IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18349 of 2022

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Shreekant Mishra S/o Late Bachchi Kant Mishra, Resident of Mohalla-New Rajendra Nagar, Madhubani, P.S.-TOP Madhubani (K. Hat), District-Purnea.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Transport Department, Govt. of Bihar, Patna.
3. The Transport Commissioner, Govt. of Bihar, Patna.
4. The Deputy Secretary, Transport Department, Govt. of Bihar, Patna.
5. The Joint Commissioner cum Secretary, Regional Transport Authority, Purnea.
6. The District Transport Officer, Katihar.
7. The Accountant General, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Tej Bahadur Singh, Sr. Advocate
		Mr. Bhaskar Shankar, Advocate
For the Respondent/s	:	Mr. Anil Kumar Singh, GP-26

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

Date : 01-12-2025

1. Heard Mr. Tej Bahadur Singh, learned Senior counsel assisted by Mr. Bhaskar Shankar, learned counsel for the petitioner and Mr. Anil Kumar Singh, learned GP-26 for the respondents.

2. The petitioner has filed the instant application

praying for setting aside the order contained in Memo no.9126 dated 21.11.2022 issued under the signature of the Deputy Secretary, Transport Department, Bihar, Patna whereby punishment of full deduction of pension has been passed under Rule 43(b) of the Bihar Pension Rules, 1950 (herein after referred to as 'the Rules').

3. The case of the petitioner in brief is that the petitioner was issued with a show-cause notice dated 28.3.2018 to which he filed his reply on 8.4.2018. Not finding the reply filed by the petitioner to be satisfactory, a departmental proceeding was initiated on 7.8.2018 appointing the Conducting Officer and the Presenting Officer in the case. As in the meantime the petitioner retired from service on 31.1.2019, the proceedings were converted into one under Rule 43(b) of the Rules.

4. The Conducting Officer–cum–Joint Commissioner –cum–Secretary, Regional Transport Authority, Purnea submitted his enquiry report finding the charge nos.1, 3 and 4 to have been proved whereas charge no.2 not to be proved.

5. The petitioner was served with a copy of the enquiry report on 13.7.2022 to which he submitted his reply on 27.7.2022.

6. Having considered the contents of the enquiry report wherein three out of the four charges had been proved and not being satisfied with the reply filed by the petitioner, the Deputy Secretary, Transport Department, Bihar, Patna was pleased to pass the order of punishment dated 21.11.2022 against the petitioner under Rule 43(b) and Rule 139 of the Rules, fully deducting the pension.

7. It is against this order of punishment dated 21.11.2022 that the instant application has been preferred by the petitioner for the relief prayed for as stated herein above.

8. It is submitted by Mr. Tej Bahadur Singh, learned Senior counsel appearing for the petitioner that the petitioner had been proceeded against for same/similar charges on earlier occasion also. First time the charges were enquired into by the respondent authorities, an enquiry report dated 4.12.2013 (Annexure-4) was submitted not finding the charges/allegations to have been proved. It is further submitted that for the same charges once again another enquiry was started which also ended with the submission of the report dated 29.1.2020, once again not finding the allegations against the petitioner to have been proved. Learned Senior counsel further submits that so far as reference to the criminal miscellaneous case is concerned i.e.

Vigilance P.S. Case no.66 of 2017 registered on 30.8.2017, the petitioner has been acquitted in the said case and a copy of the judgment is Annexure-8 to the petition. Further in reference to the order of punishment, it is submitted that it is an absolutely non-speaking order, with the Disciplinary Authority not having taken into account nor having dealt with any of the defense raised by the petitioner. The order suffers from non-application of mind.

9. It is lastly submitted that that on perusal of the enquiry report wherein as per the Enquiry Officer, three of the charges have been proved it would transpire that not a single witness was examined on behalf of the Management and consequently no document exhibited was proved. It is thus a case of no evidence against the petitioner. Reliance has been placed on the judgment in the case of **Roop Singh Negi vs. Punjab National Bank & Ors.**; **(2009) 2 SCC 570**. It is thus prayed that the order of punishment cannot be sustained, the same be set aside and the writ application be allowed.

10. The application is opposed by learned counsel appearing for the respondents. It is submitted that in a properly conducted departmental proceeding, three out of the four charges were proved as per the enquiry report submitted by the

Enquiry Officer. It is further submitted that the allegations against the petitioner are very serious and the allegations reflect of the Office of the District Transport Office being involved in corrupt practice. Learned counsel further submitted that the petitioner was reported to have demanded bribe in distribution of Learning License and in this manner, having misused the post, had earned property disproportionate to his known source of income. It is for this reason that several vigilance cases had been registered against him and had also gone to trial.

11. Heard learned Senior counsel for the petitioner and learned counsel for the respondents.

12. The relevant facts in brief are that a departmental proceeding was started against the petitioner on 7.8.2018 and after taking into consideration the reply filed by the petitioner, the Enquiry Officer came to submit the enquiry report on 15.6.2022, a copy of which has been brought on record as Annexure-6 to the writ application. In the enquiry report while charge no.2 was not found to be proved, charge nos.1, 3 and 4 were found to be proved against the petitioner.

13. On perusal of the contents of the enquiry report it transpires that not a single witness was examined on behalf of the Management to prove the charges levelled against the

petitioner. The Conducting Officer in considering the merits of the charges has proceeded to take into consideration the vigilance case filed against the petitioner in the years 2009, 2013 and 2017 for having assets disproportionate to his known source of income. The Enquiry Officer further proceeds to observe that while the petitioner has stated about having obtained a loan to the tune of Rs.14.75 lacs from the bank for the education of his children, however he has not given the details of the amount of loan and the time when the same was taken. The Enquiry Officer further proceeds to give details of the Vigilance P.S. Case no.66 of 2017 and the enquiry report with respect to the disproportionate assets of the petitioner enclosed with the said F.I.R. On the basis of these documents, he proceeds to come to the conclusion in his enquiry report that the charge nos.1, 3 and 4 were proved.

14. It may be mentioned here that no witness was examined in course of enquiry before the Enquiry Officer and consequently no document marked exhibit nor proved.

15. In the case of **Roop Singh Negi** (*supra*), the Hon'ble Supreme Court 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.”

16. Further 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."*

17. So far as the facts of the instant case is concerned, the enquiry report clearly not mentioning about the examination of any witness nor any of the documents relied upon by the Enquiry Officer having been proved by any witness nor marked an exhibit, in the opinion of the Court, the whole of the departmental proceeding was vitiated.

18. In the facts and circumstances of the case, the order of punishment contained in Memo no.9126 dated 21.11.2022 (Annexure-7) issued under the signature of the

Deputy Secretary, Transport Department, Bihar, Patna cannot be sustained and is set aside.

19. The writ application is allowed with all consequential benefits.

(Partha Sarthy, J)

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CAV DATE	N/A
Uploading Date	01.12.2025
Transmission Date	N/A