

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12199 of 2019

Uma Shankar Ram, S/o Sri Ayodhya Ram, Resident of Village: Balthi Narhar,
P.S. Sahebganj, District-Muzaffarpur.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Joint Secretary, General Administration Department, Government of Bihar, Patna.
4. The Under Secretary, General Administration Department, Government of Bihar, Patna.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Chitranjan Sinha, Sr. Advocate Mr. Shailesh Kumar Sharma, Advocate
For the State	:	Mr. Nadim Seraj, GP-5

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 07-01-2025

This Court has heard Mr. Chitranjan Sinha, learned Senior Advocate along with Mr. Shailesh Kumar Sharma, learned Advocate for the petitioner and Mr. Nadim Seraj, learned Advocate for the State.

2. The petitioner is aggrieved with the resolution of the General Administration Department, Government of Bihar, Patna, as contained in Memo No. 6626 dated 01.06.2017, whereby he has been inflicted with the punishment of dismissal from his service with a further direction that he shall not be eligible for future employment in the Government. The



petitioner has also assailed the order contained in Memo No. 4334 dated 03.04.2018, whereby the memorial preferred by the petitioner against the dismissal order came to be rejected.

3. The facts as emerging from the materials available on record(s) are summarized hereinbelow:

(i) The petitioner was a Member of Bihar Administrative Service and while he was posted in the District of East Champaran, Motihari, on the post of Director National Employment Programme (District Rural Development Authority), an FIR was instituted against him by the Economic Office Unit of the Bihar Government bearing E.O.U. P.S. Case No. 31 of 2013 on 17.07.2013 for the offences punishable under Section 13(i)(e) of the Prevention of Corruption Act, for the alleged charges of amassing disproportionate assets to the known sources of income. In course of raid, the property worth Rs.1,27,60,662/- (One crore twenty seven lakh sixty thousand six hundred and sixty two) has been found in excess to the known legal sources of the income of the petitioner. The Inspector General of Economic Offence Unit, upon institution of the FIR, communicated the same to the General Administration Department vide Letter no. 468 dated 18.07.2013 along with the copy of the FIR. Pursuant thereto, the petitioner was placed



under suspension by the order as contained in Memo No. 12560 dated 29.07.2013. The Government of Bihar, in the Department of General Administration vide its resolution contained in Memo No. 4244 dated 28.03.2014, took a decision to initiate a departmental proceeding against the petitioner under the provisions of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the Rules, 2005').

(ii) By the letter afore-noted, the Commissioner, Tirhut Division, Muzaffarpur, was appointed as Conducting Officer whereas a senior officer duly nominated by the District Magistrate, East Champaran, Motihari, as the Presenting Officer. With the afore-noted letter containing the memo of charge (Prapatra-K) was duly served upon the petitioner with a direction to ensure his presence before the Conducting Officer along with his defence. Pursuant thereto, the petitioner appeared before the Conducting Officer and submitted his application with a request to supply the requisite documents in terms of rule 17(4) of the Rules, 2005 enabling him to tender his effective defence statement.

(iii) Despite the request to make available the requisite documents, when nothing has been done, the petitioner



filed reminders. On receipt of the applications/reminders of the petitioner, the Conducting Officer directed the Presenting Officer to supply necessary relevant documents to the petitioner. In pursuance thereto, the Additional Collector, East Champaran, Motihari as well as the District Magistrate, East Champaran, Motihari vide different letters, the copies of which are placed on record as Annexure-5 series, requested the Economic Offence Unite to make available the requisite documents to the petitioner. In the meantime, the suspension of the petitioner revoked by the resolution of the General Administration Department contained in Memo No. 15895 dated 20.11.2016.

(iv) It is the admitted case of the petitioner that despite all his best efforts and the direction given by the Conducting Officer as well as the Presenting Officer to make available the necessary documents, the same could not be supplied to the petitioner. However, ignoring this fact, the Conducting Officer proceeded further in the enquiry and submitted the enquiry report vide his letter no. 841 dated 02.03.2015. On receipt of the enquiry report, the Disciplinary Authority vide its letter dated 25.08.2015 issued show-cause notice to the petitioner by annexing the enquiry report and directed him to submit his written statement(s) within a



fortnight. The petitioner immediately submitted his reply with a categorical assertion that till date he has not been supplied with the necessary documents; without which he is unable to give a reasonable reply. However, he denied all the charges levelled against him and in order to support the contention, various decisions of this Court as well as the Apex Court have been annexed thereto. The petitioner also submitted a supplementary explanation vide his Letter no. 30 dated 26.02.2016 questioning the legality of the institution of the FIR with various other contentions, including the properties obtained by his father through the competent court of law in title suit has been included in the list; the cost of the properties has shown a significant escalation and the basis of the evaluation of the properties has not been disclosed. It is also submitted that the matter is under investigation and charge-sheet has not been submitted, thus, the departmental proceeding be stayed till conclusion of the criminal case.

(v) Finally, the Disciplinary Authority having considered the enquiry report and the explanation of the petitioner took a decision to dismiss the petitioner from his services and accordingly, an opinion was sought from the Bihar Public Service Commission.



(vi) On receipt of the opinion, the proposal was sent to the Cabinet and after getting proper sanction, impugned order of dismissal came to be passed by the order of the Hon'ble Governor of the State of Bihar as contained in Memo no. 6626 dated 01.06.2017.

(vii) The petitioner being dissatisfied and aggrieved, preferred a review application under the provisions of rule 24(2) of the Rules, 2005, which finally came to be rejected vide Memo no. 4334 dated 03.04.2018. Both the orders of the Disciplinary Authority as well as the Reviewing Authority are put to challenge before this Court.

4. Mr. Chitranjan Sinha, learned Senior Advocate, representing the petitioner, primarily contended that the very initiation of the departmental proceeding based upon the allegation levelled in the FIR, suffers from various infirmities, inasmuch as the rule 17(3)(4) and (5) of the Rules, 2005 have been given a complete go by. The memo of charge does not contain the list of witnesses and any other documentary evidence, except the FIR and the information given by the Superintendent of Police to the General Administration Department. Drawing the attention of this Court to various letters/applications written by the petitioner to the



Conducting/Presenting Officer, the copies of which are marked as Annexure-5 series, learned Senior Advocate, has contended that admittedly even upon repeated requests of the petitioner, none of the requisite necessary documents were furnished to him. The Conducting Officer as well as the Presenting Officer time and again, directed the Economic Offence Unit to make available the documents/papers to the petitioner to enable him to file a proper reply; but, surprisingly, rather it is unfortunate that without providing necessary papers/documents, the Conducting Officer, all of a sudden, vide its order dated 12.11.2014 (Annexure-7 series) has taken a 'U' turn and recorded in its order that it appears that possibly the requisite papers are not available with the Presenting Officer/Department and, as such, last chance has been provided to the petitioner to submit his written statement/defence. The Enquiry Officer also noted that the documents which have been asked for by the petitioner relate to a criminal case, which has neither been available with the Department nor it is required to be made available with the petitioner and finally proceeded *ex parte* and submitted its report.

5. Learned Senior Advocate for the petitioner has categorically contended that the petitioner has never been



allowed proper opportunity to submit his explanation and, in fact, the enquiry report has been submitted in absence of the explanation of the petitioner. The conduct of the Enquiry Officer is in complete defiance of the settled proposition of law as has been held in the case of **State of Uttar Pradesh and Others v. Saroj Kumar Sinha [(2010) 2 SCC 772]**. Heavy reliance has also been placed on a decision of the Apex Court in the case of **Roop Singh Negi v. Punjab National Bank and Others [(2009) 2 SCC 570]**.

6. Learned Senior Advocate for the petitioner has further contended that though the Presenting Officer was appointed but there is no opinion of the Presenting Officer or any discussion as to what document/evidence was produced by him to arrive at the Enquiry Officer to come to a conclusion of proof of the charges. There is complete denial of the petitioner that at any point of time, his submission has been recorded; despite this fact that the Enquiry Officer has recorded that his oral submissions have been recorded, which is factually incorrect.

7. It is also contended that admittedly no evidence has been produced by the Presenting Officer/Department during the course of departmental enquiry to show the exact description of



the property stated to have been amassed by the petitioner and his relative(s) and simultaneously show the market value of the same, hence, there being no evidence to prove the charges, especially taking into account the materials on record, the conclusion of the Enquiry Officer being neither based on any evidence nor based on any material which have been found, as against the petitioner, is perverse and fit to be set aside.

8. Learned Senior Advocate for the petitioner lastly contended that the order of punishment is bad in law, as it relies only on the FIR registered against the petitioner; moreover, there is no finding of the investigating agency recording the disproportionate assets amassed by the petitioner. In absence of the contents of the FIR being proved by oral evidence, the same cannot be said to be a valid evidence to arrive at a conclusion that the charges levelled against the petitioner stands proved. Thus, it is submitted that virtually there is no evidence of any worth sought to be relied upon by the respondents to prove the charges levelled against the petitioner having amassed assets, disproportionate to his known source of income. The impugned order of punishment is nothing but a mere narration of facts as has been disclosed in the FIR. However, it does not deal as to how the charges stand proved nor it mentions any specific



particulars about the assets/properties amassed by the petitioner, disproportionate to his known source of income and the proof thereof. Hence, the same is based on no evidence, apart from being a cryptic order not depicting proper application of mind. No cogent and clear reasons have been furnished therein for inflicting punishment of dismissal and thus the same is not sustainable in the eyes of law. Reliance has also been placed on the decision of this Court in the cases of **Kumar Upendra Singh Parimar v. B.S. Co-opt. Land Dev. Bank Ltd. and Others [2000(3) PLJR 10]**, **A. Savariar v. The Secretary Tamilnadu Public Service Commission [(2013) LIC 1680/ (2013 SCC Online SC 157)]** and **Narendra Kumar Dhiraj v. The State of Bihar and Others [(2024) 4 BLJ 415]**.

9. *Per contra*, learned Advocate for the State vehemently contended that the petitioner by abusing his position as a public servant amassed huge assets, which have been allegedly found disproportionate to known sources of his income leading to institution of the FIR bearing E.O.U. P.S. Case No. 31 of 2013. The memo of charge has been duly served upon the petitioner and after giving proper opportunity of hearing to the petitioner, the Conducting Officer has found all the charges proved against the petitioner, which clearly



demonstrates that the petitioner has earned disproportionate assets than he has declared his property return. The second show-cause notice was served upon the petitioner and in response thereto, he submitted his written statement and after meticulous examination, the Disciplinary Authority has decided to dismiss the services of the petitioner with the rigor that he shall not be appointed in any Government employment in future. The decision of the Disciplinary Authority has also been approved by the Bihar Public Service Commission as well as the Cabinet. The Review preferred by the petitioner also came to be rejected. Now, the petitioner cannot be allowed to reassess the evidences, as it would amount to filing of the appeal against the impugned order of dismissal. It is lastly contended that the impugned orders are well reasoned, which have been passed on proper application of mind and after considering the defence tendered by the petitioner; there is no procedural irregularities and, as such, the writ petition bereft of any merit deserves to be dismissed.

10. This Court has anxiously heard the submissions advanced on behalf of the parties and meticulously perused the materials available on record.

11. Before parting with this case, it would be apt and



proper to highlight the mandatory prescriptions of the Rules, 2005, which are required to be followed in a departmental enquiry/proceeding.

12. Rule 17 of the Rules, 2005 prescribes the procedure for imposing major penalties. Rule 17(1) and (2) obligate the Disciplinary Authority that no order imposing any of the penalties specified in rule 14 shall be made without holding an enquiry, in the manner provided in these rules. If disciplinary authority is of the opinion that there are grounds for inquiring about the truth of any imputation of misconduct or misbehaviour against a government servant, he may himself inquire into it, or appoint under these Rules an authority to inquire about the truth thereof. Rule 17(3) further directs that in order to hold an inquiry against a government servant under this Rule, the disciplinary authority shall draw up or cause to be drawn up the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge to support each article of charge. Memo of charge shall contain a list of such documents by which and a list of such witnesses by whom, the articles of charge are proposed to be sustained. A copy of article of charge with the statement of imputation of misconduct or misbehaviour and list of documents and



witnesses shall be delivered to the government servant with a direction to submit written statement of his/her defence. The duty is also cast upon the enquiring authority to produce the necessary documents to the delinquent provided that the enquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

13. Rule 17(14) of the Rules, 2005 clearly mandates that 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.

14. Coming to the case in hand, admittedly, the memo of charge does not contain the list of witnesses. So far the documentary evidences are concerned, only two documents



have been produced to prove the article of charges i.e. Letter no. 468 dated 18.07.2013, which is an information by the Inspector General of Police, Economic Offence Unit to the Principal Secretary, General Administration Department that in course of raid, concrete evidence of amassing disproportionate properties has been found against the petitioner. The second documentary evidence is the letter issued by the Superintendent of Police, Economic Offence Unit to the Principal Secretary, General Administration Department, informing him the description of the properties disproportionately amassed by the petitioner in his name and in the name of his relative(s) qua the declaration of assets and liabilities made by the petitioner in the Financial year 2012-2013.

15. It is well settled that mere production of a document is not enough. The content of documentary evidence has to be proved by examining witnesses.

16. The Hon'ble Apex Court, time without number in various decisions held that although the charges in a departmental proceeding are not required to be proved like a criminal case i.e. beyond all reasonable doubt, it cannot lose sight of the fact that the Enquiry Officer performs a quasi judicial function, who upon analyzing the documents must



arrive at the conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant fact. He cannot shift the burden of proof and reject the relevant testimony of witnesses only on the basis of surmises and conjectures [**vide M.V. Bijlani v. Union of India (2006) 5 SCC 88**)].

17. The Hon'ble Supreme Court in the case of **Roop Singh Negi** (supra), while dealing with the identical issue has held "*the purported evidence collected during investigation by the investigating officer against the accused by itself could not be treated to be evidence in disciplinary proceeding. The charges levelled against the delinquent officer must be found to have been proved on the basis of the evidence.*" The Hon'ble Court made it clear that the report of the Enquiry Officer could not be sustained if it is based upon merely *ipse dixit* as also surmises and conjectures. The inferences drawn by the Enquiry Officer should apparently supported by any evidence. Suspicion, howsoever high may be, can under no circumstances be held to be a substitute for legal proof.

18. It would be benefiting to encapsulate the relevant



paragraphs of the said judgment for appreciation of the issue:

“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.

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record



pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.”

19. The role of the Enquiry Officer who is acting in a quasi judicial authority in a departmental/disciplinary authority is well founded that he is not supposed to be a representative of the department/disciplinary authority. His function is to examine evidence presented by the department, even in absence of delinquent official to see as to whether unrebutted evidence is sufficient to hold that the charges are proved.

20. In the case of **Saroj Kumar Sinha** (supra), the Hon’ble Supreme Court has highlighted the status and duties of the Enquiry Officer by holding that the employee should be treated fairly in any proceeding which may culminate in punishment being imposed upon him.



21. It would be apt and proper to reproduce the relevant paragraphs of the said decision, which are quoted hereunder:

“27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.

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 unrebutted 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.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”

22. The materials available on record clearly



demonstrates that initially the request of the petitioner has been acceded to by the Conducting Officer, who in turn, directed the Presenting Officer to make available the necessary required documents to the petitioner enabling him to file an effective show-cause reply.

23. Well settled it is that it is not necessary that each and every document must be supplied to the delinquent government servant facing the charges, instead only material and relevant documents are necessary to be supplied to him.

24. The Hon'ble Supreme Court in the case of **Chandrama Tewari v. Union of India [1987 (suppl) SCC 518/AIR 1988 SC 117]**, has categorically observed the afore-noted proposition and held that those documents are necessarily to be supplied to the delinquent whereupon reliance has been placed by the enquiry officer/disciplinary authority.

25. In the case in hand, despite the request made by the Conducting Officer as well as the Presenting Officer, when the requisite necessary documents have not been supplied by the Economic Offence Unit, the Enquiry Officer, unfortunately, taken a somersault and observed that these documents are in relation to criminal case and not even necessary for the proper explanation to the charges levelled against the petitioner, in the



opinion of this Court, suffers from the vice of infirmity.

26. This Court has also gone through the impugned order of dismissal and the order passed by the Reviewing Authority, which clearly depict the narrations of the fact as has been disclosed by the Superintendent of Police, Economic Offence Unit; there is no discussions and the mentioning of any specific particulars about the assets/properties amassed by the petitioner, disproportionate to his known source of income and the proof thereof. Neither the author of the letters, which have been placed as a documentary evidence in the memorandum of charge has been examined to prove its content nor the materials have been placed on record, whereby the charges have been proved and, as such, apart from the impugned orders are cryptic and unreasoned, it suffer from the vice of non-application of mind. Moreover, the impugned orders also failed to take into account the defence put forth by the petitioner, the copy of which is marked as Annexure-9 to the writ petition, which runs in 61 pages.

27. Having regard to the facts and circumstances and the discussions made hereinabove, the impugned orders as contained in Memo No. 6626 dated 01.06.2017 and in Memo No.4334 dated 03.04.2018, are hereby set aside.



28. The respondents are directed to reinstate the petitioner back in service with continuity. However, setting aside the impugned orders would not preclude the respondent authorities to initiate a fresh departmental proceeding in conformity with the prescriptions provided under the Rules, 2005, if so advised.

29. The writ petition stands allowed.

30. There shall be no order as to cost(s).

(Harish Kumar, J)

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AFR/NAFR	AFR
CAV DATE	10-12-2024
Uploading Date	08-01-2025
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