

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7206 of 2018

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Sri Indrasan Singh @ Indrasan Prasad Singh, son of Late Ram Vyas Singh
Resident of Village - Arak, P.S. - Krishna Brahma, District - Buxar.

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Health Department, Government of Bihar, Patna.
2. The Joint Secretary, Health Department, Government of Bihar, Patna.
3. The Deputy Secretary, Health Department, Government of Bihar, Patna.
4. The Under Secretary, Health Department, Government of Bihar, Patna.
5. The Director-in-Chief, Health Department, Government of Bihar, Patna.
6. The Director, Health Department, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vindheshawari Singh, Sr. Adv.
For the State : Mr. Ramadhar Singh (GP-25)

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 27-03-2024

Heard learned senior counsel for the petitioner and
learned counsel for the State.

2. The present writ petition has been filed for
setting aside the order dated 26.09.2017 passed in Service
Appeal Case No. 01/2017 (annexed as Annexure-9) by which
the Appellate Authority has dismissed the petitioner from the
service of Upper Division Clerk and further for setting aside the
enquiry report dated 04.11.2016 contained in Letter No.52
(annexed as Annexure-7) conducted by the Enquiry Officer. The



further prayer has also been made for directing the respondent to re-instate the service of the petitioner and for providing consequential benefits of service attached to the relevant post.

3. Learned senior counsel for the petitioner submits that the petitioner was a Government employee working on the post of Upper Division Clerk in Health Department, Government of Bihar, Patna and was P.A. to Under Secretary posted in Secretariat, Patna. Counsel also submits that one written complaint was made against the petitioner addressed to the Officer Incharge of Vigilance Bureau, Patna and on his allegation, Vigilance Bureau constituted a raid team and on 08.09.2011, when the petitioner was on duty in the office and in a complete planned way, Vigilance Bureau caught the petitioner which resulted into filing of Vigilance P.S. Case No.64/2011 and instant arrest of the petitioner took place in which he was released on bail *vide* order dated 01.12.2011 passed by this Hon'ble Court in Cr. Misc. No. 40372/2011. Counsel further submits that after release, the petitioner was suspended by an order contained in Memo No.106(5) dated 25.01.2012 (annexed as Annexure-1) and the charge memo has been served vide Memo No.107(5) dated 25.01.2012 (annexed as Annexure-2) by which a departmental proceeding was initiated against him and he was



put under suspension.

4. Learned senior counsel for the petitioner submits that the petitioner was subject to departmental proceeding and he appeared before the Conducting Officer provided his defence which resulted into submission of the enquiry report contained in Memo No.52 dated 04.11.2016 in which three charges were framed and proved against him followed by second show cause. The petitioner has filed his reply on the second show cause but, subsequently, a punishment order has been passed by which the petitioner was dismissed from service. Counsel also submits that he has challenged the said order before the Appellate Authority and the Appellate Authority *vide* order dated 26.09.2017 upheld the order of dismissal passed by the Disciplinary Authority, against which the petitioner has preferred the present writ petition before this Court challenging the Appellate order as well as the enquiry report. Counsel further submits that the said enquiry report has been resulted into without any evidence witness of vigilance post trap memorandum. Counsel submits that procedure for imposing major penalty has not been followed. Counsel further submits that the punishment order has been passed by under Secretary of the Health Department and no employee shall be dismissed or removed by an authority



subordinate to that by which he was appointed.

5. Learned senior counsel for the petitioner further submits that neither first show cause nor written statement was invited from the petitioner which is in gross violation of the departmental proceeding. Counsel also submits that *vide* Memo No. 107(5) dated 25.01.2012, a departmental proceeding has been initiated against the petitioner, but no report was submitted against the petitioner after lapse of one year and again on same and similar charge, a new departmental proceeding was initiated *vide* Memo No. 292(5) dated 07.03.2013 (annexed as Annexure-C of the counter affidavit) which is against the provision of law under the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'CCA Rules, 2005'). Counsel submits that the Vigilance P.S. Case No.64 of 2011 in which the petitioner is accused is still pending and without conclusion of the criminal case, punishment order has been passed which is against the service jurisprudence. Counsel further submits that on these grounds, his punishment is fit to be set aside and he may be exonerated from all the charges. Counsel also submits that there were two persons against whom criminal case has been filed. The other person was also arrested in the vigilance case. He was initially punished and removed



from the service but, by the order passed by this Hon'ble Court, he was re-instated in the service and his punishment order has been set aside. The present petitioner's case is exactly similar to that of case of other accused person.

6. Learned counsel for the State on the other hand submits that the petitioner has not challenged the original order passed by the Disciplinary Authority in the present writ petition and he has challenged only appellate order as well as the enquiry report. Counsel further submits that the memo of charge has been issued by the competent authority and the enquiry report is the result of proper charge memo and it is not a defective one. Counsel further submits that the enquiry report has been annexed in the counter affidavit as Annexure-H and the written statement which has been filed by the petitioner is annexed as Annexure-G. Counsel submits that prior to conclusion, every charge has been separately discussed, evidence of witnesses have been taken and the point of imputation has been separately discussed and then only charges alleged has been proved on the basis of the documentary as well as oral evidence following the principles of natural justice. Therefore, there is no defect in the enquiry report.

7. Learned counsel for the State further submits that



in the enquiry report prior to reaching on the conclusion, the Enquiry Officer has well discussed about the imputation and the entire materials on record then reached on the conclusion that the charges were proved which is followed by the second show cause and then punishment order has been passed *vide* Memo No.375(5) dated 29.03.2017 (annexed as Annexure-8). Counsel further submits that the Appellate Authority at the time of entertaining the appeal has discussed the points which has been raised by the petitioner before the Appellate forum which is particularly based on the enquiry report and conclusively rejected the appeal affirming the punishment by the Disciplinary Authority. Counsel also submits that the petitioner was working as Upper Division Clerk and Additional Secretary at the level of Government is the competent authority to pass the punishment order. Learned counsel for the State conclusively submits that the entire process has been done completely in accordance with CCA Rules, 2005. Counsel submits that as in case of ***State Bank of India & Ors. Vs. P. Zadenga*** reported in **2023 (4) PLJR SC 37**, Hon'ble Court has held that:-

“nature of proceeding of departmental proceeding and criminal proceeding are wholly separate and distinct. Therefore,



pendency or acquittal in criminal case ipso facto would not be tantamount to closure or culmination of proceedings in favour of the delinquent employee.”

8. After hearing the parties and perusal of the documents particularly the enquiry report, it transpires to this Court that imputation of charge has been clearly made in the charge memo and subsequently, supplementary charge has also been inserted. The documents as well as the oral evidence has been taken and the discussion made on the point of oral evidence, the Enquiry Officer has reached on the conclusion and proved the charge against the petitioner. Therefore, this Court is of the firm view that there is no need of any interference in the enquiry report.

9. After going through Annexure-8 which is the punishment order, it also transpires to this Court that the points taken in the show cause has been discussed and thereafter, the Disciplinary Authority has reached on the conclusion and impose the punishment. The basis of this allegation that the Disciplinary Authority who is Additional Secretary of the Government is not the competent authority for passing final order against Upper Division Clerk has not been provided in the



pleading.

10. So far as the Appellate Authority’s order is concerned, this Court also finds that discussion on the points that evidence of two witnesses are present in the enquiry report as well as other points to take a sympathetic view has also been taken into consideration. At the time of deciding this case, this Court has taken this point into consideration that in the departmental proceeding, High Court is not sitting in appeal, rather, for judicial review the procedural mistakes, violation of natural justice and disproportionate punishment have to be taken into consideration. But, in view of this Court, all the three points are not present in this writ petition.

11. Accordingly, with the aforesaid observations, this writ petition is hereby dismissed.

(Dr. Anshuman, J.)

Divyansh/-

AFR/NAFR	
CAV DATE	NA
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