

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 8029 of 2016

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Ram Ishwar Ram Son of Late Harigovind Ram resident of village -
Fatchpur, P.S. Didarganj, District - Patna

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Home Department, Government of Bihar, Patna
3. Inspector General of Police, Prison and Reform Services Jail,
Government of Bihar, Patna
4. The Deputy Inspector General of Police, Prison and Reform Services Jail,
Government of Bihar, Patna
5. The Director, Probation Jail and Reform Services, Bihar, Patna
6. The Joint Secretary - Cum - Director, Administration Prison and Reform
Services Directorate, Home D
7. The Superintendent, Sahid Khudiram Bose Central Jail, Muzaffarpur
8. The Superintendent, Sub - Divisional Jail, Sitamarhi
9. The Superintendent, Central Jail, Motihari
10. The Superintendent, Central Jail, Purnea

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Chaudhary, Sr. Adv.
Mr.Gajendra Kumar Singh

For the Respondent/s : Mr.Ashok Priyadarshi- Ga4

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 04-12-2023 Heard Mr. Ashok Kumar Chaudhary, learned senior
counsel for the petitioner and Mr. Sanjay Kumar, learned counsel
appearing for the respondent-State.

1. The present writ application has been filed for
quashing the order contained in Memo No. 1663 dated
13.03.2015 issued by the Inspector General, Prison and Reform
Services Jail, Government of Bihar, Patna (Respondent No.3) by
which the services of the petitioner has been dismissed and also
the order contained in Memo No. 555 dated 27.01.2016, passed



in service appeal preferred by the petitioner against the order contained in Memo No. 1663 dated 13.03.2015, whereby the order of dismissal from the service of the petitioner has been affirmed by the respondent-Principal Secretary, Home Department, Government of Bihar.

2. The brief facts fallen for consideration of this Court is that the petitioner was posted as Head Warden at Sub-jail, Sitamarhi on the fateful day of Holy on 17.03.2014. On that day a law and order situation arose in the Sub-jail on account of assault being made to the prisoners by the BMP constables and wardens by the order of the In-Charge Superintendent of Sub-Jail and the prisoners were agitating and protesting the assault made by the BMP constables. Accordingly, emergency bell was rang thereafter all the jail authorities assembled at the gate of Jail but the petitioner at the relevant point of time was distributing the food in the ladies ward situated in a separate section of jail and on the call of the emergency bell, the petitioner rushed to the Jail gate in hurry and somehow he could not lock the outer gate of the ladies ward as a result of which taking benefit of unruly situation in the premises of jail, four prisoners were escaped from the jail. For the alleged misconduct of the petitioner, he along with other officials have been served a show cause notice vide Memo No. 1515 dated 22.03.2014 by the Inspector General of Police, Government of Bihar and in reply the petitioner submitted his detailed and



exhaustive reply denying all the allegations leveled against him. Thereafter, the petitioner was put under suspension vide letter No. 1800 dated 03.04.2014 (Annexure-7) and a departmental proceeding under Rule 22 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 was initiated against the petitioner vide memo No. 2834 dated 02.06.2015 (Annexure-8). Thereafter the petitioner has submitted written statement of defence on 05.07.2014 denying all the allegations and pointing out the defects in the disciplinary proceeding. However, the petitioner was served with a second show cause notice vide Memo No. 6510 dated 16.12.2014 and in response thereof, the petitioner had submitted his reply pointing out the defects and latches in the disciplinary proceeding but the defence of the petitioner could not be taken into consideration and on the basis of inquiry report and the alleged charges against the petitioner, he has been subjected to dismissal from his service and his dismissal has been further confirmed by the Principal Secretary, Home Department, Bihar.

3. Learned senior counsel for the petitioner relying on the facts of the present case submits that undoubtedly, mistake has been committed by the petitioner but the same was not intentional or deliberate rather it could be said that it is an act of negligence that too occurred in an emergent situation which could be expected from even a prudent person, especially, when



the law and order is ruptured. He further submits that charges leveled against the petitioner in the present case have not been proved by any of the documentary or oral evidence. Not a single witness has been adduced in the departmental proceeding nor the petitioner has been afforded the opportunity to defense his case. Merely on the ground of acceptance of the petitioner that he has admitted his guilt, his acceptance culminated in to punishment of dismissal from the service. He further submits that the charges must have to be proved by the documentary or oral evidence. He further contends that the impugned orders have been passed without following the principle of natural justice which are perverse and suffer from infirmity and therefore, deserve to be quashed.

4. Learned senior counsel for the petitioner in defense further relied upon a judgment rendered by the Hon'ble Apex Court in the case of **Roop Singh Negi vs Punjab National Bank & Ors.** reported in **2009 (2) SCC 570**. The relevant extract of the judgment is reproduced herein below;

14. Undisputably, 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 noticed herein before that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by 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 manner that no evidence was left.

5. Per contra, learned counsel for the respondents submits that on the basis of the inquiry report in which the petitioner has been found to be guilty for his gross negligence as a result of which four prisoners from the jail premises have succeeded to escape and the petitioner himself has admitted his guilt of his negligence, the impugned orders have been passed which do not warrant any interference of this Court.

6. In the light of aforesaid facts and circumstances of the case, this Court would not be persuaded by the contention of the respondents, therefore, it stands rejected and taking note of the aforesaid facts as well as the settled proposition of law as laid



down in the case of **Roop Singh Negi vs Punjab National Bank & Ors (supra)**, this Court is of the view that the petitioner has made out a *prima facie* case of no evidence so as to interfere with the impugned orders dated 13.03.2015 and 27.01.2016 and observe that the order of the disciplinary authority as also the appellate authority are not supported by any reason and the materials brought on record during the inquiry pointing out the guilt of the petitioner are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. Therefore, the enquiry conducted against the petitioner was in total breach of principles of natural justice and hence, the entire departmental enquiry proceeding is vitiated.

7. Accordingly, the impugned orders dated 13.03.2015 and 27.01.2016 (Annexure- 1 and 2) are set aside. Since the enquiry is found to be vitiated as is found to be in violation of the principles of natural justice inasmuch as it is alleged that no documentary or oral evidence has been adduced in order to prove the charges against the delinquent and the petitioner has not been afforded the opportunity to defend his case, the matter is remanded to the Disciplinary Authority to conduct a fresh enquiry from the stage it stood vitiated, i.e., after the issuance of the charge sheet and to proceed further with the enquiry after affording opportunity to the petitioner to examine or cross examine the evidence and also after following due principles of



natural justice in accordance with law. The aforesaid exercise shall be completed within a period of six months from receipt or production of a copy of this order.

(Rajesh Kumar Verma, J)

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