

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11055 of 2012

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Krishna Kumar Son Of Late Deo Prasad Resident Of Village- Hemjapur, P.S.
Wazirganj, District- Gaya

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. The Director General Of Police, Bihar, Patna
3. The Deputy Inspector General Of Police, Magadh Range, Gaya
4. The Superintendent Of Police, Gaya
5. The Conducting Officer Of Departmental Proceeding-Cum-Inspector Of Police, Imamganj Anchal, District- Gaya

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajit Kumar Singh, Advocate
For the State : Mr. Arvind Ujjwal, SC-25

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 27-06-2024

Heard Mr. Ajit Kumar Singh, learned counsel for the petitioner and Mr. Arvind Ujjwal, learned Standing Counsel-25 appearing on behalf of the State of Bihar.

2. The present writ petition has been filed for quashing the order dated 04.02.2009 (*Annexure-4*), for quashing the dismissed order issued under memo no. 1674 dated 15.05.2010 (*Annexure-7*) by respondent no.4, for quashing the order issued vide memo no. 2777 dated 07.09.2010 (*Annexure-9*) issued under the signature of respondent no.3 by which the respondent no.3 dismissed the appeal filed by the petitioner and for quashing the order issued vide memo no. 338 dated 27.01.2012 (*Annexure-13*) passed by the respondent no.2



wherein and where under the respondent no.2 without applying his judicial mind and without being considered the ground of memorial dismissed the memorial filed on behalf of the petitioner.

3. Learned counsel for the petitioner submits that the petitioner was initially appointed on the post of Constable at Gaya on 06.01.2000 and he was deputed as the Bodyguard of one Smt. Kunti Devi, M.L.A. of Atari Assembly Constituency, District- Gaya. The aforesaid M.L.A. is the wife of the absconder accused, namely, Rajendra Yadav who was in custody was being produced before the learned trial Court on 04.12.2006. During the course of production of the said Rajendra Yadav, one Md. Mustafa, Sub-Inspector who is the Sub-Inspector of Civil Lines Gaya P.S. Case No. 308 of 2006 has been filed alleging therein that when he went to the Court Hazat then he did not find the accused Rajendra Yadav and custodian constable Surendra Verma. Thereafter, he started to search in the court premises and he came to know that Rajendra Yadav along with constable Surendra Verma were seen at the eastern gate of the Civil Court, Gaya and one Marshal Jeep was standing there and the said MLA along with her two bodyguards one of the petitioner and nephew son of Rajendra Yadav and 6-7



persons were sitting in the Marshal Jeep and the constable Surendra Verma left his hand and the Rajendra Yadav sat on the said Marshal Jeep and fled away by Marshal Jeep.

4. Learned counsel for the petitioner submits that after institution of the First Informant Report against the several accuse persons including this petitioner, thereafter the respondent no.4 issued a letter vide memo no. 5579 dated 19.12.2006 by which the memo of charge was framed against the petitioner and the petitioner was put under suspension through its order no. 4483 dated 05.12.2006 due to aforesaid criminal case and the charges of undisciplined, negligence and ambiguous character. From a bare perusal of the FIR it appears that the informant himself is not the eye witness rather he himself has stated that he came to know at about 2:30 P.M. about the said accused Rajendra Yadav and the custodian constable Surendra Verma was going towards the eastern gate of the court premises and he never saw the mechanism of occurrence rather he himself said that he came to know about the occurrence.

5. Learned counsel for the petitioner further submits that after receiving the memo of charge the petitioner submitted his show cause before the respondent no.4, on which



the petitioner has categorically described and denied the charges levelled against him. The memo of charge consists that the petitioner is liable in escaping the said Rajendra Yadav, who is the husband of the MLA Kunti Devi and the petitioner is alleged to have involved in the said mechanism of the occurrence because he was the bodyguard of the said MLA and he has full knowledge about the escaping of the said MLA but the petitioner did not inform the Senior Officer in this regard. The petitioner denied about the complicity in the occurrence and stated that he was not present at the place of occurrence rather he was present at the native village of the said MLA and here in this case, the informant who is not the eye witness as to whether the petitioner was present at the place of occurrence or not. But in the course of departmental proceeding the informant of the aforesaid prosecution case being Civil Line P.S. Case No. 308 of 2006, namely, Md. Mustafa supported the case of the prosecution and it appears from the FIR itself that that he was not the eye witness of the alleged occurrence and on the other hand he said that the petitioner was seen at Court Hajat but during the course of investigation of the case, he did not said in the First Information Report as well as in his subsequent statement in the case diary. Even the informant did not disclose



the colour of the vehicle in question nor the registration number was given by him in the FIR and without assigning any adequate clarity in this regard to disclose any misconduct committed by the petitioner, he has placed under suspension and memo of charge was issued. The Enquiry Officer submitted his enquiry report in cryptic manner. Only one witness was examined except the informant of the prosecution case though in the charge-sheet of the prosecution case the name of the about 21 persons have been mentioned as charge-sheet witness. The petitioner was charge-sheeted and he was placed under suspension and ultimately he was dismissed from the service only on the presumption that he was present at the place of occurrence and merely on the basis of the presumption the petitioner was charge-sheeted in the present case.

6. Learned counsel for the petitioner submits that there is non-compliance of the Rule 17(4) of the CCA Rules and there is also violation of Rule 18(3) of the CCA Rule. The Enquiry Officer did not conduct the departmental enquiry in proper way neither the facts of the prosecution case was taken into consideration nor the proper opportunity was given to the petitioner merely on the basis of show-cause submitted by him, the Enquiry Officer found him guilty of the aforesaid charges



leveled against him. The Enquiry Officer only examined the witness namely Om Prakash Prasad and Shyam Deo Singh, who are the police officials and the informant of the prosecution case but the Enquiry Officer did not describe the entire testimony of the witnesses rather in a cryptic and mechanical manner, the report was submitted and he found him guilty for the aforesaid charge and sent the said Enquiry to the Disciplinary Authority. The disciplinary authority (respondent no.4) issued a second show-cause notice against his proposed dismissal order and thereafter the petitioner submitted his second show-cause reply on 30.12.2009 in which he categorically denied and he submitted report but the respondent no.4 passed dismissal order of the petitioner vide memo no. 1674 dated 15.05.2010 without being controverted the points raised in the second show cause submitted against the petitioner. The respondent no.4 submitted his enquiry report but did not consider the charge levelled against the petitioner as well as he ignored the principle of natural justice as well as quantum of punishment and disproportionate punishment in respect of charge was awarded to the petitioner which is quite illegal and unwarranted in the eye of law and the order is totally arbitrary. The petitioner submitted a memo of appeal before the respondent no.3 on



10.06.2010 against the dismissal order passed on 15.05.2010 in which the petitioner categorically described and denied the charges as well as points which were not considered by the disciplinary authority and merely on the basis of the presumption and inference that the petitioner would have full knowledge about the escaping the Rajendra Yadav because the petitioner is the bodyguard of the wife of Rajendra Yadav, who is an M.L.A of Atari Assembly Constituency and the enquiry officer found guilty merely on the basis of presumption and the same taken into consideration by the disciplinary authority. The appellate authority has also in similar manner, a mechanical order has been passed by him and the same was communicated to the petitioner through its memo no. 2777 dated 07.09.2010 and he also dismissed the appeal of the petitioner. The petitioner submitted a memorial before the respondent no.2 on 28.10.2010 by enclosing the entire order as well as the judgment and other letters and standing order of the Government by which the petitioner is quite able to prove his innocence but the respondent no.2 did not dispose of the memorial of the petitioner then the petitioner filed a writ application bearing C.W.J.C. No. 20649 of 2011 but the same was withdrawn to pursue the memorial and finally order of memorial appeal was passed on 27.01.2012 and



the respondent no.2 without considering the contention/submission of the petitioner has rejected the memorial filed by the petitioner.

7. Learned counsel for the petitioner submits that the criminal case and departmental proceeding are based upon the same set of charges and so far as the present case is concerned, it does not come under the category of the grave misconduct rather the police official dragged the name of this petitioner on the basis of the concocted charge of his connivance and collusive role with the husband of the then M.L.A. Petitioner and others were acquitted on 01.06.2022 by the learned A.C.J.M.-IV, Gaya in the aforesaid criminal cases and thereafter the petitioner was present before the respondent nos.2, 3 & 4 enclosing the judgment of acquittal which was duly received by the officials but no action whatsoever was taken by the respondent authority.

8. Learned counsel for the petitioner submits that as per the mandate of the Rule 18(3) of the Bihar Classification, Control and Appeal Rules hereinafter referred to as ' Bihar CCA Rules' *“the disciplinary authority shall forward or cause to be forwarded a copy of the inquiry report, together with its own findings, if any, as provided in sub-rule (2), to the government*



servant who may submit, if he or she so desires, his or her written representation or submission to the disciplinary authority within fifteen days”.

but the in the present case the disciplinary authority has not complied the mandate of the Rule 18(3) of the Bihar CCA Rules.

9. Learned counsel for the petitioner relies upon a judgment in the case of *Zunjarrao Bhikaji Nagarkar Vs. Union of India and others*, reported in 1999(7) SCC 409, paragraph nos. 41, 42, 43 & 44 are quoted hereinbelow;

41. When penalty is not levied, the assessee certainly benefits. But it cannot be said that by not levying the penalty the officer has favoured the assessee or shown undue favour to him. There has to be some basis for the disciplinary authority to reach such a conclusion even prima facie. Record in the present case does not show if the disciplinary authority had any information within its possession from where it could form an opinion that the appellant showed 'favour' to the assessee by not imposing the penalty. He may have wrongly exercised his jurisdiction. But that wrong can be corrected in appeal. That cannot always form basis for initiating disciplinary proceedings for an officer while he is acting as quasi judicial



authority. It must be kept in mind that being a quasi judicial authority, he is always subject to judicial supervision in appeal.

42. Initiation of disciplinary proceedings against an officer cannot take place on an information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty.

43. If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration



influencing the quasi judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge- sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi judicial authority. The entire system of administrative adjudication whereunder quasi judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings.

44. Considering whole aspects of the matter, we are of the view that it was not a case for initiation of any disciplinary proceedings against the appellant. Charge of misconduct against him was not proper. It has to be quashed.

He also relies upon a judgment in the case of *Khem Chand Vs. Union of India and others*, reported in *AIR 1958 SC 300*, paragraph nos- 19 & 20 of which are quoted hereinbelow;

19. To summarise the reasonable opportunity envisaged by the provision under consideration includes;

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;



(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant.

In short the substance of the protection provided by rules, like R. 55 referred to above, was bodily lifted out of the rules and together with an additional opportunity embodied in S. 240 (3) of the Government of India Act, 1935 so as to give a statutory protection to the government servants and has now been incorporated in Art. 311 (2) so as to convert the protection into a constitutional safeguard.

20. We find support for our above-mentioned conclusion in the judgment of the Judicial Committee in 75 Ind App 225: (AIR 1948 PC 121) (B). It is true that after quoting a portion of the passage from the judgment of the majority of the Federal



Court set out above their Lordships at page 242 (of Ind App): (at p. 126 of AIR) stated that they agreed with the view taken by the majority of the Federal Court, but their Lordships did not stop there and went on to say:

"In their opinion, sub-s. (3) of S. 240 was not intended to be, and was not, a reproduction of R. 55. which was left unaffected as an administrative rule. Rule 55 is concerned that the civil servant shall be informed "of the grounds on which it is proposed to take action" and to afford him an adequate opportunity of defending himself against charges which have to be reduced to writing, this is in marked contrast to the statutory provision of "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him" In the opinion of their Lordships, no action is proposed within the meaning of the sub-section until a definite conclusion has been come to on the charges, and the actual punishment to follow is provisionally determined on. Before that stage, the charges are unproved and the suggested punishments are merely hypothetical. Is it on that stage being reached that the statute gives the civil servant the opportunity for which sub-s. (3) makes provision. Their Lordships would only add that they see no difficulty in the statutory opportunity being



reasonably afforded at more than one stage. If the civil servant has been through an inquiry under R. 55, it would not be reasonable that he should ask for a repetition of that stage, if duly carried out, but that would not exhaust his statutory right, and he would still be entitled to represent against the punishment proposed as the result of the findings of the inquiry."

The above passage quite clearly explains that the point on which their Lordships of the Judicial Committee agreed with the majority of the Federal Court is that a further opportunity is to be given to the government servant after the charges have been established against him and a particular punishment is proposed to be meted out to him. The opening sentence in the above passage, namely, that S. 240 (3) was not a reproduction of R. 55 and that R. 55 was left unaffected as an administrative rule does seem to suggest that S. 240 (3) is not at all concerned with the enquiry into the charges which comes at the earlier stage, but a close reading of the rest of that passage will indicate that in their Lordships view the substance of the protection of r. 55 is also included in S 240 (3) and to that is superadded, by way of further protection, the necessity of giving yet another opportunity to the government servant at the stage where the charges are proved against him and a particular



punishment is tentatively proposed to be inflicted on him. Their Lordships referred to "statutory opportunity being reasonably afforded at more than one stage", that is to say, that the opportunities at more stages than one are comprised within the opportunity contemplated by the statute itself. Of course if the government servant has been through the enquiry under R. 55, it would not be reasonable that he should ask for a repetition of that stage, if duly carried out, which implies that if no enquiry has been held under R. 55 or any analogous rule applicable to the particular servant then it will be quite reasonable for him to ask for an enquiry. Therefore, in a case where there is no rule like R. 55 the necessity of an enquiry was implicit in S. 240 (3) and is so in Art. 311 (2) itself. Further their Lordships say that an enquiry under R. 55 "would not exhaust his statutory right and he would still be entitled to make a representation against the punishment proposed as the result of the findings of the enquiry." This clearly proceeds on the basis that the right to defend himself in the enquiry and the right to make representation against the proposed punishment are all parts of his "statutory right" and are implicit in the reasonable opportunity provided by the statute itself for the protection of the government servant.



He also relies upon a judgment in the case of *Bachhittar Singh Vs. State of Punjab and another*, reported in AIR 1963 SC 395, paragraph no.7 of which is quoted hereinbelow.

7. Before we deal with the grounds we may state that the High Court was of the opinion that the proceedings taken against the appellant were made up of two parts: (a) the enquiry (which involved a decision of the question whether the allegations made against the appellant were true or not) and (b) taking action (i. e. in case the allegations were found to be true, whether the appellant should be punished or not and if so in what manner. According to the High Court the first point involved a decision on the evidence and may in its nature be described as judicial while the latter was purely an administrative decision and that in so far as this was concerned there was no reason why the State Government was incompetent to change its decision if it thought administratively advisable to do so. We cannot accent the view taken by the High Court regarding the nature of what it calls the second part of the proceedings. Departmental proceedings taken against a Government servant are not divisible in the sense in which the High Court understands them to be. There is just one continuous proceeding though there are two stages in it. The first is coming to a conclusion on



the evidence as to whether the charges alleged against the Government servant are established; or not and the second is reached only if it is found that they are so established. That stage deals with the action to be taken against the Government servant concerned. The High Court accepts that the first stage is a judicial proceeding-- and indeed it must be so because charges have to be framed, notice has to be given and the person concerned has to be given an opportunity of being heard. Even so far as the second stage is concerned Art. 311(2) of the Constitution requires a notice to be given to the person concerned as also an opportunity of being heard. Therefore this stage of the proceedings is no less judicial than the earlier one. Consequently any action decided to be taken against a Government servant found guilty of misconduct is a judicial order and as such it cannot be varied at the will of the authority who is empowered to impose the punishment. Indeed the very object with which notice is required to be given on the question of punishment is to ensure that it will be such as would be justified upon the charges established and upon the other attendant circumstances of the case. It is thus wholly erroneous to characterise the taking of action against a person found guilty of any charges at a departmental enquiry as an



administrative order.

He further relies upon a judgment in the case of *State of Assam and Another Vs. Mahendra Kumar Das and others*, reported in AIR 1970 SC 1255, paragraph nos. 23 & 26 are quoted hereinebelow;

23. A perusal of the report of the Enquiry Officer, in the proceedings before us, shows that there is absolutely no reference to any data or material, if any, collected by him when he consulted the Deputy Superintendent of Police, Anti Corruption Branch on July 14 and 15, 1958. But, we have to state that it is highly improper for an Enquiry Officer during the conduct of an enquiry to attempt to collect any materials from outside sources and not make that information, so collected, available to the delinquent officer and further make use of the same in the enquiry proceedings. There may also be cases where a very clever and astute enquiry officer may collect outside information behind the back of the delinquent officer and, without any apparent reference to the information so collected, may have been influenced in the conclusions recorded by him against the delinquent officer concerned. If it is established that the material behind the back of the delinquent officer has been collected during the enquiry and such material has been relied on by the enquiry officer, without its having been



disclosed to the delinquent officer, it can be stated that the enquiry proceedings are vitiated. It was, under such circumstances, that this Court, in Executive Committee of U. P. State Ware-housing Corporation v Chandra Kiran Tyagi, Civil Appeal No. 559 of 1967, D/-8-9-1969- (reported in 1969-2 SCWR 905), accepted the view of the High Court that the enquiry proceedings were vitiated by the enquiry officer collecting information from outside sources and utilising the same in his findings recorded against the delinquent officer without disclosing that information to the accused officer. It was, again, under similar circumstances, that this Court in Sanawarmal Purohit's case, Civil Appeal Nos. 1362-63 of 1967, D/-16-2-1968- (reported in 1969 Assam LR (SC) 11) upheld the order of the High Court holding the enquiry proceedings to be contrary to the principles of natural justice when the enquiry officer had collected information from third parties and acted upon the information so collected, without disclosing the same to the accused. If the disciplinary authority himself had been also the enquiry officer and, during the course of the enquiry he had collected materials behind the back of the accused and used such materials without disclosing he same to the officer concerned, the position will be still worse and the mere fact that such an order passed by the disciplinary authority



had even been confirmed by an appellate authority without anything more, will not alter the position in favour of the department.

26. Over and above these circumstances, it is also to be seen that the enquiry officer was not the disciplinary authority competent to impose the punishment against the respondent. The competent authority is the Superintendent of Police. The show cause notice, issued on October 18, 1958 as well as the order of dismissal passed by the Superintendent of Police, dated December 3, 1958 clearly show that the said officer has independently gone into the evidence on record in respect of the charges for which the respondent was tried and has, after taking into account the explanations furnished by him, independently come to the conclusion that the respondent is guilty. Similarly, the Deputy Inspector-General-of-Police, Range Assam, before whom the respondent filed an appeal has also very elaborately and in considerable detail discussed the entire evidence on record and has agreed with the conclusions regarding the guilt of the respondent. We have already held that there is no violation of the rules of natural justice in the enquiry proceedings. Even assuming that there was any defect in the said enquiry proceedings, inasmuch as the punishing authority and the appellate authority, the Superintendent of Police and the Deputy



Inspector-General-of-Police, respectively, have independently considered the matter and found the respondent guilty on the evidence on record, it must be held that in the circumstances of this case there has been no violation of the principles of natural justice when the order of dismissal was passed.

10. Learned counsel for the State submits that as per the allegation in the FIR that on the charge of the role and involvement of the writ petitioners is dodging and escaping the accused the former M.L.A. Rajendra Yadav from the police custody on 04.12.2006 from the vehicle of the M.L.A. Kunti Devi, a departmental proceeding no. 196 of 2006 was initiated against the petitioner which was conducted by the respondent no.5 and during the course of enquiry delinquent has filed the preliminary explanation and stated that on the basis of suspicion, charge was framed against him. The conducting officer has recorded the statement of witnesses, namely, Om Prakash Prasad and P.S.I. Shyamdeo Singh, who have proved the Letter No. 5579/R.O. dated 19.12.2006 and also recorded the other witness Md. Murtafa, P.S.I., who has fully supported his report submitted on 04.12.2006 to the officer in-charge, Civil Lines P.S., Gaya and told that delinquent constable no. 682 Krishna Kumar also went to Court Haazat on 04.12.2006. On



the basis of the aforesaid evidence, it is absolutely proved that delinquent constable-682 Krishna Kumar was bodyguard of M.L.A. Kunti Devi and he went to court haazat on the day of occurrence but he did not give any information to the senior officer about the absconding of M.L.A. Rajendra Yadav, which reflects his involvement in this. To which it is apparent that there is no interest of delinquent constable-682 Krishna Kumar in his duty which is indicative of being a duty less and careless employee. After conducting the departmental proceeding the conducting officer has submitted his opinion report dated 04.02.2009 in which the petitioner was found guilty for the charge levelled against him. Then the disciplinary authority has called for the explanation from the petitioner against dismissal from service and perusing the charge framed against the delinquent, exhibits available in the record, statement of witnesses submitted explanation of delinquent, opinion of conducting officer and other all documents and on perusal found the explanation submitted against the dismissal unsatisfactory and on being agreed with the opinion of the conducting officer he has ordered to remove the name of the petitioner from all register of Gaya District Force Vide Office Memo No. 1674/R.O. dated 15.05.2010. The petitioner has filed an appeal



before an appeal before the D.I.G., Magadh Ranga, Gaya and the same was also dismissed vide order dated 07.9.2010 thereafter the petitioner has filed a memorial appeal before the D.G.P., Bihar, Patna, who was pleaded to reject the Appeal Memorial of Delinquent after considering and perusing the entire material available on the record vide order dated 25.01.2012 and it appears that in the proceeding there is no infirmity and illegality in the conduction of departmental proceeding and order of the disciplinary authority and order of the appellate authority and there is also no infirmity in the order of D.G.P., Bihar, Patna who has passed the order in the memorial of the appeal filed by the petitioner.

11. Considering the aforesaid facts, it appears that the petitioner has been acquitted in the criminal case and for the same set of evidence the petitioner has faced the present departmental proceeding and it appears that there is non-compliance of the mandate of the Rule 18(3) of the Bihar CCA Rules in the proceeding and the order of dismissal is very harsh. The authority concerned without following the CCA Rules has passed the order. It is a settled principal of law that if the proceeding is not in accordance with Rule, the same be set aside.



12. In view of the aforesaid, the orders dated 04.02.2009 (*Annexure-4*), 15.05.2010 (*Annexure-7*), 07.09.2010 (*Annexure-9*) and 27.01.2012 (*Annexure-13*) are set aside and the writ petition is allowed.

(Rajesh Kumar Verma, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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