

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14083 of 2012

- 1.1. Meena Devi Wife of Late Kapildeo Prasad, Resident of Kurkuri, P.S.-
Phulwarisharif, District- Patna.
- 1.2. Manoj Kumar Son of Late Kapildeo Prasad, Resident of Kurkuri, P.S.-
Phulwarisharif, District- Patna.
- 1.3. Amrendra Kumar Son of Late Kapildeo Prasad, Resident of Kurkuri, P.S.-
Phulwarisharif, District- Patna.
- 1.4. Dharmendra Kumar Son of Late Kapildeo Prasad, Resident of Kurkuri, P.S.-
Phulwarisharif, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Secretary Home (Jail) Department
3. Inspector General of Prison Bihar, Patna
4. Director Administration , Jail Department, Bihar, Patna
5. Jail Superintendent, Adarsh Central Jail, Beur, Patna
6. Jail Superintendent, Sub-Jail, Barh.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Satyendra Narayan, Advocate
For the Respondent/s : SC-5

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 13-10-2025

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

2. The original petitioner Kapildeo Prasad (herein
after referred to as ‘the petitioner’) having died during pendency
of this application was substituted by his legal heirs, the



petitioners herein.

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

“1(i) To quash the order of punishment issued vide Memo no. 2355 dated 7.6.2010 (at Annexure-12) by the I.G. Prison Bihar, Patna whereby and wherein the petitioner departmental proceeding has been imposed with punishment.

(ii) To set aside the order of the secretary Home department Bihar, Patna issued vide Memo no. 4224 dated 10.10.11 whereby the appeal of the petitioner against the aforementioned punishment was rejected (Annexure-12/1).”

4. The case of the petitioner in brief is that having been appointed as Jail Warden on 11.10.1991, while posted at Sub-Jail, Barh on 18.3.2000 the petitioner was placed under suspension on the allegations of carelessness and failure to perform his duties responsibly on account of eight prisoners having escaped from the main gate of the Sub-Jail, Barh at 8 a.m. on 18.3.2000. A departmental proceeding was initiated against the petitioner and he was served with a charge-sheet on 16.11.2004. The petitioner submitted his reply and a report with respect to preliminary enquiry conducted by the Director, Administration, Home Jail Department and former Jail



Superintendent, Beur was submitted to the I.G., Prison. The I.G., Prison expressed his dissatisfaction to the report and ordered conducting a fresh enquiry appointing the Jail Superintendent, Beur as the Conducting Officer.

5. As directed, the petitioner appeared before the new Conducting Officer and requested him to make available certain documents, all of which were not provided to him. The petitioner submitted his reply denying the charges and also mentioning therein that he had not been provided with crucial documents in preparing his defence.

6. In the enquiry report submitted by the Conducting Officer, the charges against the petitioner were found to be proved. Enclosing a copy of the enquiry report, the petitioner was issued with a second show-cause notice asking him to submit his reply within 15 days.

7. It is the case of the petitioner that he once again requested the Joint Secretary-cum-Director, Home Jail Department through the Superintendent, Mandal Jail, Sasaram to provide certain documents, however the petitioner was not provided the same.

8. By order dated 7.6.2010, the petitioner was inflicted with the following punishments i.e. (i) demoted on the



initial/lower pay of Warder with the further stipulation that during this period the annual increment shall be withheld for 3 years with cumulative effect; (ii) after 3 years the annual increment shall be given for the rest service period for the initial pay; (iii) no promotion will be granted for 5 years; and (iv) No amount except the subsistence allowance shall be paid for the period of suspension, however this period shall be counted for the purpose of pension.

9. The petitioner by his letter dated 24.7.2010 once again made a request before the respondents for providing the documents to enable him to file an appeal before the Appellate Authority. Once again he was not provided with the documents. The petitioner filed his appeal which was rejected by the Appellate Authority on 10.10.2011. It is against the order of punishment dated 7.6.2010 and the order dated 10.10.2011 of the Appellate Authority rejecting his appeal that the instant application has been filed.

10. It is submitted by learned counsel for the petitioner that the documents repeatedly asked for by the petitioner for filing his reply to the charge-sheet as also the second show-cause notice were absolutely essential to enable him to file an effective reply. The respondents not having made



the same available the same is a serious lapse in the departmental proceedings. It is further submitted that on submission of the enquiry report, the respondent- I.G., Prison, Bihar by his order dated 31.7.2009 rejected the same and ordered another enquiry to be conducted appointing the Superintendent of Adarsh Central Jail, Beur, Patna as the Conducting Officer and the Assistant Superintendent of Sub-Jail, Barh as the Presenting Officer. Learned counsel submits that the said order which gives no reason for rejection of the enquiry report and commencing a fresh enquiry is not sustainable. It is further submitted in reference to the charge-sheet and the subsequent enquiry report that neither the same provided the list of witnesses who would be examined in proving the charges against the petitioner nor in course of enquiry was any witness examined. It is thus submitted that for these as also other reasons, the order of punishment as also the order rejecting the appeal of the petitioner are not sustainable and as such, the writ application be allowed.

11. Learned counsel for the petitioner in support of his submissions has placed reliance on the judgments in the cases of **Ganpati Singh vs. Board of Directors and Appellate Authority & Ors.**; 2013 (3) PLJR 258, **Kanailal Bera vs.**



**Union of India & Ors.; (2007) 11 SCC 517 & Union of India
vs. K.D. Pandey & Anr.; (2002) 10 SCC 471.**

12. In response, it is submitted by learned counsel appearing for the respondents that all the relevant and available documents were supplied to the petitioner. At every stage of the proceeding adequate opportunity was given to him to defend himself. The petitioner was informed by the Conducting Officer that it was not possible to supply all the documents as desired by him. In addition the petitioner was also given adequate opportunity to present his case in person before the Conducting Officer. In the enquiry report, the Conducting Officer found the petitioner to be responsible for dereliction of duty and as such he was served with a second show-cause notice along with a copy of the enquiry report to which the petitioner filed his reply. After considering his reply, the order of punishment was passed. All the points raised by the petitioner were considered properly by the Appellate Authority who not finding any merit in the same rejected the appeal. It is submitted that there is no merit in the instant application filed by the petitioner and as such the writ application be dismissed.

13. Heard learned counsel for the petitioners and learned counsel for the respondents. Perused the material on



record.

14. The facts in brief are that the incidence of escape of eight prisoners having taken place from Sub-Jail, Barh on 18.3.2000 at 8 a.m., the petitioner who was then posted as Jail Warden at the Barh Sub-Jail was placed under suspension and was proceeded against in a departmental proceeding on the allegation of carelessness and failure to perform his duties responsibly. The petitioner filed his reply to the show-cause notice on which the Conducting Officer submitted his enquiry report, however the I.G., Prison came out with a cryptic order dated 31.7.2009 (Annexure-4) stating that the enquiry report not being satisfactory another enquiry was ordered appointing Sri Om Prakash Gupta, Superintendent of Adarsh Central Jail, Beur, Patna as the Conducting Officer and Sri Sanjay Kumar, Assistant Jailer, Barh, Sub-Jail as the Presenting Officer.

15. It may be mentioned here that once the enquiry had proceeded and in the same enquiry report had been submitted, even if the disciplinary authority was not inclined to accept the enquiry report, they were required to provide a copy of the same to the petitioner along with an order recording the reasons for their disagreement with the contents thereof. In the opinion of the Court they could not have brushed aside the



enquiry report, not providing a copy of the same to the petitioner and directing a fresh enquiry appointing another Conducting Officer and Presenting Officer.

16. It further transpires from various communications brought by the petitioner as annexures to the writ application that even thereafter before submitting his reply to the charge-sheet, the petitioner asked for certain documents to be provided to enable him to file an effective reply. These were the evidence with the charge-sheet i.e. a copy of the joint inspection report of the Director, Administration and Sri Balmohan Naik, Superintendent of Adarsh Central Jail, Beur, the register of the visitors on 18.3.2000 together with the applications filed for meeting the prisoners, the duty register with respect to deputation of Home Guards and BMP Guards on 18.3.2000, the gate register on 18.3.2000, the duty register of the Jail Warder Cadre for 18.3.2000, the report of the Jailer, the statement of different persons recorded in context of the escape of the prisoners as also the register at the prison gate meant for frisking of the prisoners. It further transpires that he was provided with one of the documents with a further assurance by the Conducting Officer by his memo dated 8.9.2009 that the remaining documents will be provided to him as soon as the



same are available. The petitioner proceeded to file his reply without the documents having been supplied to him and even in his reply dated 22.10.2009 raised the point of non-supply of the documents.

17. Reference may be made to the decision of the Hon'ble Supreme Court in the case of **State of Uttar Pradesh & Ors. vs. Saroj Kumar Sinha; (2010) 2 SCC 772** wherein the Hon'ble Supreme Court held at paragraph nos. 28, 30, 34 and 39 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.

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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.

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34. This Court in Kashinath Dikshita v. Union of India [(1986) 3 SCC 229 : 1986 SCC (L&S) 502 : (1986) 1 ATC 176], had clearly stated the rationale for the rule requiring supply of copies of the documents, sought to be relied upon by the authorities to prove the charges levelled against a government servant. In that case the enquiry proceedings had been challenged on the ground that non-supply of the statements of the witnesses and copies of the documents had resulted in the breach of rules of natural justice. The appellant therein had requested for supply of the copies of the documents as well as the statements of the witnesses at the preliminary enquiry. The request made by the appellant was in terms turned down by the disciplinary authority.

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39. The proposition of law that a government employee facing a departmental enquiry is entitled to all the relevant statements, documents and other materials to enable him to



have a reasonable opportunity to defend himself in the departmental enquiry against the charges is too well established to need any further reiteration. Nevertheless given the facts of this case we may re-emphasise the law as stated by this Court in State of Punjab v. Bhagat Ram [(1975) 1 SCC 155 : 1975 SCC (L&S) 18] : (SCC p. 156, paras 6-8)

“6. The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

7. The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government



servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.

8. It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken.”

18. On perusal of the enquiry report in the instant case it transpires that the same does not deal with the documents asked for by the petitioner not having been supplied to him nor does the Conducting Officer states in his report as to how those documents are irrelevant for the proceedings. In absence of the documents having been supplied to the petitioner as also the Conducting Officer not having dealt with in his report as to why the documents were not being supplied or as to why the same were irrelevant, in the opinion of the Court, the departmental proceedings stands vitiated by severe procedural irregularities.



19. In view of the facts and circumstances of the case as discussed herein above, the order impugned dated 7.6.2010 passed by the I.G., Prison, Bihar, Patna imposing punishment on the petitioner as also the order dated 10.10.2011 passed by the Secretary, Home Department, Bihar, Patna rejecting the appeal filed by the petitioner, both being unsustainable are hereby set aside.

20. The writ application is allowed with all consequential benefits which shall be paid to the petitioners within a period of 3 months.

(Partha Sarthy, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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Transmission Date	

