

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5640 of 2021

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Md. Muttafique Ahmad, Son of Md. Nabijan, Resident of -Flat No.401 B,
Nizam Plaza, Samanpura, Patna-800014.

... .. Petitioner/s

Versus

1. The State of Bihar through Addl. Chief Secretary, Government of Bihar, Patna.
2. The Addl. Chief Secretary Cum Principal Secretary, Department of Home (Police, Government of Bihar, Patna
3. The Special Secretary, Department of Home (Police), Government of Bihar, Patna.
4. The Additional Secretary, Home Police Department, Government of Bihar, Patna.
5. The Director General of Police, Bihar, Patna.
6. The Additional Director General of Police, Railway, Bihar, Patna.
7. The Inspector General of Police, Headquarter, Bihar, Patna.
8. The Inspector General of Police, Central Range, Patna.
9. The Superintendent of Police Nalanda, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siddhartha Prasad, Advocate Mr. Sunit Kumar, Advocate Ms. Shristi Raman, Advocate
For the Respondent/s	:	Mr. Md.Nadim Seraj (GP5) Mr. Shailesh Kumar, AC to GP 5 Mr. Shahbaj Alam, AC to GP 5

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 20-06-2024

1. The petitioner was a Deputy Superintendent of Police, Hilsa during the year 2019. On 11th of June 2019, Nagarnausa P.S. Case No. 77 of 2019 was registered under Sections 366A and 34 of the IPC against the 5 FIR named accused persons, namely, Dharmendra Ravidas, Vilas Ravidas, Manju Devi, Mukesh Ravidas and Sushila Devi on the basis of a



written complaint submitted by one Naresh Shaw, alleging, inter alia, that on 7th of June, 2019 his minor daughter was kidnapped from the road on the way to her school. As per FIR, the case was instituted to one Tej Narayan Rai, Sub-Inspector of Police for investigation. The petitioner was directed to supervise the investigation.

2. It is the case of the petitioner that he duly supervised the investigation and submitted supervision note to the concerned Police Officer and during primary investigation, he found the case of the informant to be *prima facie* true. On his direction, the victim girl was recovered from Coimbatore within 20 days of the incident. Subsequently, a communal tension cropped up in the locality on the allegation that accused Dharmendra Ravidas had eloped the girl of the informant but other accused persons being his parents, married sister and her husband were falsely implicated in the aforementioned case. In order to stop such communal tension, the Director General of Police directed the Superintendent of Police, Nalanda to take appropriate action immediately.

3. So far as investigation of Nagarnausa P.S. Case No. 77 of 2019 is concerned, after the recovery of the victim girl her ossification test was done on the prayer of the investigating



officer and a medical report was submitted to the effect that the victim girl was aged about 18 years. The victim girl was produced before the jurisdictional Magistrate where she stated that she was inclined to go and stay with the mother of the principal accused Dharmendra Ravidas. Subsequently, on the report of the higher officers of the police department entire blame of communal tension over the arrest of the accused person was put to the petitioner, the Deputy Superintendent of Police, Hilsa. Accordingly, he was put under suspension w.e.f., 19th of August, 2019 in contemplation of departmental inquiry. Subsequently, departmental inquiry was initiated against him on 29th of August, 2019. Charges were framed under four heads by the Inspector General of Police, Bihar, Patna against the delinquent officer on 5th of August, 2019.

4. It is necessary at this stage to state the heads of charges formulated against the petitioner:-

(i) It was found from Report No. 2 of the Superintendent of Police, Nalanda that Md. Muttafique Ahmad, Deputy Superintendent of Police, Hilsa did not visit the place of occurrence, i.e., Village - Saidpur, P.S. Nagarnausa. The said fact was corroborated before the Superintendent of Police, Nalanda by all the witnesses. Failure on the part of the



delinquent officer in visiting the place of occurrence caused progress of investigation of Nagarnausa P.S. Case No. 77 of 2019 in wrong direction.

(ii) The Deputy Superintendent of Police, Hilsa submitted a supervision note to the effect that he supervised the incident along with the investigating officer. However, it is found from the investigating report that during the period between 24th of June, 2019 and 1st of July, 2019, he was in Tamil Nadu, i.e., outside the State.

(iii) The Deputy Superintendent of Police, Hilsa also submitted supervision note after a lapse and delay of 16 days on 27th of June, 2019.

(iv) On the basis of his supervision note, innocent persons were arrested and false criminal action was taken against them.

5. It appears from the record that in the departmental proceeding, Additional Director General of Police, Railway, Bihar, Patna was appointed as investigating officer and one Mr. Ajay Kumar, Additional Superintendent of Police, Nalanda was appointed as presenting officer.

6. It also appears from the record that the departmental inquiry was concluded on 12th of May, 2020 and on 6th of October 2020, order of punishment was passed,



stopping three increments with cumulative effect and stoppage of promotion for 3 years.

7. The petitioner filed a review application for reconsideration of his punishment which was rejected by the competent authority.

8. Hence, the instant writ petition.

9. In the instant writ petition, the petitioner has prayed for the following reliefs:-

“i. For issuance of writ in the nature of certiorari for quashing the punishment order contained in memo no. 6982 dated 06.10.2020 whereby and whereunder the petitioner has been inflicted with major punishment of withholding of three incremental benefits with cumulative effect and further withholding of promotion for three years.

ii. For quashing the order contained in memo no. 8466 dated 11.12.2020 issued by the special secretary Department of Home (Police Dept.) Government of Bihar whereby and whereunder the reconsideration/ review application of the petitioner against the impugned punishment order has been illegally and arbitrarily rejected.

iii. For issuance of appropriate writ(s)/order(s)/direction(s) for quashing the entire departmental proceeding in question



including the memo of charge and inquiry report.

iv. Any other relief(s) that the petitioner is entitled in the facts and circumstances of the instant case.”

10. Learned Advocate on behalf of the petitioner, at the outset, submits that the inquiry report and the entire proceeding adopted in the inquiry goes to show that all along the presenting officer was absent except on a single date. The inquiry officer took the role of both the presenting officer, cross-examiner as well as the inquiry officer. Therefore, the rule natural justice and the principle of fair trial were violated by the inquiry officer.

11. In support of his submission, he refers to Rule 17 (11) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the Bihar CCA Rules) wherein it is observed as follows:-

“(11) The inquiring authority shall, if the Government Servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government



Servant may, for the purpose of preparing his defence,-

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list in sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf;

Note:-*If the Government Servant applies in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible.*

(iii) give a notice within ten days of the order or within such further time as the inquiring authority may allow for the discovery or production of any documents which are in the possession of Government but not mentioned in the list specified in sub-rule (3) of this Rule:

Provided that the Government Servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government.”

12. Thus, it is submitted by the learned Advocate



on behalf of the petitioner that during inquiry, the inquiry officer violated the above-mentioned provision because Sub-Rule 11 of Rule 17 of Bihar CCA Rules clearly stipulates that if Government Servants does not plead guilty, then evidence has to be produced by the presenting officer to prove the charges.

13. However, in the instant case, the inquiry officer not only took the role of the presenting officer but after each and every reply given by the witness (here the Superintendent of Police, Nalanda) the delinquent officer was asked to state his opinion on the answer given by the witness.

14. Secondly, referring to Rule 17 (14) of the Bihar CCA Rules, it is submitted by the learned Advocate for the petitioner that it is the duty of the presenting officer to examine the witnesses to prove the charges, but in the present case, it is violated since the presenting officer was absent on 19th of March 2020, on which date the Superintendent of Police, Nalanda, was examined. The inquiry officer has assumed the role of presenting officer. Moreover, the delinquent employee was denied his chance to cross-examine the witness on behalf of the department.

15. The learned Advocate on behalf of the petitioner also refers to various inconsistencies with regard to



mentioning of dates in the inquiry report which are not relevant for the purpose of adjudication of this case according to me.

16. Next, he refers to the inquiry report and submits that with regard to Charge Head No. 1, the inquiry officer clearly came to the finding that the delinquent officer actually visited Village - Saidpur, P.S. Nagarnausa, for the purpose of supervision. Charge Head No. 1 relates to the allegation that the petitioner did not visit the above-named village, and due to his failure to visit the said village, the investigation proceeded in the wrong direction. However, the inquiry officer, even after coming to the specific finding that the delinquent officer went to village Saidpur on 27th of June, 2019, went on to discuss certain extraneous matters relating to non-examination of the villagers as witnesses, except 3 witnesses and also non-examination of the witnesses on behalf of the accused persons. Surprisingly enough, the inquiry officer, who at the relevant point of time was a Deputy Inspector General of Police ought to know that it is the duty of the investigating officer to examine the witnesses during investigation under Section 161 of the Cr.P.C., it is not the duty of the supervising officer to examine the witnesses.

17. It is not in dispute that the informant stated the



names of 5 accused persons in his complaints. All the accused persons were arrested. The case relates to the serious offence of kidnapping of a minor girl for the purpose of illicit intercourse or illegal marriage. The parents of the principal accused were arrested to extract the information if they knew whereabouts of principal accused, who happened to be the son of the arrested persons, so that the victim girl could be recovered. Practically, after the arrest of those persons, the victim girl was recovered from Coimbatore. For recovery of the victim girl, the investigating officer went to Tamil Nadu and stayed there during that period and he recovered the victim girl. At the time of preliminary investigation, it never be clear to the investigating officer as to who is the actual culprit and who are the suspects and if *prima facie* complicity is available against a person he is arrested by police.

18. On the direction of the Deputy Superintendent of Police, the investigating officer conducted the investigation in the right direction and recovered the victim girl. At the time of the investigation, the Deputy Superintendent of Police was not concerned about the fact that the arrest of the parents and married sister of the principal accused would cause communal violence in the locality. In order to suppress such communal



violence and to show that some action has been taken even against a responsible police officer, the petitioner has been made a scapegoat.

19. In support of his argument, the learned counsel on behalf of the petitioner refers to a decision of the Hon'ble Supreme Court in *State of U.P. & Ors. v. Saroj Kumar Sinha* reported in *(2010) 2 SCC 772* where the role of the inquiry officer is succinctly explained. In Paragraph No. 28 of the aforesaid report, it is observed by the Hon'ble Supreme Court that 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.

20. In the present case, the above-stated procedure has not been observed while taking oral evidence of the Superintendent of Police, Nalanda and the inquiry officer took the role of the presenting officer as well as the adjudicator. Thus, the basic rules of natural justice was violated and I have no other alternative but to hold that the departmental inquiry was not



proceeded with in compliance of Article 311 (2) of the Constitution of India. It is a basic requirement of the rules of natural justice that an employee be given reasonable opportunity of being heard in any proceeding which may culminate in punishment being imposed on the employee.

21. In the instant case, after the evidence of Superintendent of Police, Nalanda which was recorded by the inquiry officer, he asked the delinquent officer to submit his commit. In this way, the rule of evidence and right of the employee to cross-examine the witnesses was violated.

22. The same principle was reiterated in an unreported decision of this Court passed by a Co-ordinate Bench of this Court in C.W.J.C. No. 3978 of 2015 (Ravindra Kumar Singh v. State of Bihar & Ors.) decided on 29th of March, 2019. Paragraph 11 to 14 of the aforesaid judgment are relevant and quoted below:-

“11. Bare perusal of the enquiry proceedings shows that the case of the petitioner, as stated in paragraphs 19 and 20 of the writ petition, are substantiated by the records of the enquiry proceeding. On 19.09.2013, the proceedings were conducted by the Enquiry Officer himself. There was no Presenting Officer. The



questions were put to the petitioner by the Enquiry Officer himself and no evidence was produced in the proceeding on the said date when the enquiry was conducted. No witness was examined. Questions were only put to the petitioner/delinquent in the enquiry.

12. On 07.01.2014, the Enquiry Officer had gone for spot verification of Dalsingsarai Sub Jail, where the occurrence had taken place. At that place also, the Enquiry Officer himself has taken statement of certain persons, who were posted at the jail. The Presenting Officer was neither present on 19.09.2013, nor on 07.01.2014. This is explicit from the original record of the proceeding produced in Court today.

13. The circumstances give rise to a situation where the Enquiry Officer has assumed the role of the Presenting Officer. Such a situation cannot be countenanced and is in violation of the provisions contained in Bihar CCA Rules, 2005 as also the judgment of the Apex Court in the case of State of Uttar Pradesh & Others -Versus- Saroj Kumar Sinha, (2010) 2 Supreme Court Cases



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14. The Apex Court, in the said judgment, has dealt with the status and duties of the Enquiry Officer. Enquiry Officer is required to function as an independent adjudicator and not as a representative of the Department which is quasi judicial in nature. Circumstances, such as in the instant case, where the Enquiry Officer, performing the quasi judicial function, proceeds to take upon himself the duty of the Presenting Officer and performs the same, vitiates the entire proceedings for want of fairness.”

23. The learned Advocate on behalf of the State-Respondents, on the other hand, submits that the disciplinary proceeding was conducted by the inquiry officer in fair and impartial manner. After submission of charge memo, the petitioner was asked to submit show cause, which he submitted, and it was perused by the inquiry officer. Then he started departmental inquiry and found the delinquent employee guilty of the Charge Nos. 1, 2 and 4. Thereafter, the petitioner was directed to submit his second show cause to substantiate his case against the penalty. Second show cause was also submitted and subsequently order of punishment was passed. Thus, the inquiry



proceeded in accordance with the relevant provisions of Bihar CCA Rules as there is no infraction and the order of punishment was reviewed at the instance of the petitioner and the same was rejected. The Court should not act as an appellate authority while adjudicating a case under Article 226 of the Constitution of India.

24. Having heard the learned counsel for the petitioner and the respondents and upon careful perusal of the materials on record, this Court is under the obligation to adjudicate this case on the basis of the principles of departmental inquiry laid down in ***Union of India & Ors v. P. Gunasekaran*** reported (2015) 2 SCC 610. In paragraph 12 of the aforesaid judgment, the Hon'ble Supreme Court held:-

“12.In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;



(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.”

25. In paragraph 13 of the said judgment, the Hon’ble Supreme Court has held as follows:-

“13. Under Articles 226/227 of the Constitution of India, the High Court shall not:-



- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based.*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience.”*

26. After delineating the principle, the Hon’ble Supreme Court in paragraph 23 held as under:-

“23. Thus, the finding on Charge I has attained finality. It is the punishment of dismissal on Charge I which was directed to be reconsidered by the Central Administrative Tribunal and which view was endorsed by the High Court. On that basis only, the dismissal was converted to compulsory retirement. Such findings cannot be reopened in the subsequent round of litigation at the instance of the respondent. It was only the punishment aspect that was open to challenge.”

27. Bearing this principles in mind if the inquiry



report is examined as against the charges levelled against the petitioner, this Court finds that the inquiry officer clearly held that from the evidence on record it is absolutely clear that the delinquent officer Md. Muttafique Ahmad visited the place of occurrence.

28. Charge Head No. 1 relates to an allegation that the petitioner did not visit the place of occurrence while supervising investigation of the case. From the report of the inquiry officer, the Charge No. 1 cannot stand as against the petitioner. Subsequently, he went on discussing some extraneous matters relating to examination of 3 witnesses and non-examination of other villagers etc. These are not the subject matter of adjudication by the inquiry officer. Thus, his conclusion that Charge No. 1 was proved, was based on extraneous consideration.

29. Charge No. 2 relates to a wrong statement recorded by the petitioner in his supervision note that he visited the place of occurrence with the investigating officer. Indisputably, he visited the place with the Station House Officer (SHO), Nagarnausa Police Station. It is the plea of the delinquent employee that out of inadvertence, he recorded the investigating officer in place of SHO as the format of



supervision report speaks of presence of investigating officer during visit of place of occurrence. It is material for the investigating authority to visit the place of occurrence. The delinquent officer in supervisory role visited the place of occurrence with SHO. The investigating officer could not be accompanied because of the fact that at the relevant point of time, he was at Tamil Nadu to recover the victim girl.

30. This Court does not find that visiting the place of occurrence with the SHO is a major infraction in the process of investigation. Therefore, this Court disagrees with the investigating officer and hold that Charge No. 2 has also not been proved.

31. With regard to Charge No. 3, the inquiry officer discarded and condoned the delay of 16 days in writing the supervision note. Therefore, Charge No. 3 cannot be said to be proved.

32. Charge No. 4 relates to an allegation that the delinquent officer held 4 more persons other than the principal accused guilty though there was no evidence against them. The said 4 persons are the parents, married sister and her husband. They were arrested by the investigating officer under the direction of the delinquent officer in order to know the



whereabouts of the victim girl because the principal accused is the son of the Accused Nos. 2 and 3 and brother of Accused No. 4 and brother-in-law of Accused No. 5. They were arrested on suspicion that they might know about the hideouts of the principal accused and the victim girl. Section 41 (1) (b) of the Cr.P.C. empowers a police officer to arrest any person without a warrant if reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may extend to 7 years whether with or without fine if:-

- (i) the police officer is satisfied that such arrest is necessary for proper investigation*
- (ii) for proper investigation of the offence; or*
- (iii) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner.*

33. Thus, a police officer can arrest any person on reasonable suspicion.

34. In the instant case, the main culprit eloped the victim girl, other accused persons are closed relatives. The investigating officer and the supervising officer were of the opinion that for proper investigation viz., recovery for the girl the said persons are required to be arrested. This is not an offence or arbitrary act of the delinquent officer for which he



was subjected to disciplinary inquiry.

35. Moreover, Section 366 A of the IPC prescribes imprisonment for 10 years and fine.

36. In such case, the investigating officer under the direction of supervisory officer could arrest a person against whom reasonable suspicion exists that he/she was concerned/involved in an offence punishable for imprisonment of 10 years with fine and the arrest of the said persons was necessary for the purpose of investigation of the case.

37. In view of such power and authority given by the Cr.P.C. to a police officer while investigating a case punishable for imprisonment up to 10 years, this Court finds that Charge No. 4 was also not proved.

38. In view of the above discussions, the instant writ petition is allowed.

39. The report of the inquiry officer, the order of departmental punishment and the order of review are quashed and set aside.

40. The petitioner is entitled to all increments which were stopped with cumulative effect.

41. The respondent authorities are directed to



restore the financial and any other consequential benefit, if any,
to the petitioner within a period of four weeks from the date of
communication / receipt of a copy of this order.

(Bibek Chaudhuri, J)

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CAV DATE	
Uploading Date	
Transmission Date	

