

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.863 of 2024

In

Civil Writ Jurisdiction Case No.9871 of 2023

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1. The State of Bihar through the Additional Chief Secretary, Department of Prohibition, Excise and Registration Department, Government of Bihar, Patna.
 2. The Excise Commissioner, Department of Prohibition, Excise and Registration Department, Government of Bihar, Patna.
 3. The Secretary to Excise Commissioner Department of Prohibition, Excise and Registration Department, Government of Bihar, Patna.
 4. The Joint Commissioner, Prohibition, Excise and Registration Department, Bihar, Patna.
 5. The District Magistrate, Gaya.
 6. The Senior Superintendent of Police, Gaya.
 7. The Deputy Secretary, Prohibition, Excise and Registration Department-cum-Conducting Officer, Bihar, Patna.
 8. The Assistant Commissioner of Prohibition, Department of Prohibition, Excise and Registration Department, Government of Bihar, Gaya.
 9. The Inspector of Prohibition, Department of Prohibition, Excise and Registration Department, Gaya.
 10. The Station House Officer, Sherghati (Dhobi) Police Station, Gaya.

... .. Appellant/s

Versus

Mukesh Sharma S/O Gajendra Sharma, Ward No. 11, Malsar, P.S. Bithan,
District Samastipur, Bihar- 848207.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vivek Prasad, GP-7

For the Respondent/s : Mr. Kumar Amit, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY



ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-10-2024

The appellant is the State, which is aggrieved with the judgment of the learned Single judge, who set aside the order of the Disciplinary Authority dismissing the writ petitioner and that of the Appellate Authority; which affirmed the order of dismissal. The learned Single Judge relied on **Roop Singh Negi vs. Punjab National Bank [(2009) 2 SCC 570]** to find that mere production of an F.I.R. would not establish the guilt against a delinquent employee.

2. We heard Mr. Vivek Prasad, learned GP-7 for the appellants and Mr. Kumar Amit, learned Counsel for the writ petitioner/respondent.

3. We have already held in LPA No. 446 of 2024 (The State of Bihar & Ors. vs. Vikash Kumar) vide judgment dated 21.08.2024 that there can be no remand, insofar as conducting a proper inquiry, after a dismissal order is passed by the Disciplinary Authority even in accordance with the judgments of the Hon'ble Supreme Court in **Union of India vs. Mohd. Ramzan Khan [(1991) 1 SCC 588]** and **ECIL vs. B. Karunakar [(1993) 4 SCC 727]**. The said decisions, in our humble opinion, only empowered the Courts to set aside the



disciplinary action conducted in violation of principles of natural justice or otherwise on technical defects pointed out; if, and only if, there is some prejudice caused to the delinquent employee. In such circumstances, the Court could set aside the inquiry report and directs resumption of the inquiry from the stage at which the inquiry was found defective.

4. Insofar as the present case is concerned, the prejudice caused is that the inquiry itself was held in utter violation of the principles governing domestic inquiries. There was no witness examined, despite a specific request made by the delinquent employee, that the witnesses may be permitted to be cross-examined by the delinquent employee.

5. We pause here, for a moment, to notice the bare facts on which the inquiry was initiated, which was a demand of bribe for the purpose of release of the vehicle, apprehended under the Narcotic Drugs and Psychotropic Substances Act, 1985. An F.I.R. was registered, finding that the seizure effected on a raid conducted by the writ petitioner, was not informed to the senior officials of the Department and the vehicle, which was seized and released, was recovered from a nearby place and the writ petitioner along with two constables arrested. No witness was examined to prove the seizure, release and



subsequent registration of an F.I.R.

6. Admittedly, the inquiry was conducted in violation of provisions of Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005.

7. Rule 18(1) of the above Rules is extracted hereunder:-

“18. Action on the inquiry report.- (1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, may remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 17 as far as may be.”

Hence, when an inquiry report is filed before the Disciplinary Authority, wherein the provisions of Rule 17 have not been complied with, the Disciplinary Authority has the power to remand the matter to the Inquiry Officer for carrying out an inquiry in accordance with law.

8. We find that no such power was invoked by the Disciplinary Authority, and the Disciplinary Authority has imposed a punishment of dismissal.

9. In the above circumstances, the prejudice caused is to the Department, who had appointed an Inquiry Officer and



also appointed a Presenting Officer for producing evidence with respect to the allegations levelled against the delinquent employee; which is on account of its own laxity. The Enquiry Officer was appointed by the Disciplinary Authority and so was the Presenting Officer. If they failed to carry out the enquiry in a legal manner and the Disciplinary Authority imposed the punishment based on an enquiry report containing findings of guilt without any valid, legal evidence, then the enquiry and the consequent punishment has to be interfered with; which the learned Single Judge has rightly done.

10. We find absolutely no reason to interfere with the order of the learned Single Judge and we dismiss the appeal *in limine*.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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