

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6120 of 2023

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Bhupendra Kumar Son of Late Satyadev Lal Resident of Village-Hario Raj
Villa Apartment, Block-D/204, Near Gaya Airport, Dhobi Road, P.O.-Civil
Aerodram, P.S.-Magadh Medical, District-Gaya.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Scheduled Caste and
Schedule Tribe, Welfare Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Scheduled Caste and Schedule Tribe, Welfare
Department, Govt. of Bihar, Patna.
3. Joint Secretary, Scheduled Caste and Schedule Tribe, Welfare Department,
Govt. of Bihar, Patna.
4. Additional Secretary, Scheduled Caste and Schedule Tribe, Welfare
Department, Govt. of Bihar, Patna.
5. Enquiry Officer-Cum-Deputy Director, Welfare, Munger Division, Munger.
6. Presenting Officer-Cum-District Welfare Officer, Gaya.
7. District Magistrate, Gaya.
8. Deputy Development Commissioner, Gaya.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Raju Giri, Adv. Mr. Harsh Vardhan, Adv.
For the Respondent/s	:	Mr. S.K. Mandal, SC-3 Mr. Bipin Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 11-12-2023

Heard Mr. Raju Giri, learned counsel for the petitioner
and Mr. S.K. Mandal, learned counsel for the State.

2. The petitioner by invoking the prerogative writ
jurisdiction of this Court under Article 226 of the Constitution
of India seeking quashing of the Memo No. 1178 dated
18.04.2022 issued by the Joint Secretary, Scheduled Caste and
Scheduled Tribe, Welfare Department, Bihar, Patna, by which in



purported exercise of power under rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as 'the Rules, 1950') the pension of the petitioner has reduced to 50%. The petitioner also sought a direction upon the respondent(s) to restore his full pension with all consequential benefits.

3. The necessary facts as gleaned from the records for the purposes of disposal of this case, is/are that while the petitioner was working in the establishment office of the District Welfare Officer, Gaya, he had filed an application on 29.06.2017 before the District Welfare Officer, Gaya, requesting for casual leave from 01.07.2017 to 05.07.2017 which was duly accepted and allowed. In the meantime, the District Magistrate, Gaya, vide his letter no. 4834 dated 30.06.2017 directed the Deputy Development Commissioner, Gaya, to institute an FIR against certain persons, who were involved in illegal disbursement of fund to fake colleges. By the said letter, it was directed to get the FIR instituted by the petitioner, who was working as Sub Divisional Welfare Officer at Neem Chak Bathani, Gaya. It is the fact that, as the petitioner had taken casual leave, the FIR got instituted by Block Welfare Officer, Town, Gaya on 01.07.2017.

4. Treating the aforesaid act, as disobedience on the



part of the petitioner, a show-cause notice was issued by the Deputy Development Commissioner, Gaya, on 01.07.2017.

5. In response to the aforesaid show-cause, the petitioner submitted his reply that from 01.07.2017 to 05.07.2017, he was on casual leave and he has never been informed nor received any letter or direction to institute the FIR against the accused persons. He denied the allegation that in any manner he had helped the culprits.

6. The Departmental Authorities on being dissatisfied with the explanation, has opined to initiated a departmental proceeding vide letter no. 5259 dated 16.07.2017.

7. On the basis thereof, a Memo of Charge(s) (Prapatra-Ka) was duly drawn on 18.12.2017 and the same has been communicated to the petitioner vide letter no. 485 dated 22.02.2018 under the signature of the Joint Secretary, Scheduled Caste and Scheduled Tribe, Welfare Department, Bihar, Patna, as contained in Annexure-8 to the writ petition. The Deputy Director, Welfare, Munger Division, Munger, was appointed as Enquiry Officer and the District Welfare Officer, Gaya, as Presenting Officer.

8. The petitioner on receipt of the aforesaid Memo of Charge(s), submitted his reply before the Enquiry Officer



(Annexure-12) and categorically submitted that from 01.07.2017 to 05.07.2017, he was on casual leave, which was sanctioned on 29.06.2017 itself. In the aforesaid reply, he further submitted that no order as such, to institute the FIR had ever been made available to him till 30.06.2017 or subsequent thereon. He has denied the charge(s) that he anyhow misled the department or tried to extend help to the accused persons.

9. The Enquiry Officer, having found the charge(s) proved against the petitioner, submitted his enquiry report vide his letter no. 64 dated 25.02.2020 to the Disciplinary Authority. In the meantime, the petitioner superannuated from his service on 31.01.2019 and consequently, the proceeding has been converted under rule 43(b) of the Rules, 1950 vide Memo No. 1234-B dated 09.07.2020 (Annexure-B to the counter affidavit).

10. The second show-cause notice was issued by the Joint Secretary, Scheduled Caste and Scheduled Tribe, Welfare Department, Bihar, Patna, which could not be replied by the petitioner, as the notice had been sent on the old address entered in his service book at the time of joining of his service.

11. The Disciplinary Authority, on being satisfied with the enquiry report, passed the impugned order as contained in Memo No. 1178 dated 18.04.2022, inflicting the punishment of



reduction of 50% of the pension of the petitioner.

12. The aforesaid order of punishment, had been communicated to the petitioner vide Memo No. 1178 dated 18.04.2022, the copy of which has been marked as Annexure-16 to the writ petition.

13. While assailing the impugned order, Mr. Giri, learned counsel for the petitioner, submitted that the entire departmental proceeding suffers from infraction of the mandatory provisions of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the 'Rules, 2005') as well as Bihar Pension Rules, 1950. There is complete violation of rule 17 (3)(4) and (5) of the Rules, 2005. Neither any oral nor any documentary evidence has been brought on record nor examined during the departmental proceeding nor proved the charge(s). The respondent(s) have failed to appreciate that the petitioner did not receive the second show-cause notice, as it was not sent on proper address, which was though already furnished by the petitioner. Thus, admittedly, there is a complete violation of the principles of natural justice and violative of Article 14 of the Constitution of India.

14. He further submitted that the impugned order



came to be passed by the Disciplinary Authority without appreciating the fact that there was no evidence before the Enquiry Officer to prove the charge(s) and the enquiry report leading to the punishment order was based upon only surmises and conjectures. He went on submitting that it was the Enquiry Officer to examine the evidence presented by the Department even in absence of the delinquent employee, but from the record, it explicit that neither any witness has been examined nor the documents have been proved. Heavy reliance has been made on a judgment rendered by the Apex Court in ***State of Uttar Pradesh and others vs. Saroj Kumar Sinha, 2010 (2) SCC 772***. Further reliance has been made on a judgment rendered by the Apex Court in ***Roop Singh Negi Vs. Punjab National Bank*** reported in ***(2009) 2 SCC 570***. He next submitted that the impugned order under rule 43(b) of the Rules, 1950 is further bad as there is no allegation against the petitioner that any misconduct or negligence on his part, leading to pecuniary loss caused to the Government and, thus, the impugned order ought to be quashed and cancelled. In support of his submissions, he further relied upon the judgments passed by the learned co-ordinate Benches of this Court in ***Ganesh Prasad Yadav vs. State of Bihar & Ors. [2021(5) BLJ 256]*** and



Md. Salauddin vs. State of Bihar & Ors. [2021 (3) BLJ 595].

15. *Per contra*, learned counsel for the State, submitted that despite the direction given to the petitioner vide Memo No. 4834 dated 30.06.2017 to institute the FIR against the accused persons, who were found involve in illegal disbursement of fund to fake colleges, the petitioner has not obeyed the direction of his superior officials and knowingly went on leave from the back date. That apart, the petitioner was issued show-cause vide Memo No. 434 dated 01.07.2017 with a direction to file show-cause reply within twenty four hours, the same has been responded after a week on 08.07.2017. The explanation of the petitioner also did not find consideration for the reason that the petitioner has also been informed on his mobile on 01.07.2017 at 09:00 AM, but despite the information, he did not turn up to institute the FIR. The petitioner also failed to submit his second show-cause reply and moreover the charge(s) levelled against him stood proved during the departmental enquiry, on the basis whereof, the final order came to be passed. Thus, in any view of the matter, there is no infirmity in the departmental proceeding or in the impugned order.

16. This Court has carefully heard the submissions



advanced on behalf of the learned counsels for the respective parties and also perused the materials available on record.

17. Before coming to the merit(s) of the case, it would be apt to observe that admittedly, it is within the exclusive domain of the Disciplinary Authority to consider the evidence on record and to record findings whether charge(s) stood proved or not. It is equally settled law that in judicial review, the Court has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. It is trite law that the judicial review is not an appeal from a decision but a review of the manner in which decision has been made. It is meant to ensure that delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the Court/Tribunal (**vide State of Tamil Nadu and Another vs. S. Subramaniam, AIR 1996 SC 1232**). Time without number, the highest Court of the land has held that the Court can review to correct error(s) of law and fundamental procedural requirement, which may lead to manifest injustice and can interfere with the impugned order, if need arises.

18. Now coming to the merit(s) of the case, admittedly, the Memo of Charge(s) does not contain the list of witnesses by whom the article of charge(s) proposed to be



sustained. Sub rules (3) (4) and (6) of rule 17 of the Rules, 2005 reads as follows:

“(3) Where it is proposed to hold an inquiry against a government servant under this Rule, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government Servant;

(b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government Servant a copy of the articles of charge, such statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government Servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

x x x x x

(6) The disciplinary authority shall, where it is not the inquiring authority, forward the following records to the inquiring authority-

(i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(ii) a copy of the written statement of defence, if any, submitted by the government servant:

(iii) a copy of the statement of witnesses, if any,



specified in sub-rule (3) of this Rule.

(iv) evidence proving the delivery of the documents specified to in sub-Rule (3) to the Government Servant; and

(v) a copy of the order appointing the "Presenting officer"."

19. The afore-noted provisions clearly explicits that where the Disciplinary Authority is proposed to hold an enquiry against a government servant under this Rule and proposed to sustain the articles of charge(s) there must be witness(s) by whom the charge(s) are to be proved.

20. Learned counsel for the petitioner has rightly made reliance upon a judgment rendered by the Apex Court in ***Roop Singh Negi (supra)*** wherein it has been held in paragraph nos. 14 and 15 which reads as under:

"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 noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the 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 manner that no evidence was left.”

21. It is needless to observe that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change



in recent years. In the past it was thought that it included just two rules namely (1) no one shall be a judge in his own case (Nemo debet esse judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably (vide *A. K. Karaipak and Ors. vs. Union of India and Ors*, AIR 1970 SC 150).

22. In the *State of Uttar Pradesh (supra)*, highlighting the duties and obligations of the Enquiry Officer, the Apex Court has held in so many words that an inquiry officer acting in a quasi-judicial proceeding is in the position of an independent adjudicator. His function is to examine the evidence presented by the department, even in the absence of delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved.

23. It would be worth benefiting here to quote paragraphs 28 and 30 of the afore-noted judgment, which reads as follows:

“28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a



representative of the department/disciplinary authority/ Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”

24. Further it would also be worth noting here that rule 43(b) of the Rules, 1950 empowers the State Government to withhold or withdraw pension or any part of it, whether permanently or a specified period on the contingencies of fact



that any pecuniary loss causes to the government if the officer is found in departmental or judicial proceeding to have been guilty of grave misconduct or to have caused pecuniary loss to the Government by misconduct or negligence during his service including service rendered on re-employment after retirement.

25. Bare reading of the charge(s), it *prima facie* alleges that inspite of the direction of the District Magistrate, the petitioner did not institute the FIR against the persons, who fraudulently made payment of scholarship amount and he had disobeyed the order of his superior and tried to save those persons.

26. From the materials available on record, it appears that the petitioner had submitted his leave application on 29.06.2017, which was duly accepted and allowed on 29.06.2017 itself. The letter which is made the very basis of initiation of departmental proceeding dated 30.06.2017 was issued by the District Magistrate, Gaya, addressed to the Deputy Development Commissioner, Gaya, directing him to get the FIR instituted against the accused persons by the petitioner, have never been communicated to the petitioner nor in pursuance thereof any consequential letter/direction has been given to the petitioner. Moreover, the allegation on the part of



the respondent(s) that the petitioner had taken leave from the back date, was neither proved nor it was even charge. The reply of the petitioner is also to the effect that he was in the office on 30.06.2017 but he was never informed regarding any direction issued by the higher authorities to get the FIR instituted, all the more, it is admitted that the FIR has been instituted by the Block Welfare Officer, Gaya, on 01.07.2017 itself. The Enquiry Officer also does not suggest that the department is able to prove the charge that the petitioner has anyhow extended help to the accused persons or knowingly went on leave nor extend the help to those persons. Any inference drawn by the Enquiry Officer is nothing but based on suspicion. Thus, it can safely be observed that suspicion howsoever strong cannot take the place of proof.

27. From the materials available on record, it is also evident that the second show-cause notice issued to the petitioner had been sent to his old address entered in his service book at the time of joining his service, which has subsequently been changed and the present address is duly mentioned in his pension paper book, nonetheless, the show-cause was sent to the old address. Thus, in absence of any acknowledgment of the receipt of the show-cause notice, the stand of the petitioner that



the second show-cause notice has never been served upon him, cannot be ignored, which makes further proceeding in the departmental proceeding leading to the impugned order bad and not sustainable.

28. This Court also finds that the action of the petitioner which is termed as disobedience, neither lead to any pecuniary loss caused to the Government nor the action of the petitioner in the facts and circumstances of this case, can be said to be grave misconduct. Thus, in that view of the matter also, the impugned order inflicting the punishment of reduction of 50% pension of the petitioner shocks the conscience of this Court and held to be disproportionate to the charge(s) proved in the departmental proceeding. Thus, on this count also, the impugned order is not sustainable in the eyes of law.

29. In the aforesaid facts and circumstances and the position obtaining in law, the impugned order as contained in Memo No. 1178 dated 18.04.2022 issued by respondent no.3, the Joint Secretary, Scheduled Caste and Scheduled Tribe, Welfare Department, Bihar, Patna, is hereby set aside.

30. The respondent authorities are directed to ensure all the consequential benefits accruing on account of quashing of Memo No. 1178 dated 18.04.2022 to the petitioner,



preferably within a period of twelve weeks from the date of receipt/production of a copy of this order.

31. The writ application stands allowed.

(Harish Kumar, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13-12-2023
Transmission Date	

