

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18905 of 2015

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Surya Deo Ram S/o Late Sheo Kumar Ram, resident of village- Mojrarh, P.S.-
Nokha, District- Rohtas Petitioner/s

Versus

1. The State Of Bihar
 2. The Principal Secretary, Water Resources Department, Govt. of Bihar
 3. The Secretary, Water Resources Department, Govt. of Bihar
 4. The Chief Engineer, Water Resources Department, Dehri
- Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Kumar Samrendra, Advocate
For the Respondent/s : Ms. Kumari Amrita, GP 3

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 04-12-2023

Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the State.

2. The present writ petition has been filed for setting
aside the order contained in Memo No. 1230 dated 10.09.2015
passed by the Respondent No. 3 and order contained in Memo
No. 760 dated 12.03.2015 passed by Respondent No. 4 whereby
the petitioner has been inflicted punishment of withholding of
two increments with cumulative effect and not paying anything
to the petitioner during the period of suspension except the
subsistence allowance.

3. Learned counsel for the petitioner submits that at
the relevant time the petitioner was posted as Amin in Sone
Canal Division, Krishnapur of Water Resource Department
whereas his wife Urmila Devi was working as Sarpanch,



Dharampura Village-Panchayat, Nokha, Rohtas. One Prabhawati, Secretary Village-Dharampur made a written complaint dated 08.07.2009 before the Superintendent of Police, Vigilance Department, Patna stating therein that she has been appointed on contract basis on the post of Secretary Village-Kachahari and getting Rs. 2,000/- per month as honorarium. And she is not getting her honorarium since November 2007 and as the Sarpanch who is wife of the petitioner along with the petitioner were demanding bribe of Rs. 10,000/- for sending the absentee statement.

4. On the basis of the complaint filed by one Prabhawati Devi, the Vigilance Investigation Bureau on 13.07.2009, pre trap Memorandum was prepared and Rs. 10,000/- was recovered from the possession of the petitioner. Accordingly, an F.I.R vide Vigilance P.S. Case No. 75 of 2009 was instituted on 14.07.2009 against the petitioner and his wife under Sections 8, 7, 13(1)(d) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988.

5. The petitioner was in judicial custody since 14.07.2009 to 12.09.2009 in connection with aforesaid case. The petitioner was suspended with retrospective effect and after joining the work on 14.09.2009 the suspension of the petitioner



is deemed to have been revoked by memo no. 3864 dated 17.11.2009 issued by Chief Engineer, Water Resource Department, Dehri. The petitioner was again suspended w.e.f 11.04.2014 issued by the Chief Engineer, Water Resource Department, Dehri, the departmental proceeding was initiated against the petitioner under the Bihar Government Servant (Classification, Control and Appeal) Rule, 2005 and a memo of charge contained in "Prapatra-KA" was served on the petitioner. As per the charge memo the following charges have been levelled against the petitioner:-

(i) The petitioner demanded Rs. 10,000/- as bribe from Smt. Prabhwati Devi for sending her absentee statement.

(ii) The conduct of the petitioner is against the provision contained in Rule 3 (i) of Government Servant Conduct Rule, 1976. The petitioner has been caught red handed while taking bribe of Rs. 10,000/- by Vigilance Investigation Bureau, Patna.

In support of the aforesaid charges the copy of the F.I.R of Vigilance P.S. Case No. 75 of 2009 and the letter dated 14.07.2009 issued by the Vigilance regarding the institution of F.I.R have been relied upon by the Respondent as evidence. As per the order contained in charge memo, the petitioner has submitted his explanation to the Superintending Engineer, Sone



Canal Circle, Ara-cum-Conduction Officer on 16.05.2014 stating therein that the main allegation has been attributed against the petitioner in Vigilance P.S. Case No. 75 of 2009. The allegation made against the petitioner is not at all related to discharge of his official duty and the Vigilance Court has not taken cognizance of offence against the petitioner and in this view of the matter, the initiation of departmental proceeding against the petitioner is not warranted till the final decision in that Vigilance case. The petitioner requested to exonerate from the charges.

6. The conducting officer has given his finding on the basis of the F.I.R of Vigilance P.S. Case sNo. 75 of 2009 and the chargesheet in the said case vide no. 89 of 2009. During the entire departmental proceeding the presenting officer has not brought any evidence either oral or documentary to prove charges levelled against the petitioner and as such there is no evidence in support of the charges. The conducting officer has found guilty of the petitioner on the ground of the allegation made against the petitioner in Vigilance P.S Case No. 75 of 2009.

7. The Chief Engineer, Water Resources Department, Dehri issued show cause notice vide letter no. 3409 dated



06.11.2014 asking the petitioner to submit his explanation in terms of the finding of enquiry officer in the enquiry report. The petitioner has submitted his explanation dated 03.12.2014 stating therein that the explanation submitted by the petitioner before the conducting officer has not been considered at all and the presenting officer has brought no evidence in support of the charges levelled against the petitioner. The conducting officer has failed to consider that the Special Court vigilance has not taken cognizance against the petitioner in Vigilance P.S. Case No. 75 of 2009 which is the sole basis of the departmental proceeding. The petitioner requested for rejecting the enquiry report and revoking his suspension order. The disciplinary authority vide order contained in memo no. 760 dated 12.03.2015 inflicted the following punishment against the petitioner:-

- (i) Withholding of two increments with cumulative effects.
- (ii) The petitioner will not get anything except subsistence allowance during the period of suspension.

The suspension of the petitioner was revoked and the petitioner was directed to give his joining. The petitioner submitted his representation dated 11.08.2015 before the Secretary, Water Resources Department, Government of Bihar stating therein that



with respect to the charges levelled against him and also the grounds on the basis of which the revision of earlier order is not justifiable. The petitioner has requested for not imposing any punishment till the final decision in Vigilance P.S. Case No. 75 of 2009. The Secretary, Water Resources Department, Govt. of Bihar, Patna under order contained in Memo No. 1230 dated 10.09.2015 held that earlier awarded punishment to the petitioner is not proportionate to the charges and accordingly, revised the earlier order dated 12.03.2015 and awarded the punishment of dismissal from service of the petitioner be exercising the power of revision under Rule 28 of Bihar Government Servant (CCA) Rules, 2005.

8. Learned Counsel for the petitioner submits that both the order has been passed in violation of the mandatory provision prescribed under the Bihar CCA Rules 2005 prescribes two pre conditions for exercising the power of revision of punishment i.e. (I) providing reasonable opportunity to the delinquent employee for making representation against the penalty proposed for revision, and (ii) holding of enquiry in the manner laid down in Rule 17 (14) of the Bihar Government Servant (CCA) Rules, 2005.

9. Learned counsel of the petitioner submits that



despite of the mandatory conditions for holding enquiry under Rule 17 for revising the punishment, no such enquiry has been held by the respondent in enhancing the punishment of dismissal and as such the principles of natural justice has been violated causing serious prejudice to the petitioner and resulting into miscarriage of justice.

10. He further submits the proviso of Rule 17(14) of Bihar Government Servant (CCA) Rules, 2005, which is as follows;

“(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government Servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses, as it thinks fit.”

11. He further submits that though the finding of



both the authorities is perverse and no evidence was produce in support of the charges during the proceeding.

12. Learned counsel for the petitioner has relied upon the paragraph no. 20 of the judgments of the Hon'ble Supreme Court reported in (i) **AIR 1964 (SC) 364 (Union of India vs. H.C Goyal)** which is reproduced herein below;

“20. This conclusion does not finally dispose of the appeal. It still remains to be considered whether the respondent is not right when he contends that in the circumstances of this case, the conclusion of the Government is based on no evidence whatever. It is a conclusion which is perverse and, therefore, suffers from such an obvious and patent error on the face of the record that the High Court would be justified in quashing it. In dealing with writ petitions filed by public servants who have been dismissed, or otherwise dealt with so as to attract Article 311(2), the High Court under Article 226 has jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. It is true that the order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order;



nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charges framed against him are in the nature of quasi-judicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings, which is the basis of his dismissal, is based on no evidence. In fact, in fairness to the learned Attorney-General, we ought to add that he did not seriously dispute this position in law.”

He also relies upon paragraph nos. 14, 23 and 24 of the judgment reported in **2009 2 (SCC) 570 (Roop Singh Negi vs. Punjab National Bank)** which are quoted herein below;

“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.”

“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.”

“24. For the aforementioned reasons, the judgment of the High Court is set aside. The appeal is allowed with costs and the appellant is directed to be reinstated with full back wages. Counsel's fee assessed at Rs 25,000.”

He also relies upon the paragraph no. 28 of the judgment reported in **2010 2 (SC) 772 (State of Uttar Pradesh vs Saroj Kumar Sinha)** which is quoted herein below;

“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.”

13. Learned counsel for the State on the other hand submits that the order impugned passed in accordance with Bihar CCA Rules, 2005 and there was no infirmity in the impugned order.

14. In view of the aforesaid it transpire that no evidence was produced in support of the charges during the proceeding. Accordingly, let both the impugned order dated 30.09.2009 and 10.09.2015 (Annexure 11 and 14 respectively) have been set aside and the matter be remanded to the disciplinary authority for taking afresh proceeding against the petitioner in accordance with law and conclude the same within a period of 6 months from the date of production of the order.

15. Accordingly, the writ petition stands allowed.

(Rajesh Kumar Verma, J)

Vanisha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	11.12.2023
Transmission Date	N/A

