

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12481 of 2022

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Raj Kumar Ram, Son of Late Ramchandra Ram, Resident of Mohalla-
Brahmni Ghat, Back of Sen Ji Mandir, P.S.- Bishnupad, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, General Administration Department, Bihar, Patna.
2. The Divisional Commissioner, Magadh Division, Gaya.
3. The District Magistrate, Gaya.
4. The Deputy Collector (Establishment), Gaya.
5. The Sub Divisional Public Grievance Redressal Officer, Sadar, Gaya-cum-Enquiry Officer.
6. The Sub Divisional Magistrate, Sadar, Gaya-cum-Presenting Officer.
7. The Accountant General (A and E), Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Indu Bhushan, Advocate Ms. Swati Parmar, Advocate
For the Respondent/s	:	Mr. Md.Irshad, AC to SC 1
For the Accountant General	:	Mr. Ram Yash Singh, Advocate Mr. Utkarsh Bhushan, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 30-07-2024

1. The Petitioner was a Class-IV employee working as a Peon in the office of District Magistrate, Gaya. On the basis of a complaint submitted by one Suman Kumar on 12th of April, 2018, alleging, *inter alia*, that the Petitioner demanded bribe from him, Vigilance Investigation Bureau (hereinafter referred to as the “VIB”), Bihar conducted a trap to ascertain the veracity of the aforesaid complaint. During trap, it is alleged that the officers and members of force of VIB had caught the Petitioner



red-handed while taking bribe from the complainant, namely, Suman Kumar. As a result, the Petitioner was arrested and Vigilance P. S. Case No. 17 of 2018 under Section 7 of the Prevention of Corruption Act, 1988 was registered against the Petitioner. It will not be out of place to mention here that the aforesaid criminal case is still pending before the learned Special Judge of the jurisdiction and trial is continuing.

2. After registration of Vigilance P. S. Case No. 17 of 2018 and arrest of the Petitioner, the matter was referred to the District Magistrate, Gaya by the Superintendent, VIB. The District Magistrate, Gaya directed the Sub-Divisional Officer, Gaya to frame charge against the Petitioner and, accordingly, Memorandum of Charge was prepared and served upon the Petitioner. On the basis of the said Memorandum of Charge, departmental inquiry was initiated and the inquiry officer found the Petitioner guilty of the charge framed against him.

3. In the meantime, the Petitioner retired from service on superannuation on 31st of May, 2020. On his retirement, the departmental proceeding was converted into a proceeding under Section 43 (b) of the Bihar Pension Rules. The Petitioner was held guilty for accepting bribe and the disciplinary authority passed an order of forfeiture of 100% pension from the



retirement benefit of the Petitioner. The punishment order was affirmed in appeal filed by the Petitioner.

4. Challenging the order of punishment passed by the disciplinary authority, which was subsequently affirmed by the appellate authority, the Petitioner has filed the instant writ petition.

5. In the instant case, it is contended on behalf of the Petitioner that the departmental inquiry was in violation of the established procedure for imposing penalties as contained in Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the “Bihar CCA Rules” for short). It is specifically pleaded by the Petitioner that the Memorandum of Charge (Paptra-K) does not contain the list of witnesses through whom the department proposed to prove the charge against the Petitioner. It is also contended on behalf of the Petitioner that during the inquiry proceeding, no witness on behalf of the prosecution was examined. Naturally, the Petitioner did not get any scope to cross-examine the witnesses. In the absence of examination of witnesses and proving documents against the Petitioner, charge cannot be held to be proved.

6. Thus, the learned Advocate appearing on behalf of



the Petitioner contends that the inquiry proceeding as well as departmental order of punishment was in violation of principles of natural justice.

7. It is also urged by the Petitioner that under Bihar Pension Rules, 100% of the pension of an employee cannot be forfeited because pension is the amount of money which an employee earned but not paid by the employer in order to pay the same after retirement as a source of sustenance of a government employee.

8. The Respondent Nos. 3 to 6 have filed counter-affidavit, assailing all the allegations made out by the Petitioner in the writ petition. It is specifically stated by the respondents that on the basis of a complaint submitted by one Suman Kumar before the VIB, alleging demand of bribe by the Petitioner, a trap was conducted by the Officers and Members of force, attached to Vigilance Department. Prior to the trap, the written complaint submitted by the above-named complainant was verified by one Chandrabhushan Kumar Singh and it was found to be correct. Thereafter, the Petitioner was caught red-handed by the Vigilance Team during trap, while he was accepting the bribe money from the complainant. On the basis of the trap report, which was treated as complaint, Vigilance P.S. Case No.



17 of 2018 was registered against the Petitioner. The VIB forwarded all materials to the District Magistrate, Gaya, and he, on perusal of the documents, directed Sub-Divisional Officer, Gaya, to frame Memorandum of Charge against the Petitioner. Accordingly, under such direction, it was prepared by the Sub-Divisional Officer, Gaya. On the basis of the said Memorandum of Charge, inquiry was held. During inquiry, the documents, viz., trap memo and the complaint, were produced. On the basis of the said documents, the Petitioner was held guilty for accepting bribe and subsequently he was punished. Thus, there is no irregularity in the entire proceeding and the Writ Court does not have any ground to interfere with the decision of the disciplinary authority which was finally affirmed by the Divisional Commissioner being the appellate authority.

9. Learned Advocates on behalf of the Petitioner and the respondents made their submissions in the light of the averments made in the writ petition as well as counter affidavit.

10. Be it mentioned here that the Petitioner submitted a rejoinder to the counter affidavit reiterating his grievance made out in the writ petition.

11. It is submitted, at the outset, by the Learned Advocate on behalf of the Petitioner that the Memorandum of



Charge was not formulated and served by the appointing authority i.e. the District Magistrate, Gaya and, therefore, the Memorandum of Charge which is the initial instrument of departmental proceeding is not legal, valid and operative.

12. In this regard, this Court is of the view that the District Magistrate, Gaya is the appointing authority of the Petitioner. Indisputably, Memorandum of Charge was framed by the Sub-Divisional Officer, Gaya under the instruction of the District Magistrate, Gaya. Law is no longer *res integra* that if a Memorandum of Charge is formulated by an officer below the appointing authority under the direction of the appointing authority, the said Memorandum of Charge cannot be held to be illegal, inoperative and unfair. Therefore, I am not in position to accept the submission made by the learned Advocate for the Petitioner that the Memorandum of Charge is not acceptable on the ground that it was prepared by the Sub-Divisional Officer, Gaya.

13. The Memorandum of Charge contains two documents as evidence and those are:-

“1. ट्रैप के उपरांत गिरफ्तारी संबंधी सूचना से संबंधित अनुमंडल पदाधिकारी, सदर, गया का पत्रांक 60/स्था०, दिनांक 26.04.2018

2. श्री राम को निलंबित करने संबंधी जिला पदाधिकारी, गया का आदेश ज्ञापांक 549/स्था०, दिनांक



03.05.2018”

14. It is found from the Memorandum of Charge that the disciplinary authority did not even propose to examine Suman Kumar, who lodged the complaint before the VIB regarding demand of bribe by the Petitioner. The disciplinary authority did not cite Chandrabhushan Kumar Singh, who allegedly verified the veracity of the complaint submitted by Suman Kumar on behalf of the VIB. Even the copy of the trap memo was not produced during departmental enquiry. Memorandum of Charge, in the column of evidence, states only two documents and those are a correspondence sent to the Sub-Divisional Officer, Gaya informing Petitioner's arrest in connection with Vigilance P.S. Case No. 17 of 2018 and order of suspension passed by the District Magistrate, Gaya. The said documents were also not brought in evidence by the enquiry officer. This Court is also not unmindful to note that disciplinary proceedings is a quasi-judicial proceeding and strict compliance of rules of Evidence Act is necessary. However, the principles of natural justice demands that the Petitioner should be given an opportunity to refute the charge levelled against him by the disciplinary authority. The Petitioner did not get such chance in the instant case.

15. Learned Advocate on behalf of the Petitioner



submits that a communication made by the VIB that the Petitioner was arrested in connection with a case under Section 7 of the Prevention of Corruption Act cannot *ipso facto* be treated as evidence, in the absence of the complaint lodged by one Suman Kumar against the Petitioner, report of the Police Officer verifying the veracity of the complaint and the trap memo. It is also contended by the learned Advocate for the Petitioner that mere production of those documents will not establish charge against the Petitioner. Those documents have to be proved by the witnesses so that the Petitioner may have the opportunity to cross-examine the witness. This procedure has not been followed during the departmental inquiry. In support of his contention, the learned Advocate for the Petitioner refers to a decision of the Hon'ble in the case of ***Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr.***, reported in ***AIR 1999 SC 1416***.

16. In the above-mentioned report, the Superintendent of Police had raided the residential premises of the Petitioner and had recovered a mining sponge gold ball, weighing 4.5 grams and 1276 grams of "gold-bearing sand". It was on this basis that a criminal case was launched against him. On the same set of facts, constituting the raid and recovery,



departmental proceedings were initiated against the Petitioner as the “recovery” was treated to be a “misconduct”. On the service of the charge-sheet, the Petitioner raised an objection that the departmental proceedings may be stayed as the basis of these proceedings was the raid conducted at his residence on which basis a criminal case had already been launched against him. The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the Petitioner were sought to be proved by police officers and panch witnesses, who had raided the house of the Petitioner and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the Petitioner. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the Petitioner. The whole case of the prosecution was thrown out and the Petitioner was acquitted. In this situation, therefore, where the Petitioner is acquitted by a judicial pronouncement with the finding that the “raid and recovery” at the residence of the Petitioner were not proved, it



would be unjust, unfair and rather oppressive to allow the findings recorded at the *ex parte* departmental proceedings to stand.

17. The learned Advocate on behalf of the Petitioner attempts to apply the ratio of this decision arguing that in a departmental proceeding initiated on the basis of an allegation of accepting illegal gratification and thereby committing an offence under Section 7 of the Prevention of Corruption Act, 1988, can only be proved by examining the complainant and the police officers as well as the members constituting trap to apprehend the Petitioner. In the absence of any evidence in support of charge, he invites the Court to hold that the departmental inquiry was based on no evidence.

18. The learned Advocate on behalf of the Petitioner also refers to the decision of the Hon'ble Supreme Court in the case of ***Roop Singh Negi v. Punjab National Bank & Ors.***, reported in ***(2009) 2 SCC 570*** and ***The State of U.P. & Ors. v. Saroj Kumar Sinha***, reported in ***(2010) 2 SCC 772***, in order to demonstrate that the inquiry officer in a departmental proceeding holds quasi judicial character. Therefore, he is duty bound to consider as to whether departmental charge of misconduct is proved by satisfactory evidence or not.



19. In the instant case, no evidence was led by the department. Therefore, the decision of the disciplinary authority as well as the appellate authority based on such inquiry report is perverse and cannot sustain.

20. In ***Roop Singh Negi*** (Supra), the Hon'ble Supreme Court clearly held that in a departmental inquiry, documentary evidence cannot be proved by mere production of documents. Contents of documentary evidence has to be proved by examining witnesses. It is also held that FIR in itself is not an evidence without actual proof of facts stated therein. Thus, if a criminal case on the basis of FIR is lodged against a Government employee and the said FIR becomes the basis of departmental inquiry, production of copy of the FIR does not prove its contents without examining the informant.

21. Similar is the case in hand. The initial complaint made by one Suman Kumar was not brought in evidence. The statement of the persons, who verified the truthfulness of the complaint, was also not examined. Even the trap memo was not proved, but the Petitioner was held guilty for departmental misconduct on the ground of a communication made by VIB that a criminal case under the Prevention of Corruption Act was initiated against him.



22. There is one more issue that the disciplinary authority did not consider another aspect of the matter. The Petitioner was suspended on 3rd of May, 2018. Memorandum of Charge was served upon the Petitioner on 2nd of August, 2018. The departmental inquiry was initiated on 29th of February, 2020. The Petitioner retired from service on attainment of age of superannuation on 31st of May, 2020. After his retirement, the departmental proceeding converted to a procedure under Section 43 (b) of the Bihar Pension Rules.

23. Under the aforesaid provision, the Petitioner was held guilty under Rule 139 (b) and 100% of his pension was forfeited.

24. As this Court has already found that the disciplinary proceeding is a classical example of a case of no evidence and the Petitioner cannot be punished for misconduct in the absence of any evidence, the impugned decision of forfeiture of 100% pension by the disciplinary authority and affirmed by the appellate authority, on 18.01.2021 and 08.04.2022, respectively, are liable to be quashed and set aside.

25. Under the facts and circumstances stated hereinabove, the instant writ petition is allowed, on contest.

26. The orders of punishment passed by the



disciplinary authority and affirmed by the appellate authority, dated 18.01.2021 and 08.04.2022, respectively, are quashed and set aside.

27. The Respondent No. 3 is directed to release entire pensionary benefits with other consequential relief to the Petitioner within 60 days from the date of communication/receipt of a copy of this order.

28. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	01.08.2024
Transmission Date	N/A

