2) of the Constitution of India. Learned counsel for the petitioner further submits that it appears from the aforesaid reply that in course of departmental proceeding neither evidence was produced by the Presenting Officer nor reasonable opportunity to defend was provided to the petitioner and police paper based opinion of the presenting officer as well as inquiry officer the disciplinary authority passed the order of dismissal from service and the same was affirmed in appeal without consideration of objection of the petitioner at the inquiry



stage, punishment stage as well as appellate stage. Learned counsel for the petitioner further submits that after released from custody petitioner had given his joining to the department concerned which was accepted on 17.12.2012 and thereafter his suspension was revoked vide Memo No. 70 dated 04.04.2013 and the petitioner was suspended with retrospective effect i.e. on 17.12.2012 contrary to the statutory rule and without any evidence or documents and bare perusal of the allegation which is not specific quantity of wheat mentioned in the allegation.

11. Learned counsel for the petitioner has referred to a judgment of the Supreme Court reported in *(1999) 2 SCC 10 (Kuldeep Singh vs. Commissioner of Police & Ors.)* and with particular reference to the conclusion recorded at paragraph nos. 4 to 10, 25 to 32 and 39. He submits that in absence of evidence led by the Department, the charges could not have been upheld.

12. Learned counsel for the petitioner also relied upon a judgment in the case of Roop Singh Negi v. Punjab National Bank and Ors., reported in (2009) 2 SCC 570, and the conclusion of the Supreme Court recorded in paragraph nos. 14, 15 and 23 of the judgment which squarely covers in the case in hand are quoted hereinbelow :



“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. We have notice hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station.



The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a matter that no evidence was left.

“23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A



decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.”

13. Learned counsel for the State submits that the scope of disciplinary proceeding and a criminal proceeding are entirely distinct and while the charge in a criminal case is required to be conclusively proved, the finding in a disciplinary proceeding rests on preponderance of probability. He further submits that since in the present case, the petitioner has been apprehended while taking bribe leading to institution of the F.I.R., the circumstances draws against the petitioner to support the finding of the enquiry officer as upheld by the disciplinary authority.



14. As in the present case, the only evidence available with the disciplinary authority was the F.I.R. and no witness was examined in the present case to prove the documents. The Supreme Court held this exercise to be insufficient to uphold the charges and also held that the allegation made in the F.I.R., simplicitor unless proved by leading evidence, by itself cannot be treated as evidence. It appears that no evidence to prove the charge or to confirm the allegation.

15. In the result, the order dated 06.02.2014 of the Director Planning and Development Department (Economic and Statistics) Govt. of Bihar, Patna (Annexure-1) together with the order dated 14.08.2014 of the appellate authority (Annexure-2) cannot be upheld and are, accordingly, quashed and set aside.

16. The writ petition stands allowed.

17. The petitioner stands reinstated and would be entitled for all consequential benefits.

(Rajesh Kumar Verma, J)

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AFR/NAFR	NAFR
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