

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13402 of 2019

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Raj Kishore Singh S/o Kapil Dev Singh, Resident of Village BarkaLauhar,
Bujurglauhar, P.O.- Farna, P.S.- Barahara, District- Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar Through its Principal Secretary Cum Additional Chief Secretary, Department of Home, Bihar, Patna.
2. The Principal Secretary cum Additional chief Secretary, Department of Home, Government of Bihar, Patna.
3. The Inspector General (Prison and Correctional Services), Bihar, Patna.
4. The Jail Superintendent, District jail, Sasaram.
5. The Deputy Jail Superintendent, District Jail, Sasaram.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siddhartha Prasad, Advocate
Mr. Sunit Kumar, Advocate
Mr. Om Prakash Kumar, Advocate
For the Respondent/s : Mr. Sheo Shankar Prasad, SC 8

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 03-01-2025

Heard Mr. Siddhartha Prasad, learned Advocate for
the petitioner and Mr. Sheo Shankar Prasad, learned SC-8 for
the State.

2. The petitioner by invoking the jurisdiction of this
Court seeking quashing of the entire departmental proceeding



against the petitioner, which is said to have been initiated against him on superfluous charge and without any application of mind. The petitioner also prays for quashing of the appellate order dated 06.05.2019 passed by the Principal Secretary-cum-Additional Chief Secretary, Government of Bihar in the Department of Home, whereby the punishment of withholding of one increment with non-cumulative effect has been awarded to the petitioner by modifying the order of disciplinary authority inflicted with the punishment of three increments with non-cumulative effect.

3. The factual matrix of the case as culled out from the materials available on record are summarised hereinbelow:

(i) At the relevant time, while the petitioner was posted as Jail Clerk in the District Jail, Sasaram, one Nami Shah has been sent to the prison in connection with Nokha (Dharampura) P.S. Case No. 19 of 2017. On 03.11.2017, the learned court of Additional District and Sessions Judge Ist, Sasaram, Rohtas issued release order of the said prisoner in the aforementioned case the copy of which was sent to the jail concerned. The said prisoner Nami Shah was also an accused in another case bearing G.R. No. 1084/2010, T.R. No. 172/2017, wherein the learned ACJM IInd, Sasaram, Rohtas issued a



production warrant directing for production of the prisoner Nami Shah in the said court on 09.11.2017 vide order dated 30.10.2017. The said production warrant was received by the jail authority on 30.10.2017. The petitioner being the In-charge of the Entry Section made entry in the relevant register and further produced the prisoner along with the entry register before the Deputy Jail Superintendent. Despite the release order of the prisoner by the court of learned Additional District and Sessions Judge Ist, Sasaram, Rohtas, the prisoner was not released from the jail, since the production warrant from other court of ACJM-II, Sasaram was pending. Neither the prisoner was produced in the learned court nor any information regarding his non-production was sent to the court which led to issuance of show cause to the Superintendent of District Jail, Sasaram with his physical appearance and further direction was issued on 07.11.2017 for withholding of salary.

(ii) Taking note of the fact that the petitioner was the In-charge of the Admission Section of the Jail and he should have informed about the order of the learned court to the Jail Superintendent but the same has not been done, the Superintendent District Jail, Sasarm issued a show cause notice to the petitioner vide Memo No. 3675 dated 08.11.2017



directing him to submit reply within 24 hours. In response thereto, the petitioner immediately submitted his show cause reply, however the Jail Superintendent being not satisfied with the reply of the petitioner has recommended the matter for disciplinary proceeding and appropriate punishment to the Inspector General (Prison and Correctional Services), Bihar on 15.11.2017 through the competent authority. On receipt of the letter aforementioned, the petitioner was placed under suspension and decision was taken to initiate a departmental proceeding. In pursuance thereto, departmental proceeding was initiated by serving a memo of charge upon the petitioner. The Superintendent, Central Jail, Bhagalpur was appointed as the Conducting Officer whereas the Senior Clerk, District Jail Sasaram was appointed as Presenting Officer. The petitioner submitted his statement of defence to the Conducting Officer on 08.08.2018. After completion of the enquiry the Conducting Officer submitted his enquiry report to the DIG, Prison vide Letter No. 5577 dated 22.12.2018 on being found the charges partially proved.

(iii) On the basis of the enquiry report and the materials available on record, the I.G., Prison inflicted the punishment of withholding of three increments with non-



cumulative effect, vacating the suspension of the petitioner, vide Memo No. 324 dated 11.01.2019, copy of which is marked as Annexure-11 to the writ petition.

(iv) Being aggrieved with the order of punishment, the petitioner preferred Service Appeal before the Principal Secretary, Home; which came to be rejected vide order dated 06.05.2019.

4. Learned Advocate for the petitioner, Mr. Siddhartha Prasad, while assailing the impugned action and the order of the concerned respondent has drawn the attention of this Court to the memo of charge and contended that the only charge against the petitioner is that, notwithstanding the order of release issued by the learned court of Additional District and Sessions Judge Ist Sasaram, Rohtas, neither the prisoner Nami Shah has been released from the jail, nor the petitioner informed the Jail Superintendent about the release order and production warrant of the said prisoner during the period 03.11.2017 to 06.11.2017; and thus he acted in defiance to the order of the learned court. Due to negligence on his part, hindrances have been caused in the work of the court leading to issuance of show cause notice and finally appearance of the Superintendent as well as stoppage of his salary.



5. In response to the charge afore-noted, the petitioner has categorically submitted his show cause reply as well as defence statement that on receipt of the production warrant by the jail authority on 31.10.2017, the petitioner being the In-charge of the Entry Section made entry in the relevant register and produced the prisoner, Nami Shah along with the said entry register before the Deputy Jail Superintendent. The entry register clearly demonstrates the details of production warrant. After proper verification, the Deputy Jail Superintendent has signed the register on 03.11.2017. The entire facts of production warrant and release of the petitioner in connection with the cases afore-noted have been brought to the knowledge of the authority concerned, who was responsible to take action regarding recall and release of the prisoner because the power related to release of the prisoners is entrusted with the Jail Superintendent and the intimation in this regard has to be given by the Deputy Superintendent or the Superintendent in terms of Rule 48 of the Bihar Prison Manual, 2012. Referring to Rules 48 and 49 of the said Manual, it is thus contended that if any production warrant issued by the court against a prisoner in connection with one case pending compliance, then he/she is not released from jail even if he/she gets bail in another case until



such production warrant is recalled by the concerned court and it is the duty of the Superintendent of Jail to file a recall petition as soon as possible.

6. It is further contended that the departmental proceeding was initiated under Rule 17(2) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the 'Rules, 2005'). The memo of charge contains the list of document but it did not contain the list of witnesses by whom the contents of document are to be proved; thus it transgresses Rule 17(4) of the Rules, 2005. In support of the aforesaid contention, reliance has also been placed on the decisions rendered by the Hon'ble Supreme Court in the case of *State of U.P. vs. Saroj Kumar Sinha [(2010) 2 SCC 772]* as also in the case of *Roop Singh Negi v. Punjab National Bank and others [2009] 2 SCC 570*].

7. Mr. Prasad, learned Advocate for the petitioner has further drawn the attention of this Court to the enquiry report, copy of which is marked as Anneuxre-A to the counter affidavit and vehemently contended that the enquiry report concluded that the petitioner cannot be said to be wholly responsible for the act of misconduct, however the delinquent petitioner should be cautious of his duty. The Conducting Officer has taken note



of the written defence statement of the petitioner, which has not been confronted by the Presenting Officer who has only opined that the delinquent petitioner should be cautious of his duty and thus negligence was found on the part of the petitioner in discharge of his duty. Referring to the enquiry report, it is also contended that the impugned punishment is not based on the charges levelled in the memo of charge. The enquiry report wherein the Conducting Officer has found the charges partially proved has never been served upon the petitioner nor the disciplinary authority has issued any show cause notice before inflicting the punishment of withholding of three increments with non-cumulative effect, which order was, though later on, modified by the Appellate Authority to the extent of withholding of one increment with non-cumulative effect.

8. Non-issuance of second show cause notice along with enquiry report, forbidding the petitioner to place his defence before the disciplinary authority, who had passed the punishment order, amounts to gross violation of the principles of natural justice. The Conducting Officer did not take any plea for proving the charges through oral or documentary evidence despite the settled legal position that every charge was required to be proved through oral or documentary evidence. It is lastly



contended that the appellate order dated 06.05.2019 suffers from non-application of mind in as much as the submission of the petitioner has not been considered. It is lastly urged before this Court that notwithstanding the fact that the Conducting Officer has categorically observed that the petitioner cannot be held solely responsible for the negligence, no action has ever been taken against the Deputy Superintendent of Jail to whom the petitioner had intimated the entire facts, including the order of the learned courts, and produced the entry register but no necessary order has been passed by him.

9. Mr. Sheo Shankar Prasad, learned Advocate for the State confronted the submissions advanced on behalf of the petitioner and contended with all vehemence that the act of the petitioner is in complete defiance of the order passed by the learned Additional District and Sessions Judge-Ist, Sasaram, who had directed to release the prisoner on 03.11.2017 itself but the prisoner was kept confined without any authority of law resulting into inconvenience and hampering in the judicial work. The facts are not in dispute that notwithstanding the issuance of production warrant fixing the date of production of the prisoner on 09.11.2017, he was neither produced in the learned court nor any information regarding his non-production was sent to the



court. The Superintendent District Jail, Sasaram had never been informed of this matter by the petitioner resulting into issuance of show cause notice and personal appearance of the Superintendent District Jail, Sasaram, apart from stoppage of his salary since the petitioner was the In-charge of the Admission Section of the jail, he was fully responsible for this act, constituting wilful negligence and misconduct.

10. Learned Standing Counsel for the State further contended that since the petitioner has been inflicted with minor punishment of withholding of one increment with non-cumulative effect, there is no requirement of strict compliance of Rule 17 which is to be followed only for major punishment. The petitioner has been given ample opportunity to place his defence and taking note of his defence and after considering his written defence statement, the charges were found partially proved which led to the order of punishment.

11. This Court has given anxious consideration to the submission advanced on behalf of the learned Advocate for the respective parties and also perused the materials available on record.

12. Indisputably, the charge against the petitioner in sum and substance, was that between 03.11.2017 and



06.11.2017 the petitioner has not taken any action for the release of the prisoner Nami Shah and also not intimated about the production warrant to the concerned officer and due to his negligent act, severe action has been taken against the Jail Superintendent. The defence statement of the petitioner clearly demonstrates that the release order of the prisoner Nami Shah has been reconciled with the entry register and then the prisoner has been produced before the Deputy Jail Superintendent. The entry register further demonstrates that the prisoner had to release in view of order dated 03.11.2017 but since in another case production warrant was issued by the court, therefore the prisoner could not be released. The said register was duly signed by the Deputy Jail Superintendent and the petitioner on 03.11.2017. Neither the Presenting Officer nor the enquiry report confronted the aforesaid fact. The enquiry report also does not disclose as to what was the responsibility of the petitioner which was not discharged by the petitioner. The Enquiry Officer despite admitting of this fact came to the conclusion that for the act in question the concerned delinquent cannot be held fully responsible but surprisingly has observed that the delinquent must be careful to his duty and thus the charges are said to be partially proved. This Court fails to



understand that once the petitioner being the Incharge of the Entry Section had duly entered all the order/information and intimated the same to his superior authority, what more was required to be done by him; this fact has also not been disclosed by the disciplinary authority. All the more, the Deputy Superintendent of Jail, who was supposed to pass the necessary order, but failed to do so, has neither been even put to show cause or subjected to disciplinary proceeding, is also a question to be answered by the disciplinary authority.

13. The materials on record clearly demonstrates that the proceeding has been initiated under Rule 17(2) of the Rules, 2005. Once in the opinion of this Court, the proceeding has been initiated under Rule 17 wherein the procedure for imposing major penalty has been prescribed, the disciplinary authority cannot be allowed to give a go by to the mandatory prescriptions as required under it. Rule 17(4) of the Rules, 2005 mandates the disciplinary authority to deliver a copy of the articles of charge containing the statement of the imputations of misconduct or misbehavior and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government Servant to submit, within such time as may be specified, a written statement of his



defence. In the case in hand, admittedly the memo of charge does not contain the list of witnesses by whom the article of charge is to be proved. Time without number, the Hon'ble Supreme Court in catena of decisions held that the charges levelled against the delinquent official 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. In **Roop Singh Negi** (supra) the Hon'ble Supreme Court in no uncertain term held that mere production of document is not enough. The contents of documentary evidence has to be proved by examining the witnesses. This Court thinks it apt and proper to encapsulate the relevant paragraph of the said decision:

“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.”

14. The Hon’ble Apex Court in the case of **Saroj Kumar Sinha** (supra) while highlighting the status and duty of the Enquiry Officer has also held that the function of the Enquiry Officer is to examine the evidence presented by the Department, even in the absence of delinquent official to see as to whether unrebutted evidence is sufficient to hold that the charges are proved. Taking note of the fact that no oral evidence has been examined to prove the document, the Hon’ble Court, thus held that it could not have been taken into consideration to conclude that the charges have been proved against the respondents.

15. Suffice it to say that the procedural fairness and irregularity are of the indispensable essence of liberty. When a government servant is facing disciplinary proceeding he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. Non-submission of the copy of the enquiry report and the second show cause amounts to denial of reasonable opportunity. It is incumbent



upon the disciplinary authority to furnish the enquiry report to the delinquent employee even if the statutory rules are silent or against it. Such proposition stood settled by the Constitution Bench of the Hon'ble Supreme Court in case of ***Managing Director, ECIL Hyderabad Vs. B. Karunakar [AIR 1994 SC 1074]***.

16. Admittedly in the case in hand, the petitioner has neither been served with the second show cause notice nor the enquiry report and, as such, he never got an opportunity to place his defence before the disciplinary authority, who had to pass the order of punishment, hence the action of the respondent authorities suffers from vice of gross violation of the principles of natural justice. This Court also finds substance in the submission of the learned Advocate for the petitioner that there has been no application of mind by the disciplinary authority to arrive at a conclusion of inflicting the punishment without making any discussion of the explanation of the petitioner as to why it is not acceptable to him. There is only narration of the facts before inflicting punishment.

17. In the aforesaid facts, circumstances and the position obtaining in law, this Court is of the opinion that the entire departmental proceeding suffers from vice of infirmities,



as discussed hereinabove, and, as such, left with no option but to allow the writ petition by quashing the entire departmental proceeding against the petitioner including the appellate order dated 06.05.2019.

18. The writ petition stands allowed. There shall be no order as to cost.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	08 .01.2025
Transmission Date	

