

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17172 of 2021

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Ram Vinay Kumar son of Shri Ramesh Mauar resident of Village- Ram Bagh,
Anand Nagar, P.S.- Ara Nagar, Ara District- Bhojpur.

... .. Petitioner/s

Versus

1. That State of Bihar.
2. The Chief Secretary, Bihar, Patna.
3. The Principal Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, Patna.
4. The Commissioner, Patna Division, Patna.
5. The District Magistrate, Bhojpur, Ara.
6. The Additional District Magistrate, Bhojpur, Ara.
7. Circle Officer, Koilwar, Bhojpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Y.V.Giri, Sr. Adv. Mr.Ravi Kumar, Adv. Mr.Shashi Kumar, Adv.
For the Respondent/s	:	Mr.Md. Nadim Seraj, GP-5 Mr.Dhuvendra Kumar, AC to GP-5

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 13-12-2023

1. The present writ petition has been filed for quashing the order dated 03.02.2014, passed by the District Magistrate, Bhojpur at Ara, i.e. the respondent no.5, whereby and whereunder the petitioner has been inflicted with the punishment of dismissal from service. The petitioner has also challenged the Appellate Order dated 9.4.2021, passed by the Commissioner, Patna Division, Patna, i.e. the respondent no. 4, whereby the Appeal filed by the petitioner has been rejected and



has consequently prayed for reinstatement in service and grant of consequential benefits.

2. The brief facts of the case, according to the petitioner, are that the petitioner was appointed as a Clerk in the District Collectorate, Bhojpur at Ara on 22.03.2005, whereafter he had joined the services and since then he has been working to the satisfaction of all concerned. Subsequently, the petitioner was made an accused in Vigilance P.S. Case No. 8 of 2010, on the allegation of accepting bribe of a sum of Rs. 2000/- and having been caught red handed, whereafter the petitioner was suspended by an order dated 31.03.2010 and then a departmental proceeding was initiated. The charges were framed in *Prapatra (Ka)* vide charge sheet dated 12.06.2010, which was also served on the petitioner, inter alia alleging therein that the petitioner was caught red handed while accepting bribe to the tune of Rs. 2000/- on 01.02.2010, leading to filing of a Vigilance P.S. Case No. 8 of 2010. The petitioner had then filed his written statement, whereafter the Inquiry Officer had submitted the Inquiry Report dated 24.01.2014, finding the petitioner to be guilty of charges levelled against him. The Disciplinary Authority had then, without issuing any second Show Cause Notice dismissed the petitioner from service by an



order dated 03.02.2014, passed by the respondent no 5. The petitioner had then filed an appeal, however, the same has also stood dismissed by an order dated 09.04.2021, passed by the respondent no. 4.

3. The learned senior counsel for the petitioner has submitted, by referring to the Inquiry Report dated 24.01.2014, that the same would depict that no evidence, whatsoever has been led by the prosecution to prove the charges and in fact not even a single witness has been examined, hence in absence of any evidence, the conclusion arrived at by the Inquiry Officer in his Inquiry Report dated 24.01.2014 is perverse, hence on the basis of such perverse findings, based on no evidence, the respondent no. 5 could not have passed the order of dismissal from service dated 03.02.2014. It is next contended that the impugned order of punishment dated 03.02.2014, passed by the District Magistrate, Bhojpur at Ara is also an unreasoned order and does not spell out any reason, as to on what grounds the petitioner has been found to be guilty, so as to warrant his dismissal from service.

4. The learned senior counsel for the petitioner has relied upon the following judgments, rendered by the Hon'ble Apex Court as also by this Court:-



(i) **(2009) 2 SCC 570** (Roop Singh Negi vs. Punjab National Bank);

(ii) **(2010) 2 SCC 772** (State of U.P. and Ors. vs. Saroj Kumar Sinha);

(iii) **2000(3) PLJR 10** (Kumar Upendra Singh Parimar vs. B.S. Co-Opt Land Dev. Bank Ltd. & Ors.)

(iv) **2018(3) PLJR 329** (Anand Kumar vs. the State of Bihar & Ors.).

5. The learned senior counsel for the petitioner has further submitted that non issuance of 2nd Show Cause notice also amounts to denial of proper opportunity to the petitioner to put forth his defense to the proposed punishment, which the Disciplinary Authority has sought to inflict upon the petitioner, hence the same amounts to breach of the principles of natural justice and violation of Article 311 (2) of the Constitution of India. Reference in this connection has been made to a judgment rendered by the Hon'ble Apex Court in the case of ECIL vs. B.Karunakar, reported in **(1993) 4 SCC 727**.

6. Per contra, the learned counsel for the respondents has though admitted that no witnesses have been examined or for that matter, no documents have been proved during the course of the departmental inquiry, but it is submitted that there is no procedural error in conduct of the disciplinary proceeding,



which has been conducted as per the provisions contained in the Bihar Civil Servants (Classification, Control & Appeal) Rules, 2005, hence this court would not sit in appeal and re-appreciate the evidence, thus there is no merit in the present writ petition and the same is fit to be dismissed.

7. I have heard the learned counsel for the parties and have gone through the materials on record. This court finds from a bare perusal of the Inquiry Report dated 24.01.2014 that neither any witness has been examined by the prosecution nor any evidence has been led nor any document has been proved in support of the case of the prosecution and merely it has been observed by the Enquiry Officer that since the Presenting Officer has stated that one Vigilance P.S. Case No 8 of 2010 is pending and the petitioner is F.I.R. named accused, he is guilty, thus only on the said premise, the Enquiry Officer has found the charges levelled against the petitioner to have been proved.

8. Consequently, this court finds that the present case is a case of no evidence, hence the prosecution has utterly failed to prove the charges as against the petitioner herein. Now, coming to the order of the disciplinary authority dated 03.02.2014, by which the petitioner has been inflicted with the punishment of dismissal from service, it must be stated that the same is merely



a narration of events which have taken place in the present case and is neither based on any evidence nor the same discusses any material which might have been found, as against the petitioner, during the course of the departmental enquiry. Moreover, the impugned order of punishment dated 03.02.2014 is not only perverse but also smacks of non-application of mind by the disciplinary authority and a total non-consideration of the issues raised by the petitioner, hence the same cannot be upheld and is fit to be set aside, being not supported by any reason or evidence so as to warrant infliction of punishment upon the petitioner herein. It is a trite law that since an order passed by the disciplinary authority has civil consequences, hence appropriate reasons are required to be assigned. Moreover, a decision must be arrived at on the basis of some evidence which are legally admissible. Reference in this connection be had to a judgment dated 21.09.2023, rendered by this Court in C.W.J.C. No.17189 of 2015 (Smt. Abha Kumari Versus The State of Bihar & Ors.), paragraph nos. 4, 5 and 7 to 9 whereof are reproduced herein below:-

"4. The learned counsel for the petitioner has further submitted that the impugned order dated 30.6.2015, passed by the Respondent No. 3, would show that the same is mere narration of facts and has neither dealt



with the defence put forth by the petitioner nor mentions instances of irregularities, alleged to have been committed by the petitioner and the proof thereof, hence, the same is also based on no evidence, apart from being a cryptic order, not depicting proper application of mind, inasmuch as no cogent or succinct reason have been furnished for inflicting punishment upon the petitioner, which is an indispensable part of a decision making process. In this regard, the learned counsel for the petitioner has referred to a judgment, rendered by a coordinate Bench of this Court in the case of Janeshwar Sinha vs. State of Bihar and Others, reported in 2022 (1) PLJR 169, paragraphs no. 5 to 9 whereof are reproduced hereinbelow:-

“5. Learned counsel for the petitioner submits that the disciplinary authority was exercising quasi-judicial power. Therefore, he was bound to mention the defence raised by the petitioner in his show cause which would have been material for consideration before the authority and thereafter by a reasoned order he should have rejected the same. In absence of any reason, the impugned order suffers from non-application of mind and arbitrariness, as such is not sustainable in law.

6. The State has filed detailed counter affidavit controverting the claim of the petitioner, however does not dispute that the impugned order does not disclose the defence of the petitioner or reason for non-acceptance of the same.

7. In Roop Singh Negi v. Punjab National Bank,



reported in (2009) 2 SCC 570, relied upon by learned counsel for the petitioner, the Hon'ble Supreme Court said that "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."

"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."

8. Evidently in the case on hand, the disciplinary authority has not assigned any reason for awarding the punishment against the petitioner. Hence the impugned order is hereby quashed. There is no need for further remand of this matter, as sufficient injustice has been done with the petitioner who retired in the year 2001.

9. Hence authorities are directed to make payment of entire retiral dues including entire salary for the period of suspension minus already paid amount. The Suspension period was in between 08.03.1999 to 30.11.2000. If any recovery has been made from the petitioner in pursuance of the impugned order that would also be refunded to the petitioner."

5. The learned counsel for the petitioner has referred to



yet another judgment, rendered by a coordinate Bench of this Court in the case of Dr. Kamla Singh vs. State of Bihar & Others, reported in 2023 (1) PLJR 803, paragraph no. 7 whereof is reproduced hereinbelow:-

"7. So far as second contention of the petitioner is concerned, the same has substance. From perusal of the order of punishment, it is evident that the Disciplinary Authority, without taking into consideration or discussing show cause reply of the petitioner, has mechanically passed the impugned order. The impugned order does not contain any discussion as to how the petitioner's reply to the second show cause notice was not acceptable to the disciplinary authority referring to the points taken therein. In this case, order of punishment does not disclose the application of mind. As per Rule 19 of the Bihar CCA Rules, 2005, it is incumbent upon the authorities concerned to consider the representation made by the employees and such consideration means a conscious application of mind and also a consideration of the explanation given by the employees in an objective basis. Reference is made to the decision of the Division Bench of this Court in case of Dr. Rabindra Nath Singh vs. The State of Bihar and Others, reported in 1983PLJR 92."

7. I have heard the learned counsel for the parties and perused the materials on record. It is evident from the records, as narrated by the learned counsel for the petitioner and recorded hereinabove in the preceding



paragraphs that the present case is a case of no evidence. This Court further finds that the impugned order dated 30.6.2015 is not only cryptic but also an unreasoned order, depicting complete non-application of mind inasmuch as the same has not taken into account the defence put forth by the petitioner, apart from no clear, cogent and succinct reasons, having been furnished by the Respondent No. 3, for coming to a decision warranting infliction of punishment upon the petitioner. It is a trite law that furnishing of clear, cogent and succinct reasons in support of the impugned order, is an indispensable component of a decision making process. Reference, in this connection, be had to a judgment, rendered by the Hon'ble Apex Court in the case of ORYX Fisheries Pvt. Ltd. vs. Union of India, reported in (2010) 13SCC 427.

8. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I deem it fit and proper to quash the impugned order dated 30.6.2015 as also preclude the respondent authorities from proceeding any further in the matter, inasmuch as the petitioner has already been harassed to bits on account of hanging of sword over her head since the year, 2010 apart from sufficient injustice being meted out to the petitioner.

9. The writ petition stands allowed."

9. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, this Court finds



that the impugned order of punishment dated 03.02.2014, passed by the District Magistrate, Bhojpur at Ara is not sustainable in the eyes of law, hence is quashed. Consequently, the Appellate Order dated 09.04.2021, passed by the Divisional Commissioner, Patna Division, Patna has got no legs to stand, hence is also set aside. Accordingly, the petitioner is directed to be reinstated in service, however, with all consequential benefits including 100% back wages, inasmuch as this Court finds that the disciplinary proceedings have been attended with malafide and the action of the disciplinary authority reeks of a design to somehow inflict punishment of dismissal upon the petitioner. Reference in this connection be had to a judgment rendered by the Hon’ble Apex Court in the case of Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya & Ors., reported in (2013)10 SCC 324.

10. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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CAV DATE	NA
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