

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17342 of 2015

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Raju Prasad son of Late Bahadur Prasad resident of Mohalla- Laluchak P.O.
and P.S. Ishakchak, Dist- Bhagalpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Pricnipal Secretary, Home Department Govt. of Bihar, Patna-1.
3. Inspector General of Police, Jail and Reform Services, Govt. of Bihar, Patna-1.
4. Additional Secretary-cum-Director, Pr, Jail and Reform Services, Govt of Bihar, Patna-1.
5. Superintendent, Adarsh Kendriya Kara, Beur, Patna-1.
6. Joint Secretary-cum-Director Pra- Bihar, Patna-1.
7. Asst. Superintendant, Enquiry Officer, Adarsh Kendriya Kara- Beur, Patna.
8. Director Probation Charya, Jail and Reforms Services, Home Dept. Bihar Patna-1.
9. Chief Medical Officer-cum-Incharge, Adarsh Kendriya Kara, Beur, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vivekanand Vivek, Advocate
For the Respondent/s	:	Mr. Ajay Behari Sinha, GA-8
	:	Mr. Upendra Kumar Singh, AC to GA-8

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 28-03-2024

Heard Mr. Vivekanand Vivek, learned counsel for
the petitioner and Mr. Ajay Behari Sinha, learned GA-8 assisted
by Mr. Upendra Kumar Singh, learned AC to GA-8 for the
State.

2. The present writ petition has been filed for the
following reliefs;

*I. For issuance of an appropriate
writ/writs/order/ orders direction/directions*



commanding the respondents for quashing the order of punishment Vide Memo No. 4032 dated 21.07.2014 passed by the Inspector General, Jail & Reforms Services, Bihar Patna as well as order Vide Memo No. 2429 dated 20.04.2015 passed in Service in Appeal by the Principal Secretary of the Govt, Home Department, Bihar Patna, contained in Annexure- 15 and 17 respectively.

II. For issuance of an appropriate writ/writs/order/ orders/direction/directions commanding the respondents to pay the denied salary during the period of suspension and to grant all consequential reliefs to which the petitioner is entitled in accordance with law.

III. For issuance of an appropriate writ/writs/order/ orders/direction/directions to which the petitioner is entitled in accordance with law.

3. Learned counsel for the petitioner submits that when the petitioner was the warden in Adarsh Kendriya Kara, Beur Jail Patna. In course of his duty, the jail authority entrusted duty to the petitioner on 01.01.2013 known as medical Ardli to provide medicines to a prisoner Udai Rai at P.M.C.H. on demand/ requisition of attending doctor of the said patient and required medicines was to be purchased from the market on cash payment and supplied the medicine to the prisoner Udit Rai who was admitted for his treatment in P.M.C.H.



4. The petitioner remained on duty with the prisoner Udai Rai from 01.01.2013 to 11.01.2013. In course of treatment the patient prisoner died in the hospital on 11.01.2013 and post-mortem was held in the P.M.C.H. in the same day and the cause of death stated is 'Disease Natural'. He further submits that the brother of the patient/ prisoner, Dinesh Kumar had made a written complaint on 08.01.2013 to the respondent no.5 alleging therein that the petitioner does not make available medicines to the patient as per requirement which would be evident from the treatment chart and he has further requested respondent no.5 to take action against the petitioner. On the basis of the aforesaid complaint, the Director/ respondent no.8 has fixed the date of hearing of such complaint on 03.05.2013 and he has directed the complainant to produce the evidence and petitioner was also directed to be present and produce his evidence vide Memo No. 89 dated 29.04.2013. He further submits that on the request of respondent no. 9 addressed to respondent no.5 that an enquiry on high level to find out the fault is required in the present case and vide Memo No. 69 dated 04.06.2013 the petitioner was suspended for his negligent indiscipline behaviour with immediate effect. The respondent no.3 vide



his Memo No. 4621 dated 19.09.2013 informed the petitioner that a departmental enquiry was initiated against him and Superintendent, Central Jail Gaya was appointed as an Enquiry Officer and the order and charges was communicated to all concerned including the petitioner and accordingly Prapatra 'K' was framed by the enquiry officer on 23.09.2013 and to prove the charges he referred photo copy of daily register, complaint of Dinesh Kumar treatment charge and report of Director, Probation charya and all the documents were served to the petitioner.

5. Learned counsel for the petitioner further submits that the respondent no.8 had made enquiry and submitted his report with a finding that either the petitioner has not purchased the medicines or he has purchased insufficient medicines as per requirement and respondent no.8 could not be able to find out the definite allegation against the petitioner rather a vague report has been submitted which was made the basis to provide the charges against the petitioner. On 17.10.2013, the petitioner has submitted written request to the respondent no.3 to supply the certified copy of the treatment chart signed by the doctor but the same was never supplied to the petitioner.



6. Learned counsel for the petitioner further submitted his show cause on 05.02.2014 to the enquiry officer stating his defence. He has also stated the details of amount given by the jail authority and annexed the medical bills of the medicines purchased by him for the prisoner Udai Rai at PMCH. Vide Memo No. 3088 dated 09.06.2014 the petitioner was asked to submit second show cause within 15 days on the ground that the enquiry officer has submitted report against the petitioner and copy of such enquiry report has also been served to the petitioner. He further submits that the enquiry report submitted by the enquiry officer reveals violation of rules of natural justice and enquiry conducted is in violation of Rule 17 Sub Clause (13) and (14) of the Bihar CCA Rules, 2005. On perusal of the enquiry report it is evident that allegation is not definite and specific. The charges is that either the petitioner has not purchased the medicines or if purchased insufficient medicines from the market whereas sufficient money regularly was being given for purchase of medicines from 01.01.2013 to 10.01.2013. He further submits that it reveals from the enquiry report that the evidence to prove the charges in violation of Rule- 17 Sub Clause (13) and (14) of the Bihar CCA Rules, 2005



which are read as follows;

(13) On receipt of the requisition specified in sub Rule (12) of this Rule, every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority:

Provided that if the authority, having the custody or possession of the requisitioned documents, is satisfied, for reasons to be recorded by it in writing, that the production of all or any of such documents will be against public interest or security of the State, he shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informant, communicate the information to the Government Servant and withdraw the requisition made by it for the production or discovery of such documents.

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government Servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses, as it thinks fit.

7. Learned counsel for the petitioner further submits



that neither the original documents referred was produced by the presenting officer nor any witness even the **complainant/ doctor/ nurse** were examined. So without examination of any witness, the charge against the petitioner would not be proved but any finding with regard to proof of guilt is without any basis and evidence and in spite of demand of certified copy of treatment chart neither the same was supplied to the petitioner nor the original treatment chart was produced during the course of enquiry to prove the charges. The Deputy Superintendent cum Cash In-charge had not examined and he has not come with record to prove the fact as to how, in what manner, on which date and on what basis he made the money available to the petitioner in fact the petitioner was deputed on 01.01.2013 but money was made available to the petitioner on 04.01.2013. Despite payment of money in negligent manner, the petitioner made available the medicines in excise of rupees given by the jail authority.

8. Learned counsel for the petitioner relied upon a judgment in the case of **Anant R. Kulkarni vs. Y.P. Education Society**, reported in 2013 (3) PLJR, para-10 of the said judgment is quoted hereinbelow;

10. Where the chargesheet is accompanied by the statement of facts and the allegations are not



specific in the chargesheet, but are crystal clear from the statement of facts, in such a situation, as both constitute the same document, it cannot be held that as the charges were not specific, definite and clear, the enquiry stood vitiated. Thus, nowhere should a delinquent be served a chargesheet, without providing to him, a clear, specific and definite description of the charge against him. When statement of allegations are not served with the chargesheet, the enquiry stands vitiated, as having been conducted in violation of the principles of natural justice. Evidence adduced should not be perfunctory, even if the delinquent does not take the defence of, or make a protest with against that the charges are vague, that does not save the enquiry from being vitiated, for the reason that there must be fair-play in action, particularly in respect of an order involving adverse or penal consequences. What is required to be examined is whether the delinquent knew the nature of accusation. The charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges.

(Vide: [State of Andhra Pradesh & Ors. v. S. Sree Rama Rao](#), AIR 1963 SC 1723; [Sawai Singh v. State of Rajasthan](#), AIR 1986 SC 995; [U.P.S.R.T.C. & Ors. v. Ram Chandra Yadav](#), AIR 2000 SC 3596; [Union of India & Ors. v. Gyan Chand Chattar](#), (2009) 12 SCC 78; and [Anil Gilurker v. Bilaspur Raipur Kshetria Gramin Bank & Anr.](#), (2011) 14 SCC 379).

He also relied upon a judgment in the case of **Pandit D. Aher**



v. State of Maharashtra, reported in 2007 (1) SCC 437, para 19 of the said judgment is quoted hereinbelow;

19. When an employee, by reason of an alleged act of misconduct, is sought to be deprived of his livelihood, the procedures laid down under the sub-rules are required to be strictly followed. It is now well settled that a judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses its power in a manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review.

He further relied upon a judgment in the case of **Dinesh Kumar vs. State of Bihar**, reported in 2015(1) PLJR 108, paras 8 & 9 of the said judgment are quoted hereinbelow;

*8. Counsel for the petitioner relies on two decisions of the Hon'ble Apex Court. First is the case of **State of Uttar Pradesh & Others vs. Saroj Kumar Sinha**, reported in (2010)2 SCC 772. Reliance is placed on paragraphs 28 and 30, 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 (emphasis added).

30. 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."

*9. Second decision, which has been pressed into service is the decision rendered in the case of **Roop Singh Negi vs. Punjab National Bank & Others**, re-ported in (2009)2 SCC 570. Reliance is placed at paragraphs 14 and 23 of the said decision, ion, which is reproduced hereinbelow:-*

"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges leveled



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 F.I.R. which could not have been treated as evidence. (emphasis mine)

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 as- signed. 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 reports 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."

9. Learned counsel for the State has filed a counter affidavit and supplementary counter affidavit stating therein that the enquiry was conducted in accordance with rule and ample opportunity has been given to the petitioner to defend the case and during the course of departmental proceeding the facts has come that the petitioner failed to provide required medicine to the deceased/ prisoner which was clarified from the treatment chart resulting the prisoner Udai Rai died and the petitioner has preferred service appeal before the Principle Secretary, Home Department who after going through the entire material available on the record rejected the appeal of the petitioner and upheld the order of punishment passed by the disciplinary authority and the order passed by the I.G. Prisons, as well as Principle Secretary,



Home Department are well reasoned orders based on material facts and are sustainable in law. Punishment has been awarded on the ground of departmental enquiry and proceeding which have been conducted in accordance with law but fairly submits that the petitioner has not provided the requisite documents as demanded from the to the enquiry officer and the complainant as well as Doctor and Nurse has not been examined in the present proceeding.

10. On the facts of the pleadings available on the records, it reveals that there is violation of Rule-17 Sub-Clause (13) & (14) of the Bihar CCA Rules, 2005, neither the original documents were produced by the Presenting Officer nor any witness was examined and in view of the settled Principal of law as well as judgment the case of the petitioner fall squarely in case of ***Roop Singh Negi vs Punjab National Bank & Ors. (Supra)***.

11. For the aforesaid reasons, the order dated 21.07.2014 (*Annexure-15*) and order dated 20.04.2015 (*Annexure-17*) are set aside.

12. Accordingly, the writ petition is allowed. The respondents are directed to act accordingly and pay all consequential benefits to the petitioner within a period of six



weeks from the date of the production/receipt of the copy of
this order.

(Rajesh Kumar Verma, J)

ajay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.04.2024
Transmission Date	NA

