

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9303 of 2016

=====

Kumar Chandra Vikram Son of Late Kumar Kamlesh Maldahiyar resident of Flat No. 401, Block - B, Shanti Enclave, Sharma Path, Rukunpura, Police Station Rukunpura, District Patna.

... .. Petitioner/s

Versus

1. The Union Of India through the Secretary, Ministry of Home Affairs, New Delhi.
2. The Director General Force Headquarter, Sashastra Seema Bal, East Block - V, R.K. Puram, New Delhi
3. The Union Public Service Commission, represented through its Secretary, Dholpur House, New Delhi.
4. The Assistant Director (Personnel-1), Government of India, Ministry of Home Affairs Directorate General, Sashastra Seema Bal, East Block - V, R.K. Puram, New Delhi.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Rupak Kumar, Advocate
For the Respondent/s : Mr.Rakesh Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT

Date : 24-06-2024

Heard Mr. Rupak Kumar, learned counsel for the petitioner and Mr.Rakesh Kumar, learned counsel appearing for the Union of India.

2. The present writ application has been filed for quashing the order No.3239 dated 29.03.2016 (Annexure-1) issued under the signature of respondent No.4 by which the penalty of censure has been inflicted upon the petitioner. Further a writ in the nature of mandamus directing the respondents to grant consequential benefits to the petitioner consequent upon quashing the order No.3239 dated 29.03.2016 (Annexure-1).



3. Learned counsel for the petitioner submits that when the petitioner was posted in Sashastra Seema Bal (hereinafter referred as SSB) petitioner was served a charge memo in respect of three charges vide letter no.1/FTRL/GE/10(84)/15667 dated 12.07.2011 under Section 43 of SSB Act 2007 concerning selling his car A star VXI Maruti bearing Registration No.BR-06R 8496 to SI Anurag Singh and purchasing TATA Indigo CS GLX bearing Registration No BR-06-V-0865. Learned counsel for the petitioner further submits that the order of severe reprimand under section 58(1) (b) of S.S.B Act 2007 came to be issued over the signature of Inspector General, S.S.B in pursuance of charge memo dated 12.07.2011 vide order 27420 dated 12.12.2012 and order No.27504 dated 13.12.2012.

4. A departmental enquiry was initiated against the petitioner vide memorandum dated 02.03.2012 containing five articles of charges ranging from 2007 to 2009 enclosing therewith imputation of misconduct, a list of document and list of witnesses asking the petitioner to submit written statement of defence within 10 days of the receipt of the memorandum while the petitioner was posted as Commandant, frontier head quarter, Sashastra Seema Bal, Lucknow. Learned counsel for the petitioner submits that three charges out of five charges in which memo dated 02.03.2012



were same and similar in charge memo dated 12.07.2011 for which the petitioner was already awarded severe reprimand. Learned counsel for the petitioner submits that the five articles of charge framed against the petitioner, which are reproduced hereinbelow:

“Article-1:- Shri K.C. Vikram, Commandant, SSB while posted at 19h Bn., SSB Bathnaha (Araria), committed a misconduct by not informing about sale of Alto (LX) car, Registration No. WB-74/F-8162 to Sh Jitendra Singh son of Late Paras Nath Singh, VPO Jaitpur, PS Baraihya, Distt. Lakhi Sarai for Rs. 1,70,000/- on 15.07.2007 and thereby violated Rule 18 (3) of CCS (Conduct) Rule 1964.

Article-II:- Sh. KC Vikram, Commandant, SSB while a posted at 19" Bn., Bathnaha (Araria), during 2007 committed a misconduct by not informing about purchase of TATA Indica GLS (XETA) car, Registration No. WB-74 17791 for Rs. 3,25,000/ and thus violated Rule 18 (3) of CCS (Conduct) Rules, 1964.

Article- III:- Sh. K.C. Vikram, Commandant, 558 while a posted at 9 Bo. Sitamarhi, during November/ December 2008 committed a misconduct by not



informing about sale of TATA Indica GIS (XETA) car Registration No WB-74 L-7791 for Rs.2,50,000/ only to Md. Rejjak Ali son of Md. Musaraf Hussain, R/o Boltala (Bahadur) to Kotwali, Jalpaiguri on 30.11.2008 and thereby violated Rule 18 (3) of CCS (Conduct) Rule 1964.

Article-IV:- Sh. K.C. Vikram, Commandant, 558 while posted at 9 Bn. Sitamarhi, during February/ March 2009 committed a misconduct by not informing about purchase of A-STAR Vei car, Registration No. BR-06R-8496 for Rs 4,13,899/ only on 09.02.2009 and thus violated Rule 18 (3) of CCS (Conduct) Rule 1964.

Article-V:- Sh. K.C. Vikram, Commandant, 55B while posted at 9 BN. Sitamarhi, during March 2009 committed a misconduct by not obtaining permission of the competent authority for taking loan amounting to Rs.4,25,000/- for payment of one time settlement in divorce to his wife and thus violated Rule 16 (4) of CCS (Conduct) Rule 1964.”

5. Learned counsel for the petitioner submits that the petitioner filed written statement for defence on 23.03.2012 to the



respondent No.4 in respect of the charges framed and in pursuance of memo no.1089 dated 02.03.2012. The petitioner submitted written statement of defence on 11.01.2013 before the Inquiry Officer pointing out the discrepancy in initiation of departmental proceeding with regard to the same charges and also pointed out/raised the issue about non-deposing of prosecution witness to support the charges upon the petitioner. Learned counsel for the petitioner submits that a memorandum dated 13.03.2013 issued vide letter no.4827 dated 13.03.2013 enclosing therewith a copy of brief dated 03.03.2013 of presenting Officer was served upon the petitioner and representation pursuant thereto was asked from the petitioner. The petitioner submitted his reply to the Inquiry Officer on 02.04.2013 in pursuance of aforesaid memorandum dated 13.03.2013 mentioning therein about the earlier reply dated 11.01.2013 and the petitioner was raising preliminary objection and alleging the role of Presenting Officer as a witness on behalf of the Disciplinary Authority. Learned counsel for the petitioner submits that the petitioner has been served upon a memorandum No.4520-23 dated 28.06.2013 issued by respondent No.4 enclosing therewith a copy of enquiry report dated 22.04.2013 requesting the petitioner to submit his representation in respect of the findings of the enquiry report. Learned counsel for the



petitioner submits that the petitioner submitted representation on 24.07.2013 to respondent No.4 mentioning therein about the earlier proceeding initiated vide charge memo dated 12.07.2011 in which three charges out of five charges of the present proceeding were same and similar for which punishment of severe reprimand was already awarded to the petitioner. Learned counsel for the petitioner submits that the petitioner has also mentioned in his representation about Rule 13 (1) and Rule 16 of Central Civil Services conduct rule 1964 and also questioned the validity and propriety of the charges framed against him as misconduct the same can best be construed as minor regularities and the charges were proved against the petitioner without there being any prosecution witnesses. Thereafter the petitioner received a letter from the respondent No.4 enclosing therewith an enquiry report and asking the petitioner to submit his representation for onward submission to Ministry of Home Affairs. The petitioner submitted his representation on 09.06.2015 to respondent No.4 requesting therein to exonerate him of charges as he had at all points of time only one car and he was not in possession of many cars as the case has been made out against the petitioner. Learned counsel for the petitioner submits that the proceeding of the departmental proceeding was referred to Union Public Service Commission



(hereinafter referred to as UPSC) vide letter dated 21.08.2015 with regard to imposition of penalty pursuant to which memorandum No. 366-67 dated 21.01.2016 came to be issued over the signature of respondent No.2 enclosing therewith a copy of advice of UPSC dated 09.12.2015 asking the petitioner to file representation. The petitioner filed representation on 04.02.2016 to the respondent No.2 requesting therein to drop the punishment as the punishment of censure will impede the promotion to the next higher post.

6. Learned counsel for the petitioner submits that from a bare perusal of the aforesaid it appears that the respondents initiated departmental enquiry against the petitioner for three charges out of five charges which formed part of the previous enquiry in which severe reprimand under Section 58 (1) (b) of SSB Act-2007 was awarded to the petitioner and it appears from the enquiry report it appears that the Inquiry Officer acts as representative of department which is contrary to the principle laid down by the Hon'ble Apex Court in case of **State of Uttar Pradesh & Ors. Vs. Saroj Kumar Sinha** reported in (2010) 2 SCC 772, paragraph-28 of the said judgment which is reproduced hereinbelow:

“28. 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.”

7. It appears that the Inquiry Officer functioning as quasi judicial authority has to act as independent adjudicator without being biased but in the instant case the Inquiry Officer called for the witnesses which is beyond his function as quasi judicial authority. The Article 20 (2) of the Constitution of India in respect of double jeopardy is attracted in the case of the instant petitioner as he has already been punished for three charges out of five charges contained in charge memo dated 02.03.2012 and as such the initiation of departmental enquiry is bad in law and the charges against the petitioner in departmental enquiry have been proved



without any witnesses having been examined on behalf of prosecution and the petitioner has missed the opportunity to cross examine the witness contrary to the judgment in case of **Kumar Upendra Singh Parimar Vs. B.S. Co-opt. Land Dev. Bank Limited** reported in **2000 (3) P.L.J.R. 10**, paragraph-12,16,18 and 19 of the said judgment which are reproduced hereinbelow:

“12.Under those rules there are detailed provisions for holding regular departmental enquiry. In holding of a departmental enquiry it is required to prove the charges against the delinquent employee by producing the departmental witnesses and by examining them by the enquiry officer. If the delinquent employee does not attend the enquiry even then the department has to prove the charges by examining the witnesses in support of its own documents. In the departmental enquiry no onus is cast upon the delinquent employee to prove the charges. The charges have to be proved by the department. If no witness is called by the department in support of the charges in that case it should be held that the department has not proved its case and in such a situation the enquiry officer cannot record



the findings with regard to guilt against the delinquent employee just because the delinquent employee is absent.”

“16. Since the aforesaid principle laid down by the Constitution Bench of the Supreme Court has been subsequently followed in many other cases, and has not been departed from till today, this Court cannot accept the bald statement urged by the learned counsel for the respondent that since the charges are based upon the documents so no witnesses need be examined to bring home the charges.”

“18. This Court cannot accept this argument for the reasons already indicated when an enquiry has been ordered by the disciplinary authority and an enquiry officer has been appointed it is not for the petitioner to demand that the department must produce witnesses to prove its case. The onus is never on the delinquent employee, on the other hand, onus is on the department to prove the charges and it is for them to produce their witnesses in support of his case against the delinquent employee.”



“19. Therefore, in the facts of this case, this Court is constrained to hold that by not producing any evidence in support of its case, the respondent authorities have failed to prove the charges against the delinquent employee. Where charges have not been proved the enquiry report loses all its importance and the punishment imposed on the petitioner cannot be sustained. When a person is thrown out of employment, it must be on the basis of a procedure which is reasonable, just and fair. (See D.K. Jadav vs. J M.A. Industries Ltd., reported in (1993)3 SCC page 259: 1994(2) PLJR (SC)55.”

8. And in the case of **Roop Singh Negi Vs. Punjab National Bank** reported in **(2009) 2 SCC 570**, paragraph-14 of the said judgment, which is reproduced hereinbelow:

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The



purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.”

9. Learned counsel for the petitioner submits that the penalty of censure inflicted upon the petitioner could be given under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules 1965 on mere asking representation from the petitioner which could protect him from undergoing agony of the departmental enquiry and disturbance of future promotion which lasted for about four years and the petitioner has been made to suffer on account of continuance of departmental enquiry in imposition of punishment of censure vide order dated 29.03.2016 for the charge period of 2007-2009 but the continuance of departmental enquiry which resulted in penalty of censure dated 29.03.2016 sealed the chances of promotional avenue of the petitioner during the pendency of proceeding and currency of the



penalty and learned counsel for the petitioner further relied upon the judgment of the Hon'ble Apex Court in the case of **Union of India Vs. J. Ahmad** reported in AIR 1979 SC 1022.

10. In view of the aforesaid judgments (Supra) which suggest that the charges framed against the petitioner do not constitute misconduct and charge No.5 is unsustainable in view of Rule 13 (10) of CCS Conduct Rule 1964, which is reproduced hereinbelow:

“Save as otherwise provided in these rules, n Government servant shall accept, or perinit any member of his family or any person acting on his behalf to accept any gift

Explanation:- The expression "gift" shall include free transport, boarding lodging or other service or any other pecuniary advantage provided by any person other than a near relative or personal friend having no official dealing with the Government servant.

Note I- A casual meal, lift or other social hospitality shall not deemed to be a gift

Note 2- A Government servant shall avoid accepting lavish hospitality or frequent hospitality from any



individual, Industrial or commercial firms, organizations, etc having official dealing with him.

Moreover, attention of Rule 16, Government of India Decision (2) (il) of CCS Conduct Rule is invited which is reproduced here as under:-

"Purely temporary loan of small amount, free of interest can be taken by Government servant from personal friends and relatives even if they reside within the local limited of his authority. No sanction of the Government will be necessary in such cases. However, if the amount is large, previous sanction of the Government will be necessary"

11. Learned counsel for the Union of India submits that the punishment awarded to the petitioner after taking lenient view by the UPSC. Charges in both the chargesheets are different. The present chargesheet is not reiteration of the charge sheet in which the punishment of severe reprimand under Section 58(1) (b) of SSB Act, 2007 was awarded to the petitioner. The Department can initiate separate departmental enquiries together due to charges being different. The Inquiry Officer has afforded a reasonable opportunity to the petitioner to meet the charges against him in an effective manner and the Inquiry Officer has followed the rules of



natural justice to ensure not only that justice is done but is manifested to be done. The I.A, has not acted as representative of the department. The departmental enquiries were conducted against the petitioner for different charges. There is no inter alia relation in between the charges framed in both chargesheets. Two punishments were imposed upon the petitioner for his misconduct.

12. Learned counsel for the Union of India submits that on receipt of various complaints against the petitioner a preliminary enquiry was conducted by Shri D.S Chauhan, IPS, the then Inspector General, FTR, Patna in which manipulation of result sheet of physical efficiency test and commission of malpractices were established prima facie. Therefore, a Departmental Enquiry was initiated against the petitioner. While issuing the chargesheet, a Statement of Imputation of Misconduct in support of the Articles of Charge and a list of documents by which the Articles of Charges were proposed to be sustained, were provided to the petitioner with the chargesheet memorandum. Censure has been prescribed as minor penalty under Rule 11 of CCS (CCA) Rules, therefore the punishment of censure can be awarded under Rule-16 of CCS (CCA) Rules, 1965. The petitioner was not made to suffer on account of continuance of departmental enquiry as the charge as the petitioner had committed



a series of misconduct resulting initiation of three departmental enquiries against the petitioner out of three enquiries, two were conducted under the provisions of SSB Act and Rules and another was initiated under CCS (CCA) Rules.

13. In view of the aforesaid and the principles laid down by the Hon’ble Apex Court (Supra) as well as this Court, the order dated 29.03.2016(Annexure-1)issued by the respondent No.4 is set aside and the petitioner is entitled to grant consequential benefits and the respondents are directed to pay all the consequential benefits to the petitioner within a period of three months from the date of receipt/production of a copy of this order.

14. The writ application is allowed.

(Rajesh Kumar Verma, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	16.04.2024.
Uploading Date	24.06.2024
Transmission Date	NA

