

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.366 of 2022

In

Civil Writ Jurisdiction Case No.5811 of 2020

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Rajendra Prasad son of Late Nepal Prasad, Resident of Village - P.O. and P.S. - Garhani, District - Bhojpur At Ara, At present Residing At Machli Gali, New Jakkanpur, P.S. - Jakkanpur, District - Patna.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary-Cum-Additional Chief Secretary, Education Department, Government of Bihar, Patna.
2. The Director, Primary Education, Education Department, Bihar, Patna.
3. The Director Administration-Cum-Additional Secretary, Education Department, Bihar, Patna.
4. The Regional Deputy Director of Education, Magadh Division, Gaya.
5. The District Education Officer (Establishment), Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Ranjeet Kumar, Advocate Mr. Kanishk Kaustubh, Advocate Mr. Shikhar Mani, Advocate Mr. Ranjesh Prakash, Advocate Ms. Lakshmi Kumari, Advocate
For the Respondent/s	:	Mr. Apurva Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-07-2024

The appeal is against the judgment of the learned Single Judge refusing to interfere with the disciplinary proceedings initiated against the petitioner, appellant herein, which concluded with a punishment of dismissal. The appellant was working as a Headmaster in the Government Basic School,



Sirisa Adda Compact, Ara Brindawan, West Champaran and was promoted as Block Education Officer in the month of August, 1996. While working as Block Education Officer, Pandarak, Patna, the appellant was issued with charges of dereliction of duty. After the initiation of departmental proceeding, the appellant was trapped by the Vigilance Investigation Bureau and caught taking Rs. 10,000/- as bribe from an Incharge Principal of Middle School, Sarhan. A separate charge-sheet was also served on him based on the trap case, on which an FIR was also registered under the Prevention of Corruption Act. The appellant was suspended, later that was revoked and then he was again placed on suspension with effect from 26.12.2016. The Regional Deputy Director of Education (RDDE) was appointed as the Enquiry Officer. An enquiry report was submitted based on which, Annexure-P/17 order of dismissal was passed after giving an opportunity to the appellant, by way of a second show cause notice along with which the enquiry report was also annexed.

2. An appeal filed from the dismissal order also stood rejected as per Annexure-P/19. The appellant approached the learned Single Judge with the writ petition contending that there was absolutely no evidence led at the enquiry; wherein no



witness was examined and merely based on surmises and conjectures, an enquiry report filed, dealing with only the last charge based on trap case and without any application of mind, the dismissal order was passed. The Appellate Authority also did not examine the matter in the context of the principles governing a disciplinary enquiry.

3. The learned Single Judge specifically noticed the charge-sheet, which contained altogether six charges relating to dereliction of duty and laid emphasis on the trap case. The learned Single Judge found that the Enquiry Officer has stated in the report that on examination of the evidence, it was apparent that the appellant had been arrested and remanded in jail for having taken bribe of Rs. 10,000/-. The statement of the Enquiry Officer that it was beyond the scope of enquiry to determine as to whether the allegation of taking bribe is proved or not, was noticed with approval. It was held that the contention of the appellant that the enquiry report only looked at the supplementary charge-sheet, was incorrect. It was held that the Enquiry Officer, after considering the charge-sheet, '*in his own wisdom*' (sic), concluded that the charges are proved, after having considered the evidence which was brought before him.

4. ***Union of India v. P. Gunasekaran, (2015) 2 SCC***



610 was specifically referred, to find that this Court would not sit in appeal over the findings of the Enquiry Officer as accepted by the disciplinary authority. The confined jurisdiction of the High Court, as noticed in the afore cited decision, was extracted to find that none of these grounds exist to interfere with the enquiry. It was held that admittedly, the petitioner was caught red handed taking the bribe and the allegation itself is sufficient to reach the conclusion, as arrived at by the Enquiry Officer.

5. The decision cited in *Roop Singh Negi v. Punjab National Bank & Ors., (2009) 2 SCC 570* was distinguished on facts. It was reiterated with approval that the Enquiry Officer specifically observed that he was not examining the facts relating to the trap case, which is to be decided in the criminal case and the charge of ‘conduct unbecoming of a government servant’ and ‘violation of Rule 3 of the Government Servants Conduct Rules, 1976’, stood proved. The learned Single Judge observed that allegations of corruption, especially of demand of bribe followed up with a trap case, would dis-entitle the petitioner from claiming equity as his actions were anathema to the principles of equity. Finding the appellant to be not entitled to any leniency or sympathy because he was on the verge of retirement, the order of dismissal was upheld.



6. Before us, Shri Ranjeet Kumar, learned Counsel for the appellant, took us through the charge-sheet, supplementary charge-sheet, enquiry report, dismissal order and the appellate order. It is pointed out that there was no witness examined and even the FIR was merely produced before the Enquiry Officer. In the context of no evidence having been led before the Enquiry Officer, the enquiry report has to be set aside along with the dismissal order and the learned Single Judge erred in affirming the impugned report and the order. The decisions cited in the impugned judgment was again put forth before us as also another Division Bench judgment of this Court in ***State of Bihar vs. Arun Kumar Dubey, 2024 SCC OnLine Pat 895***. The appellant has retired on 18.02.2019, while he was on suspension and hence, there is no question of a *de novo* enquiry being held against him for reason of there being no employer-employee relationship as of now. Further it is not a technical defect that is pointed out in the enquiry conducted, but one which goes to the root of the matter; the finding being without any evidence. The learned Single Judge has also upheld the impugned order, which is based only on allegation more on a moral perspective & conviction than a legal one.

7. Mr. Apurva Kumar, learned Counsel appearing for



the State, on the other hand, urged that the limits of judicial review are confined and there is no question of the High Court sitting in appeal over the findings of the Enquiry Officer as accepted by the Disciplinary Authority. The reply filed on behalf of the respondents in the LPA is specifically referred to. The learned Single Judge has elaborately considered the matter and the factual and legal position have been delineated correctly. That the appellant had taken bribe is proved from the trap case. The FIR was registered based on the trap case and this alone would indicate the complicity of the delinquent employee; which would warrant dismissal. The delinquent employee also did not appear before the Enquiry Officer or put forth his defence, in which circumstance, it is only proper that the order is sustained. There can be no interference caused to the enquiry, the order of punishment, the appellate order and the judgment of the learned Single Judge; asserts the Government Advocate.

8. We have been served with the translated copy of the charge-sheet, the enquiry report, the order of punishment and the appellate order. The charge-sheet levelled six allegations against the appellant. The charges in the first charge-sheet issued related to (i) departmental instructions for making available salary determination forms and details of absence of



contract teachers, having not been made available, (ii) not providing the List/CD of certificates of contract teachers to the Vigilance Department for verification (iii) the deficiency of students found enrolled as against the targeted enrollment in a named school and (iv) in the same School those found admitted not being present. The supplementary charge-sheet was with respect to the trap case, which led to allegations of demand of bribe of Rs.20,000/- and accepting an amount of Rs.10,000/- as bribe from the complainant, who was a Senior Teacher in a Middle School. The charges based on these allegations were: lack of devotion to duty, failure to discharge official responsibilities and doing an indecent act unbecoming of a government servant.

9. The enquiry report is produced as Annexure-15 at Page 79 of the writ petition. It is pertinent that in the column with respect to description of charges, the demand of bribe for issuing a letter to operate *Vidyalaya Shiksha Samiti* and thereby non discharge of responsibilities, negligence in performing duties by demanding bribe and thereby having no devotion to duty and the indecent act of accepting bribe for performing responsibilities, when the delinquent was caught; alone are mentioned. The allegations leading to the charge of dereliction



of duty as first issued to the petitioner have not at all been noticed. We have to accept the contention of the appellant that only the allegations in the supplementary charge-sheet have been referred to in the enquiry report.

10. The enquiry report also merely holds that from the evidence attached with the charge-memo in Form-A, it is proved that delinquent employee has accepted bribe from the complainant, a Senior Teacher, and he was caught in the act by the Vigilance Department Raiding Team. It has been found that the evidence annexed and the circumstances, proved that the accused officer was caught and arrested by the Vigilance Team taking a bribe of Rs. 10,000/- and after completing departmental processes, he was sent to prison. The aforesaid conduct of the delinquent officer was found, leading to proof of the specific charges of misconduct alleged. The trap case was found to have proved the acceptance of bribe by the delinquent officer. We cannot but notice that there is no reference to any witnesses nor is there any discussion on the evidence said to have been proffered at the enquiry, to find the allegations to be proved.

11. Despite the fact that the enquiry report does not indicate any discussion on the allegations or on any documents or evidence led, the disciplinary authority's order at Annexure-



P/17, makes a more elaborate consideration. It speaks of the allegations or dereliction in duty levelled against the appellant, including that of a demand and acceptance of bribe. The proceedings which led to the enquiry have been referred to from certain documents. A letter dated 23.11.2015 of the District Programme Officer (Establishment), Patna is referred, to find that departmental instruction was issued to fix the salary of teachers in the pay scale of 5200-20200 and pay from July, 2015 and the delinquent employee was not taking interest in salary determination or payment. Even the letter referred to, is said to have been presented by the Presenting Officer in the course of enquiry. There is also nothing to indicate that the delinquent employee was negligent in making salary determination or payment. As far as Charge No. 2, the disciplinary authority holds that from the above letter of the District Programme Officer (Establishment), Patna, again, it is clear that the delinquent employee did not produce the certificates of the contract teachers for verification by the Vigilance Department; which was a direction by the High Court in a Public Interest Litigation. Again, the author of the letter was not examined nor was any document or witness proffered to support factual allegations leading to the charge of dereliction of duty, raised



against the delinquent employee.

12. With respect to Charge No. 3, the Enquiry Officer's statement that the delinquent officer was not present in the review meeting of the District Education Officer, Patna and there was lack of attendance in the schools under the jurisdiction of the delinquent employee was accepted, without any proof of the same. So far as Charge No. 4, the statement of the Enquiry Officer is relied on, again, to find that the District Officer, Patna expressed his dissatisfaction on the delinquent employee not having taken appropriate action in completing the construction of the upper floor of a building of *Kasturba Gandhi Balika Vidyalaya, Pandarak*. It is based on this unsubstantiated statement of the Enquiry Officer that the negligence alleged against the appellant was found.

13. We did not find any discussion of the evidence in the Enquiry Officer's report but we remind ourselves that the disciplinary authority is entitled to look into the records of the enquiry and differ from the Enquiry Officers' findings or even further substantiate the findings of the Enquiry Officer with the valid evidence led therein. However, but for the Enquiry Officer's statement, no evidence is seen to have been led at the enquiry or discussed by the disciplinary authority also.



14. As far as the demand and acceptance of bribe, the specific defence in the reply of the delinquent employee was that there was nothing relating to the complainant, pending with him, for making a demand of bribe or accepting it. The complainant obviously was not examined before the Enquiry Officer and the Enquiry Officer merely relied on the fact that the delinquent officer was arrested by the Vigilance Team; red handed while accepting the bribe of Rs. 10,000/-. Neither any member of the Vigilance Team was examined nor was any witnesses in the trap case examined before the Enquiry Officer. The disciplinary authority makes a mere statement that in the context of evidence and circumstance of the delinquent officer having been arrested by the Vigilance Team, the delinquent is found to have acted in violation of Rule 3 of the Government Servant Conduct Rules, 1976. There is nothing to prove a demand of bribe of Rs. 20,000/- nor is there any evidence on record to indicate the acceptance of bribe of Rs. 10,000/-, led in the enquiry proceeding.

15. In this context, we have to necessarily notice the decision of the Hon'ble Supreme Court in ***Roop Singh Negi*** (supra), from which Paragraphs 14 and 15 were extracted by the learned Single Judge; but was given short shrift, finding it to be



not of any help to the delinquent officer, which in our opinion is otherwise and vitiates the entire procedure and the report itself, putting to peril the order of punishment too. Paragraph 15 of the said judgment held that a departmental proceeding is a *quasi-judicial* proceeding and an Enquiry Officer performed a *quasi-judicial* function. It was held that the Enquiry Officer has a duty to arrive at a finding after taking into consideration the materials brought on record by the parties and the mere evidence collected during investigation by the Investigating Officer against the accused, cannot be treated to be evidence in the departmental proceeding. This would have to be proved by examination of witnesses and mere tendering of documents would not prove the contents thereof. Therein also, the Enquiry Officer had placed reliance on the FIR, which was categorically stated to be not possible of consideration as valid evidence, even in a departmental proceeding.

16. True, in ***Roop Singh Negi*** (supra), the Enquiry Officer had also relied on the purported confession made by the delinquent employee; which the delinquent therein asserted as having been procured on torture and coercion. There was no direct or indirect evidence and the tone and tenor of the enquiry report in ***Roop Singh Negi*** (supra) demonstrated that the



Enquiry Officer had made up his mind to find the delinquent, guilty.

17. We find no distinction possible, in the instant case and merely on registration of an FIR, the Enquiry Officer jumped into the conclusion of guilt of the delinquent employee. The disciplinary authority also fell into the same error and referred to documents produced by the Presenting Officer, but not proved by either the author or the custodian of such documents. As for the demand and acceptance of bribe, neither was the complainant examined nor was any witness procured from the Vigilance Department, examined before the Enquiry Officer. Again, the FIR was produced by the Presenting Officer and without any further evidence or proof the allegation of demand and acceptance of bribe was found proved.

18. We cannot but observe, with all the respect at our command, that the observation of the learned Single Judge regarding the Enquiry Officer having found '*on his own wisdom*', considering the charge-sheets that the misconduct stood proved; cannot be legally countenanced, without any evidence led at the enquiry. Mere production of an FIR cannot lead to the finding of a guilt and the occurrence of a trap case as indicated by the FIR cannot by itself lead to a punishment of



dismissal when even the FIR was not proved through the police officer who registered it or the evidence of the first informant.

19. We are quite conscious of the principle that, in a criminal trial, a finding of guilt can be only if the offence is proved beyond reasonable doubt; whereas in a departmental enquiry mere preponderance of probability would be sufficient. However, even for entering a finding on preponderance of probability, there should be some evidence led regarding the charges. We cannot also countenance the finding of the Enquiry Officer that he is not looking into the facts as to whether a bribe was taken or not. When the allegation is of demand & acceptance of bribe, there should be some semblance of evidence regarding such demand & acceptance, by either examining the complainant or a member of the trap team, in which case, there could be a finding on preponderance of probabilities. In the present case, nothing of that sort was done.

20. We also notice the judgment of ***P. Gunasekaran*** (supra) from which extracts were made by the learned Single Judge. We specifically extract Clauses (a) to (i) laid down by the Hon'ble Supreme Court in Paragraph 12 of the cited decision, which were the aspects, which could be looked into under Article 226/227 of the Constitution in a challenge against the



departmental proceeding. Clauses (a) to (i) of Paragraph 12 are as under: -

“The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.”

(underlying by us for emphasis)

This is a clear case of there being no finding of fact based on evidence.

21. We cannot but reiterate that the enquiry does not have any finding of fact based on evidence. Admittedly the delinquent had not participated in the enquiry, but that does not absolve the department from giving short shrift to the principles



regulating a departmental enquiry and leading evidence by examining the witnesses who can prove the documents produced and speak on the conduct of the officer as revealed from the records or even personal knowledge. There is absolute lack of evidence and mere production of the FIR by the Presenting Officer would not and cannot result in a finding of demand & acceptance of bribe by the delinquent employee. We have looked at the order imposing punishment and also the appellate order, which again does not speak of any evidence having been looked into by the Enquiry Officer. The peremptory findings of the Enquiry Officer have been accepted by the disciplinary authority, again without any useful discussion on valid evidence adduced at the enquiry. The appellate authority, without any application of mind and without reference to the evidence led at the enquiry has rejected the appeal. We accept the contention of the appellant that it is merely on surmises and conjectures that the misconducts have been held to be proved.

22. We find no reason to uphold the order of the learned Single Judge or the orders impugned in the writ petition. The enquiry proceedings and the report filed are held to be vitiated; for reason of no evidence having been led thereat. The order of punishment and the appellate order are also hence



vitiated; for reason of having relied on the enquiry report and the mere allegations levelled against the delinquent employee without referring to any valid evidence, to find proof of such allegations.

23. We set aside the order of punishment & the appellate order as also the order of the learned Single Judge. The appellant has already retired in 2019 and hence, the appellant has to be restored to his service from the date of his suspension and the entire pay and allowance shall be paid to him till the date of his dismissal, after deducting any subsistence allowance paid. Since he has been restored in service, the appellant has also to be paid the pay and allowances after dismissal till the date of superannuation. The appellant shall also be entitled to all retirement benefits including pension from the date of his superannuation, which shall also be computed and the arrears paid to him. The appellant shall be entitled further to pension from this month onwards.

24. The directions hereinabove shall be complied with and the payments of arrears of salary & allowances, retirement benefits and pension shall be made within a period of six months from the date of uploading of this judgment; failing which, the appellant would be entitled to 5% p.a. simple interest



on the said amounts from the date of expiry of the period of six months, till the payment is made. While making the payment of arrears, the appellant shall be issued with written computation of amounts due to him from the date of his suspension. If the amounts are not paid within the time provided by us, the interest shall first to be paid by the State Government and then the State Government would be entitled to proceed against any officer who committed default in complying with our directions.

25. The appeal is allowed setting aside the judgment of the learned Single Judge and allowing the writ petition with the directions hereinabove.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

Sujit/-

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