

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6916 of 2018

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Arjun Kumar Sinha Son of late Chandrika Prasad resident of village -
Kashipur, Police Station - Raja Pakar, P.O. - Bedupur R.S., District - Vaishali.
... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, General Administration Department, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Divisional Commissioner cum Appellate Authority, Tirhut Division, Muzaffarpur.
4. The District Magistrate-cum-Collector cum Disciplinary Authority, Vaishali at Hajipur.
5. The Sub-Divisional Officer cum Conducting Officer, Hajipur Sadar, Hajipur, District - Vaishali.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjeet Kumar, Adv. Mr. Shikhar Mani, Adv. Mr. Kanishk Kaustubh, Adv. Mrs. Lakshmi Kumari, Adv. Mr. Rajnish Prakash, Adv.
For the Respondent/s	:	Mr. Saroj Kumar Sharma, AC to AAG- 3

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 13-02-2025

Heard Learned Counsel for the petitioner and
Learned Counsel for the State.

2. The present writ petition has been filed for the
following reliefs:-

*(i) To issue a writ in the nature of
Certiorari for quashing the order as
contained in memo no.513 dated 08.06.2015
whereby the District Magistrate has
imposed the punishment of dismissal from*



service upon the petitioner under provisions of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as CCA, Rules, 2005) including quashing of appellate order dated 26.10.2015 whereby the appellate authority has affirmed the order of the disciplinary authority and also quashing of order dated 06.09.2017 passed in Service Appeal (Revision) Case No.35 of 2016 and also quashing of inquiry report as the proceeding has not been conducted in accordance with procedure prescribed under Rule-17(14) of CCA, Rules, 2005 and consequent upon quashing of the above orders and enquiry report, issuance of direction to the respondents for payment of salary for the period the petitioner was put to suspension.

(ii) To issue a writ in the nature of Mandamus commanding the respondents to treat the services of the petitioner regularized and without break in service and consequent thereupon, to make payment of pensionary and other admissible benefits accrued to the petitioner.

(iii) That the amendment sought through the present interlocutory application is for addition of prayers which



are as follows:-

(iv) To issue a writ in the nature of certiorari for quashing of Memo of charge (Prapatra-ka) dated 07.03.2007, Supplementary Memo of charge (Prapatra-ka) and Memo of charge (Prapatra-ka) dated 02.03.2013 as Same are in teeth of Rule-17(3)(ii) of CCA, Rules, 2005 and law laid down by this Hon'ble Court.

(v) To any other relief or reliefs to which the petitioner is entitled in the facts and circumstances of the case.

3. Learned Counsel for the petitioner submits that the petitioner joined the service as a Peon in Purnia Collectorate on 01.01.1981. Subsequently, he was promoted to the post of Clerk on 16.05.1999. At the relevant period of time, he was working on the post of Upper Divisional Clerk- cum- Circle Nazir, Circle Office at Rajapakar, District- Vaishali. A vigilance case was lodged against the petitioner, followed by Departmental Proceeding Case No. 08 of 2007-08, in which it was alleged that he received bribe of Rs. 1200/- . Consequently, a Vigilance P.S. Case No. 05 of 2007 was registered against him, and a departmental proceeding was initiated and *Prapatra-ka* (memo of charge) was issued on 07.03.2007. The petitioner submitted a reply to the said *Prapatra-ka*.



4. Counsel further submits that another departmental proceeding was initiated against the petitioner in connection with a second vigilance trap case, registered as Departmental Proceeding Case No. 02 of 2013-14. Counsel further submits that with regard to the earlier proceeding, an enquiry was conducted, and the charge was proved. A second show-cause notice was issued to the petitioner, to which he submitted his reply on 18.06.2014, denying the charge against him. However, no final order was passed. In the meantime, based on the second trap case, another Departmental Proceeding Case No. 02 of 2013-14 was initiated, and a separate *Prapatra-ka* was issued to him. The petitioner appeared in the enquiry proceeding and submitted his defence. In the second enquiry report dated 30.07.2013, the charges were not found to be proved. However, the Disciplinary Authority after being disagreed with the findings, returned the file to reconsider the decision by a fresh enquiry through a different enquiry officer. In the second enquiry report which was submitted on 26.11.2014, charge had been found proved. Consequently, a second show-cause notice was issued to the petitioner on 19.12.2014. The petitioner has submitted his reply to the second show-cause notice on 10.01.2015. The Disciplinary



Authority, after considering the enquiry reports of both disciplinary proceedings and the petitioner's reply to the second show-cause notice, passed a final order of dismissal on 08.06.2015 (annexed as Annexure P/15).

5. Thereafter, the petitioner preferred Service Appeal but it was dismissed vide order dated 26.10.2015 (Annexure-P/16). The petitioner superannuated from service on 31.10.2016. Counsel submits that the petitioner subsequently filed a Service Revision, which was dismissed on 06.09.2017 (Annexure- P/17). Counsel further submits that thereafter, the petitioner has preferred the present writ petition which has been numbered as CWJC No. 6916 of 2018. Counsel states that although there is a consistent finding of facts against the petitioner, he relies entirely on the argument that there was an absolute violation of procedural law in the departmental proceedings. Counsel further submits that there was violation in issuance of charge memo as the list of witnesses and documents were also not provided to the petitioner. Counsel further submits that from the enquiry report, it becomes crystal clear that there was a gross violation of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as CCA, Rules, 2005). He contends that



the enquiry officer without examining a single witness or without marking a single document, imposed punishment, despite the fact that a previous enquiry officer had exonerated the petitioner.

6. To substantiate his argument, learned counsel for the petitioner relied on a judgment rendered in the case of ***Satyendra Singh Vs. Uttar Pradesh and Anr.*** reported in **2024 SCC OnLine SC 3325**, and submits that the relevant paragraphs for consideration are from paragraphs 13 to 17. In this judgment Hon'ble Supreme Court has held that a departmental proceeding is a *quasi-judicial* proceeding, and the enquiry officer performs *quasi-judicial* functions. Therefore, the charges leveled against the delinquent must be found to have been proved. Counsel further submits that the enquiry officer has a duty to arrive at finding based on the materials brought on record by the parties. He contends that the purported evidence collected during the investigation by the investigating officer against all the accused cannot, by itself, be treated as evidence in the disciplinary proceeding. No witness was examined to prove the said documents.

7. He further argues that in the present case, one person involved in the earlier vigilance case, namely, Anil



Kumar Singh, and another person in the second vigilance case, namely, Jagdish Ray who were the individuals on whose complaints the alleged vigilance trap cases were conducted, but they did not come forward to prove their documents or confirm that they had filed any complaint against the petitioner. He submits that since there has been a gross violation of the CCA, Rules, 2005, the findings of the Original Authority, Appellate Authority and the Revisional Authority should be set aside.

8. Learned Counsel for the State, on the other hand, submits that there is no need for any interference in the present case, as there is a concurrent finding of guilt at all three levels, i.e., original level, appellate level and revisional level. The petitioner was found guilty in each of these proceedings. Counsel further submits that there were two vigilance trap cases against the petitioner. Although criminal cases arising out of both vigilance cases are still pending and no final decision has been rendered. It has been further argued that the petitioner was given due opportunity to present his defence. The decision was taken in compliance with the principles of natural justice. He acknowledges that no witness was examined in the present case but argues that the petitioner is accused in two vigilance trap cases and was caught red-handed twice. Therefore, his



case cannot be viewed in a liberal way. Counsel further submits that two different enquiry officers conducted the inquiries and found the charge against the petitioner to be proved. The Disciplinary Authority, after considering the enquiry reports, passed the final order of punishment. The said order of punishment was duly checked by the Appellate Authority and the Revisional Authority, affirming the order passed by the Original Authority.

9. In support of his argument, Counsel for the respondents relied on a judgment rendered in the case of *Union of India and Ors. Vs. P. Gunasekaran* reported in (2015) 2 SCC 610 wherein it was held in paragraphs 12 and 13 of the judgment that in disciplinary proceeding the High Court is not, and cannot act as a second court of first appeal. The High Court can exercise its power under Articles 226/227 of the Constitution of India, shall not venture into a reappraisal of evidence. He submits that, therefore, this Honble Court has a very limited scope to interfere in the concurrent findings of the departmental proceedings. Accordingly, he argues that there is no need for any interference, and the writ petition should be dismissed.

10. After hearing the parties and reviewing the



documents and decisions of Disciplinary Authority, on which the parties have relied, certain facts are admitted. It is evident that the enquiry officer reached on a conclusion without any supporting evidence. Not a single witness was examined, nor was any document exhibited before the enquiring authority. As such, there is a gross violation of Rule 17(14) of the CCA, Rules, 2005 which are as follows:-

(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.

11. Upon bare reading of the said Rule, the methodology for taking evidence has been laid down, and the word 'shall' has been used in this Rule, making it mandatory



and binding. The judgment on which counsel for the petitioner has relied i.e., ***Satyendra Singh Vs. Uttar Pradesh & Anr. (supra)***, and relevant paragraphs Nos. 13 to 17 are as follows:-

13. This Court in a catena of judgments has held that the recording of evidence in a disciplinary proceeding proposing charges of a major punishment is mandatory. Reference in this regard may be held to Roop Singh Negi v. Punjab National Bank and Nirmala J. Jhala v. State of Gujarat.

14. In the case of Roop Singh Negi, this Court held that mere production of documents is not enough, contents of documentary evidence have to be proved by examining witnesses. Relevant extract thereof reads as under: -

"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.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct



evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

19. The judgment and decree passed against the respondent in Narinder Mohan Arya case [(2006) 4 SCC 713 2006 SCC (L&S) 840] had attained finality. In the said suit, the enquiry report in the disciplinary proceeding was considered, the same was held to have been based on no evidence. The appellant therein in the aforementioned situation filed a writ petition questioning the validity of the disciplinary proceeding, the same was dismissed. This Court held that when a crucial finding like forgery was arrived at on evidence which is non est in the eye of the law, the civil court would have jurisdiction to interfere in the matter. This Court emphasised that a finding can be arrived at by the enquiry officer if there is some evidence on record.



15. Same view was reiterated in State of Uttar Pradesh v. Saroj Kumar Sinha, wherein, this Court held that even in an ex-parte inquiry, it is the duty of the Inquiry Officer to examine the evidence presented by the Department to find out whether the un rebutted evidence is sufficient to hold that the charges are proved. The relevant observations made in Saroj Kumar Sinha are as follows:-

"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 un rebutted 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.

33. As noticed earlier in the present case not only the respondent has been denied access to documents sought to be relied upon against him, but he has been condemned unheard as the inquiry officer failed to fix any date for conduct of the enquiry. In other words, not a single witness has been examined in support of the charges levelled against the respondent. The High Court. therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of the principles of natural justice and total disregard of fair play. The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge-sheet."

16. In the case of Nirmala J. Jhala, this Court held that evidence recorded in a preliminary inquiry cannot be used for a regular inquiry as the delinquent is not associated with it and the opportunity to cross- examine persons examined in preliminary inquiry is not given. Relevant



extract thereof reads as under: -

"42. A Constitution Bench of this Court in Amalendu Ghosh v. North Eastern Railway [AIR 1960 SC 992], held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.

43. Similarly in Champaklal Chimanlal Shah v. Union of India [AIR 1964 SC 1854] a Constitution Bench of this Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. Preliminary inquiry may be held ex parte, for it is merely for the satisfaction of the



Government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the Government as to whether a regular inquiry must be held. The Court further held as under: (AIR p. 1862, para 12)

"12. There must therefore be no confusion between the two enquiries and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of that article [nor prior to that]."

44. In Narayan Dattatraya Ramteerthakhar V. State of Maharashtra [(1997) 1 SCC 299 1997 SCC (L&S) 152 AIR 1997 SC 2148] this Court dealt with the issue and held as under:



"... a preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice of (sic) nor, remains of no consequence."

45. In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.

17. Thus, even in an ex-parte inquiry, it is sine qua non to record the



evidence of the witnesses for proving the charges. Having tested the facts of the case at hand on the touchstone of the Rules of 1999, and the law as expounded by this Court in the cases of Roop Singh Negi and Nirmala J. Jhala, we are of the firm view that the inquiry proceedings conducted against the appellant pertaining to charges punishable with major penalty, were totally vitiated and non-est in the eyes of law since no oral evidence whatsoever was recorded by the department in support of the charges.

12. The judgment on which counsel for the respondents relied, i.e., ***Union of India and Ors. Vs. P. Gunasekaran reported in (2015) 2 SCC 610*** relevant Paragraph Nos. 12 and 13 where as follows :-

12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, 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 reappreciation 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. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which



findings can be based.

*(vi) correct the error of fact
however grave it may appear to
be;*

*(vii) go into the proportionality
of punishment unless it shocks
its conscience.*

13. It is true that the Hon'ble Supreme Court of India has pleased to set a precedent for the High Court in considering cases related to departmental proceedings. In the present case, this Court has refrained from functioning as a Court of First Appeal. Instead, it has only examined the specific issue raised by the petitioner's counsel that there is a violation of the established rule under Section 17(14) of the CCA, Rules, 2005. It is apparent that the Disciplinary Authority has not followed the due process of law. Consequently, this Court has no option but to intervene, as there has been a gross violation of Rule 17(14) of the CCA, Rules, 2005. The Appellate Authority and the Revisional Authority have also failed to consider this issue. Therefore, this Court hereby set aside all three orders, i.e., the original order dated 08.06.2015, passed by the Collector- cum- District Magistrate (Annexure- 15 to the writ petition), the appellate order dated 26.10.2015, passed by the Divisional



Commissioner, Tirhut Division, Muzaffarpur (Annexure- 16 to the writ petition) and the revisional order, dated 06.09.2017, passed by the Chairman- cum- Member Board of Revenue, Bihar (Annexure- 17 to the writ petition).

14. However, liberty is hereby granted to the respondents that, on the basis of charges, the authority may initiate the enquiry afresh in accordance with the law. The inquiry must be concluded within a specified period, not exceeding six months from the date of the production of this order.

15. It is well within the mind of the Court that the petitioner has now retired. However, as per the law, disciplinary proceedings may continue even after the retirement of the employee, after following legal paraphernalia. The respondents are directed to ensure compliance with these legal provisions.

16. Accordingly, the writ petition stands allowed.

(Dr. Anshuman, J.)

Aman Kumar/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	25.02.2025
Transmission Date	NA

