

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10688 of 2021

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Ram Parikshan Gupta, Son of Late Saudagar Sah, Resident of Village-
Thadhi, P.S.- Andhrathadhi, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Additional Secretary, Ministry of Home, (Police Branch), Govt. of Bihar, Patna.
3. The Director General of Police, Government of Bihar, Patna.
4. The Inspector General of Police, Range at Muzaffarpur, Government of Bihar, Patna.
5. The Senior Superintendent of Police, Muzaffarpur at Muzaffarpur.
6. The Deputy Superintendent of Police, East at Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Srivdeo Singh, Advocate
		Mr. Sanjay Kumar, Advocate
For the Respondent/s	:	Mr. Dhurendra Kumar, AC to GP 5

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 27-09-2024

The petitioner has approached this Court under constitutional jurisdiction with a prayer to issue appropriate writ/writs, order/orders, direction/directions for quashing the order passed by the disciplinary authority *vide* Memo No. 2041 dated 25th April 2019 by which the petitioner was dismissed from service.

2. The petitioner has also prayed for issuance of the writ in the nature of *certiorari* quashing the order of the appellate authority *vide* Memo No. 31 dated 09th January 2020 and further order passed in memorial by the Ministry of Home *vide* Memo



No. 4260 of 19th June 2020, affirming the order of dismissal passed by the appellate authority.

3. The petitioner was Sub-Inspector of Police appointed by the Inspector General of Police (Administration), Bihar, Patna, *vide* order dated 23rd August 1994. It is alleged that on 02nd August 2007, while discharging his duty as Sub-Inspector of Police, he was caught red-handed for taking a bribe of Rs. 30,000/- by members of the trap constituted by the Vigilance Investigation Bureau. Subsequently, by an order passed by the DIG of Police on 09th September 2007, sanction for prosecution was issued, and Vigilance P.S. Case 90/2007 was registered on 02nd August 2007 under Section 07/13 (2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, against the petitioner. The said case was registered on the basis of a complaint made by one Santosh Kumar, alleging, *inter alia*, that the petitioner was demanding a bribe from him. The petitioner was taken into custody in connection with the aforesaid criminal case and he was subsequently suspended. Thereafter, a departmental proceeding was initiated against the petitioner, and he was dismissed from service after conducting an inquiry in accordance with Service Rules with effect from 29th February 2012. The petitioner challenged the said order in appeal, which was also dismissed.



Subsequently, he filed a memorial challenging the orders passed by the disciplinary authority and affirmed by the appellate authority, but the said memorial was also dismissed by the Department of Home Affairs, Government of Bihar.

4. In the instant writ petition, it is contented on behalf of the petitioner that from the initial stage after submission of the charge sheet, when the petitioner was directed to submit his written statement of defence, he demanded altogether 83 documents from the Inquiry Officer in order to facilitate him to file an appropriate statement of defence, but the Inquiry Officer refused to supply those documents to the petitioner. The petitioner was also denied the opportunity to examine the witnesses, and the Inquiry Officer without making proper inquiry and by violating the principle of natural justice, submitted his report on 21st December 2011 to the Senior Superintendent of Police, Muzaffarpur, holding the petitioner guilty of the charges levelled against him. On the basis of the said inquiry report, the petitioner was dismissed from service. Previously, the petitioner challenged the order of dismissal dated 29th February 2012 before this Court by filing a writ petition bearing no. **CWJC 18801 of 2013**. The said writ petition was disposed of on 16th May 2016 holding, *inter alia*, that the order was passed without jurisdiction. The respondents challenged the



said order in LPA No. 1684 of 2017, which was also dismissed *vide* order dated 31st January 2018. In the light of the order passed by this Court in aforementioned proceedings, a fresh order was passed by the Inspector General, Muzaffarpur, on 31st August 2018, and the departmental proceeding was initiated *de novo* on the basis of the said order. The Senior Superintendent of Police, Muzaffarpur, appointed the Presenting Officer and the Inquiry Officer *vide* order dated 04th September 2018. The petitioner was again directed to appear before the inquiry over a telephonic message. On 15th March 2019, the petitioner wrote a letter to the Inquiry Officer and expressed his difficulty to cooperate during the inquiry. The petitioner again asked for supply of certain documents; again on 17th March 2019, he requested the Inquiry Officer to supply documents to him for his defence. However, by a letter dated 15th March 2019, the Inquiry Officer refused to supply documents to the delinquent officer during the inquiry. The said matter was intimated to the Senior Superintendent of Police, Muzaffarpur, by the petitioner by a letter dated 23rd March 2019, alleging, *inter alia*, that the inquiry proceeding was being conducted against him without giving opportunity to verify and examine the documents which were proposed to be used against



him during the inquiry. Subsequently, on 23rd March 2019, the petitioner submitted his first reply to the show-cause. However, the Inquiry Officer, without considering the reply submitted by the petitioner, closed the inquiry and submitted his report to the Senior Superintendent of Police, Muzaffarpur, on 01st April 2019. The Senior Superintendent of Police, Muzaffarpur, sent the said report to the Inspector General of Police, Muzaffarpur, with a recommendation for dismissal; thereafter, the petitioner was served with a second show-cause notice on 09th April 2019, which was filed by the petitioner on 18th April 2019. On the basis of the said report, he was dismissed by the disciplinary authority.

5. The learned Advocate appearing on behalf of the petitioner has raised the following objections to demonstrate that the order of dismissal issued against the petitioner was not passed in accordance with law:

(i) It is submitted by him that the memorandum charge was not issued by the appointing authority of the petitioner; therefore, the memorandum of charge is inherently defective. The Senior Superintendent of Police, Muzaffarpur, was incompetent to submit the memorandum of charge against the petitioner because of the fact that the Senior Superintendent of Police was not the appointing authority of the petitioner and,



(ii) It is submitted by the learned counsel for the petitioner that the basis of the departmental proceeding was the initiation of a police case under the Prevention of Corruption Act by the Vigilance Investigation Bureau Patna. The Inquiry Officer during the first inquiry opined that the department of proceeding ought to be stayed till the disposal of the criminal case. However, the opinion of the inquiry Officer was not considered by the disciplinary authority.

6. It is contended by the learned advocate for the petitioner that the departmental of proceeding should be stayed till the disposal of the criminal case instituted against the petitioner on the allegation of accepting bribe from one Santosh Kumar.

7. The learned advocate appearing on behalf of the petitioner next draws my attention to the second inquiry report (Annexure 16) submitted by the Deputy Superintendent of Police, Muzaffarpur cum officer, to show that during the inquiry, the Inquiry Officer examined 7 witnesses, namely, Manoj Kumar Sahni, Pawan Kumar Singh, Santosh Kumar, Prakash Nath Mishra, Maharaj Kanishk, Md. Sarfraz, and Deepak Kumar. The above-named witnesses denied the allegation of the trap conducted by the Vigilance Investigation Bureau and apprehension of the petitioner while taking a bribe of Rs. 30,000/-. The witness no. 3,



namely, Santosh Kumar, is the complainant on whose complaint the Vigilance Investigation Bureau conducted a trap to apprehend the petitioner. The said Santosh Kumar clearly stated in his evidence before the Inquiry Officer:-

"दरोगा जी ने कभी रुपया हमसे नहीं मांगा। न ही हमने कोई रुपया दिया। पूर्व में भी मैंने यही बयान दिया था। आज भी वो बयान दे रहा हूं।"

8. Witness no. 4 Prakash Nath Mishra was the Deputy Superintendent of Police, Vigilance Investigation Bureau. He was the Investigating Officer of Vigilance PS Case No. 90 of 2007 instituted against the petitioner. During the investigation, he collected the chemical examination report of the water in which the petitioner washed his hands and examined the witnesses. On the basis of the said report, the witness submitted charge sheet number 12 dated 27 September 2017. In evidence, it is stated by him that as the said case is pending before the Court of the learned Special Judge, it would not be proper for him to make any comment with regard to the nature of inspection or the fate of the criminal case.

9. Witness, namely, Maharaj Kanishk Kumar, was the Deputy Superintendent of Police Vigilance Investigation Bureau who laid the trap on 02nd August 2007. In his statement, he stated



that the petitioner was arrested by the trap members while he was accepting the bribe of Rs. 30,000/-.

10. It is contended by the learned Advocate appearing on behalf of the petitioner that during the inquiry, the *de facto* complainant as well as the seizure witnesses did not support the allegation of accepting bribe by the petitioner in their evidence before the Inquiry Officer. Even the *de facto* complainant did not support the allegation. The Inquiry Officer submitted his report only on the basis of the evidence adduced by the Investigating Officer and the fact that a case under the Prevention of Corruption Act is pending against the petitioner.

11. On the basis of the said report, the departmental authority held the petitioner guilty of gross misconduct and dismissed him from service. His appeal and memorial against the order of dismissal were also dismissed. The learned Advocate appearing on behalf of the petitioner has placed reliance on the Hon'ble Supreme Court's decision in the case of **Roop Singh Negi v. Punjab National Bank**, reported in (2009) 2 SCC 570, a Co-ordinate Bench's decision in the case of **Birendra Kumar vs. State of Bihar and Ors.** (CWJC No. 5376 of 2017) decided on **25th October 2021** to establish that the impugned order imposing punishment of dismissal from service is illegal, arbitrary, and in



complete violation of the principle of natural justice. It is also submitted by him that the charge of corruption against an employee has grave consequence of incurring punishment of dismissal from service as the only recourse, which must be proved to the hilt in a departmental proceeding. Reference in this regard was also made to a decision in the case of **Union of India versus Gyan Chand Chattar** reported in **2009 (12) SCC 78 (Paragraph 21)**.

12. The learned Advocate appearing on behalf of the petitioner also refers to a decision of the Division Bench of this Court in **Niranjan Kumar Dutta versus the State of Bihar and others** reported in **2019 volume 2 PLJR 983 (PHC)**. In this report, the Division Bench of the Court held that while passing an order under the Service Rule in connection with a departmental proceeding, it is of paramount importance that the authority passing the order himself should give a conscious consideration to the representation filed by the employee after due application of mind, as any punishment which should follow would be marring future prospects of the employee. A mechanical approach based on conjectures and surmises should be avoided, and all considerations of the representation should be on an objective basis. This



reasoning finds support in the case of **Md. Mahmudul Hasan v. The State of Bihar**, reported in 1997 volume to PLJR 953.

13. The Division Bench quoted paragraph 8 of **Md. Mahmudul Hasan** which reads as hereunder:-

*“In so far as the second point is concerned, this court is of the view that while passing an order under Rule 55-A of the said Rules, it is incumbent upon the authority concerned to consider the representation made by the employees and such consideration means a conscious application of mind and also a consideration of the explanation given by the employees in an objective basis. This point is, no doubt, concluded by a Division Bench judgment of this Court in the case of **Dr. Rabindra Nath Singh v. The State of Bihar** reported in 1983 P.L.J.R. page 92. In paragraph 10 of the said judgment the learned Judges hold that as no reason has been assigned as to why the show cause reply is unsatisfactory, the same was quashed and the learned Judges held that giving reasons in support of the order which affects a person is also the basic need of the principles of natural justice. In coming to the said conclusion in the case of **Dr. Rabindra Nath Singh** (supra) the learned Judges of the Division Bench have considered various authorities of the Supreme*



*Court. This Court is in respectful agreement with the said judgment in **Dr. Rabindra Nath Singh** (supra) and holds that in the instant case also the impugned order suffers from the same infirmity inasmuch as the impugned order does not at all consider objectively or otherwise the explanation given by the petitioner. Therefore, the impugned order has to be quashed and this Court does quash it as being wholly without jurisdiction.”*

14. Referring to the above judgments, it is submitted by the Learned advocate, appearing on behalf of the petitioner from the very inception of the disciplinary proceeding, demanded the documents relied on by the departmental authority to frame a charge against him. However, no document was supplied to the petitioner; therefore, he was not in a position to submit a comprehensive reply against the notice to the show cause.

15. This aspect was not considered by the Inquiry Officer. On a similar issue, the learned advocate appearing on behalf of the petitioner also relies on the decision of this Court in the case of **Ratnesh Kumar vs. State of Bihar & Ors.**, decided on **8th July 2024** in **CWJC No. 9190 of 2021**.

16. The respondents did not submit any counter affidavit against the instant writ petition; however, Mr. Dhurendra Kumar learned AC to GP 5 submits, referring to Annexure 13 of the writ



petition that the petitioner was supplied with all documents which were relied on by the departmental authority. The Inquiry Officer could not supply two documents which were not annexed with the charge memo and the reasons for none supply of the said documents were clearly mentioned in paragraphs no. 3 and 4 of the Annexure 13. It is also submitted by him that during the inquiry, the Inquiry Officer examined in all 7 witnesses. Subsequently, on the basis of the evidence of the Investigating Officer of Vigilance P.S. Case No. 90 of 2007 and the charge sheet filed against the petitioner, the Inquiry Officer held that the departmental charge has been proved against the petitioner. It is contended by him that filing of the charge sheet in a criminal case suggests that *a prima facie* case against the petitioner has been established. It is also submitted by him that a departmental charge need not be proved beyond any shadow of reasonable doubt; if the departmental charge is proved on the basis of preponderance of probability, the delinquent employee can be held to be guilty for committing the departmental misconduct. Under such circumstances, there is no reason to interfere with the impugned orders passed by the departmental authority and affirmed by the appellate as well as memorial authority.



17. Having heard the learned counsels for the parties and on careful perusal of the materials on record, this Court finds on careful consideration of the second inquiry report that the independent witnesses did not support the case of accepting bribe by the petitioner for which departmental proceeding was initiated. Even the *de facto* complainant stated that the petitioner never demanded any bribe from him, and he also did not pay any bribe to the delinquent police officer.

18. In view of such evidence, is it appropriate for the inquiry officer to hold the petitioner guilty under the charge of gross misconduct on the basis of the evidence of the Investigating Officer and in view of the fact that a charge sheet under Section 7/13 (2) read with Section 13(1) (b) of the Prevention of Corruption Act has been filed against him and the said criminal case is pending before the competent court for trial.

19. Since the independent witnesses and the *de facto* complainant did not support the charge against the petitioner, it would have been proper for the departmental authority to stay the departmental proceeding till the completion of the criminal case pending against him. This Court is absolutely conscious of the fact that a departmental proceeding and a criminal case are two different proceedings, and the decision of none of them is



dependent upon the conclusion of the other. However, when the FIR is the basis of the departmental charge and both the departmental proceeding as well as the criminal proceeding were initiated on the same set of witnesses and documents, natural justice demands that the departmental proceeding ought to be stayed till the disposal of the criminal case.

20. For the reasons stated above, this Court finds that the order of dismissal passed against the petitioner at this stage by the respondents authority was unfair, unjust, arbitrary, and improper, as the order violates the principle of natural justice. The Inquiry Officer did not rely on the evidence of the eye-witnesses and the *de facto* complainant. Under such circumstances, the order of dismissal ought not to be passed till the disposal of the criminal case instituted against the petitioner.

21. In view of the above discussion, the impugned orders of dismissal dated 25th April 2019 passed by the disciplinary authority and 09th January 2020 passed by the appellate authority are quashed and set aside at this stage. The respondents authority is directed to pass an order of reinstatement of the petitioner with all consequential benefits. However, respondents are at liberty to pass an appropriate order on



completion of the criminal case pending against the petitioner under the Prevention of Corruption Act.

22. With the above order, the instant writ petition is disposed of on contest.

(Bibek Chaudhuri, J)

Suraj Dubey/-

AFR/NAFR	NAFR
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