

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9190 of 2021

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Ratnesh Kumar, Son of Late Jagan Nath Raut, Resident of Mohalla - Naya Tola, Kumhrar, P.S. - Agamkuan, Town Patnacity, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Additional Director General of Police, (Law and Order) Patna.
3. The Deputy Inspector General, Champaran Range at Bettiah.
4. The Superintendent of Police, Motihari, East Champaran.
5. The Deputy Superintendent of Police cum Enquiring Officer, Sikarahna (Dhaka), Motihari, East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Akhilesh Dutta Verma
For the Respondent/s : Mr. Ajay Kumar, AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 08-07-2024

1. The Petitioner was a Sub-Inspector of Bihar Police Service. He joined the service as Sub-Inspector of Police on 5th of September 1994. On the allegation that on 09.08.2007, when was posted at Pachpakari Outpost within Dhaka Police Station in the district of East Champaran, he was apprehended by the Vigilance Investigation Bureau on the allegation that he was taking bribe. Following such allegation, it was held by the Police Department that the purported act of the Petitioner was misconduct. As a result of which he was directed to face departmental proceeding following service of charge-sheet on



31st of August 2007.

2. Annexure - 2 is the charge-sheet issued by the Superintendent of Police, East Champaran, Motihari, which *inter alia*, states: -

“Shri Anil Kumar Singh, Superintendent of Police Incharge cum Sub-divisional Police Officer informed the Superintendent of Police, East Champaran that Ratnesh Kumar, Petitioner herein, was arrested by Vigilance Investigation Bureau in a trap on 9th of August 2007 while he was taking bribe. Police attached to Vigilance Investigation Bureau conducted the said trap on the basis of General Diary Entry No. 1607, dated 08.08.2007 at 07.30 a.m. The On-duty Police Officer, Dhaka Police and the SHO, Dharmendra Kumar and Police Officers corroborated the said fact of arrest of the Petitioner by Vigilance Investigation Bureau while allegedly he was taking bribe.”

3. It is alleged by the Petitioner that the memo of charge was not drafted in the manner as described under the law relating to disciplinary proceedings. Be that as it may, following the departmental proceeding, the Petitioner was punished and terminated from service, vide order dated 30th of November 2011, issued by the Deputy Inspector General of



Police, Champaran Range, Bettiah. The Petitioner filed an appeal against the order of the DIG, Champaran Range, Bettiah before the Inspector General of Police, Muzaffarpur. However, he affirmed the order of the DIG Police and affirmed the order of termination passed against the Petitioner.

4. The Petitioner challenged the said order before this Court in C.W.J.C. No. 1328 of 2017. By an order dated 19th of February 2018, the writ petition filed by the Petitioner, was allowed and a Coordinate Bench of this Court quashed the orders of the disciplinary authority, dated 30th of November 2011 and the order of the IG, Police dated 16th of June 2012 and was pleased to direct the respondent authorities to allow the writ Petitioner to join the service and release all consequential benefits with a liberty to the respondents to further proceed with the case in accordance with law.

5. The Petitioner again joined his service as per the order passed in C.W.J.C. No. 1328 of 2017 on 19th of February 2018 but his joining was not accepted and, therefore, he was not treated as in service.

6. Again on 24th of April 2018, a departmental charge-sheet was issued, which was practically a replication of the charge-sheet dated 31st of August 2007.



7. It is contended by the Petitioner that as he was not allowed to join the service as per the direction of this Court in C.W.J.C. No. 1328 of 2017, he could not be considered as in service and, therefore, second memorandum of charge issued by the Superintendent of Police Motihari on 24th of April 2018 is illegal, inoperative and the Petitioner was not subjected to any departmental proceeding as he was not allowed to join his service. The Superintendent of Police, Motihari could not act as departmental authority as the Petitioner was appointed by Inspector General of Police (Admin) Patna Bihar. The appointing authority only is the disciplinary authority in terms of settled law of Land.

8. It is alleged by the Petitioner that the Sub-Divisional Officer was appointed as Inquiry Officer and Inspector, Dhaka, Arjun Kumar was appointed as Presenting Officer. The Petitioner further alleges that enquiry should be conducted under the provisions of Rules 17 and 18 of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the “Bihar CCA Rules, 2005” for short). But the said rules was not followed during inquiry. In departmental inquiry proceeding, the Petitioner at the outset raised the authenticity of the departmental proceeding in view of



the fact that he was not permitted to join service in terms of the order passed in C.W.J.C. No. 1328 of 2017 and on the date of submission of charge sheet, the Petitioner was not an employee under the Police Department of the Government of Bihar. When the Petitioner took the aforesaid plea, the respondents accepted his joining on 1st of May 2018. After his joining, the Petitioner has filed detailed application on 16th of November 2019 under Rule 17(11) of the Bihar CCA Rules, 2005 for supply of documents relating to the charge.

9. However, he was not served with any document which the Inquiry Officer relied upon as the mandatory provisions of Rule 17(11) of the Bihar CCA Rules 2005. Subsequently, without obtaining any reply to the charge-sheet from the Petitioner, examining any witness or exhibit any document, the Inquiry Officer submitted his report on 25th of February 2020. The Petitioner contains that procedural requirement stated in Rules 14, 15, 16, 17 and 18 of the Bihar CCA Rules, 2005 had not been followed by the inquiry authority. The Inquiry Officer submitted his report to the Superintendent of Police, Motihari, who acted as disciplinary authority and asked the Petitioner to file second show cause on 30th of March 2020. The Petitioner filed his show cause refuting



charges levelled against him and also with the authority of the Superintendent of Police regarding his role as disciplinary authority, but on 11th of June 2020, the Superintendent of Police, Motihari, acting as disciplinary authority, recommended punishment of termination of the Petitioner from service.

10. The Inspector General of Police, Bettiah accepted the order of termination of the Petitioner by his order dated 18th of June 2020. The Petitioner has challenged both the recommendation issued by the Superintendent of Police, Motihari, dated 11th of June 2020 and the order of the Deputy Inspector General of Police, Champaran Range, dated 18th of June 2020 by filing the writ petition.

11. In the instant writ petition, the Petitioner has prayed for issuance of writ in the nature of Certiorari for quashing the order, dated 18th of June 2020, passed by the Deputy Inspector General of Police, Champaran Range, Bettiah and the Letter No. 438 of 2020, dated 7th of July 2020, by virtue of which the service of the Petitioner was terminated and also the orders, dated 22th of October 2020, passed by Additional Director General of Police (Law and Order), Patna, upholding the order of termination passed by the Deputy Inspector General of Police, Champaran, Bettiah along with consequential and



incidental reliefs thereto.

12. It is submitted by the learned Advocate appearing for the Petitioner that the Petitioner was appointed by the Inspector General of Police, (Administration) Bihar, Patna. He, being the Appointing Authority, disciplinary proceedings could only be conducted by him or by any Officer subordinate to him under his order.

13. In the instant case, disciplinary proceeding was not conducted either by the Appointing Authority or by an officer under his order. The Superintendent of Police, East Champaran, Bettiah issued second charge-sheet against the Petitioner (Annexure 4). The only difference between the first charge-sheet and second charge-sheet is that one Arjun Kumar, S.H.O, Dhaka Police Station was appointed as the Presenting Officer in the second departmental proceeding, Column 10 of the said charge-sheet refers to the departmental Order No. 53 of 2007. In the column, name of the witnesses, it is stated that the witnesses would be in terms of the departmental Order No. 53 of 2007 and the documents relied on or cited by the witness would be relied on as documentary evidence against the Petitioner.

14. The learned Advocate on behalf of the



Petitioner submits that the second charge-sheet was issued by the Superintendent of Police, East Champaran, Motihari on 24th April 2018 when the Petitioner was not absorbed in service. Therefore, the second charge-sheet is premature, illegal and arbitrary.

15. Another limb of argument made by the learned Advocate on behalf of the Petitioner is that the Petitioner demanded a document which might be relied upon by the Inquiry Officer during enquiry, but no document was supplied to him. On the other hand, without examining any witness or any document, whatsoever, inquiry report was submitted against the Petitioner. After the said inquiry report being submitted, the Superintendent of Police, East Champaran, Motihari wrote a letter, directing the Petitioner to submit second show cause against the proposed order of termination. The Petitioner submitted his detailed reply to the show cause on 1st of June 2020.

16. It is pointed out by the learned Advocate on behalf of the Petitioner that Rule 2(f) (iii) of the Bihar CCA Rules, 2005 defines “Appointing Authority” as the Authority who has appointed the government servant to such service. Rule 2 (j) of the Bihar CCA Rules, 2005 defines a “Disciplinary



Authority” to mean the Appointing Authority or any other Authority authorized by it, who shall be competent under the Rules to impose on a government servant any of the penalties specified Rule 14 of the Bihar CCA Rules, 2005 to impose on a government servant.

17. Thus, it becomes abundantly clear that whatever be the circumstances, once a person is appointed by a particular authority, he cannot be dismissed by any Officer inferior in rank, to the one, who appointed him. In a given case, the rules may have undertaken change after a person is appointed to a service resulting in the position of the Appointing Authority being downgraded. That, however, does not make any difference for application of Article 311 of the Constitution. What one has to see is, as to who was the Officer, who signed the order of appointment of the employee. If order of punishment is signed by the Officer, who happens to be the inferior in rank, the order needs to be set aside, being violative of Article 311 of the Constitution.

18. Since the Petitioner was appointed by the Inspector General of Police (Administration), Bihar, final order of termination ought to have been passed by him.

19. The learned Advocate appearing on behalf of



the Petitioner next refers to the decision of the Hon'ble Supreme Court in the case of ***Union of India & Ors. v. B. V. Gopinath***, reported in ***(2014) 1 SCC 351*** to impress upon this Court that under Article 311(1) of the Constitution of India, a member of Civil Service of the Union or the State, can only be dismissed or removed by his Appointing Authority. Same principle is laid down in Rule 15 of the Bihar CCA Rules, 2005. Sub-rule (2) of Rule 15 states -

“Without prejudice to the provisions of Sub-rule (1), any of the penalties specified in Rule 14 may be imposed on a government servants by the Appointing Authority or any authority to which the Appointing Authority is subordinate or by any other authority in this behalf by a general or special order of the Government. Since the final order of termination was not passed against the Petitioner by his Appointing Authority or any authority to which the Appointing Authority is subordinate or by any authority empowered for this order by a general or special order of the Government, the Respondents failed to prove that there is any general or special order passed by the Government that the Superintendent of Police or the Deputy Inspector General of Police can pass order of termination against the Petitioner. Therefore, the very order is illegal



and not applicable under the Rule.”

20. The learned Advocate for the Petitioner also refers to another decision of the Hon'ble Supreme Court in the case of **Roop Singh Negi v. Punjab National Bank & Ors.**, reported in **(2009) 2 SCC 570**. In paragraph 17 of the aforesaid judgement, the Hon'ble Supreme Court recorded an observation made in **Moni Shankar v. Union of India**, reported in **(2008) 3 SCC 484**, which runs as under:-

“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 evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality.”

21. Finally, in **Roop Singh Negi** (supra), it is held by the Hon'ble Supreme Court in paragraph 23 as under: -

“23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were



not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.”

22. Thus, though a departmental proceeding and enquiry therein is a quasi-judicial proceeding and the principles of Evidence Act is not fully applicable in a departmental proceeding, but neither the Enquiry Officer nor the Disciplinary Authority is permitted to violate the basic principles of natural justice.

23. Termination of service of a government employee has serious consequences. Therefore, the disciplinary authority enjoins an obligation that any order of major penalty must be passed on the basis of some evidence.

24. In the instant case, the Enquiry Officer did not examine any evidence. The Enquiry Officer as well as disciplinary authority relied on the trap memo of the Vigilance Investigation Bureau and the criminal case instituted against the Petitioner under different penal provisions of the Prevention of Corruption Act. However, the Enquiry Officer did not take any attempt to prove the trap memo during enquiry by examining the members of the Vigilance Investigation Bureau, who constituted the trap. Even the written complaint submitted by



the Police Officer attached to the Vigilance Investigation Bureau had not been examined.

25. In ***Roop Singh Negi*** (supra), the Hon'ble Supreme Court held that as the report of the Enquiry Officer was based on merely *ipse dixit* as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.

26. On this issue, the learned Advocate appearing on behalf of the Petitioner refers to the decision of the Hon'ble Supreme Court in ***State of Uttar Pradesh & Ors. v. Saroj Kumar Sinha***, reported in ***(2010) 2 SCC 772*** to show the role of Enquiry Officer as an independent adjudicator.

27. Also, referring to the case of ***Kuldeep Singh v. Commissioner of Police & Ors.***, reported in ***(1999) 2 SCC 10***, it is submitted by the learned Advocate appearing on behalf of the Petitioner that the Court can interfere with the finding of guilt of the Petitioner if the same is based on new evidence or is such as could not be reached by an ordinary prudent man or is perverse or is made at the dictates of a superior authority.



28. The learned Advocate appearing on behalf of the State, on the other hand, submits that Clause 825 (C) of the Bihar Police Manual remains unchanged and even if the Petitioner was appointed by the Inspector General of Police (Administration), Bihar, Patna, the Deputy Inspector General of Police was designated as Disciplinary Authority and the provision continues to be so even now. The relevant provision is as follows: -

“825. Officer empowered to impose punishment.-

(a) No police officer shall be dismissed or compulsorily retired by an authority subordinate to that which appointed him.

(b) The Inspector General may award to any police officer below the rank of Deputy Superintendent any one or more of the punishments in Rule 824.

(c) A Deputy Inspector General may impose on any police officer subordinate to him and below the rank of Deputy Superintendent any of the punishments in Rule 824 except dismissal, compulsory retirement and removal in the case of an Inspector.

(d) A Superintendent may impose on any police officer subordinate to him and of and below the rank of Sub-Inspector any or more of the punishments in Rule 824 except dismissal,



removal and compulsory retirement in the case of Sub-Inspector or Assistant Sub-Inspector. It shall be kept in mind that if any enquiry has been initiated by the District Magistrate, a report of the result shall be sent to him for information. If required, the file of departmental proceeding shall also be sent with it.

(e) The punishments noted in Rules 824(h) and (i) can be awarded by S.D.P.O. also but its record shall be kept in the office of Superintendent and it shall also be seen that different yardsticks are not used in awarding punishments.

(f) A list of officers competent to give punishments or ordering of suspension according to Act V, 1861 is given in Appendix 84.”

29. Thus, according to Clause (c) of Rule 825 of the Bihar Police Manual, a Deputy Inspector General is empowered to impose on any Police Officer subordinate to him and below the rank of Deputy Superintendent; any punishments in Rule 824 except dismissal, compulsory retirement and removal in the case of an Inspector. The Petitioner was Sub-Inspector of Police. He was terminated from service on being proposed by the Deputy Inspector General of Police by the Inspector General, East Champaran, Motihari. Therefore, there is no illegality in the impugned order. It is submitted by him that



in a departmental proceeding, the Constitutional Court does not have the power to act as the second Appellate Authority to scrutinize the order of the disciplinary authority. Re-appreciation of evidence is not applicable in a departmental proceeding. The report of the Vigilance Investigation Bureau proves that the Petitioner was caught red-handed while he was accepting bribe. The Police attached to Vigilance Investigation Bureau submitted a report before the Vigilance Police Station. On the basis of the said report / complaint, a criminal case was registered against the Petitioner. The said case is still pending. All these documents are matters of record prepared in ordinary course of official business by the competent Officer of Vigilance Investigation Bureau. The order of termination of the Petitioner was made on the basis of the said report. Therefore, the enquiry report, finding of the disciplinary authority and final report of termination order from service cannot be assailed in the instant writ petition.

30. Having heard the learned counsels for the Petitioner and the respondents and on careful perusal of the materials on record as well as the decisions of the Hon'ble Supreme Court, this can be concluded that : -

(i) The High Court under the jurisdiction of Article



226 of the Constitution of India has no authority to re-assess the evidence on record produced in a departmental proceeding;

(ii) It is, however, the solemn duty of the High Court to look into the question, whether basic principles of natural justice has been followed in a departmental proceeding or not.

(iii) Since the Enquiry Officer is a quasi-judicial authority, his report must be in conformity with some evidence.

(iv) If a decision in a departmental proceeding is found to be based on no evidence, such finding is liable to be set aside.

31. In an unreported decision, dated 13th September 2013, passed in ***C.W.J.C. No. 12013 of 2012 (Shashi Bhushan Prasad v. State of Bihar & Ors.)***, the delinquent Police Officer raised an issue that he was appointed by the Inspector General of Police (Administration), Bihar, Patna, therefore, under Article 311(1) of the Constitution of India, any order of termination of service passed by an Officer below the rank of Inspector General of Police (Administration) cannot be sustained on this ground alone. This Court in the aforesaid decision quashed and set aside the order of disciplinary authority as well as the Appellate Authority and the case was remitted back to the



disciplinary authority for taking fresh action on the basis of the materials on record.

32. In *Uday Pratap Singh v. The State of Bihar & Ors.*, reported in **2017 (4) PLJR 195**, the factual score of this case is same and identical. The Petitioner was apprehended accepting illegal gratification. A disciplinary proceeding was initiated and major penalty was finally passed against him. The delinquent Police Officer in this case also claimed that the disciplinary authority of the Petitioner is Inspector General of Police, Senior Superintendent of Police has initiated the proceeding against the Petitioner and also directed him to file his reply. In the absence of any authorization given by the Sr. Superintendent of Police, either under Bihar Police Manual or by the Inspector General of Police, being the Appointing Authority or the Deputy Inspector General of Police being the disciplinary authority to initiate the process, the very initiation of the departmental proceeding was held to be without jurisdiction.

33. A Coordinate Bench of this Court held that when the initial proceeding stands vitiated due to the absence of basic foundation, the subsequent proceeding is liable to be quashed.



34. In *Vijendra Prasad v. State of Bihar & Ors.*, reported in **2019 (4) PLJR 1046**, a Coordinate Bench of this Court found on perusal of the order of the disciplinary authority also that the said order simply states rejection of the report of the Enquiry Officer and explanation submitted by the Petitioner after submission of the report of the Examination Officer. There is absolutely no discussion in the order of the disciplinary authority as to how the charge against the Petitioner of accepting bribe can be said to have been proved. The order of the Appellate Authority was likely unreasoned inasmuch as the said order also does not refer to any material on the basis of which the disciplinary action taken against the Petitioner can be said to be justified.

35. The Appellate Authority has not, at all, discussed the grounds taken by the Petitioner in his memo of appeal and as to why such grounds were not acceptable to him. The only fact which was proved and which was not on dispute during the departmental proceeding was that the Petitioner was arrested by the Vigilance Team. His arrest cannot be said to be constituting a misconduct. In the aforesaid background, the High Court quashed and set aside the entire action of imposition of punishment of dismissal of the Petitioner from service and



subsequent order passed by the disciplinary authority.

36. In *Arun Kumar v. State of Bihar & Ors.*, reported in **2019 (3) BLJ 221**, this Court relying on the decision of the Hon'ble Supreme Court in *Roop Singh Negi* (supra) quashed the decision of the disciplinary authority as well as the order passed in Memorial Appeal on the ground that the finding was based on no evidence. As such, it violates Rule 17(3) as well as Rule 17(4) of the Bihar CCA Rules, 2005.

37. Since the factual circumstances of the instant case is absolutely similar as decided in the afore-mentioned judgements, I do not find any reason to take a contrary view against the Petitioner.

38. As the report of the Enquiry Officer as well as Disciplinary Authority and Appellate Authority in the instant case suffer from manifest illegality in view of the fact that the findings were based on no evidence, the impugned orders, dated 18.06.2020 and 22.10.2020, are set aside and quashed.

39. The writ petition, accordingly, stands allowed.

40. The Petitioner is directed to be reinstated in service and he is entitled to all consequential benefits from the date of his initial suspension contemplating enquiry against him, which is the subject matter of this case.



41. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

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