

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3414 of 2020

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Ram Lagan Ram son of Late Ganesh Ram, Resident of Village- Alisherpur,
P.O.- Gihuli, P.S.- Patahin, District- East Champaran, Motihari.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Land and Revenue, Government of Bihar, Patna.
2. The Commissioner, Tirhut Division, Muzaffarpur.
3. The District Magistrate, East Champaran, Motihari.
4. The Additional Collector cum District Public Grievance Redressal Officer, East Champaran, Motihari.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ranjeet Kumar, Advocate

Mr. Kanishk Kaustubh, Advocate

Mr. Shekhar Mani, Advocate

Mr. Rishabh Gupta, Advocate

For the Respondent/s : Mr.Subash Chandra Yadav (GP15)

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 16-02-2024

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

2. The present writ petition has been filed for
setting aside the enquiry report contained in Letter No.500 dated



10.06.2019 and also for setting aside the order contained in Memo No. 1381 dated 08.11.2019, passed by the disciplinary authority by which punishment for dismissal from the service has been imposed upon the petitioner. Further prayer has been added by way of Interlocutory Application No. 01/2020 for quashing of order dated 23.03.2020 passed by the Commissioner, Tirhut Division, Muzaffarpur in Service Appeal No. 299 of 2019 whereby the appeal of the petitioner has been dismissed.

3. Learned counsel for the petitioner submits that the petitioner has earlier moved before this Hon'ble Court in CWJC No. 8298 of 2014, challenging his order of dismissal from the service. The said writ petition was allowed and the order of dismissal was set aside. The matter was remitted back to the District Magistrate, East Champaran, Motihari to proceed afresh in accordance with the law against the petitioner. Learned counsel submits that in that view of the matter, a fresh order has been issued to him vide Memo No.15 dated 01.01.2018 in which the enquiry officer and the presenting officer were appointed.

4. Learned counsel for the petitioner submits that the petitioner was posted as Clerk in the office of Certificate



Officer, East Champaran, Motihari, and on the basis of a complaint submitted by one Vishwanath Choudhary, before the Vigilance Investigation Bureau, Bihar, Patna, alleging demand of Rs.10,000/-, the petitioner was allegedly trapped by the Vigilance Investigation Bureau on 09.11.2012 while receiving Rs.10,000/-. Subsequently, on the basis of the aforesaid complaint, a formal FIR bearing Vigilance P.S. Case No. 72/2012 was registered against the petitioner under Sections 7/8/13(2), 13(1)(D) of the Prevention of Corruption Act. Learned counsel for the petitioner further submits that the District Magistrate, East Champaran, Motihari vide order dated 24.01.2014, served articles of charge to the petitioner and directed to file show cause. In pursuance thereof, the petitioner submitted his reply to the show cause on 29.01.2014 denying all the charges levelled against him. It is alleged by the petitioner that the District Magistrate, Motihari, without holding any enquiry, as envisaged under Rule 17 of the Bihar Governments Servant (Classification, Control and Appeal)Rule, 2005 (hereinafter referred to as 'the CCA Rules, 2005') dismissed the petitioner from service vide order contained in Memo No. 96 dated 28.03.2014.

5. Learned counsel for the petitioner further



submits that the petitioner has filed CWJC No. 8298 of 2014 which was allowed in favour of the petitioner vide order dated 18.08.2017 wherein the Hon'ble Court pleased to hold that the order of dismissal dated 28.03.2014 is not sustainable and after setting aside the said order, remitted the matter back to the District Magistrate, East Champaran, Motihari to proceed afresh in accordance with the law. Thereafter, a fresh proceeding was initiated against the petitioner and vide order contained in Memo No. 15 dated 01.01.2018, In-charge District Certificate Officer, East Champaran, Motihari, has been appointed as Presenting Officer and Additional Collector-cum-District Public Grievance Redressal Officer, East Champaran, Motihari, as enquiry officer. Vide Letter No. 1731 dated 27.10.2018, issued under the signature of In-Charge Additional Collector, East Champaran, Motihari, the petitioner was served with articles of charges and was directed to file show cause. The memo of charge contained three charges. Petitioner submitted his reply denying the charges. The enquiry officer found the petitioner's guilt. The second show cause was issued to him contained in Memo No. 657 dated 26.06.2019. Counsel submits that initially enquiry report has not been provided to the petitioner but subsequently upon correspondence, it was provided to the



petitioner only vide Memo No. 952 dated 27.08.2019. Counsel submits that in response to the second show cause, the petitioner has submitted the entire facts denying all the charges levelled against him. The District Magistrate vide order contained in Memo No. 1381 dated 08.11.2019, dismissed the petitioner from service in the light of the CCA Rules, 2005.

6. Learned counsel for the petitioner further submits that the petitioner has preferred the appeal, but no order has been passed in the said appeal. Thereafter, the petitioner has preferred the present writ petition before this Hon'ble Court, and during pendency of the present writ petition, the appellate authority passed a final order vide order 23.03.2020 in Service Appeal No. 299/2019 rejected his appeal. The appellate order has been challenged by the petitioner vide Interlocutory Application No. 1 of 2020. The said interlocutory application has been allowed by this Hon'ble Court vide order dated 22.12.2023.

7. Learned counsel for the petitioner submits in his defense that the allegation levelled in the complaint that the petitioner demanded Rs. 40,000/- with a promise to ensure the recall of warrant of arrest issued by the Certificate Officer, East Champaran, Motihari, in Case No. 228/08-09 and also assured



the payment of the due amount of Rs.1,57,587/- in installment. He has taken the defense that it is beyond imagination that anybody can offer a bribe of Rs.40,000/- with respect to payment of Rs.1,57,587/-. Another defense was taken by the petitioner that the petitioner was not at all connected with the District Certificate Officer, East Champaran, Motihar and his duty was only to keep records and deliver/hand over the same whenever the Peshkar demanded. Another defense, he has taken is that during the entire departmental proceeding, no witnesses including the complaint came forward to depose and support the charges levelled against him. He further submits that the enquiry officer found the charges proved against the petitioner only on the basis of the First Information Report.

8. Learned counsel for the petitioner has relied on a judgment to substantiate his case rendered in the case of ***Roop Singh Negi Vs. Punjab National Bank*** reported in (2009)2 SCC 570 in which the Hon'ble Court has held that any document produced does not *ipso facto* establish the charges unless and until the same is proved by producing the oral testimony. He submits that the finding of the enquiry officer is based upon presumption, assumption, and fanciful imagination. He submits that the present matter is a case of no evidence and



therefore, the charges could not be held to be proved against the petitioner.

9. Learned counsel for the petitioner further relied on a judgment of the Hon'ble Supreme Court rendered in the case of *Kuldeep Singh vs. Commissioner of Police* reported in (1999) 2 SCC 10; *Anil Kumar Vs. Presenting Officer* reported in (1985) 3 SCC 378; *State of U.P. and Ors Vs. Saroj Kumar Sinha* reported in 2010 (2) SCC 773 ; *Depali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya* reported in 2013(10) SCC 324, *Pawan Kuman Agarwala Vs. General Manager II and Appointing Authority, State Bank of India and Ors.* reported in (2015)15 SCC 184 and submits that the present case is without any basis and fit to be allowed by way of setting aside the enquiry report, disciplinary order and the appellate order.

10. Learned counsel for the State on the other hand submits that the petitioner has earlier moved before this Hon'ble Court in CWJC No. 8298/2014 in which vide order dated 18.08.2017 earlier punishment order has been set aside and the matter was remitted back to the District Magistrate, East Champaran to proceed afresh in accordance with law against the petitioner. Thereafter, the fresh proceeding was initiated and he



was issued a reminder by way of filing a written statement, and a charge memo has been served in which a copy of FIR has also been served upon him. The petitioner has submitted his reply before the enquiry officer. The Enquiry Officer reached on conclusion and found the charges proved against the delinquent. Counsel further submits that the second show cause notice has been issued upon the petitioner and the petitioner has responded on the same, in which he has raised some points which he has raised before the enquiry officer. Thereafter final order has been passed in which he has been held guilty and a punishment order has been passed by way of dismissal from his service. Counsel further submits that the petitioner has challenged his punishment order before the appellate authority and the appellate authority has dismissed the appeal.

11. Counsel for the State relied on different judgments rendered in the case of **Iftekhar Alam Vs. The Chief General Manager, State Bank of India and Ors.** reported in 2000 (4) PLJR 289; **Kuldeep Singh vs. The State of Punjab and Ors.** reported in (1996) 10 SCC 659 ; **Vikramaditya Singh Vs. The State of Bihar and Ors.** reported in 2020 (1) PLJR 95 and **The State of Uttar Pradesh and Ors. Vs. Rajit Singh** reported in 2022 (2) PLJR 196 (SC).



12. With a view to adjudicate this matter, this Court feels it necessary to quote the relevant paragraphs of the judgment relied upon by learned counsel for the petitioner. In the case of ***Kuldeep Singh vs. Commissioner of Police***, it has been held in paragraphs 6, 7 and 42 as under :

“6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority.

7. In Nand Kishore Prasad v. State of Bihar [(1978) 3 SCC 366 : 1978 SCC (L&S) 458 : AIR 1978 SC 1277 : (1978) 3 SCR 708] it was held that the disciplinary proceedings



before a domestic tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the enquiry officer would be perverse.

42. The enquiry officer did not sit with an open mind to hold an impartial domestic enquiry which is an essential component of the principles of natural justice as also that of “reasonable opportunity”, contemplated by Article 311(2) of the Constitution. The “bias” in favour of the Department had so badly affected the enquiry officer's whole faculty of reasoning that even non-production of the complainants was ascribed to the appellant which squarely was the fault of the Department. Once the Department knew that the labourers were employed somewhere in Devli Khanpur, their presence could have been procured and they could have been produced before the enquiry officer to prove the charge framed against the



appellant. He has acted so arbitrarily in the matter and has found the appellant guilty in such a coarse manner that it becomes apparent that he was merely carrying out the command from some superior officer who perhaps directed “fix him up”.

13. This Court further feels it necessary to quote relevant paragraph nos.5 and 6 of the judgement cited by learned counsel for the petitioner in the case of **Anil Kumar Vs. Presenting Officer (supra)**, as under :-

5. We have extracted the charges framed against the appellant. We have also pointed out in clear terms the report of the enquiry officer. 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 enquiry 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 creditworthy. 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* [AIR 1966 SC 671 : (1966) 1 SCR 466 : (1966) 1 SCJ 204] 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 Santosh Kumar v. Slate of U.P.* [AIR 1966 SC 671 : (1971) 1 SCR 201] 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 more 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.”

14. In the case of the *State of U.P. and Ors Vs.*

Saroj Kumar Sinha (supra), it has been held as under ;-

“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.

Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that



justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”

15. It has been held in paragraph 40 of the judgment rendered in the case of ***Depali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (supra)***, as under : -

“40. The learned Single Judge agreed with the Tribunal that the action taken by the management to terminate the appellant's service was per se illegal but set aside the award of back wages by making a cryptic observation that she had not proved the factum of non-employment during the intervening period. While doing so, the learned Single Judge not only overlooked the order passed by the Division Bench in Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya [Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, WP No. 8404 of 2006, order dated 21-3-2007 (Bom)] , but also Rule 33 which prohibits an employee from taking employment elsewhere. Indeed, it was not even the pleaded case of the management that during the period of suspension, the appellant had left the headquarters without prior approval of the Chief Executive Officer and thereby disentitling her from getting subsistence allowance or that during the intervening period she was gainfully employed elsewhere.”



16. This Court further quotes the relevant paragraphs 25 and 26 of the judgment rendered in the case of ***Pawan Kuman Agarwala Vs. General Manager II and Appointing Authority, State Bank of India and Ors (supra)***, as under :-

“25. For the reasons stated supra, we have examined the case threadbare on the basis of the material placed on record and rival legal contentions urged on behalf of the parties, we hold that the finding of the enquiry officer on the charges is vitiated on account of non-compliance with the statutory rules and the principles of natural justice. In the absence of evidence, the order of reinstatement sans full back wages is unjustified in law. At best, the High Court should have made deduction of the amount of pension received by the appellant after awarding full back wages for the period in question. In not doing so, the orders of the learned Single Judge [Pawan Kumar Agarwala v. Union of India, 2014 SCC OnLine Gau 35 : (2014) 3 Gau LR 343] and the Division Bench [SBI v. Pawan Kumar Agarwala, 2014 SCC OnLine Gau 230] of the High Court are liable to be set aside with regard to non-grant of full back wages.

26. Accordingly, we set aside the orders of the Division Bench imposing the penalty of reduction of one increment to the appellant for one year and restore and modify the order of the learned Single Judge with regard to award of reinstatement with full back wages for the period from the date of removal till the date of the appellant attaining the age of superannuation, on the basis of periodical revisions of salary to the appellant herein and deduct the pension amount from the back wages payable to the appellant. The same shall be paid to the appellant within eight weeks from the date of receipt of the copy of this order.”



17. This Court also feels it necessary to mention the judgment relied upon by learned counsel for the State in the case of ***Iftekhhar Alam Vs. the Chief General Manager, State Bank of India and Ors. (supra)*** in which it has been held that the judicial intervention in the departmental proceeding can be made not to look into the sufficiency of the material nor can arrive at a different conclusion after appreciating the evidence the Court, u/Art. 226 has only to see that there was no error in the decision-making process, competency of disciplinary authority, compliance with the requirement of principles of natural justice and statutory provisions.

18. Further, the Supreme Court has held in the case of ***Kuldeep Singh Vs. The State of Punjab and Ors. (supra)*** that if the disciplinary authority comes to the conclusion that the statement was indeed voluntary and true, he may well be entitled to act upon the said statement. As in the present case, the petitioner has not denied that cash money has not been recovered from his possession.

19. It has been held in the case of ***Vikramaditya Singh Vs. The State of Bihar and Ors. (supra)*** that on analyzing the entire material on record, the Enquiry Officer



found the petitioner was responsible for misappropriation/irregularity indirectly for providing charge if the materials are available which could be the basis of coming to a different conclusion, then only because witnesses were not examined, the entire enquiry report could not be thrown out as the departmental proceeding is an allegation hardly in which the Evidence Act is not applicable only on the preponderance of probability the Enquiry Officer has to reach at conclusion.

20. It has been held in the case of *The State of Uttar Pradesh and Ors. Vs. Rajit Singh (supra)* that a Court cannot reinstate the employee and the matter is to be remanded to the enquiry officer/disciplinary authority to proceed further with the enquiry from the stage of violation of principles of natural justice is noticed and the enquiry has to be proceeded further after furnishing the necessary documents mentioned in the charge sheet.

21. Upon going through the arguments as well as the documents available on record, it transpires to this Court that the counsel for the petitioner has consistently argued on the point that in the said departmental proceeding, not a single witness has been examined and, therefore, the imputation of the charge made in the charge memo cannot be said to be proved



and proving only on the basis of documentary evidence cannot be accepted as the content of the arguments has not been proved by any of the witnesses. On the other hand, the State consistently put emphasis that under Article 226 of the Constitution of India, the High Court is not the Court of appeal. It is only the question of judicial review. The Court has only to test whether the question of judicial review attracted or not and the Court has to only see whether, in a decision-making process, the authority has committed any error or not; whether the disciplinary authority was competent to pass the order of punishment or not; and whether the enquiry was conducted by following the relevant rule consistent with the principle of natural justice or not.

22. It transpires to this that in the departmental proceeding, the standard of proof is neither like that of a civil case i.e. preponderance of probability nor like that of a criminal case i.e. proof beyond all reasonable doubts rather it has to only establish article of charge. It transpires to this Court that in the present case, recovery of money has taken place from the delinquent and it has not been denied that money has not been recovered from his possession which is sufficient to establish article of charge. This departmental proceeding is the result of



the vigilance case under which an allegation of bribery i.e. recovery of money from possession of the delinquent is there which appears to the enquiry officer through the document which is public in nature. The opportunity was granted to the delinquent to defend and all processes have been completed by the disciplinary authority, enquiry officer compliance and requirement of the principle of natural justice have been followed, and due to this reason, this Court is not inclined to interfere in the order impugned.

23. Accordingly, the present writ petition stands dismissed.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	
CAV DATE	NA
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