

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16943 of 2023

Vakil Kumar, Son of Kunkun Sahani, Resident of Village- Kopi, P.S. -
Dhanaur, District - Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Home Department, Govt. of Bihar, Patna.
2. The Additional Chief Secretary, Home Department (Jail), Bihar, Patna.
3. The Director General of Police, Prison and Reforms Services, Govt. of Bihar, Patna.
4. The Deputy Inspector of General, Prison and Reforms Services, Govt. of Bihar, Patna.
5. The Superintendent, Mandal Jail, Begusarai.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Mukund Mohan Jha, Advocate
For the Respondent/s : Mr. Ajay Kumar, AC to GP4

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL ORDER

2 02-05-2024 1. The Petitioner is a Jail Warder, posted at Begusarai
Mandal Correctional Home during the year 2021. The Petitioner
has filed the instant writ petition for the following reliefs:-

*“i. To quash the order vide memo no.
1025 dated 02.02.2023 issued by the Assistant
Inspector General, Prison and Reforms
Services, Govt. of Bihar whereby and
whereunder Petitioner has punished with the
withholding of four (4) increments of pay with
cumulative effect and further ordered that*

Petitioner will not received any amount/allowance except the subsistence allowances in the suspension period.

ii. To quash the order dated 29.05.2023 issued by the Additional Chief Secretary of the department and communicated vide memo no. 4662 dated 01.06.2023 to the Petitioner whereby ad whereunder the service appeal has been rejected with an order that punishment given by the Additional Inspector General, Prison and Reforms, Home Department, Govt. of Bihar vide memo no. 1025 dated 02.02.2023 shall remain as usual without considering the facts in a mechanical manner without applying his judicious mind.

iii. For issuance of an appropriate writ/writs, direction/directions in the nature of mandamus directing to pay the entire salary of suspension period.

iv. For issuance of any other relief/reliefs for which the Petitioner is entitled in the eye of law.”

2. On 15th of December, 2021, the Chief Warder, Divisional Correctional Home, Begusarai, namely, Md. Nasim Khan made a compliant before the Superintendent of the said Correctional Home, stating, inter alia, that on the same date at about 09:00 A.M., he was reported the inmates of the said Correctional Home that the Petitioner had recovered one mobile

phone from one inmate, namely, Hemant Rai, who was kept in custody in Ward No. 8. It is also informed that the said mobile phone was recovered from the old latrine room situated between the Ward Nos. 5 and 7 by the Petitioner. However, the said mobile phone set was returned to Hemant Rai on consideration of some bribe. Therefore, the Chief Warder, Md. Nasim Khan requested the Additional Superintendent of the said Correctional Home to inquire into the matter and take necessary action.

3. On the basis of the said information, the Superintendent of the said Correctional Home lodged a compliant before the S.H.O, Town Police Station, Begusarai, stating, inter alia, that on 15th of December, 2021 at about 01:00 P.M., a blue coloured Samsung Mobile Phone with Sim-Card was recovered from behind Ward No. 8. The said mobile set was stated to be in possession of a prisoner, namely, Hemant Rai. The mobile set was duly seized and the seizure list was forwarded with the FIR. Though, the Officer-in-Charge of the Police Station was requested to take legal action over the said matter, no case was registered against anybody over the said incident which was informed by the Superintendent of the Begusarai, Divisional Correctional Home.

4. Subsequently, on 16th of December, 2021, the

Petitioner was served with a show cause notice wherein it is alleged that on 15th of December, 2011 during his duty hours, he recovered one Samsung Mobile Set with Sim-Card from behind Ward No. 8. The said mobile was under possession of Hemant Rai, a prisoner and the Petitioner returned the said mobile to the above-named prisoner taking bribe of Rs. 1,500/-. The Petitioner gave reply to the show cause notice on 20th of December, 2021, stating, inter alia, that on the date and time of occurrence, he had his duty from 06:00 A.M. to 12:00 (noon) to look after Ward Nos. 9 to 16. One Kamlesh Kumar was on duty to look after Ward Nos. 1 to 8 at the relevant point of time. It is also stated by him that the Assistant Superintendent, Correctional Home and Chief Warder asked the prisoners of the said prison regarding recovery of the mobile phone but nobody made any allegation against the Petitioner. It is also alleged by him that subsequently Md. Nasim Khan obtained a statement of Hemant Rai under threat and coercion. It is also found from the first reply to the show cause notice that his relation with the Chief Warder of the Correctional Home was inimical and he made a confidential statement against the Chief Warder. Therefore, he was falsely implicated on the allegation of misconduct in performing his official duty at the instance of Md.

Nasim Khan. The reply to the first show cause notice was not accepted by the authority and the Superintendent of the Divisional Correctional Home, Begusarai vide his letter dated 9th of January, 2022, issued second show cause to the Petitioner, stating, inter alia, that by submitting his reply, he wanted to suppress his misconduct and guilt in discharge of his official duty. The Petitioner duly gave reply on 10th of January, 2022 in writing and denied all the allegations made out in the above-mentioned two show cause notices served to him by the authority. Subsequently, charge was framed on two counts against the Petitioner which runs thus:-

“(2) द्वितीय भाग- अवचार या कदाचार
के लांछनों का सार

दिनांक- 15.12.2021 को कक्षपाल, श्री वकील कुमार की ड्युटी कक्ष सं० - 09 से 16 में थी। इन्होंने कक्ष सं०- 08 के बंदी हेमन्त राय, पे०- राजकुमार राय के पास से एक मोबाईल जब्त किया। लेकिन उक्त जब्त मोबाईल के संबंध में कारा के किसी वरीय पदाधिकारी को सूचना नहीं दी गई तथा कक्षपाल, श्री कुमार के द्वारा 1500/- रु० में समझौता कर बंदी को पुनः मोबाईल वापस कर दिया गया। प्रभारी उपाधीक्षक के द्वारा सूचना प्राप्त होते ही त्वरित कार्रवाई एवं तलाशी कर उक्त मोबाईल को जब्त कर लिया गया एवं स्थानीय थाना में प्राथमिकी दर्ज कराई गई। उपलब्ध साक्ष्य के आलोक में पैसा

के बदले बंदी को मोबाईल वापस लौटाने के मामले में कक्षपाल, श्री वकील कुमार को प्रथम दृष्टया दोषी पाया गया। इनका यह कृत्य कारा को निषिद्ध वस्तुओं से मुक्त रखने के प्रयासों एवं बिहार कारा हस्तक 2012 के नियम 830 (x) 870 (iii) (iv) (xv) (xvii) 876(vii)(ix) का घोर उल्लंघन है। साथ ही साथ कारा की सुरक्षा व्यवस्था के साथ कारा कर्मियों की सुरक्षा को भी खतरे में डालने वाला है।

अधीक्षक

मंडल कारा बेगूसराय।

(3) तृतीय भाग- अवचार या कदाचार के लांछनों का अभिकथन

दिनांक- 15.12.2021 को कक्षपाल, श्री वकील कुमार की ड्युटी कारा के कक्ष सं 0-09 से 16 पर थी। इनके द्वारा कक्ष सं 0 - 08 के बंदी हेमन्त राय, पे०- राजकुमार राय के पास से एक मोबाईल पकड़ा गया एवं इस संबंध में कारा के किसी भी वरीय पदाधिकारी को कुछ भी नहीं बताया गया। उक्त मोबाईल को कक्षपाल, श्री वकील कुमार के द्वारा बंदी से समझौता कर पैसों की लालच में बंदी को मोबाईल पुनः वापस कर दिया गया। कारा में कर्तव्यरत मुख्य उच्च कक्षपाल, मो० नसीम खान को कारा के अन्य बंदियों के द्वारा यह सूचना प्राप्त हुई कि कक्षपाल, श्री वकील कुमार के द्वारा बंदी के पास से एक मोबाईल जब्त किया गया एवं पुनः बंदी से समझौता कर मोबाईल को वापस कर दिया। मुख्य उच्च कक्षपाल के द्वारा उक्त घटना से संबंधित लिखित बयान सहायक अधीक्षक, श्री प्रदीप कुमार

सिंह को दिया गया (बयान की छायाप्रति संलग्न)। उक्त बयान के आधार पर सहायक अधीक्षक-सह-प्रभारी उपाधीक्षक, श्री प्रदीप कुमार सिंह के द्वारा बंदी हेमन्त राय, पे०- राजकुमार राय को कार्यालय में बुलाकर पूछ-ताछ की गई। पूछ-ताछ के क्रम में बंदी हेमन्त राय, पे०- राज कुमार राय के द्वारा बताया गया कि दिनांक- 15.12. 2021 को सुबह में मैं कक्ष के पीछे टहल रहा था। टहलने के दौरान कक्षपा, श्री वकील कुमार के द्वारा मेरा तलाशी लिया गया जिसमें मेरे पास से सैमसंग का एक गोबाईल बरामद किया। मेरे द्वारा विनती करने के उपरान्त कक्षपाल, श्री वकील कुमार ने 1500/- (एक हजार पांच सौ) रु० देने के बात पर उक्त मोबाईल को मुझे पुनः वापस कर दिया। बंदी के बयान के आधार पर वहाँ पर मौजूद अन्य बंदियों को भी कार्यालय में बुलाकर पूछ-ताछ किया गया। इस संबंध में वहाँ पर मौजूद तीन अन्य बंदियों (1) हीरागज यादव (2) जटाशंकर यादव (3) मन्नू कुमार के द्वारा बताया गया एवं लिखित बयान भी दिया गया है कि कक्षपाल, श्री वकील कुमार एवं बंदी हेमन्त राय के बीच बहस हो रहा था। जब मैं वहाँ पहुँचा तब वहाँ मोबाईल लेने की बात चल रही थी। कक्षपाल, श्री वकील कुमार बंदी हेमन्त राय से 1500/- रु० देने के बात पर समझौता करते हुए जब्त मोबाईल को बंदी को पुनः वापस दे दिया (बयान की छायाप्रति संलग्न)।

बंदी हेमन्त राय के द्वारा कारा कार्यालय में सिम सहित एक मोबाईल जमा किया गया। जब्त

किये गये मोबाईल एवं सिम को लेकर कारा के पत्रांक- 7215 दिनांक- 16.12.2021 के द्वारा अभियुक्त हेमन्त राय, पे०- राजकुमार राय पर प्राथमिकी दर्ज कराई गई है (छायाप्रति संलग्न)।

प्रभारी उपाधीक्षक के जाँच प्रतिवेदन एवं बंदियों के बयान पर कक्षपाल श्री वकील कुमार से इस कारा के ज्ञापक- 7214 दिनांक- 16.12.2021 के द्वारा 24 घंटे के अंदर स्पष्टीकरण की माँग की गई (स्पष्टीकरण की छायाप्रति संलग्न)। उक्त स्पष्टीकरण का जवाब कक्षपाल श्री वकील कुमार के द्वारा दिनांक- 20.12.2021 को इस कारा में दिया गया (छायाप्रति संलग्न) जो पूर्णतः स्वीकार योग्य नहीं है साथ ही साथ इनके द्वारा बिना कोई ठोस सबूत के कारा के वरीय पदाधिकारी पर आरोप लगाया जा रहा है। कक्षपाल, श्री वकील कुमार के द्वारा प्रथम स्पष्टीकरण के जवाब में लिखा गया है कि तत्कालीन अधीक्षक, श्री मेहता के समय कक्षपाल, श्री संजय कुमार के द्वारा कक्ष सं० - 07 के बंदी से मोबाईल बरामद किया गया था। उक्त कक्षपाल को आरोप पत्र उपलब्ध कराकर दोषी साबित कर दिया गया। जबकि कक्षपाल श्री संजय कुमार को बंदी से साँठ-गाँठ एवं उससे मोबाईल पर सम्पर्क स्थापित कर कारा के अंदर मोबाईल एवं गाँजा पहुँचाने के आरोप में दोषी पाया गया एवं था एवं निलंबित भी किया गया था। इसकी पुष्टि श्री संजय कुमार के मोबाईल कॉल हिस्ट्री से भी हुई थी। कक्षपाल, श्री वकील कुमार के स्पष्टीकरण के जवाब से स्पष्ट है कि ये अपने उपर लगे आरोपों से इतर मनगढ़ंत एवं झूठी कहानियों बंधा

कर रहे हैं। स्पष्टीकरण स्वीकार योग्य नहीं होने पर पुनः इस कारा के ज़ापांक - 92 दिनांक- 09.01.2022 के द्वारा द्वितीय स्पष्टीकरण की मांग की गयी (छायाप्रति संलग्न)। द्वितीय स्पष्टीकरण के जबाब में इनके द्वारा उल्लेख किया गया है कि मैं द्वितीय स्पष्टीकरण का जबाब लिखने में असमर्थ हूँ (छायाप्रति संलग्न)। उन्होंने यह नहीं बताया है कि किन परिस्थितियों में या किसके दबाब में उन्होंने बंदी से साँठ-गाँठ करके 1500/- रु० के लोभ में मोबाईल वापस कर दिया। इससे स्पष्ट है कि कक्षपाल, श्री वकील कुमार पूर्ण रूपेण दोषी है।

कारा के अंदर बंदी से मोबाईल जब्त कर पुनः पैसे के बदले बंदी को मोबाईल लौटा देने से यह स्पष्ट है कि कक्षपाल पूर्व से ही बंदियों को पैसे केलोभ में प्रतिबंधित सामग्री उपलब्ध करवाते थे एवं कक्षपाल का बंदी के साथ साँठ-गाँठ था। कक्षपाल, श्री वकील कुमार का बंदी के साथ साँठ-गाँठ से किसी गंभीर अप्रिय घटना से इंकार नहीं किया जा सकता है।

कक्षपाल, श्री वकील कुमार यह कृत्य बिहार कारा हस्तक 2012 के नियम 830 (x) 870 (iii) (iv) (xv) (xvii) 876 (vii) (ix) का घोर उल्लंघन, कर्तव्यहीनता, मनमाने खैया एवं अनुशासनहीनता को दर्शाता है।

अधीक्षक, मंडल कारा बेगूसराय।"

5. It is submitted by the learned Advocate for the Petitioner that in the departmental proceeding, the Enquiry

Officer did not follow the basic requirements of natural justice and minimum rules of conducting departmental proceeding. It is next submitted by him that the charge against the Petitioner was framed on the basis of the statement of some prisoners, namely, Hiraganj Yadav, Jatashankar Yadav and Mannu Kumar. The said witnesses were not examined during departmental inquiry and, therefore, the Petitioner did not get any scope to cross-examine the said witnesses.

6. Moreover, the prisoner, Hemant Rai was also not examined. The Petitioner was not provided with the chance of cross-examination of the said witnesses. The disciplinary authority relied on the statement of Hemant Rai which he made at the time of initial inquiry before the Additional Superintendent of Prisons. The Enquiry Officer found that the Petitioner did not examine Md. Nasim Khan in spite of repeated request by the Enquiry Officer. However, he is absolutely silent with regard to cross-examination of the material witnesses like Hemant Rai and other prisoners during disciplinary proceeding by the Petitioner. No opportunity was granted to him to cross-examine them. Ultimately, on the basis of the inquiry report, disciplinary proceeding was concluded and he was punished with directing stoppage of four increments. It is also directed

that he would not be entitled any amount more than subsistence allowance which he received during suspension.

7. Learned Advocate for the Petitioner submits that detailed procedure of departmental inquiry and imposing penalties is enumerated in Rule 17 of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the 'Bihar CCA Rules, 2005'). The Enquiry Officer failed to conduct the departmental inquiry in terms of Rule 17 of Bihar CCA Rules, 2005. Rules 17(14), which states as follows:-

“17(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge 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 and may be cross-examined by or on behalf of the Government Servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses, as it thinks fit.”

8. According to the learned Advocate for the Petitioner failure on the part of the presenting officer to produce

the witnesses before the disciplinary authority goes to the root of the authenticity of the disciplinary proceeding because of the fact the Petitioner did not get any opportunity to cross-examine the witnesses.

9. It is also submitted by him that impugned order was not passed following Sub-Rule 23(i) of Rule 17 of Bihar CCA Rules, 2005. Thus, entire disciplinary proceeding as well as the finding of the authority is liable to be quashed.

10. Learned Advocate on behalf of the State, on the other hand, submits that the inquiry held by the appropriate authority is in accordance with law. The Petitioner was given adequate opportunity to cross-examine all the witnesses.

11. On due consideration of the evidence as well as statement of the imputation of charge and reply made by the Petitioner on show cause notice, the Superintendent of Bihar Kendriya Kara, Bhagalpur and the Conducting Officer, departmental proceeding held as hereinbelow:-

उपाधीक्षक के बयान और पूछ-ताछ से भी यह स्पष्ट होता है। पुनः बंदी हेमन्त राय हीरागज यादव, जयशंकर यादव, मन्त्रू कुमार के बयानों में स्पष्ट कहा गया है कि कक्षपाल श्री वकील कुमार बंदी हेमन्त राय से 1500/- रु० देने की बात पर सामझौता करते हुए बंदी हेमन्त कुमार को मोबाईल वापस कर दिया जो बंदी के साथ कक्षपाल के सौंठ-

गाँठ को प्रकट करता है। श्री वकील कुमार का यह कहना कि बंदी कक्ष संख्या -08 का था और मेरी डियूटी कक्ष संख्या-09-16 में था, स्वीकार योग्य नहीं है।

इस संबंध में गवाहों एवं प्रस्तुतिकरण पदाधिकारी द्वारा बंदी के बयानों के अलावे कोई अन्य साक्ष्य प्रस्तुत नहीं किया गया जिससे सिद्ध हो कि मोबाईल के बदले आरोपित कर्मी ने पैसे का सौदा किया। पुनः मुख्य उच्च कक्षपाल ने अपने लिखित बयान में यह साफ लिखा है कि कक्षपाल ने इस तरह की घटना से इंकार किया एवं बंदी हेमंत राय ने बताने से इंकार किया। पूछ-ताछ में मुख्य उच्च कक्षपाल ने स्वीकार किया कि हेमंत राय ने ऐसी घटना से इंकार किया लेकिन प्रभारी उपाधीक्षक के बयान, जाँच के अवलोकन व पूछ-ताछ से स्पष्ट होता है कि ऐसी घटना घटित हुई। आरोपित कर्मी ने अपने बचाव में कोई ठोस बचाव समर्पित नहीं किया। बल्कि घटित घटना को दूसरे तरफ मोड़ने के लिए विभिन्न प्रकार के आरोप लगाया जिसका इस घटना से कोई संबंध नहीं है। घटित घटना के संबंध में सिर्फ एक ही बचाव प्रस्तुत किया गया: कि बंदी हेमंत राय मेरे क्षेत्राधिकार में नहीं था, यह मान्य नहीं है। अतः कक्षपाल श्री वकील कुमार पर लगाया गया आरोप सिद्ध होता है।

निष्कर्ष :- श्री वकील कुमार, निलंबित कक्षपाल के उपर गठित आरोप प्रमाणित होता है।

12. Learned Advocate for the State also refers to a decision of Hon'ble Supreme Court in the case of *Union Of*

India & Ors. v. P. Gunasekaran, reported in ***(2015) 2 SCC 610***.

It is observed by the Hon'ble Supreme Court that in disciplinary proceeding, the High Court is not and cannot act as a second Court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. 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.”

13. In the instant case, it is found, indisputably, that the star witnesses on behalf of the enquiry authority where the prisoners on the basis of whose statement, the Chief Warder initially found that the Petitioner allegedly took a sum of Rs. 1,500/- in return of a mobile set. During departmental inquiry, the said witnesses were not produced. It was the duty of the presenting officer to produce the said witnesses and on production, he could have relied on the statement made by the said witnesses giving liberty to cross-examine them by the delinquent employee or his representative. The said procedure has not been followed and uncontroverted statement of the prisoners were accepted without assigning any reason.

14. Thus, this Court is of the view that the principle of natural justice was violated by the disciplinary authority. The authorities have disabled themselves from reaching a fair consideration without giving opportunity to the Petitioner to cross-examine the witnesses.

15. Last but not the least, the Chief Warder of the Correctional Home submitted the FIR mentioning the colour of

the mobile phone as blue but the mobile phone which was subsequently seized from Hemant Rai was made by Samsung Company having black and white colour. Thus, material testimony i.e., mobile set which was allegedly recovered from prisoner, Hemant Rai was not produced before the Enquiry Officer. The Enquiry Officer did not consider the said fact also.

16. In view of such circumstances, I come to the conclusion that the report of the disciplinary as well as the appellate authority is liable to be set aside and accordingly the impugned report of the disciplinary authority and the appellate authority are set aside.

17. The disciplinary authority is directed to direct the inquiry officer to conduct the disciplinary proceeding against the Petitioner following the principles laid down in Bihar CCA Rules, 2005, especially Rule 17 (14) and 17 (23) (i) thereof and give opportunity to the delinquent employee / Petitioner to cross-examine all the witnesses whose evidence was relied upon by the presenting officer and the inquiry authority to prove the charge levelled against the Petitioner.

18. Entire process shall be concluded within a period of 3 months from the date of receipt/communication of a copy this order to the inquiry officer or any other officer appointed by

the disciplinary authority.

(Bibek Chaudhuri, J)

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