

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5825 of 2016

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Bipin Kumar Singh Son of Late Ram Padarath Singh R/o village - Barki Beri,
P.S. Patouri, District - Samastipur Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Bihar Patna.
2. The Principal Secretary Home Department, Bihar, Patna
3. The I.G., Prison and Reforms Services, Bihar, Patna
4. The Additional Secretary - Cum - Director, Administration, Home Jail Department, Government of Biha
5. The District Magistrate, Vaishali at Hazipur
6. The Superintendent Model Central Jail, Beur, Patna
7. The Superintendent District Jail, Vaishali at Hajipur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Singh, Advocate
For the Respondent/s : Mr. Sarvesh Kumar Singh, AAG 13

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 23-01-2024

Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the State.

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

“i) For quashing the order contained in memo no. 3866 dated 14.7.2014 passed by I.G Prison (respondent no.3) whereby petitioner has been inflicted with major punishment in a departmental proceeding where by five increments with cumulative effect has been stopped and further punishment of censor has been imposed. Apart from order has been passed that petitioner will not be entitled to any emoluments except the subsistence allowance paid to him during period of suspension however this period will be computed for the purposes of pension.



ii) For further to quash the appellate order passed by Principal Secretary Home department contained in memo no. 1817 dated 19.3.2015 whereby the appeal preferred by petitioner has been dismissed and the order of punishment aforementioned has been affirmed.

iii) For further to quash the enquiry report dated 6.3.2014 submitted by the enquiry officer (resp. no.6) which has been conducted in violation of the principles governing the processes to be adopted during course of enquiry.

iv) For further to hold that the enquiry conducted against the petitioner for alleged charges suffer from vice of malafide and the same is not sustainable because the petitioner has been denied reasonable opportunity to defend himself.

v) For any other relief or reliefs for which the petitioner is found entitled in the facts and circumstances of the case.”

3. Learned counsel for the petitioner submits that the petitioner was posted at District Jail, Hajipur as Assistant Superintendent. In the morning of 22.10.2013 a fight took place between the prisoners in the jail premises because of the reason that one Rambalak Rai who was incarcerated in the said jail died. The petitioner being incharge of the jail at that time neither maintained the situation of law and order nor informed any senior authority about the situation. And because of the said altercation that took place between the prisoners, some prisoners sustained injuries. The petitioner was posted in that jail as Assistant Superintendent whereas his immediate superior authority i.e. Deputy Superintendent was on leave and the



Superintendent was out of head quarter. He further submits that the District Magistrate, Vaishali himself monitored the whole incident and personally visited the jail which resulted in normalizing the situation. The District Magistrate vide letter contained in memo no. 1899 dated 22.10.2013 has reported the respondent no. 3 (I.G. Prisoner) to the extent that the petitioner had acquainted the Superintendent of Jail with regard to expected agitation of some prisoners on account of death of one prisoner Rambalak Rai but the Superintendent of Jail acting negligently neither informed to him nor gave information to the Superintendent of Police and remained unauthorized absent during the entire period of incident.

4. Learned counsel for the petitioner submits that the I.G Prisoner instead of action upon the recommendation made by the District Magistrate has taken disciplinary action against the Superintendent of Jail, came out with an office order contained in memo no. 5297 dated 25.10.2013 whereby petitioner was placed under suspension and during period of suspension his head quarter was fixed at Model Central Jail, Buer, Patna. Thereafter, the charge was framed against the petitioner and accordingly "Prapatra K" was issued. He further submits that from perusal of the aforesaid office order it



manifest that that very basis for issuance of aforesaid order is based on interim report submitted by the District Magistrate, Vaishali vide letter no. 1899 dated 22.12.2013 and from perusal of the above report it appears that the interim report does not indict the present petitioner rather recommendation was made to take disciplinary action against the then Superintendent of Jail but instead taking any action against him the present petitioner has been made escape goat in the present matter.

5. The respondent no. 4 has issued an office order contained in memo no. 461 dated 24.01.2014, whereby the Superintendent of Model Jail, Patna was appointed as conducting officer of departmental proceeding contemplated against the petitioner under the provision of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 and directed to submit a report within the stipulated period as mentioned in the aforesaid order. The memo of charge along with relevant evidence was served upon the petitioner by enquiry officer vide its letter contained in memo no. 565 dated 30.01.2014 and the petitioner was directed to submit his reply to the show cause notice and defense statement.

6. Learned counsel for the petitioner submits that from perusal of the memo of charge it manifest that three



charges has been levelled against the petitioner. So far first charge is concerned, it is with regard to dereliction of duty whereas charge no. 2 relates to administrative inefficiency. Similarly charge no. 3 relates to disobedience to the order of senior officer. The aforesaid memo of charge further goes to show that by way of enclosure letter no. 1985 dated 01.11.2013 written by Superintendent of District Jail, Hajipur to the learned District and Sessions Judge, Vaishali at Hajipur was enclosed by way of list of evidence.

7. Learned counsel for the petitioner submits that accordingly, the petitioner has filed reply to show cause notice on 10.02.2014 in which the petitioner had categorically stated that as per the provision contained in Section 17(3) (ii) (b) in Bihar C.C.A Rules, 2005 all relevant documents and list of witnesses upon which charge are going to be proved must be supplied along with the memo of charge itself but list of witnesses had not been supplied to the petitioner and since the charge has been framed on the basis of a letter written by the then Superintendent of Jail, Hajipur and the petitioner had requested to cross examine and the petitioner had refuted each and every charge levelled against him and explained in so many words as to how those charges are baseless and in the aforesaid



background and requested to exonerate him from all the charges.

8. Learned counsel for the petitioner submits that it appears from the aforesaid enquiry officer did not supplied the relevant documents asked for by the petitioner and concluded the enquiry in very cryptic manner in which he did not examined any witnesses on behalf of department to substantiate the charges labeled against the petitioner. In fact, solely relying upon the letter no. 1958 dated 01.11.2013 written by the then Superintendent of District Jail to the learned District and Sessions Judge, Vaishali, the enquiry officer has come to the conclusion that charge nos. 1 and 2 stands proved against the petitioner. He further submits that from perusal of the enquiry report it appears that since no witness has been examined by the enquiry officer which has deprived the petitioner an opportunity to examine the witnesses and as such on the ground the enquiry report stands vitiated. The enquiry officer has taken shelter of his personal opinion apparently no based on any evidence. Not only that the personal opinion has been formed by the enquiry officer was not part of the memo of charge nor it was presented by the presenting officer at the time of enquiry.

9. Bare perusal of the provision contained in 17(3)



(ii)(b) which is quoted hereinbelow;

“17. Procedure for imposing major penalties.

(3) Where it is proposed to hold an inquiry against a government servant under this Rule, the disciplinary authority shall draw up or cause to be drawn up-

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government Servant;

(b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained.”

10. It appears that the statement of imputation of misconduct permissible in support of each article of charges which shall contained a statement or relevant facts including any admission or confession made by the Government servant, list of such documents by which and a list of such witnesses by whom the articles of charges are proposed to be sustained, but in the present case the enquiry officer did not supplied the relevant documents asked for by the petitioner and even the list of witnesses were not supplied to him and the petitioner did not examined any witnesses.

11. The respondent no. 4 issued second show cause notice to the petitioner vide memo no. 2761 dated 29.05.2014



asking the petitioner that as to why a major punishment be not inflicted upon him on the ground that the conducting officer has found the charges proved against him and petitioner was directed to submit his reply within a period of 15 days. The petitioner has responded upon the aforesaid show cause notice and submitted his reply on 20.06.2014 before respondent no. 4 raising the issue with regard to non-adherence of procedure prescribed under 17(3) (ii) (b) of the Bihar C.C.A Rules, 2005 for conducting the departmental enquiry. In his reply the petitioner has specifically pointed out that how he has been deprived of opportunity to defend himself but the respondent no. 3 without applying his judicial mind passed office order contained in memo no. 3866 dated 14.07.2014 and he has also adopted the personal opinion framed by the enquiry officer and inflicted major punishment upon the petitioner whereby five increments with cumulative effect has been stopped and punishment of censor has been entered. Further order has been passed that petitioner shall not be entitled to any emoluments for the said period except subsistence allowance, however that period has been ordered to be computed for the purpose of pension.

12. Learned counsel for the petitioner submits that



the petitioner being aggrieved by the aforesaid order of punishment has preferred appeal before respondent no. 2 on 16.08.2014. The petitioner has raised the point highlighting the fact with regard to illegality and infirmity committed by the respondents in conducting the departmental proceeding and petitioner also mentioned in his appeal that at the relevant point of time only 14 security personnel were available whereas more than 800 prisoners were agitated and I tried to pacify them which fact has been approved by the District Magistrate, Vaishali vide his interim report contained in letter no. 1899 dated 22.10.2013. But the appellate authority did not appreciated the plea taken by the petitioner and passed the order in mechanical manner affirming the order passed by the disciplinary authority and dismissed the appeal vide his order dated 18.03.2015 and the same was communicated to the petitioner vide memo n o. 1817 dated 19.03.2015.

13. Learned counsel for the petitioner submits that the enquiry officer cannot be sustained in the eye of law for the reason that the department has failed to sustain the charges by not producing even a single witness thereby depriving the petitioner the opportunity to defend himself. Apart from that the petitioner had made specific demand with the respondent



authority to supply the relevant document such as list of witnesses, etc, but the same has not been given to the petitioner and in the aforesaid the enquiry cannot be held to have been conducted in accordance with the rule and even the respondent authority has not taken cognizance of the letter of the District Magistrate, Vaishali in which he had categorically mentioned that the authority responsible for this is none else but the in-charge Superintendent of Jail who was unauthorized absent during that period. And by non supplying of the relevant documents and non examination of the witness, they have violated the principles of natural justice and as such the entire proceeding stood vitiated.

14. Learned counsel appearing on behalf of the State submits that the petitioner was suspended for the above gross negligence of duty by the respondent no. 3 on the report of District Magistrate, Vaishali and the respondent no. 7 on the order of respondent no. 3 has framed charge against the petitioner for the above gross negligence of duty, administrative incapability and disobedience of senior officer's order committed in jail premises and the proceeding was conducted according with rule and petitioner has given ample opportunity to defend his case and there is no violation of the principle of



natural justice and after due consideration of the facts the impugned order has been passed according to the rule.

15. Having regard to the submissions made by the parties, it appears that the respondent authorities have not conducted the proceeding in accordance with rule as prescribed in 17(3) (ii) (b) of the Bihar C.C.A Rules, 2005 and all the relevant documents have been not supplied to the petitioner and even the list of witnesses have not been given to the petitioner and petitioner did not examined any witness and the department has not produced any witness in support of charges. The enquiry officer has come to the conclusion on the basis of the letter written by the Superintendent of Jail, Vaishali to the learned District and Sessions Judge, Vaishali and even the Superintendent was not examined in the present case.

16. In view of the aforesaid, the order dated 14.07.2014 (Annexure-9), 19.03.2015 (Annexure-11) and 06.03.2014 (Annexure-6) are hereby set aside and this writ application stands allowed.

(Rajesh Kumar Verma, J)

Vanisha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	01.05.2024
Transmission Date	N/A

