

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.443 of 2022

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Ravi Kumar Son of Late Mohan Chandra Pandey Resident of Kulharia Niwas, Near Shiv Mandir Agarava, Motihari, District- East Champaran, Bihar, Pin Code- 845401.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary-cum-the Appellate Authority, Department of Co-Operative, Govt. of Bihar, Patna.
2. The Registrar, Co-Operative Societies-Cum-the Disciplinary Authority Department of Co-Operative, Govt. of Bihar, Patna.
3. The Enquiry Officer-cum-the Assistant Registrar Co-Operative Societies, Tirhut Division Muzaffarpur.
4. The Assistant Registrar-cum-the Presenting Officer Co-Operative Societies, Sikrahana Anchal, Motihari.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Purushottam Kumar Jha, Advocate
For the Respondent/s : Mr. Uday Shankar Sharan Singh, GP-19

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 07-01-2025

This Court has heard Mr. Purushottam Kumar Jha, learned Advocate for the petitioner and the learned Advocate for the State.

2. The petitioner is aggrieved with the office order, as contained in Memo No. 2623 dated 13.05.2014, issued by the Registrar, Co-Operative Societies-Cum-the Disciplinary Authority whereby, the petitioner has been dismissed from the services of the Co-operative Department, Government of Bihar. The petitioner also assailed the order dated 26.05.2015, as contained in Memo No. 1732 dated 03.05.2019 passed by the



Principal Secretary-cum-the Appellate Authority, Co-operative Department, whereby the service appeal preferred by the petitioner against the order of his dismissal has also been rejected. The petitioner also questioned the legality of the memorandum of charge as well as a show-cause notice issued by the disciplinary authority with a further prayer to reinstate the petitioner in the services of the Co-operative Department, Government of Bihar with all consequential benefits.

3. The petitioner was posted as Lower Division Assistant in the office of the Assistant Registrar, Co-operative Societies, Sikrahna Anchal, Motihari. On 23.06.2011, one Surendra Sahni made a complaint before the Vigilance Department alleging demand of illegal gratification by the then District Co-operative Officer, East Champaran, Motihari. In the said complaint, it is alleged that the aforementioned District Co-operative Officer had instructed the complainant to contact this petitioner and one Mr. Hargun Prasad Singh, an Assistant in the office for getting the deal final.

4. The complainant, on the instruction, met the petitioner and Mr. Hargun Prasad Singh, who demanded Rs. 50,000/-. With the aforesaid allegation, a complaint was filed by the complainant; the Vigilance Department made verification



and submitted its report on 29.06.2011. Based upon the verification report, the petitioner was trapped by the Vigilance Trap Team on 30.06.2011, leading to institution of Vigilance P.S. Case No. 041 of 2011, for the offences punishable under Section 7/13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988.

5. On account of the institution of the FIR and the petitioner being apprehended by the trap team, the petitioner was placed under suspension with effect from 30.06.2011 vide Memo No. 3571 dated 02.08.2011. However, on being released from the judicial custody, the joining of the petitioner was accepted on 14.11.2011 and the suspension of the petitioner has been revoked vide Memo No. 3694 dated 17.07.2012 by the Registrar, Co-operative Societies.

6. Subsequent thereto, in contemplation of the departmental proceeding, the petitioner was again placed under suspension and a memorandum of charge was framed against the petitioner on 08.08.2012. The Assistant Registrar, Co-operative Societies, Tirhut Division, Muzaffarpur was appointed as the Enquiry Officer and the Assistant Registrar, Co-operative Societies, Sikrahana Anchal, Motihari was appointed as the Presenting Officer for conducting the departmental proceeding,



in pursuant to Memo No. 4467 dated 29.08.2012.

7. In response to the memo of charge, the petitioner submitted his reply before the Joint Registrar, Co-operative Societies, Tirhut Division, Muzaffarpur on 03.10.2012 and denied all the charges. The Presenting Officer submitted written report before the Enquiry Officer vide Letter No. 514 dated 23.07.2013, and finally, the Enquiry Officer submitted his enquiry report vide Letter No. 136 dated 17.02.2014, with the findings that none of the charges, so levelled against the petitioner are proved.

8. On receipt of the enquiry report, the Registrar, Co-operative Societies, Bihar issued second show-cause notice directing him as to why major punishment under Rule 14 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as, "Rules, 2005"), be not inflicted upon him. The petitioner in response thereto, submitted a detailed representation before the respondent no. 2 with a request to absolve him from all the charges; Finally, the disciplinary authority passed the order impugned dismissing the petitioner from services and communicated the same vide Memo No. 2623 dated 13.05.2014, as contained in Annexure-16 to the writ petition.



9. Aggrieved with the order of the dismissal, as aforesaid, the petitioner preferred Service Appeal before the Principal Secretary-cum-the Appellate Authority, Department of Co-operative, Government of Bihar. The said appeal also came to be turned down by the order, as contained in Memo No. 1780 dated 28.05.2015, as contained in Annexure-18 to the writ petition. The petitioner on being dissatisfied and aggrieved by the order of the Appellate Authority moved before this Court in CWJC No. 2223 of 2016. The learned Court having found the appellate order being non-reasoned and non-speaking, showing total non-consideration of the petitioner's appeal, has been pleased to quash the appellate order and directed the Principal Secretary of the Department to consider the appeal of the petitioner upon its own merit, after giving regard to the various issues raised therein and dispose off the same by a reasoned and speaking order. Pursuant to the order of this Court, the petitioner submitted a detailed representation, upon which, the respondent no. 1 passed a fresh order on 15.04.2019, as contained in Memo No. 1732 dated 03.05.2019, but with the same result in dismissal of the appeal, which order is also marked as Annexure-20 to the writ petition.

10. Mr. Purushottam Kumar Jha, learned Advocate for the petitioner while assailing the impugned orders and action



of the respondent authorities has primarily contended that the disciplinary authority initiated a regular departmental proceeding against the petitioner straightway without giving a show-cause notice to the petitioner, in defying the mandatory requirements under Rule 17(4) and 17(5) of the Rules, 2005. It is further contended that upon submission of the show-cause explanation by the petitioner, the Presenting Officer submitted his written report, but fairly not disputed the contention of the petitioner, rather accepted the same as true, resulting into exoneration of the petitioner from all the charges levelled against him by the Enquiry Officer. Notwithstanding, the disciplinary authority ignoring all these facts issued second show-cause notice, as to why not the major punishment be imposed against the petitioner. The action of the disciplinary authority is in complete defiance of Rule 18 (2) of the Rules, 2005, which mandates the disciplinary authority to grant an opportunity to the delinquent to submit his comments in case, the disciplinary authority disagrees with the findings of the Enquiry Officer. Reliance has also been placed on a decision of the Hon'ble Supreme Court in the case of ***Punjab National Bank and Ors. Vs. Kunj Behari Misra, (1998) 7 SCC 84.***

11. Mr. Jha, learned Advocate for the petitioner further contended that mere lodging of a criminal case by the



Vigilance Department cannot be made the basis for holding the guilt of the accused employee. The respondent no. 2 was under obligation to examine the correctness of the allegation so levelled against the petitioner. However, in the case in hand, the disciplinary authority did not produce even single evidence either oral or documentary in support of the charges. Reliance has also been placed on a decision of the Hon'ble Supreme Court in the case of ***Roop Singh Negi Vs. Punjab National Bank and Ors., (2009) 2 SCC 570.***

12. Taking this Court to the facts of the case, it is further contended that one Mr. Hargun Prasad Singh, who was also apprehended along with the petitioner by the Vigilance Trap Team and against whom, the similar memo of charge was framed, leading to institution of departmental proceeding; and the Enquiry Officer did not find any of the charges proved in its enquiry report dated 17.02.2014. But, in identical fashion, the respondent no. 2 even without disclosing the grounds for differences of opinion, issued second show-cause notice and passed the order of dismissal. The said Mr. Hargun Prasad Singh also preferred Service Appeal, which also came to be dismissed. In the aforesaid premise, Mr. Hargun Prasad Singh preferred CWJC No. 11695 of 2018, assailing both the order of dismissal as well as the appellate order. The learned Court having



considered the infirmities in the disciplinary proceeding, including the orders without any reason and cryptic, set-aside the order of dismissal and directed to reinstate the petitioner with all consequential benefits. The order of this Court passed in CWJC No. 11695 of 2018 has been placed on record as Annexure-29 to the writ petition.

13. Apart from the contention as aforementioned, learned Advocate for the petitioner also urged that in the departmental proceeding, it was the duty of the disciplinary authority to examine the correctness of the allegation so levelled against the petitioner. It is the admitted fact that the complainant Mr. Surendra Sahni has not even whispered that he has handed Rs. 10,000/- to the petitioner. The evidence of the independent witnesses and the affidavit filed on their behalf will go on to show that the petitioner has been forcibly implicated by the trap team of the Vigilance Investigation Bureau and, thus, once the respondents are failed to prove the fact that the petitioner had made a demand of bribe from the complainant, the impugned order cannot be allowed to sustain. Moreover, the Vigilance P.S. Case No. 41 of 2011 is still pending for trial before the learned Court.

14. The aforementioned contention of the petitioner has



been duly confronted by the learned Advocate for the State. Apart from the submissions that there are no infirmities in the impugned orders and the same have been passed after considering the entire materials available on record, it is contended that the impugned orders are based on proven charge of accepting bribe. It is specifically contended that in terms of Rule 18 (2) of the Rules, 2005, the disciplinary authority is the competent authority to disagree with the findings of Enquiry Officer. Thus, in terms of Rule 18 (2) of the Rules, 2005, the disciplinary authority after differing from the report of the Enquiry Officer issued second show-cause notice and on being found the charges to be proved, inflicted the punishment of dismissal. The appellate authority further in pursuant to the order of this Court passed in CWJC No. 2223 of 2016, has considered each and every points of the petitioner raised in the appeal and disposed off the same by a reasoned and speaking order. The petitioner has been allowed ample opportunity of hearing and after through consideration of his explanation/reply, the impugned orders have been passed.

15. This Court has given anxious consideration to the submissions advanced on behalf of the rival parties and also meticulously perused the materials available on record. Admittedly, the alleged charges of being apprehended while



taking bribe for giving a favourable order is a grave charge of misconduct and thus, it requires serious attention, requiring careful action to be taken in terms with the Rules, 2005, which prescribes the modes, manners and procedures for conduct of the departmental/disciplinary proceedings. Rule 17 (3) and (4) describe the manner in which a charge memo is to be framed and to include, *inter alia*, the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge as well as a list of such document/witnesses, by whom the articles of charges is to be framed. Insofar as the present case is concerned, the charge memo simply refers to Vigilance Enquiry Report with no other documentary evidence or oral witnesses, named therein. Further Rule 17 (4) of the Rules, 2005 obligates the disciplinary authority to ask a show-cause on the charge memo from the delinquent and also hearing him, before the disciplinary authority comes to the opinion that the matter requires further enquiry in the manner prescribed or the explanation is worthy of acceptance.

16. The materials available on record clearly demonstrate that there is no compliance of the aforementioned rules, which are mandatory in its character. Irrespective of the facts aforementioned, the disciplinary proceeding further proceeded and the Enquiry Officer after considering the show-cause



explanation of the petitioner and the report of the Presenting Officer has submitted enquiry report, exonerating the petitioner from all the charges.

17. This Court also finds substance in the submissions of the petitioner that the Presenting Officer has not disputed the contention of the petitioner, as regards to his innocence. Nonetheless, the disciplinary authority issued second show-cause as to why not the petitioner be inflicted with the major punishment in complete ignorance of Rule 18 (2) of the Rules, 2005. Suffice it to quote Rule 18 (2) of the Rules, 2005, which reads as follows:

“18 (2) The disciplinary authority, after receipt of the enquiry report as per Rule 17 (23)(ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.”

18. From bare perusal of the Rule 18 (2) of the Rules, 2005, it would be evident that it clearly mandates the disciplinary authority that in case, it disagrees with the finding of the disciplinary authority of any article of charge, the reason for such disagreement and record its own finding on such charge is *sine qua non*. The Hon’ble Apex Court in the case of **Kunj**



Behari Misra (supra) has held in no uncertain terms that when the disciplinary authority differs with the view of the Enquiry Officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted to the delinquent. It will be most unfair and iniquitous that where the charged officers succeed before the Enquiry Officer, they are deprived of representing to the disciplinary authority before that authority differs with the Enquiry Officer's report and, while recording a finding of guilt, imposes punishment on the officer. The Hon'ble Court ruled that in such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. Similar view has also been taken by the Hon'ble Supreme Court in the case of ***Yoginath D. Bagde Vs. State of Maharashtra and Anr., (1999) 7 SCC 739***, wherein, the Hon'ble Court held that if the disciplinary authority does not agree with the findings of the enquiry authority, it may record its own findings and thus, giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the Rules made under Article 309 of the Constitution of India or the disciplinary authority may, of its own, provide such opportunity. The Hon'ble Court further held that if a delinquent



officer, who has already been held to be not guilty by the enquiry authority, is found guilty, without being afforded an opportunity of hearing on the basis of the same evidence and the material on which a finding of not guilty has already been recorded is contrary to the principles of natural justice.

19. The entire case of the respondent is based upon the FIR/Vigilance Enquiry Report, which led to dismissal of the petitioner. However, neither any documentary evidence or witnesses were examined to prove the charges. The Hon'ble Apex Court, time without number, in its various decisions held that indisputably, a departmental proceeding is a quasi judicial proceeding and although the provisions of the Evidence Act are not applicable in the said proceeding, but the principle of natural justice, in any circumstances are required to be complied with. The suspicion, howsoever, high and bare presumption cannot take the place of prove, even in a domestic enquiry. Mere production of document is not enough, the contents of documentary evidence has to be proved by examining the witnesses. The Hon'ble Court in the case of **Roop Singh Negi** (supra) in its clear term held that FIR in itself, is not an evidence, without actual proof of facts, stated therein. It would be apt and proper to encapsulate paragraph no. 14 of the said



judgment, for appreciation of the issue raised, herein:

“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.”

20. In the case of ***State of Uttaranchal and Ors. Vs. Kharak Singh, (2008) 8 SCC 236***, while enunciating the principles to be consistently followed in a departmental/disciplinary proceeding, the Hon'ble Court observe that the enquiries must be conducted *bona fide* and care must be taken to see that the enquiries do not become empty formalities. In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any



explanation about the evidence led against him. On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.

21. This Court also finds substance in the submissions advanced on behalf of the petitioner that with an identical allegation, when Mr. Hargun Prasad Singh was apprehended along with the petitioner and put to disciplinary proceeding leading to submission of enquiry report by exonerating him from all the charges; however, the disciplinary authority in identical fashion, as has been done in the present case, differing with the enquiry report, issued second show-cause notice and inflicted the punishment of dismissal, which order has also been upheld by the appellate authority. Whereupon, the impugned order of dismissal as well as the appellate order were put to challenge before this Court in CWJC No. 11695 of 2018 and this Court having taken note of the mandatory prescriptions of Rule 18 (2) of the Rules, 2005 has held the action of the disciplinary authority unsustainable and finally set-aside the impugned order of dismissal on being found that it did not take into consideration any material or evidence, based on which, the said petitioner has been visited with the extreme consequence of



dismissal. The learned Court further found that the petitioner's detailed and elaborate appeal has also been rejected by a cryptic order, which do not show any consideration of various issues raised in the appeal.

22. The allegation and the charges levelled against both the petitioner and Mr. Hargun Prasad Singh are one and identical; and further in resultant exoneration of the charges by the Enquiry Officer. However, the disciplinary authority, contrary to the mandatory provision of Rule 18 (2) of the Rules, 2005 proceeded further and inflicted the punishment of dismissal, which has been held to be illegal and unsustainable in case of Hargun Prasad Singh in CWJC No. 11695 of 2018.

23. This Court has also gone through the impugned order of dismissal as well as the appellate order passed by the appellate authority, However, both the authorities have recorded the explanation/reply of the petitioner; But, surprisingly, not made any discussion as to why they do not find any favour, nevertheless, the Enquiry Officer has exonerated the petitioner from the charges and there is no material either documentary or oral to prove the charges. The appellate authority has also committed identical mistake and rejected the same by a cryptic order, without assigning any reason for non-consideration of the



points raised in the appeal and thus, clearly demonstrate non-application of mind.

24. In view of the aforementioned observations and the settled position in law, in the result, the impugned order, as contained in Memo No. 2623 dated 13.05.2014 (Annexure-16) as also the order contained in Memo No. 1732 dated 03.05.2019 (Annexure-20) are hereby set-aside. The respondents are directed to reinstate the petitioner in the service with all consequential benefits, preferably within a period of twelve weeks, from the date of receipt/production of a copy of this order.

25. Suffice it to observe that this order would not preclude the respondent authorities to take further action in consequent to the outcome of the vigilance case.

26. The writ petition stands allowed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
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