

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3299 of 2024

Shweta Mishra Daughter of Sri Dinesh Kumar Mishra Resident of G1 105 Sector Govardan Kalindipuram Rajrooppur Allahabad P.S. Dhumanganj Distict-Allahabad, U.P. Bihar and Currently Posted on the Post of D.C.L.R., Ara. District-Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secreary, General Adminis-
tration Department, Government of Bihar, Patna.
2. The Additional Chief Secreary, General Administration Department, Gov-
ernment of Bihar, Patna.
3. The Special Secretary, Administration Department, Government of Bihar,
Patna.
4. The Joint Secretary, General Administration Department, Government of Bi-
har, Patna.
5. The Additional Secrerary, General Administration Department, Government
of Bihar, Patna.
6. The Special Secreary, Social Welfare Department, Government of Biahr,
Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Chandan Kumar, Advocate Mr. Fazle Karim, Advocate Mr. Ranjeet Kumar, Advocate Mr. Rishabh Gupta, Advocate Mr. Kanishk Kaustubh, Advocate
For the State	:	Mr. Vinay Kirti Singh, GA 2 Mr. Rajan Prakash, AC to GA 2

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 29-10-2024

Heard Mr. Chandan Kumar along with Mr. Fazle Karim, Mr. Ranjeet Kumar, Mr. Rishabh Gupta and Mr. Kanishk Kaustubh, learned counsels appearing on behalf of the petitioner and Mr. Vinay Kirti Singh, learned GA2 along with Mr. Rajan Prakash, learned AC to GA 2 for the State.

2. The petitioner, in paragraph no. 1 of the present writ petition, has sought, *inter alia*, the following relief(s),



which is reproduced hereinafter:-

“1. That this Civil Writ application is being filed for issuance of appropriate writ/writs, direction/directions, order/orders and thereby for grant of following relief to the petitioner:-

I. For setting aside the order contained in Memo No. 9746 Dated 25.05.2023 issued with the signature of Joint Secretary, General Administrative Department, Government of Bihar, Patna, whereby punishment of sensor (Charge Period 2015- 16) has been imposed as well as two increment with none cumulative effect has been withheld in exercise of jurisdiction conferred under Rule-19 of the Bihar Government Servant (Classification, Control and Appeal) Rule, 2005.

II. For setting aside the order contained in Memo No. 22938 of 19.12.2023 issued with the signature of Special Secretary, General Administrative Department, Government of Bihar, Patna, whereby Review application filed by the petitioner against the aforementioned order of punishment has been rejected.

III. For that the petitioner further prays that after setting aside the aforementioned orders, the increment already withheld be restored and all consequential benefits be granted.

IV. For any other relief/reliefs for which the petitioner may be deemed entitled too.”

3. Brief facts of the case are that petitioner is a member of Bihar Administrative Service and presently posted as Deputy Collector Land Reforms (D.C.L.R.), Ara, District Bhojpur, however, while she was posted as Senior Deputy Collector (S.D.C.) Kaimur at Bhabhua from 24.03.2015 to 28.01.2016, due to vacant post of District Programme Officer (D.P.O.) (ICDS), petitioner was also assigned the additional charge of District Programme Officer, Kaimur at Bhabhua for period 12.05.2015 to 16.02.2016. The petitioner having assigned the additional charge along with two other DPOs, who were also posted in Kaimur at Bhabhua were held responsible to



visit, review, inspect, and monitor the Short Stay Home, Kudra at Kaimur. A complaint was made in respect of irregularities relating to sexual assault with children. A report was submitted by TISS (Tata Institute of Social Sciences) dated 27.04.2018 in respect of 16 shelter homes including SSH at Kudra in District Kaimur. In light of the social audit report of TISS, Bhabhua Mahila P.S. Case No. 35 of 2018 under Sections-341, 323, 354, 504, 34 of the Indian Penal Code, 1860 read with Section-12 of POCSO Act, 2012 was registered against accused Pintu Pal, Guard, Sudharshan Ram, Guard and Tara Devi, Guard. The Hon'ble Supreme Court vide order dated 28.11.2018 directed the CBI, SCB, Patna to take over the investigation. Accordingly, Crime Case No. 35/18 was re-registered as RC0922019S0010. The CBI submitted an investigation report dated 30.12.2019 wherein the name of the petitioner was also incorporated. The allegation against the petitioner is that the petitioner did not inspect the Short Stay Home following the prescribed guidelines. The CBI vide its Letter No. 4437 dated 30.12.2019 recommended for taking action against the petitioner for imposition of major penalty.

4. The General Administrative Department issued show cause to the petitioner vide Letter No. 6667 Dated 04.05.22. The



petitioner submitted her detailed reply on 24.11.2022, denying the allegation and pleaded her innocence vide her explanation contained in Letter No. 6667, dated 04.05.2022. The Disciplinary authority vide order contained in Memo No. 9746 dated 25.05.2023 inflicted punishment of Censure (Charge year 2015-16) and also withheld two increments with non-cumulative effect.

5. The petitioner being aggrieved and dissatisfied with the order of punishment, filed a Review application before the Additional Chief Secretary, General Administration Department, Government of Bihar, Patna on 10.11.2023 requesting therein to reconsider the matter. The Review application filed by the petitioner was rejected vide order contained in Memo No. 22938 dated 19.12.2023 on the ground of limitation. Aggrieved by the order of penalty dated 25.05.2023 and review order dated 19.12.2023, the petitioner has filed the present writ petition.

Submissions on behalf of the parties

6. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is a member of Bihar Administrative Service, having civil list No.596 of 2023. The petitioner, while posted in capacity of District Programme



Officer, Kaimur, the Central Bureau of Investigation (C.B.I) submitted enquiry report regarding major irregularities committed in shelter homes and recommended to initiate a departmental proceeding for imposing major punishment for the allegation that the petitioner had not regularly inspected the shelter homes.

7. Learned counsel next contended that the disciplinary action was taken on the basis of the enquiry report dated 30.12.2019 submitted by the CBI in respect of RDA, suggesting “major penalty” against several officers (Annexure-P/1 to the writ petition) including the petitioner to the Chief Secretary Government of Bihar in respect of 16 shelter homes. In the said report, specific allegation levelled against the petitioner is that she has not followed the guidelines by not regularly inspecting the short shelter homes which is in violation of Rule 3 (i) (ii) and (iii) of Bihar Government Servants' Conduct Rules, 1976. The General Administration Department, Government of Bihar directed the petitioner to file show cause. The petitioner in her detailed show cause had denied the allegation made against her in the report of the C.B.I. and had questioned the validity of the ex-parte report being in gross violation of principle of natural justice. The



petitioner also submitted that the date of occurrence as mentioned in the FIR is June 2018, however the present petitioner had been transferred in February 2016 itself. The petitioner further highlighted that the investigating officer never considered the work done by the petitioner and during her visit to the short stay home for inspection, the toilet and bathrooms were found in good condition. The General Administrative Department, being not satisfied by the reply had issued show cause to the petitioner vide Letter No. 6667 dated 04.05.22. The petitioner submitted her detailed reply on 24.11.2022 denying the allegation, reiterating that the report submitted by the CBI is ex-parte and has no leg to stand because it has been prepared behind her back. Petitioner further submitted that C.B.I. has overlooked the fact that Women Development Corporation is responsible for the entire work and the dedicated persons have already been employed/engaged at SSH. Further C.B.I. never supplied the copy of TISS Report and if the TISS report had been supplied, the petitioner would have been in better position to give proper reply against the allegation. Further the petitioner submitted that the charges levelled against her is vague, indefinite and are not remotely linked with specific duties. In the charge memo, the authority has not mentioned any



misconduct etc. The respondent thereafter without considering petitioner's reply, passed the final order vide Order contained in Memo No. 9746 dated 25.05.2023 inflicting punishment of Censure (Charge year 2015-16) and also withheld two increment with non-cumulative effect.

8. Learned counsel for the petitioner submitted that the petitioner was put under suspension and a charge memo in '*Prapatra Ka*' was served to the petitioner allegedly in accordance with the provision of Rule 17 (3) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as C.C.A. Rules, 2005) contained in Memo No. 63/2020-3630 dated 23.09.2020. Learned counsel submitted that the very initiation of disciplinary proceeding against the petitioner, which was initiated as per the direction of the CBI for imposition of major penalty, in absence of the approval of charge memo by the State Government issued under the authority of the Governor would amount to be in violation of the Rule 16 of the C.C.A. Rules, 2005.

9. Petitioner further submitted that from careful perusal of the aforementioned order of punishment, it transpires that the Disciplinary authority did not apply its own mind, rather forwarded petitioner's reply to the Social Welfare Department



vide Letter No. 322 dated 04.01.2023 and called for their response and the Social Welfare Department sent its opinion vide Letter No. 1966 dated 12.04.2023 finding the petitioner guilty and the Disciplinary authority thereafter passed the order of punishment blindly relying upon the opinion of Social Welfare Department and without applying his own mind.

10. Learned counsel further submitted that though the petitioner was proceeded for major punishment, no enquiry has been held as per the provision of Rule 17 of the CCA Rules which is in violation of principle of Natural Justice. The petitioner was not served with any document in Departmental Inquiry along with the Charge Memo (Annexure-2) and considering that the Charge Memo has not been issued under the Authority of the Governor for the purposes of the Departmental Inquiry in accordance with Rule 16 and Clause (17)(3)(i) of C.C.A. Rules, 2005, or as per the provisions of Bihar Framing of Articles of Charge against Government Servants Regulations, 2017 the same is in violation of law.

11. The petitioner being aggrieved and dissatisfied with the order of punishment, filed a Review application before the Additional Chief Secretary, General Administration Department, Government of Bihar, Patna on 10.11.2023,



requesting therein to reconsider the matter. The petitioner in her review application submitted that she was appointed at Kaimur on the post of Senior Deputy Collector and then she was made In- charge of D.P.O. (C.I.D.S.) as a Nodal Officer and thereafter in light of TISS Report, the C.B.I. Patna branch implicated her without giving any opportunity to state her case in the enquiry. The petitioner also submitted that while she was posted there, she was responsible for public grievance cell, 20 *Sutri*, Record Room, Senior-In-Charge of Block, to inspect the different Aaganwadi centers and In-Charge of D.P.O.(I.C.D.S.). The review application filed by the petitioner has been rejected vide order contained in Memo No. 22938 dated 19.12.2023 on the ground of limitation and without appreciating the grounds taken by the petitioner, which is in gross violation of the principle of natural justice. As the limitation is a mixed question of law, as well as, facts and respondent authority without considering the facts and the circumstances rejected the review application on the ground of limitation only.

12. Learned counsel, in support of above arguments, has relied on the judgment passed by the Apex Court in cases of (i) **Roop Singh Negi vs. The Punjab National Bank** reported in (2009) 2 SCC 570, (ii) **State of Uttar Pradesh vs. Saroj**



Kumar Sinha reported in (2010) 2 SCC 772, (iii) **Kranti Associates Private Limited vs. Mastodon Ahmad Khan** reported in (2010) 14 SCC 770 and (iv) *State of Punjab vs. Mohinder Pal Singh Bhullar* reported in (2011) 14 SCC 770.

13. He also submitted that the same principle was enunciated by this Court in case of *Vijendra Prasad v. State of Bihar & Ors.*, reported in 2019 (4) P.L.J.R. 1046 and subsequently, in C.W.J.C. No. 2013 of 2015 (*Arun Kumar v. State of Bihar & Ors.*), decided on 18th of January, 2019, a Coordinate Bench of this Court on similar circumstances held that the conclusions arrived by the disciplinary authority in absence of the enquiry, oral and documentary evidence and in absence of prescribed procedure in the departmental proceeding, which is based on no evidence, calls for interference of this Court.

14. Learned counsel in alternative submitted that in terms of explanation to 14(2) of CCA Rules, 2005, the penalty of censure and withholding of two increments with non-cumulative effect has lost its effect by lapse of time. He informs that one similarly situated person namely Tara Nand Mahto Viyogi had preferred CWJC No.8970 of 2023 against whom also, the Departmental Inquiry was initiated on the basis of



direction of the CBI contained in letter no. 4437, dated 30.12.2019 in connection with CBI Case No. RC-0922019S0010, dated 16.01.2019, in which case, a Coordinate Bench of this Court has been pleased to quash the order of imposition of punishment, against whom also, the same charges were leveled. Based on the above submission, learned counsel submitted that the order contained in Memo No.9746 dated 25.05.2023 inflicting minor penalty is fit to be quashed.

15. The petitioner further submitted that because of illegal penalty order, the case of the petitioner for being considered for promotion to the higher post of Additional Collector is being affected in spite of her unblemished service record and her bright future.

16. *Per contra*, learned counsel appearing on behalf of the respondents submitted that a full fledged Departmental Inquiry was initiated after framing of charge in accordance with Bihar Framing of Articles of Charge against Government Servants Regulations, 2017 and in accordance with the prescribed rules under CCA Rules, 2005 required for imposing minor penalty. Due procedure, as required under Rule 19 by following the procedure prescribed under sub-rule (3) to (23) of Rule 17 of the CCA Rules, 2005 has been followed in the case



of the petitioner. The petitioner was aware of the fact that CBI inquiry has been initiated against her and she was found guilty after investigation, therefore, the petitioner's submission that she was not provided with any document would not come in a way to vitiate the Departmental Inquiry.

17. Learned counsel further submitted that the petitioner had preferred review petition after a delay of five months subsequent to the order of punishment imposed upon her and on these grounds also, the present writ petition is fit to be dismissed, considering the fact that the petitioner being not vigilant insofar as her right is concerned and approaching the writ Court after much delay only calls for non-interference by this Court.

18. Learned counsel submitted that the contention of the petitioner that the Special Secretary insofar who has issued the charge memo has no jurisdiction in case of imposing of minor penalty in absence of the authorization of the Governor is not required. He further submitted that as per the provision of Rule 19 of CCA Rules, 2005 full fledged disciplinary enquiry as contemplated in Rule 17 of CCA Rules, 2005 is not necessary, where the Disciplinary Authority proposed to impose minor penalty on a government servant. On



these grounds, learned counsel submitted that no interference is required against the impugned order.

Analysis and Conclusion

19. Heard the parties.

20. I have given anxious consideration to the submission made on behalf of the parties by their respective counsels and have perused the material available on record, the petitioner was served prapatra 'K', while she was posted as Senior Deputy Collector, Kaimur and had additional charge of D.P.O, Kaimur in respect of charges relating to certain irregularities on the basis of enquiry report dated 30.12.2019 submitted by the CBI, by which, it had recommended for initiation of Departmental Proceeding against the petitioner and other accused person. The Disciplinary Authority had not proceeded to hold any enquiry as would appear from the Impugned Order contained in Memo No. 9746 dated 25.05.2023.

21. Rule 14 of CCA Rules, 2005 prescribes for minor and major penalties. The penalty of censure and withholding of two increments with non-cumulative effect is minor penalty as per the Sub- Rules (v) of Rule 14 of the Bihar C.C.A. Rules, 2005. The Disciplinary Authorities has been



prescribed in Rule- 15 of the Bihar C.C.A. Rules, 2005, which provides that the Government may impose any of the penalties specified in Rule-14 on any Government Servant. The condition has been imposed that the same can be imposed on a Government Servant by the Disciplinary Authority or any Authority to which the Appointing Authority is subordinate or by any other authority empowered in this regard by a general or special order of the Government. Rule-16 of the Bihar C.C.A. Rules, 2005, deals with the Authority to institute proceeding. It clarifies that the Government or Appointing Authority or any Authority to which the Appointing Authority is subordinate or by any other authority empowered in this regard by a general or special order of the Government may institute Disciplinary Proceedings against any Government Servant or direct a Disciplinary Authority to institute Disciplinary Proceedings against any Government Servant on whom that disciplinary authority is competent to impose any of the penalties specified in Rule-14.

22. Misconduct is defined as a transgression of a known rule or standard of behavior, or an intentional act that is wrongful or improper. It can also referred to violation of a law or standard especially by a government official. Misconduct



literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action. The word misconduct has been defined in Stroud's Judicial Dictionary, which runs as under:

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct".

23. Rule 19 of the Bihar Government Servants

(Classification, Control and Appeal) Rules, 2005 runs thus:-

"19. Procedure for imposing minor penalties.- (1) Subject to the provisions of sub-rule (3) of Rule 18, no order imposing on a Government Servant any of the penalties specified in clauses (i) to (v) of Rule 14 shall be made except

(a) informing the Government Servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 17, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Government Servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;

(d) recording a finding on each imputation of misconduct or misbehaviour; and

(e) consulting the Commission where such consultation is necessary.

(2) The record of the proceedings in such cases shall include-

(i) a copy of the intimation to the Government Servant of the proposal to take action against him;

(ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;

(iii) his representation if any;

(iv) the evidence produced during the



*inquiry;
(v) the advice of the Commission, if any;
(vi) the findings of each imputation of
misconduct or misbehaviour; and
(vii) the orders on the case together with the
reasons therefor.”*

24. Rule 19 (1) (b) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 says that no order imposing on a Government Servant any of the penalties specified in Clauses (i) to (iv) of Rule 14 shall be made except after holding an enquiry in the manner laid down in Sub Rule (3) to (23) of Rule, 17, in every case in which the disciplinary authority is of the opinion that such enquiry is necessary.

25. It is true that a writ court is very slow in interfering with the findings of facts recorded by a Disciplinary Authority on the basis of evidence available on record. But it is equally true that in a case where the Disciplinary Authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of



principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the Enquiry Officer or the Disciplinary Authority, non- recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment.

26. Reference in this regard can be made to the judgment of the Hon'ble Supreme Court in following cases:-

The Hon'ble Supreme Court in the case of State of **Karnataka Vs. Umesh**, reported in **(2022) 6 SCC 563**, in paragraph Nos.16 to 23, has held that:

"In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not reappreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether;

(i) the rules of natural justice have been complied with;

(ii) the finding of misconduct is based on some evidence;

(iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and

(iv) whether the findings of the disciplinary authority suffer from perversity; and

(v) the penalty is disproportionate to the proven misconduct."

The Apex Court in the case of **Sarvepalli Ramaiah v. District Collector, Chittoor**, reported in **(2019) 4 SCC 500** has held as follows:-

"40. Administrative decisions are subject to judicial review under Article 226 of the Constitution, only on grounds of perversity, patent illegality, irrationality, want of



power to take the decision and procedural irregularity. Except on these grounds administrative decisions are not interfered with, in exercise of the extraordinary power of judicial review. 43. Judicial review under Article 226 is directed, not against the decision, but the decision-making process. Of course, a patent illegality and/or error apparent on the face of the decision, which goes to the root of the decision, may vitiate the decision-making process...”

27. Hence, the dictum laid down by the Hon'ble Apex Court in the above case, clarifies that if the findings of the disciplinary authority suffers from perversity, then this Court can interfere with the said order.

28. I find that the impugned order contained in Memo No. 9746 dated 25.05.2023 issued by Joint Secretary to Government, General Administration Department, Bihar, Patna, has been passed without holding proper enquiry in respect of charges levelled against the petitioner and without consideration of reply of the petitioner, merely on the basis of assumption on the directions of the C.B.I. The penalty of censor and withholding of two increments with non-cumulative effect under Rule-14 of the Bihar C.C.A Rules, 2005, requires to be in accordance with Rules 17(3) to (23) of the Rules, 2005 and the manner prescribed under Rule 19 of the Rules, 2005 for imposing minor penalties.

29. In the present case, there has been complete violation of holding an enquiry as per the manner prescribed in Sub-Rule (1) (b) of Rule 19 of the Bihar C.C.A. Rules, 2005, as



much as, which prescribes for holding of an enquiry in the manner laid down in Sub-Rule (3) to Rule-23 of Rule 17, in every case, in which the Disciplinary Authority is of opinion that such Enquiry is necessary. I find that at the same time, there has been complete violation of the mandatory provision as contained in Sub-Rule (c), (d) and (e) of Rule-1 and also Sub-Rule (2) of Rule 19.

30. It is well settled principle of law that while exercising power of judicial review under Article 226 of Constitution of India, the Court will not sit as an appellate authority and entertain a petition and in this connection, I find it apt to take reference of paragraph no.8 of the judgment passed by the Apex Court in the case of ***Depot Manager, A.P. State Road Transport Corpn. Vs. Mohd. Yousuf Miya & Ors.***, reported in ***(1997) 2 SCC 699*** which is reproduced hereinafter:-

“8. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each



case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, the charge is failure to anticipate the accident and prevention thereof.....”

31. The principle of law was referred by the Apex Court in case of ***G. M. Tank V. State of Gujarat & Anr.***, reported in ***AIR 2006 SC 2129***. Reference can be made to paragraphs no.30 and 31 of the said judgment, which are reproduced hereinafter:-

“30. The Judgment in the case of State of A.P. & Ors. Vs. S. Sree Rama Rao (supra), was cited for the purpose that the High Court is not constituted in a proceeding under Art. 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant, it is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf and whether the rules of natural justice are not



violated.

31. The judgments relied on by the learned counsel appearing for the respondents are not distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.”

32. The Apex court in the case of ***United Bank of India v. Biswanath Bhattacharjee***, reported in (2022) 13 SCC 329 has held, *inter alia*, as follows:

19. Other decisions have ruled that being a proceeding before a domestic tribunal, strict rules of



evidence, or adherence to the provisions of the Evidence Act, 1872 are inessential. However, the procedure has to be fair and reasonable, and the charged employee has to be given reasonable opportunity to defend himself (ref : Bank of India v. Degala Suryanarayana [Bank of India v. Degala Suryanarayana, (1999) 5 SCC 762 : 1999 SCC (L&S) 1036] a decision followed later in Punjab & Sind Bank v. Daya Singh [Punjab & Sind Bank v. Daya Singh, (2010) 11 SCC 233 : (2010) 2 SCC (L&S) 758]). In Moni Shankar v. Union of India [Moni Shankar v. Union of India, (2008) 3 SCC 484 : (2008) 1 SCC (L&S) 819] this Court outlined what judicial review entails in respect of orders made by the disciplinary authorities : (Moni Shankar case [Moni Shankar v. Union of India, (2008) 3 SCC 484 : (2008) 1 SCC (L&S) 819] , SCC p. 492, para 17)

“17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidence, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere.”

20. This Court struck a similar note, in State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya [State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya, (2011) 4 SCC 584 : (2011) 1 SCC (L&S) 721] , where it was observed that : (SCC p. 587, para 7)

“7. ... If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental



enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record.”

33. A reference in this regard can be applied in the present case in light of law laid down by the Apex Court in the above-referred cases in view of the fact that the disciplinary action has been taken on the basis of no evidence in support of the charges, leading to the conclusion derived by the disciplinary authority which vitiates the entire proceeding.

34. When the Memorandum of charge was submitted against the delinquent Officer, her reply was obtained in the form of written statement of defence, it was absolutely necessary to give liberty to the petitioner of hearing as contemplated under Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. The petitioner was imposed minor punishment only on the basis of the recommendation of the CBI and the three Members Committee by the Social Welfare Department. The petitioner cannot be held responsible for any act of misconduct, alleged irregularity committed by her in want of any proved charge in course of departmental inquiry.

35. I find that the petitioner has made out a case,



insofar as, the due procedure as prescribed under Rule 19 of CCA Rules, 2005 for imposition of minor penalty has also not been followed. The petitioner must have been provided with the evidence in support of the charge memo and in absence of the same the entire proceeding is vitiated in the eyes of law and the principle of natural justice was blatantly violated by the Department.

36. The findings recorded by the Disciplinary Authority can only be held to perverse and are based on no evidence, the charge memo dated 23.09.2020 also losses its effect in want of the approval of the Governor. I accordingly, set aside and quash the order of penalty contained in Memo No.9746 dated 25.05.2023 communicated by Joint Secretary, General Administrative Department, Government of Bihar, Patna.

37. As I have already set aside the order of penalty, the petitioner becomes entitled for grant of all consequential benefits including her being considered for her promotion to the higher post to which she is entitled.

38. Accordingly, the present writ petition stands disposed of.

39. Interlocutory Application(s), if any, also stands



disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	A.F.R.
CAV DATE	NA
Uploading Date	13.11.2024
Transmission Date	NA

