

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7256 of 2021

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Yaqoob Ali Ansari, Son of Mehdi Hussain Ansari, Resident of Village-
Ekderwa, P.S. and District- Gopalganj.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Home (Police) Department, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Additional Director General of Police (Law and Order), Bihar, Patna.
4. The Deputy Inspector General of Police, Champaran Range at Bettiah.
5. The Superintendent of Police, Bettiah.
6. The Sub-Divisional Police Officer-cum-Enquiry Officer, Narkatiyaganj, Bettiah.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Amaresh Kumar Sinha, Advocate Mr. Mohammad Sufiyan, Advocate
For the State	:	Mr. Ajay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 25-11-2024

Heard Mr. Amaresh Kumar Sinha, learned Advocate with Mohammad Sufiyna, learned Advocate for the petitioner and Mr. Ajay Kumar, learned Advocate for the State.

2. The petitioner who had been serving as Outpost Officer In-charge, Muffasil Police Station, Bettiah, a complaint was made by one Ranjan Jha, alleging demand of bribe of Rs.60,000/- for sending a verification report about the complainant's vehicle to the Sub-Judge, Bettiah, which was seized by the petitioner in connection with Banu Chhapar OP



(Muffasil) P.S. Case No. 448 of 2017.

3. Based upon the afore-noted complaint, a raid was conducted by a duly constituted raiding party of the Vigilance Department and the petitioner was caught red handed while accepting illegal gratification/bribe of Rs.50,000/-, leading to preparation of seizure and post trap memo and institution of Vigilance P.S. Case No. 105 of 2017, Special Case No. 47 of 2017 dated 24.11.2017 against the petitioner.

4. The aforesaid criminal case led to initiation of a departmental proceeding and finally culminated into the order of punishment of dismissal from service, which order also stood affirmed in appeal by the Appellate Authority.

5. The petitioner on being aggrieved has assailed the order as contained in Memo No. 1656 dated 22.10.2019 passed by the respondent no.4, whereby he has been dismissed from his service. The petitioner further assailed the order dated 16.06.2020 passed by the respondent no.3, whereby the appeal preferred by the petitioner against the order of dismissal came to be rejected. The petitioner has also questioned the legality of the inquiry report dated 26.02.2019 contained in Memo No. 308/2019 submitted by the respondent no.6, whereby the charges levelled against the petitioner have been found to be



proved.

6. Mr. Amaresh Kumar Sinha, learned Advocate for the petitioner, while assailing the impugned orders has submitted that the entire departmental proceeding start from its initiation to passing of order of punishment as also the appellate order, vitiated on account of the non-compliance of the various mandatory provisions of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (for short 'the Rules, 2005'). It is further contended that the charge memo dated 04.08.2018 (Annexure-1) was framed and issued by the Superintendent of Police, Bettiah, who was not the competent authority in terms of the prescriptions of Bihar Police Manual. In the case in hand, the Deputy Inspector General of Police/Inspector General of Police is the disciplinary authority; thus the very initiation of the proceeding by an authority which is not competent, is bad and illegal. Reliance has also been placed upon a judgment of this Court in the case of **Uday Pratap Singh v. The State of Bihar and Others [2017(4) PLJR 195]**.

7. Mr. Sinha, further drew the attention of this Court to the memo of charge (Annexure-1) and thus contended that from perusal of the same, it is apparent that no show-



cause/explanation was sought from the petitioner by the disciplinary authority in terms of Rule 17(5) of the Rules, 2005. Thus, there is complete violation of the provisions laid in Rule 17(5) of the Rules, 2005. The show-cause explanation sought from the petitioner by the Enquiry Officer is contrary to the provisions prescribed under Rule 17(4) of the Rules, 2005, as the Enquiry Officer is not the competent authority to consider the reply of the delinquent. For the aforesaid contention, reliance has been placed on a judgment rendered by the learned Division Bench of this Court in **Ravindra Nath Singh v. The Bihar State Road Transport Corporation [1996(2) PLJR 95 (D.B.)]**.

8. Learned Advocate for the petitioner has further taken this Court through the various annexures appended with the writ petition and submitted that irrespective of the fact that a Presenting Officer was appointed but he did not appear in the proceeding and thus there was no Presenting Officer to lay evidence against the petitioner. Heavy reliance has been placed on a judgment of the Hon'ble Apex Court in the case of **State of Uttar Pradesh and Others v. Saroj Kumar Sinha [(2010) 2 SCC 772]**.

9. Now, coming to the inquiry report, learned



Advocate for the petitioner next contended that save and except one formal witness, who identified the signature of his superior, there is no other witness nor even the complainant was examined and thus in violation of Rule 17(4) of the Rules, 2005. To support the aforesaid contention, Mr. Sinha, has further placed reliance upon a judgment of this Court in the case of **Anjum Hassan Ansari v. The State of Bihar [2023 (1) PLJR 494]**. Placing further reliance upon a judgment of the Hon'ble Apex Court in the case of **Roop Singh Negi v. Punjab National Bank and others [2009) 2 SCC 570]** as also the judgments of this Court in the case of **Bipin Bihari Mandal v. The State of Bihar and Others [2018 (4) PLJR 536 and Smt. Dropadi Devi @ Dropati Devi and Others v. The State of Bihar and Others [2019(4) PLJR 1200]**, it is urged before this Court that the reliance of the Enquiry Officer upon the FIR and the document(s) contained in the FIR, which were prepared during the course of investigation, is bad and illegal.

10. Learned Advocate for the petitioner has lastly taken this Court to the impugned order of dismissal dated 22.10.2019 (Annexure-7) and vigorously contended that the disciplinary authority failed to consider the explanation and the legal points raised by the petitioner and thus non-consideration



of explanation made in the second show-cause, is bad and illegal. The similar mistake has also been committed by the Appellate Authority while passing the order dated 16.06.2020 (Annexure-9). To strengthen the aforesaid submissions, the decision of the Hon'ble Apex Court in the case of **Kranti Associates Private and Another v. Masood Ahmed Khan and Others [(2010) 9 SCC 496]** and further the decision in the case of **Vijay Singh v. State of Uttar Pradesh and Others [(2012) 5 SCC 242]** have been placed.

11. *Per contra*, learned Advocate for the State submitted that since the charge facing the petitioner is an open and shut case, the procedural lapses, if any, would not dilute the charges which itself is sufficient to uphold the punishment. On a complaint made by the complainant (Ranjan Jha), S.P. Vigilance constituted a raiding party and the petitioner was apprehended with illegal gratification of Rs.50,000/- leading to institution of Vigilance P.S. Case No. 105 of 2017 for the offences punishable under Sections 7/13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. On account of the institution of the criminal case, the petitioner was put under suspension and a departmental proceeding was initiated. The Superintendent of Police, West Champaran, Bettiah being the competent authority



vide its memo no. 1161 dated 04.08.2018, has appointed Sri Ram Singh, Inspector-cum-SHO of Muffasil Police Station as Presenting Officer and Nishar Ahmad, Dy. S.P., Narkatiaganj as Conducting Officer of the departmental proceeding. Following the principles of natural justice, the Conducting Officer has found the writ-petitioner guilty in the departmental proceeding and accordingly vide its memo no. 308/2019 dated 26.02.2019 has forwarded his recommendation to the S.P. West Champaran at Bettiah. The writ-petitioner was asked to furnish second show-cause on the proposed punishment of dismissal from the service. In response thereto, the writ-petitioner submitted his second show-cause, however, the same was not found to be satisfactory and, as such, the S.P. West Champaran had forwarded the record of the departmental proceeding to the Deputy Inspector General of Police, Champaran Range, West Champaran at Bettiah with a recommendation of dismissal of the writ petitioner. Accordingly, the impugned order of dismissal came to be passed by the respondent no.4; the appeal preferred by the petitioner also came to be dismissed having found no merit by the respondent no.3.

12. So far the contention of the petitioner with respect to the jurisdiction of the Superintendent of Police, Bettiah to



initiate a departmental proceeding against the petitioner, it is contended that of course the departmental proceeding was initiated by the S.P., Bettiah but the punishment order is passed by the D.I.G., Champaran Range, West Champaran at Bettiah, who was the competent authority to pass the order against the writ-petitioner.

13. In sum and substance, learned Advocate for the State supported the impugned order of punishment as also the appellate order by urging before this Court that there is no infirmity in the departmental proceeding.

14. This Court has anxiously heard learned Advocates for the respective parties and also meticulously perused the materials available on record.

15. Certain facts are admitted in the case in hand that the memo of charge has been framed and issued by the S.P. Bettiah, who is said to be not the competent authority. Rule 17 of the Rules, 2005 provides a complete code for holding a departmental proceeding by the disciplinary authority either by himself or by the inquiring authority as the case may be. Sub-rule 14 thereof, obligates that on the date fixed for inquiry, the oral and documentary evidence by which the article of charges 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. The Presenting Officer has been vested with the power to re-examine the witnesses on any point on which they have been cross-examined. They are also entitled to re-examine the witness on any new matter but not without the leave of the inquiring authority. Sub-rule 15 of Rule 17 of the Rules, 2005 also vested discretion in the inquiring authority to allow the Presenting Officer to produce evidence not included in the list given to the government servant or may itself call for new evidence etc. if it shall appear necessary before the closure of the case. Sub-rule 23 thereof made it clear that after the conclusion of the inquiry, record shall be prepared containing the following materials:

- “(a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (b) the defence of the Government Servant in respect of each article of charge,
- (c) an assessment of the evidence in respect of each article of charge,
- (d) the findings on each article of charge and the reasons thereof.”

A disciplinary proceeding is said to have been initiated upon service of memo of charge as prescribed under Rule 17(3) of the Rules, 2005. Rule 17(4) of the Rules, 2005



mandates the disciplinary authority to deliver such charge memo on the government servant concerned and required him to submit written statement of defence and to state whether he desires to be heard in person. A discretion is vested in the disciplinary authority if he is not satisfied by the written statement of defence furnished by the delinquent to hold a formal proceeding under Rule 17(5) of the Rules, 2005 and either inquiry into the allegation himself or to appoint the inquiring authority.

16. Bare reading of Rule 2(f) and 2(j) of the Rules, 2005, which defines the appointing authority and the disciplinary authority if read with Rule 16 of the Rules, 2005, it makes it clear that it is the appointing authority or any authority authorized by it, who would be competent to initiate a disciplinary proceeding against a government servant.

17. The identical issue as has been raised by the petitioner in the case in hand was duly considered by this Court in **Uday Pratap Singh** (supra), wherein the learned Court while examining the validity of the framing of charge by the Superintendent of Police held that the very initiation of a departmental proceeding by an authority who was not competent to do so, is illegal and that itself vitiates the entire



departmental proceeding. It would be apt and proper to quote paragraphs 25 to 30 thereof.

“25. I would now deal with issues raised and contested.

Re: Invalidity in the framing of charge:

26. Rule 2(f) of “the Disciplinary Rules” defines an appointing authority and inter alia under sub-rule (iii) includes the authority who has appointed the Government servant to such service. The appointment order thus having been issued under the signature of the Inspector General of Police, he would be the appointing authority in terms of rule 2(f) (iii) of “the Disciplinary Rules”.

27. Rule 2(j) of “the Disciplinary Rules” defines a Disciplinary Authority to mean the appointing authority or any other authority authorized by it who shall be competent under these Rules to impose on a Government servant any of the penalties provided under rule 14 of the Rules.

28. Rule 16 of “the Disciplinary Rules” is the other relevant rule in the present context inasmuch as it provides for the authority to institute a proceeding and inter alia empowers the Government or the appointing authority or any authority to which the appointing authority is subordinate or any other authority empowered by general or special order of the Government, to institute disciplinary proceeding against a



Government servant or direct a disciplinary authority to institute disciplinary proceeding.

29. A careful reading of the three provisions leaves no room for confusion that it is either the appointing authority or any authority authorized by it or an authority authorized by special or general order, who would be competent to initiate a disciplinary proceeding against a Government servant.

30. In so far as the case in hand is concerned it is the Senior Superintendent of Police, Patna who has initiated the proceeding against the petitioner by service of charge memo placed at Annexure-6 and which also directs the petitioner to file his reply before the Senior Superintendent of Police but then in absence of any authorization given to the Senior Superintendent of Police either under the Bihar Police Manual or by the Inspector General of Police being the appointing authority or the Deputy Inspector General of Police being the Disciplinary Authority to initiate the process, the very initiation is without jurisdiction.”

18. The facts of this case also reveal that there is no compliance of Rule 17(4) and 17(5) of the Rules, 2005, as there is no satisfaction on the part of the disciplinary authority regarding the matter of authority nor there is any finding of the disciplinary authority in terms of the prescriptions provided



under sub-rule 4 and 5 of Rule 17 of the Rules, 2005. The memo of charge dated 04.08.2018 (Annexure-1) contains only the copy of the FIR, pre and post memorandum, the complaint filed by Ranjan Jha, the letter of S.P. Vigilance and the district order. The list of witnesses contains the name of Dy. S.P.-cum-In-charge Raiding Party along with all the seven police personnel, apart from the complainant.

19. Having gone through the record, this Court finds that none of the witnesses were examined, except one formal witness, who was not even named in the list of the witnesses to prove the charges.

20. The Hon'ble Apex Court in its decision rendered in the case of **Roop Singh Negi** (supra), while holding that mere production of documents is not enough and the contents of the documentary evidence has to be proved by examining witnesses, has held in clear terms that FIR in itself is not an evidence without actual proof of facts stated therein. It would be apt and proper to quote para-14 of the said judgment to highlight the issue raised herein.

“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 FIR which could not have been treated as evidence.”

21. This Court also cannot lose sight of the fact that the petitioner having entered his appearance before the Enquiry Officer, filed an application with a request to supply documents for filing a detailed and effective show-cause. However, the same was not provided. Nonetheless, the Conducting Officer was not obligated to examine the witnesses and the documentary evidence and without sticking to the duty attached with him came to the conclusion that the charges have been found to be proved against the petitioner.

22. Time without number, the Hon’ble Apex Court held that Enquiry Officer/Conducting Officer acting in quasi-judicial authority, is in the position of an independent



adjudicator. He is not supposed to be a representative of department/disciplinary authority/Government. His function is to examine evidence presented by Department, even in absence of delinquent official to see as to whether unrebutted evidence is sufficient to hold that charges are proved. This Court considers relevant to quote paragraphs 27 and 28 of the decision rendered by the Hon'ble Apex Court in the case of **Saroj Kumar Sinha** (supra).

“27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the enquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the enquiry officer to record the statement of witnesses mentioned in the charge sheet. Since the Government servant is absent, he would clearly lose the benefit of cross examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the enquiry officer. This is so as to avoid the charge that the enquiry officer has acted as a prosecutor as well as a judge.

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 unrebutted 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.”

23. Now, coming to the impugned order as contained in Annexure-7 to the writ petition, there is neither any discussion of the explanation/defence raised by the petitioner in his second show-cause nor the order of punishment demonstrates that there is any application of independent mind, rather it is only based upon the recommendation of the S.P., Bettiah. The Appellate Authority also failed to consider the points raised by the petitioner in his memo of appeal, irrespective of the settled position of law that it being a quasi-judicial authority, it was supposed to exercise its independent mind while deciding the appeal. The independent application of



mind by the Appellate Authority in deciding the appeal dealing with the grounds taken therein would make the appellate forum an empty formality.

24. It is trite law that holding departmental proceeding and recording a finding of guilt against any delinquent and imposing punishment for the same is a quasi-judicial function and not the administrative one. The authority has to act or purport to act in pursuance or executing or intended execution of the statute or statutory rules [vide **Poona City Municipal Corporation v. Dattatraya Nagesh Deodhar, AIR 1965 SC 555** and **Bachhittar Singh v. State of Punjab and Another, AIR 1963 SC 395**].

25. In view of the discussions made hereinabove, this Court finds substance in the present writ petition and accordingly the impugned order of inflicting the punishment of dismissal as contained in Memo No. 1656 dated 22.10.2019 (Annexure-7) passed by the respondent no.4 as also the order dated 16.06.2020 passed by the respondent no.3 as contained in Annexure-9, are hereby set aside.

26. At this juncture, learned Advocate for the State submits that since the very initiation of the departmental proceeding was held to be bad on account of technical flaw, the



same is required to be remanded back to the disciplinary authority for fresh inquiry and proceeding.

27. The contention of the learned Advocate for the State, however, does not find any force.

28. In view of the fact that the dismissal order is not only interfered with on technical defect(s) in the conduct of the inquiry or culmination of the departmental proceeding in punishment, as in the case in hand but also the inquiry was carried out without there being any proper evidence led by the Management and thus the Management cannot be allowed to correct its mistake by making a remand and permitting fresh evidence to be led to find the delinquent employee guilty of the misconduct.

29. The identical issue as raised before the learned Division Bench of this Court in the case of **The State of Bihar and Others v. Vikash Kumar @ Vikas Kumar [L.P.A. No. 446 of 2024]**, where the learned Division Bench had not acceded to the request of the State to grant a remand for the purpose of producing valid evidence. The similar issue has also been raised in the cases of **Srikant Singh v. The State of Bihar and Others [L.P.A. No. 58 of 2024]** and **Ram Lagan Ram v. The State of Bihar and Others [L.P.A. No. 389 of 2024]**. It would be worth to quote para-6 of the decision of the learned



Division Bench of this court in the case of **Srikant Singh** (supra).

“6. A remand on finding the enquiry proceeding to be vitiated on a technical ground; is to avoid prejudice to the delinquent employee. As has been held, it is not a measure to cover up the negligence or laxity of the Disciplinary authority in conducting a proper enquiry.”

30. The writ petition accordingly stands allowed.

31. The petitioner is directed to be reinstated in service with all consequential benefit(s) from the date of his initial suspension.

32. There shall be no order as to cost(s).

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	24-10-2024
Uploading Date	28-11-2024
Transmission Date	

