

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11966 of 2012

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Biswajit Dan S/O Shri A.M. Dan R/O- S/O Ramprabesh Roy, Mohalla-
Etwari Bazar, P.S- Bihar Sharif, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner Cum Principal Secretary, Mines And Geology, Bihar, Patna.
3. The Director, Mines and Geology, Bihar, Patna.
4. The Additional Secretary, Mines And Geology, Bihar, Patna.
5. The Deputy Secretary Mines And Geology, Bihar, Patna.
6. The District Magistrate, Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar, Advocate
For the Respondent/s	:	Mr. Vishwa Mohan Kumar Sinha, Advocate
For the Mining Dept.	:	Mr. Naresh Dikshit, Spl.P.P.
		Ms. Kalpana, Advocate

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 08-09-2025

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

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

*“1. That this is an application for
issuance of an appropriate writ/writ(s)/
order(s)/direction(s) for quashing the order
Contained in memo no- 278 dated 30.1.12
whereby and where under three punishments viz
(i) censure to be entered in confidential record*



for 2009-10, (ii) stoppage of three increments with cumulative effect, and (iii) No payment of salary and other allowances shall be made other than subsistence allowance for suspension period, i.e., for the period from 23.12.2010 to 29.1.2012, which is totally illegal and further for any other relief(s) for which the petitioner may found entitled to.”

3. The case of the petitioner in brief is that while working in the capacity of an Assistant Director, Mines and Geology, Nalanda, on 13.11.2009 the petitioner was given the additional charge of Assistant Director, Gaya.

4. The petitioner received a notice dated 27.12.2009 from the District Magistrate, Nalanda asking him to show-cause within 24 hours as to why he was not at the headquarters on 27.12.2009 at the time of the Chief Minister's visit and he had been deputed at Rajgir to maintain law and order. The same was followed by another show-cause on 28.12.2009 stating that no reply had been received from him. The petitioner submitted his reply on 28.12.2009 denying the charges. He followed the same with another reply dated 2.1.2010 which was with respect to the running of the illegal brick kiln. The District Magistrate wrote a letter dated 14.1.2010 to the Principal Secretary, Mines and Geology Department stating therein that the reply submitted by the petitioner had not been found to be satisfactory and the



petitioner had also not made available the enquiry report with respect to the brick kiln. As such it was requested that appropriate proceeding be initiated against the petitioner. Accordingly the petitioner was served with a charge-sheet dated 30.7.2010 containing four charges which were to the effect that (i) the petitioner had been directed to coordinate with the Block Development Officer, Giriyak and the Officer In-charge, Giriyak and to enquire into the running of the illegal brick kiln and to submit the report; (ii) the report had not been submitted; (iii) all the Officers had been directed not to leave their headquarters in view of the visit of the Hon'ble Chief Minister but the directions were not followed by the petitioner; (iv) in absence of the petitioner, the enquiry with respect to the illegally run brick kiln was got done by the Circle Officer, Giriyak, the Police Inspector, Giriyak and the Officer In-charge, Giriyak.

5. The petitioner filed a detailed reply to each of the charges before the Conducting Officer on 14.9.2010. The Conducting Officer submitted his enquiry report on 25.10.2010. He was of the opinion that the charge with respect to not following the directions of the authority was partly proved. He was further of the opinion that the petitioner should have taken



prior permission before leaving the headquarters and though the petitioner had expressed his regret, such an error from such an experienced officer cannot be appreciated. Further with respect to the fourth charge, he was of the opinion that there had been lack of alertness on part of the petitioner.

6. The petitioner was placed under suspension on 23.12.2010.

7. On 14.6.2011, the petitioner was served with a copy of the enquiry report and asked to submit his response within a fortnight. The petitioner filed his detailed reply to the contents of the enquiry report on 11.8.2011. Thereafter, the respondents came out with the order dated 30.1.2012 under the signature of the Deputy Secretary, Mines and Geology Department, Government of Bihar imposing the following punishments on the petitioner i.e. (i) censure to be entered in the confidential record for the year 2009-10, (ii) stoppage of three increments with cumulative effect, & (iii) no other amount would be payable for the period of suspension except for the subsistence allowance.

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

9. It was submitted by learned counsel for the



petitioner in reference to the documents received by him under the Right to Information Act that the order of punishment dated 30.1.2012 issued by the Government of Bihar was sent to the Departmental Minister as also the Hon'ble Chief Minister and has received their approval. Thus, no purpose would be served in filing a review/appeal before them. It was further submitted that a detailed point-wise reply to the show-cause was filed by the petitioner to each of the charges levelled against him. However the authorities concerned neither appreciated the charges levelled nor even have taken into consideration that it was on 27.12.2009 itself at 5 p.m. that it was the petitioner who himself lodged an F.I.R. being Giriyak P.S. Case no.196 of 2009 with respect to illegally running brick kiln and that the contents of the F.I.R. clearly states that the same was done after an inspection having been done of the site on the same day between 12 p.m. and 4 p.m. along with the Block Development Officer, the Police Inspector, the Officer In-charge of the Giriyak Police Station besides others.

10. Learned counsel further submits that from perusal of the enquiry report would show that none of the documents etc. relied upon by the respondents in course of enquiry was proved by any of them. As such placing reliance on the



judgment in the case of **Roop Singh Negi vs. Punjab National Bank & Ors.; (2009) 2 SCC 570**, learned counsel submitted that the order of punishment on such an enquiry report was not sustainable, the same be set aside and the instant application be allowed. In support of his contentions learned counsel for the petitioner has also placed reliance on the judgments of this Court in the cases of **Ashwini Kumar vs. State of Bihar & Ors.; 2017 (3) PLJR 500** and **Obaidur Rahman vs. State of Bihar & Ors.; 2009 (4) PLJR 451**.

11. In response it is submitted by learned counsel appearing for the respondents that there has been no procedural faults in the proceedings conducted against the petitioner. At every stage, the petitioner was issued with a show-cause notice and given an opportunity to respond. Even on submission of the enquiry report, he was provided with a copy of the same and having received his detailed reply and having considered the same that the order of punishment has been passed. The 3 member report contained in Annexure-5 was not signed by the petitioner only for the reason that he was not present in the inspection. There is no illegality in the order impugned, no merit in the instant application and the same be dismissed.

12. Heard learned counsel for the petitioner and



learned counsel for the respondents. Perused the materials on record.

13. The relevant facts in brief are that the petitioner while posted as Assistant Director (Mines and Geology) at Nalanda was given the extra charge of Gaya on 13.11.2009. He was served with a show-cause notice on 27.12.2009 asking him to submit his reply within a period of 24 hours. The same was followed by another notice on 28.12.2009. The petitioner submitted his reply on 28.12.2009 followed by another reply on 2.1.2010 with respect to the illegal running of the brick kiln.

14. With respect to Charge nos.1 and 2 it was stated by the petitioner that soon after having received the instructions of the District Magistrate on 27.12.2009, he contacted the Officer In-charge and the Circle Officer of Giriyak, cooperated in the inspection of the brick kiln, which was carried out from 12 p.m. to 4 p.m. and registered an F.I.R. on 27.12.2009 itself. With respect to Charge no.3 the petitioner stated that having been given the additional charge of Gaya, in the interest of the State, he had to go to Gaya for carrying out timely auction of the sand *ghats*. With respect to Charge no.4 he submitted that he had not disobeyed any of the directions of his superiors and mere absence of his signature on the report dated 27.12.2009



should not be taken against him as it was he who registered and is admittedly the informant in the F.I.R. being Giriyak P.S. Case no.196 of 2009.

15. It may be observed here itself that while the report dated 27.12.2009 submitted by the Circle Officer, Giriyak contains the signature of the Officer In-charge, Giriyak Police Station, the Police Inspector, Giriyak Circle and the Circle Officer, Giriyak, the report incorrectly states that Giriyak P.S. Case no.196 of 2009 dated 27.12.2009 was registered by the District Mines Officer, Nalanda. The F.I.R. of Giriyak P.S. Case no.196 of 2009, brought on record as Annexure-4 clearly shows that it was the petitioner i.e. the Assistant Director, Mines and Geology, Nalanda who registered the case.

16. Besides the above, on perusal of the charge-sheet it transpires that while mentioning the four charges in column no.2, in column no.3 which deals with evidence, the same refers to two documents i.e. the Letter no.6671 dated 27.12.2009 of the Nalanda Collectorate, Bihar Sharif and Letter no.360 dated 14.1.2010 also of the Nalanda Collectorate, Bihar Sharif. Perusal of the enquiry report would show that no other evidence was given by the Presenting Officer. Though the enquiry report mentions about some oral evidence having been given, however,



the enquiry report is silent as to who was examined. A bare reading of the enquiry report would lead to the inevitable conclusion that neither any witness was examined in support of the charges nor any/either of the two documents which finds mention in the column of evidence in the charge-sheet, were proved.

17. In the opinion of the Court, the instant case would be one of no evidence against the petitioner.

18. The Hon'ble Supreme Court in the case of **Roop Singh Negi** (*supra*) 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.”



19. 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.”



20. Coming to facts of the instant case, as seen herein above, neither the enquiry report mentions about any witness having been examined nor does it state about contents of either of the two letters mentioned as evidence in the charge-sheet having been proved by any person. Further it appears that while only two letters dated 27.12.2009 and 14.1.2010 was mentioned as evidence and no further evidence was given, the enquiry report also refers to Letter no.12 dated 27.12.2009.

21. In the facts and circumstances of the case, in the opinion of the Court, the order impugned contained in Memo no.278 dated 30.1.2012 (Annexure-18) issued under the signature of the Deputy Secretary, Mines and Geology Department, Government of Bihar is not sustainable and is set aside.

22. The writ application is allowed with all consequential reliefs.

(Partha Sarthy, J)

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