

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10028 of 2021

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Ram Nath Upadhyay Son of Late Bachu Upadhyay Resident of Village- Karaundi, P.O.- Saraon via Natwar, P.S.- Natwar, District- Rohtas, at present residing at Mohalla- Anand Nagar, Ward No. -5, West of Mahabir Mandir, Bikramganj, P.O. and P.S.- Bikramganj, District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The District Magistrate Rohtas at Sasaram.
3. The Additional Collector Rohtas at Sasaram.
4. The Circle Officer Kochas, District- Rohtas.
5. The Circle Officer Sanjhauli, District- Rohtas.
6. The Accountant General Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner	: Mr. Bibhakar Tiwary, Advocate
For the State	: Mr. Sajid Salim Khan, SC-25
For the Accountant General	: Ms. Ritika Rani, Advocate

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 03-12-2025

1. Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The petitioner has filed the instant application for the following reliefs :-

“(i) To issue an appropriate writ, preferably in the nature of certiorari for setting aside the order no. 115/20-21 contained in memo no. 374 dated 05.03.2021 issued under the signature of District Magistrate-cum- Collector, Rohtas, Sasaram by which punishment



withholding full pension and gratuity has been inflicted against the petitioner under Rule 43 (b) of the Bihar Pension Rules.

(ii) To hold and declare that the proceeding initiated against the petitioner vide order dated 05.03.2021 for the alleged misconduct dated 05.05.2009 is barred by law in view of proviso (i) and (ii) to Rule 43 (b) of the Bihar Pension Rules, 1950.

(iii) To issue an appropriate writ preferably in the nature of mandamus commanding upon the respondent authorities to pay full pension and Gratuity to the petitioner with suitable interest with effect from 01.05.2013 and

(iv) To grant any other relief (s), for which the petitioner may be found entitled to in the facts and circumstances of the case.”

3. The relevant facts in brief are that the petitioner while posted as Revenue Clerk in block- Kochas in the district of Rohtas, was made an accused in Vigilance P.S. Case no.47 of 2009 registered on 6.5.2009 under sections 7/13(2) read with section 13(1)(e) of the Prevention of Corruption Act, 1988 with the allegations of having been trapped while receiving a bribe of Rs.16,000/- from one Mahendra Singh. The petitioner, on account of being taken into custody in the said criminal case, was placed under suspension by order dated 2.7.2009 with effect from 5.5.2009. On his release from custody, the petitioner joined



service on 22.8.2009. His suspension was revoked by order dated 16.10.2009 and his joining was accepted.

4. It further transpires that the petitioner retired from service on 30.4.2013.

5. On 31.12.2013, the petitioner was served with a memo of charge asking him to file his show-cause. The petitioner filed his reply on 29.1.2014. He was thereafter served with a supplementary show-cause notice on 29.1.2014 to which he submitted his reply on 12.3.2014.

6. It may be stated here that the charge against the petitioner in brief was that he had made a demand of illegal gratification for mutation of land. Not having been given the amount, the petitioner did not refer the application to the competent authority. Further, charge against the petitioner was that he was caught red handed by the vigilance team on 5.5.2009 at 12 noon taking a bribe which lead to the registration of Vigilance P.S. Case no.47/2009 on 6.5.2009 and for which the petitioner was sent to jail. On investigation in the said F.I.R., charge-sheet has been submitted by the Vigilance Department against the petitioner and sanction has been accorded by the District Magistrate to proceed in the criminal case against him.

7. On conclusion of the enquiry, the Enquiry Officer



submitted his report on 15.2.2014. No copy of the enquiry report was served on the petitioner but by a memo dated 28.2.2014 the District Magistrate, informing the petitioner that enquiry report has been submitted directed him to file his reply. The petitioner filed his reply on 12.3.2014.

8. The respondents came out with an order of punishment dated 28.3.2014 issued under the signature of the District Magistrate –cum– Collector, Rohtas, Sasaram forfeiting 100% pension as also the total amount of gratuity payable to the petitioner.

9. The petitioner challenged the order of punishment in this Court by filing CWJC no.7960 of 2014 which was allowed by order dated 24.8.2017. The order of punishment contained in Memo no.12 dated 28.3.2014 was set aside and the matter was remitted back to the Disciplinary Authority to hold a departmental proceeding afresh in accordance with law.

10. On remand, the respondents initiated a fresh proceeding against the petitioner by appointing a new Enquiry Officer and a new Presenting Officer on 17.11.2017. As directed by the Enquiry Officer, the petitioner appeared and submitted his defence. The Enquiry Officer submitted his enquiry report on 25.8.2018 holding the charges levelled against the petitioner



to have been proved. A copy of the enquiry report was forwarded to the petitioner by the District Magistrate, Rohtas asking him to reply to the same. The petitioner submitted his reply on 26.2.2019.

11. The respondents came out with an Order no.115/20-21 contained in Memo no.374 dated 5.3.2021 under the signature of the District Magistrate, Rohtas imposing the punishment on the petitioner of withholding his full pension and gratuity.

12. It is against this order that the petitioner has preferred the instant writ application.

13. It is submitted by learned counsel appearing for the petitioner that the basis of the order of punishment is the enquiry report dated 25.8.2018 submitted by the Enquiry Officer after the matter was remanded by this Court by order dated 24.8.2017 passed in CWJC no.7960 of 2014.

14. Referring to the contents of the enquiry report brought on record as Annexure-P-16 to the writ application, it is submitted that the Enquiry Officer has narrated the incidence therein leading to registration of the Vigilance P.S. Case no.47 of 2009 against the petitioner. In the enquiry report, he further proceeds to refer to the sanction accorded by the District



Magistrate to proceed against the petitioner in the criminal case. Learned counsel submits that the Enquiry Officer further refers to the evidence/documents enclosed with the memo of charge i.e. the complaint filed by Mahendra Singh before the Vigilance Department and the F.I.R. no.47 of 2009 registered on 6.5.2009 in the Vigilance Court at Patna. However it is submitted that not a single witness was examined on behalf of the Management to prove the charges against the petitioner as levelled in the memo of charge nor any document/F.I.R. or report relied on or referred to by the Enquiry Officer in his enquiry report has been proved by any witness or marked as an exhibit. It is thus submitted that in absence of the same, it is a case of no evidence against the petitioner and consequently the order of punishment is not sustainable, the same be set aside and the writ application be allowed.

15. Learned counsel for the petitioner in support of his contention relies on the judgments in the case of **Roop Singh Negi vs. Punjab National Bank & Ors.**; (2009) 2 SCC 570 as also in the case of **State of Bihar & Ors. vs. Mohd. Idris Ansari**; 1995 Supp (3) SCC 56.

16. The application is opposed by learned counsel appearing for the State. It is submitted by learned counsel for



the State that the petitioner was caught red handed taking bribe as a result of which Vigilance P.S. Case no.47 of 2009 was registered against him on 6.5.2009 and he was taken into custody. He was placed under suspension which was vacated on his release from custody. It is further submitted that, in the departmental proceeding, the Enquiry Officer relied upon the F.I.R. registered against the petitioner, the genuineness of which was never contested by him at any point of time. The petitioner has also at no point of time made any application nor even oral request for supply of any other document. The departmental proceeding is conducted in accordance with law. The petitioner has not made out any case for interference in the order of punishment and as such the instant application be dismissed.

17. Heard Mr. Bibhakar Tiwary, learned counsel for the petitioner, Mr. Sajid Salim Khan, learned SC-25 for the State and Ms. Ritika Rani, learned counsel for the Accountant General. The facts of the case having been stated in detail herein above, the same are not being repeated all over again.

18. The relevant facts in brief are that the order of punishment dated 28.3.2014 having been challenged by the petitioner in this Court, the same was set aside by order dated 24.8.2017 passed in CWJC no.7960 of 2014 and the matter was



remanded back to the Disciplinary Authority to hold a departmental enquiry afresh in accordance with law.

19. The enquiry was held and an enquiry report came to be submitted on 25.8.2018. After a reply having been submitted to the same, the order of punishment dated 5.3.2021 came to be passed against the petitioner by the District Magistrate, Rohtas, Sasaram.

20. With respect to the contention raised by learned counsel for the petitioner, it may be observed here that in course of enquiry not a single witness was examined on behalf of the Management in proof/establishing the charge levelled against the petitioner. Further neither any of the documents relied on/referred to by the Enquiry Officer in his report was proved nor was the same marked exhibit. The same is clearly in teeth of the judgment in the case of **Roop Singh Negi** (*supra*) wherein the Hon'ble Supreme Court held as follows :-

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled 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. Further a Division Bench of this Court in the case of **Devendra Prasad vs. The State of Bihar & Ors.** (judgment dated 19.10.2023 passed in LPA no.1302 of 2017), following **Roop Singh Negi** (*supra*) observed as follows :-

“7. As has been held in Roop Singh Negi v. Punjab National Bank and others; (2009) 2 SCC 570, the documents produced in a departmental inquiry has to be proved by examining witnesses. Even an F.I.R. was held to be not evidence by itself without actual proof of facts stated therein. The Hon'ble Supreme Court had also held that even an admission or confession to the police itself is not sufficient to find the delinquent employee guilty in a departmental proceeding if no evidence is brought on record to prove the offence or misconduct alleged. Departmental inquiry was held to be a quasi-judicial proceeding and the Inquiry Officer functions



in the status of a quasi-judicial authority. Not only should evidence be led in a departmental inquiry, the conclusions arrived at should be based on evidence which brings forth a probability that the delinquent has committed the misconduct alleged and charged against him. No Inquiry Report based on conjectures and surmises can be sustained and even in a departmental inquiry, the standard of proof is not a mere suspicion. However high the degree of suspicion is, it cannot be a substitute for legal proof.”

22. Coming to the facts of the instant case, there being no dispute to the fact that no witness was examined on behalf of the Management nor any document relied upon by the Enquiry Officer having been proved in course of the enquiry nor exhibited, it is a case of no evidence against the petitioner.

23. In view of the facts and circumstances stated herein above, being inclined to allow the instant application on this ground alone, this Court is not going into the other points raised by the petitioner with respect to maintainability etc. of the proceeding under Rule 43(b) of the Bihar Pension Rules, 1950.

24. In the facts of the case, in the opinion of the Court, this being a case of no evidence against the petitioner, the order of punishment cannot be sustained and accordingly Order



no.115/20-21 contained in Memo no.374 dated 5.3.2021 issued under the signature of the District Magistrate –cum– Collector, Rohtas, Sasaram is hereby set aside.

25. The writ application is allowed with full consequential benefits which shall be paid to the petitioner within a period of three months from the date of receipt/production of a copy of this order.

(Partha Sarthy, J)

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AFR/NAFR	
CAV DATE	N/A
Uploading Date	03.12.2025
Transmission Date	N/A

