

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14324 of 2013

=====

Miran Prasad Yadav Son Of Late Rishu Prasad Yadav Resident Of Village-
Koili, P.O.- Khutaha, P.S.- Jagdishpur, District- Bhagalpur

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary-cum-Commissioner, the Home (Jail), Old Secretariat, Patna
2. Inspector General Of Prison, Old Secretariat, Patna
3. Jail Superintendent, Central Jail, Muzaffarpur
4. Jail Superintendent, District Jail, Sitamarhi

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Sunil Kumar,
Mr. Sanjiv Jaiswal, Advocates.
For the Respondent/s : Mr. Naman Deepak, AC to AAG-13

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV JUDGMENT/ORDER

05-04-2023

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

2. The petitioner, at the relevant time in the year 2011, working as Warder in the District Jail, Sitamarhi, has filed the present writ application for quashing the order dated 11.02.2013 passed by Respondent No.2 (I.G. Prison, Patna) whereby the petitioner has been awarded punishment of reduction in pay scale to the basic grade with a further punishment that petitioner shall not be paid his salary for the period of suspension except subsistence allowance.

3. The brief fact of this case is that the petitioner, at the relevant time, was posted at District Jail,



Sitamrahi. On 05.03.2011, one under-trial prisoner, namely, Teju Sahani fell seriously ill and was to be shifted to the Sadar Hospital, Sitamarhi. The Jail Superintendent deputed the petitioner and three other Jail Guards for shifting the under-trial prisoner to Sadar Hospital under his custody.

4. As per the case of the petitioner, no safety measures were taken by the Jail Superintendent or by District Magistrate by deputing police security guards in the Hospital. The petitioner taking into consideration this situation divided the duty amongst four jail employees including himself of 4 to 4 ½ hours each guard for looking after and guarding the under-trial prisoner. On 06.03.2011 when the other jail security employees accompanying the petitioner was on duty in the early hours, the petitioner went to see and check the prisoner and found the prisoner missing. On the same day, the prisoner was found dead in the river.

5. Due to negligence in duty of the petitioner and other guards, the under-trial prisoner escaped and subsequently, his dead body was recovered from the river, the petitioner and other guards/jail personnel were put under suspension *vide* letter No. 399 dated 06.03.2011 issued by the Superintendent, Mandal Kara, Sitamarhi. *Vide* Memo No. 4222



dated 10.10.2011. Respondent took a decision to initiate departmental proceeding against the petitioner on the charge of negligence and dereliction of duty and accordingly, Memo having charge No.1 and 2 was served upon the petitioner. The Enquiry Officer as well as Presenting Officer were also appointed by the aforesaid letter.

6. The petitioner submitted his written statement in defence denying the charges. The enquiry officer submitted the enquiry report dated 16.02.2012 and thereafter *vide* letter dated 31.05.2012, the Joint Secretary (Administration), Home Prison, Department issued 2nd show-cause to the petitioner along with a copy of enquiry report. The petitioner submitted his reply to the 2nd show-cause dated 03.09.2012. Thereafter, the impugned order of punishment dated 11.02.2013 was passed by I.G. (Prison), Patna that the petitioner allocated the duty to jail security personnel for 4 to 6 hours each instead of 2-2 hours due to which the security personnel fell asleep and this facilitated the under-trial prisoner to escape from the custody.

7. Learned counsel while assailing the order impugned submits that on 06.02.2012 the enquiry officer fixed the date for conduct of enquiry and in response the petitioner appeared before the enquiry officer, no departmental proceeding



and or oral enquiry was held by the enquiry officer. The presenting officer was absent. No witness was examined by the enquiry officer and no document was produced by the department. The contents of the documentary evidence were not proved by examining witnesses. The documents relied upon by the enquiry officer during course of enquiry have also not been supplied to the petitioner.

8. Learned counsel further submits that in the reply filed by the petitioner to the 2nd show-cause, he has contended that the petitioner was not given proper opportunity by the enquiry officer during course of enquiry. No witnesses were examined, so that, he could cross-examine the necessary witnesses produced by the department. The proceeding of enquiry was held on a single day i.e., on 06.02.2012 and based upon perfunctory enquiry, the enquiry officer submitted his report holding the petitioner guilty of charges levelled against him.

9. Based upon this, the impugned order of punishment has been passed. In support of his argument, the petitioner relied upon the case of one ***Ran Bhadur Sharma v. The State of Bihar & Ors*** passed by this Court in ***Civil Writ Jurisdiction Case No. 18300/2010*** and the judgment reported in



Shankar Dayal v. State of Bihar as reported in ***2018(1) PLJR 144.***

10. *Per contra*, learned counsel for the State argued that the departmental proceeding was conducted in accordance with procedure prescribed. Memo of charge was served, the enquiry officer called the petitioner in the enquiry, copy of enquiry report along with 2nd show-cause was served upon him. The enquiry officer submitted the detailed enquiry report holding the charges proved. The petitioner never requested the enquiry officer for cross-examination of any witness. As such, the order of punishment does not suffer from any infirmity or illegality. The petitioner has taken a lame excuse to defend his own inaction/negligence due to which the prisoner escaped from his custody.

11. I have heard learned counsel for the parties and perused the materials on record. From perusal of memo of charge, it appears that two charges were levelled against the petitioner.

Charge No.1 is that on 05.03.2011 one under-trial prisoner, namely, Teju Sahani was sent in the custody of petitioner to Sadar Hospital, Sitamarhi for treatment but on the same night the prisoner escaped from the hospital and subsequently died. This is gross negligence and dereliction of duty on the part of the



petitioner.

Charge No.2 is that the under-trial prisoner was handcuffed but instead of tying another end of handcuff with the pole/rod of the hospital bed, extra piece of rope was added in the handcuff and the said rope was thereafter tied with the pole/rod of the hospital bed.

12. Along with memo of charge, the petitioner was served a copy of duty chart dated 05.03.2011, photo copy of gate register, photo copy of statement and bed head ticket of Sadar Hospital as piece of documentary evidence to be produced by the department during course of enquiry. From perusal of the enquiry report, I find that the enquiry officer has taken into consideration the various documents available in the file relating to the occurrence dated 05.03.2011 as well as the explanation/reply submitted by the petitioner. The enquiry officer have relied upon altogether 17 documents in the enquiry report, taken out from aforesaid file including the statement of co-prisoner, Ravi Singh and other staff of Sadar Hospital.

13. It transpires that along with memo of charge only four documents were provided but in enquiry report the enquiry officer has taken into consideration altogether 17 documents including statement of staffs of the Sadar Hospital and other jail staffs. The copy of documents and statement of the



witnesses kept in the file was not provided to the petitioner. The enquiry report does not indicate as to who were the witnesses who were examined in the departmental enquiry and which documents were produced by the presenting officer during course of enquiry.

14. In the unreported judgment of ***Ran Bhadur Sharma (supra)*** the Co-ordinate Bench of this Court has relied upon the judgment of Hon'ble Supreme Court in the case of ***Anil Kumar v. Presiding Officer*** as reported in ***AIR 1985 SC 1121*** wherein it has been held that *an enquiry report with regard to a departmental enquiry conducted by the enquiry officer should not be based on the ipse dixit of the enquiry officer. It should show as to what are the charges levelled against the petitioner; how a departmental enquiry was conducted. What was the evidence that came on record, it should show analysis of the evidence and conclusion of the enquiry officer based on reason to show that the evidence that came before the Enquiry Officer was analyzed in the backdrop of the explanation submitted by the petitioner and he holds the delinquent employee guilty of the charges levelled against him. The Hon'ble Supreme Court in the aforesaid case holds that if the report of enquiry officer does not meet the aforesaid*



requirement of law, it is a total violation of the principles of natural justice and based on such enquiry report, no punishment can be imposed upon a delinquent employee.

15. In the case of **Anil Kumar (Supra)**, the Hon'ble Apex Court in para 5 and 6 has laid down the principle in the following manner:-

“5.It is well-settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the Enquiry Officer has a duty to act judicially. The Officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his *ipse dixit* that the charges are proved. He did not assign a single reason why the evidence produced by the appellant did not appeal to him or was considered not credit-worthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an *ipse dixit* of the Enquiry Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. This is too well-settled to be supported by a precedent. In *Madhya Pradesh Industries Ltd. v. Union of India* [1966]1 SCR 466 : (AIR 1966 SC 671), this Court observed that a speaking order will at best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard. Similarly in *Mahabir Prasad v. State of Uttar Pradesh* [1971] 1 SCR201:(AIR1970 SC 1302), this Court reiterated that satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that



appealed to the authority. It should all the more be so where the quasi-judicial enquiry may result in deprivation of livelihood or attach a stigma to the character. In this case the enquiry report is an order sheet which merely produces the stage through which the enquiry passed. It clearly disclosed a total non-application of mind and it is this report on which the General Manager acted in terminating the service of the appellant. There could not have been a gross case of non-application of mind and it is such an enquiry which has found favour with the Labour Court and the High Court.”

6. Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy or sufficiency of evidence. But where the evidence is annexed to an order sheet and no correlation is established between the two showing application of mind, we are constrained to observe that it is not an enquiry report at all. Therefore, there was no enquiry in this case worth the name and the order of termination based on such proceeding disclosing non-application of mind would be unsustainable.”

16. In order to verify the contention of the learned counsel for the petitioner that the enquiry was conducted on a single day i.e., on 06.02.2012 and no witness was examined by the presenting officer and that the documents were not produced by the presenting officer in his presence, the original record of the departmental enquiry was called for by this Court. Upon perusal of the order-sheet of the departmental



proceeding, I find at page 22/92 of the original file the order sheet recorded during course of enquiry by the enquiry officer. It is a half page order sheet. From perusal of the same it appears that altogether five orders have been recorded during course of enquiry. Order no.1 is dated 11.10.2011 and the same records that the memo of charge was received vide Memo No. 4222 dated 10.10.2011 issued by I.G. (Prison), Bihar, Patna. Order No.2 dated 15.11.2011 records that vide letter bearing No. 4166 dated 15.11.2022, memo of charge was served upon the Warder, Miran Prasad Yadav for inviting his explanation. Order No.3 dated 26.11.2011 records that the Warder, Miran Prasad Yadav submitted his explanation dated 26.11.2011. Order No.4 dated 06.02.2012 records that the Warder Miran Prasad Yadav (delinquent) appeared before the undersigned for the purpose of placing his defense. Order No. 5 dated 16.02.2012 records that the enquiry report was forwarded to the headquarters *vide* letter no. 685 dated 16.02.2012 of the jail.

17. Upon careful scrutiny of the order-sheet, I find that the contention of the petitioner is correct that the enquiry was conducted on a single day i.e., on 06.02.2012 when the petitioner appeared before enquiry officer. I did not find any other order recorded by the enquiry officer that the presenting



officer was present during course of enquiry and that the documents relied upon by the enquiry officer in the enquiry report was produced and examined by the presenting officer during course of enquiry. I also did not find that any oral enquiry was conducted and witnesses were examined in order to substantiate the charges against the petitioner giving opportunity to him to cross-examine the witnesses produced by the department.

18. In reply to the 2nd show-cause, the petitioner has taken the point that none of the witnesses were examined in his presence and he was not given opportunity to cross-examine witnesses. No opportunity was given to the petitioner to produce his defence witness by the enquiry officer.

19. In the judgment relied upon by the petitioner in the case of *Shankar Dayal v. State of Bihar (supra)* the Co-ordinate Bench of this Court has held in paragraphs no. 9, 10 and 11 as follows:-

“9. A complete procedure stands discussed under rule 17 to 19 of ‘the Disciplinary Rules’ in which the role of the Disciplinary Authority, the Presenting Officer and Enquiry Officer is very clearly explained but as I have said neither the Disciplinary Authority has bothered to appreciate his obligation nor has the Enquiry Officer or the Presenting Officer. Holding of the disciplinary proceeding is not a routine matter rather a stigma is attached to the officer concerned and which requires to be driven home in the manner



provided under 'the Disciplinary Rules' and not by getting swayed on the allegation.

10. The role of the Enquiry Officer and the Presenting Officer stands discussed in a judgment of this Court on a similar matter arising from CWJC No. 7207 of 2016 (*Shankar Dayal v. State of Bihar*) and which should have been a guidance for the respondents which runs as under:

"It is not in dispute that though a Presenting Officer was appointed for the enquiry but he did not choose to lead any evidence drawn against the petitioner or examine the petitioner on the allegation. On the contrary it is the Enquiry Officer who took this duty upon himself. Rule 17 of 'the Rules' draws a complete scheme of the proceeding and details the manner in which a proceeding is to be conducted. Rule 17(14) very eloquently describes as to how a proceeding is to proceed on the date fixed. A mandatory duty has been cast on the Presenting Officer to examine the witnesses and lead evidence collected against a delinquent. This mandatory duty has not been discharged. Instead the Enquiry Officer took this duty upon himself even when such practice has been deprecated by the Courts on different occasions. For ready reference I would refer to a judgment of the Supreme Court reported in (2010) 2 SCC 772 (*State of Uttar Pradesh v. Saroj Kumar Sinha*). At paragraph 28 of the judgment the Supreme Court has the following words of advise for the enquiry officer:

"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."

In continuation I would also refer to a judgment reported in 1996 (1) PLJR 401 (*Panchanan Kumar v. The Bihar State Electricity Board*) in which case though a Presenting Officer



was appointed but he failed to discharge his obligation and in his absence his role was assumed by the Enquiry Officer. The opinion of the Bench at paragraph 11 of the judgment would be relevant for the issue at hand:

“11. Considering the rival contentions of the parties, this Court is of the opinion that in the instant case the inquiry has been vitiated inasmuch as the enquiry officer himself has acted as the presenting officer even though the presenting officer was appointed by the Electricity Board. There is no explanation why the said presenting officer did not appear before the enquiry officer to present the case of the department. In the peculiar facts of this case, the action of the enquiry officer to present the case himself on behalf of the department and also to take upon himself the duty of enquiring the correctness or otherwise of the said case clearly shows that the enquiry officer, in the instant case, has failed to discharge his duty as a fair and impartial enquiry authority. He has rolled up within himself the role of both the presenting officer and the enquiry officer and as such has acted in a manner which is not consistent with the principles of natural justice.
.....”

It is undisputed that there was no Presenting Officer present either to lead or to prove the evidence whatsoever, collected against the petitioner. The Enquiry Officer in such circumstances could not have assumed this duty upon himself to examine the evidence to hold it sufficient enough for upholding the charges.

In this connection I would again refer to paragraph 14 of the judgment of the Supreme Court reported in (2009) 2 SCC 570 (*Roop Singh Negi v. Punjab National Bank*) which would again apply on all fours in the present case:

“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.”

11. Obviously where the punishment orders are resting on an invalid enquiry it would have to bear the consequences.”

20. A bench of this Court in a judgment passed in ***Kumar Upendra Singh Parimar v. The State of Bihar*** as reported in ***2000(3) PLJR 10*** in paragraphs 17, 18 and 19, has held as follows:-

“17. The other grounds on which no witnesses have been produced in the said enquiry is that the petitioner has not demanded an oral enquiry.

“18. This Court cannot accept this argument for the reasons already indicated when an enquiry has been ordered by the disciplinary authority and an enquiry officer has been appointed it is not for the petitioner to demand that the department must produce witnesses to prove its case. The onus is never on the delinquent employee, on the other hand, onus is on the department to prove the charges and it is for them to produce their witnesses in support of his case against the delinquent employee.

19. Therefore, in the facts of this case, this Court is constrained to hold that by not producing any evidence in support of its case, the respondent authorities have failed to prove the charges against the delinquent employee. Where charges have not been proved the enquiry report loses all its importance and the punishment imposed on the petitioner cannot be sustained. When a person is thrown out of employment, it must be on the basis of a procedure which is reasonable, just and fair. (See *D.K. Jadav v. J.M.A. Industries Ltd.*, reported in (1993) 3 SCC 259 : 1994 (2) PLJR (SC) 55.”



21. In another judgment of this Court passed in the case of *S.K. Verma v. The State of Bihar* as reported in *2000(1) PLJR 116*, it has been held as follows in paragraph-16:-

“ In view of the fact that during the inquiry no witness was examined, this Court holds that the charges against the petitioner cannot be said to have been proved. It is a well known principle that at the stage of inquiry the petitioner is entitled to be given a reasonable opportunity to cross-examine the witnesses who are produced to prove the charges. The petitioner also has a right to adduce evidence by producing witness. It is well known that at this stage provision of the [Indian Evidence Act](#) does not apply. But, the substantial principles of [Evidence Act](#) are to be observed in a departmental enquiry also.”

22. Coming back to the facts of the present case, I find that the presenting officer was not present during course of enquiry either to produce oral evidence or to produce the documentary evidence and/or to prove the charges by examining the witnesses. Enquiry officer, in such circumstances, has grossly erred in arrogating this role upon himself to prove the charges by collecting documents from the departmental file.

23. From perusal of the original record of the departmental enquiry and the enquiry report, it is evident that the enquiry officer assumed this duty upon himself by collecting documents from the departmental file for upholding the charges



without handing over the copy of those documents to the delinquent. The duty of the enquiry officer is to examine the evidence presented by the department. The enquiry officer is not the agent of the disciplinary authority, he is a quasi judicial authority and is in the role of independent adjudicator. The enquiry was conducted absolutely in a perfunctory manner and I agree with the contention of the petitioner that in a single day, the enquiry was conducted and the enquiry report was submitted by the enquiry officer based on his *ipse dixit* holding the charges as proved.

24. In view of the fact that during course of enquiry no oral enquiry was conducted, no oral evidence was examined, the documents have not been proved, accordingly, in my opinion, the enquiry itself has vitiated. The enquiry officer has failed to discharge his duty as an independent adjudicator. Resultantly, I hold that the charges against the petitioner cannot be said to have been proved. It is now well known that at the stage of enquiry, the delinquent is entitled to be given a reasonable opportunity to cross-examine the witnesses who are produced to prove the charges. The delinquent also has the right to adduce the evidence by producing his witness.

25. Since this Court has held that the enquiry has



vitiated, the punishment order based upon the invalid enquiry also cannot sustain and in the result, the order of punishment dated 11.02.2013 passed by Respondent No.2 (I.G. Prison, Patna) as well as enquiry report dated 16.02.2012 are hereby quashed.

26. The petitioner is entitled to be paid all consequential and monetary benefits. I order accordingly.

27. Since this Court has not quashed the charges, accordingly, the respondents if so advised may hold fresh enquiry in accordance with law in respect of self same charges by providing adequate opportunity to the petitioner and by producing their own witnesses/documentary evidence, if any in support of the charges.

28. Let the original records produced by Respondents be sent back to the concerned department.

(Anil Kumar Sinha, J)

Md. Perwez Alam

AFR/NAFR	AFR
CAV DATE	09.02.2023
Uploading Date	05.04.2023
Transmission Date	

