

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.17518 of 2023**

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Birendra Narayan Prabhakar Son of Baleshwar Prasad, Resident of Village-Sonari, Police Station-Sirdalla, District Nawada, presently posted as Revenue Karamchari, Anchal Officer, Bettiah, Police Station-Bettiah, District-West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Tirhut Division, Muzaffarpur.
2. The Commissioner, Tirhut Division, Muzaffarpur.
3. The District Magistrate, West Champaran, Bettiah.
4. The District Land Acquisition Officer, West Champaran, Bettiah.
5. The Deputy Collector (Establishment), West Champaran, Bettiah.
6. The Circle Officer, Narkatiyaganj, West Champaran.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Deepak Kumar  
For the Respondent/s : Mr.Syed Iqbal Ahmad ( Sc 20 )

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**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR**  
**ORAL ORDER**

2      07-10-2025                      Heard the parties.

2. The present writ application has been filed on  
behalf of the petitioner for the following reliefs:-

*A. For issuance of appropriate writ of certiorari for quashing the order dated 14.09.2023 passed in Service Appeal No - 259 of 2019 by which the Commissioner, Tirhut Division, Muzaffarpur has rejected the Appeal of the petitioner.*

*B. For quashing the order contained in Memo No.- 533 dated 07.08.2019 by which the District Magistrate, West Champaran, Bettiah has given the punishment of reduction to a lower stage*



*on the timescale of pay.*

3. The petitioner is a government employee who is presently posted as Revenue Karamchari, Anchal Officer, Bettiah and the brief facts of the case are that when he was posted as Revenue Karamchari-cum-Circle Inspector in the Anchal Office of Narkatiyaganj, a letter vide Letter no- 452 dated 18.10.2017 signed by the District Land Acquisition Officer, West Champaran, Bettiah was issued to him with show cause notice along with charges (Prapatra 'Ka') and in the show cause notice, the petitioner was asked to give reply before conducting officer on 07.11.2017 but no document supporting the imputation of allegation were furnished in the said show cause.

4. Upon receiving the said show cause notice, the petitioner filed a detailed reply on 07.11.2017 explaining his innocence and non-involvement in any kind of malpractice and prayed that he may be exonerated from all the charges. Thereafter merely on the basis of the said show cause reply, the Enquiry report was submitted on 12.06.2018 and it would be evident that there is no oral evidence in support of the charges was adduced and no document relied by the conducting officer was produced by the presenting officer. Also, neither any author of such documents was examined nor the show cause reply filed



by the petitioner was properly appreciated and considered.

5. It is further alleged by the petitioner that no regular departmental proceeding was initiated as provided under the CCA Rules and upon the enquiry report, the Deputy Collector(Establishment), West Champaran, Bettiah issued 2nd Show Cause notice to the petitioner vide Memo No.-740 dated 26.10.2018 asking him to submit his reply within one week.

6. Thereafter, the petitioner gave reply to the second show cause notice but the District Magistrate, West Champaran, Bettiah without considering the reply of the petitioner, vide Memo No.- 533 dated 07.08.2019, awarded the punishment of reduction to a lower stage on the timescale of pay to the petitioner.

7. In furtherance, the petitioner, being aggrieved by the order awarding punishment preferred an appeal being Service Appeal Case No. 259 of 2019 before the Commissioner, Tirhut Division, Muzaffarpur which was also dismissed vide order dated 14.09.2023.

8. It has been submitted by the learned counsel for the petitioner that the impugned orders have been passed on *non est* grounds without considering the show-cause submitted on behalf of the petitioner. He further submits that the charges



levelled against petitioner are cryptic as no documents in support of charges were provided to the petitioner.

9. Learned counsel for the petitioner has further submitted that the disciplinary authority prepared a tabular chart with respect to the charges and the defence of the petitioner but did not deal with the defence of the petitioner and has not considered the defence of the petitioner. He further submits that the disciplinary authority stated that the petitioner has accepted his guilt but it was not so.

10. Learned counsel for the petitioner further submits that the documents produced in a departmental inquiry has to be proved by examining witnesses and the conclusion arrived at should be based on evidence which brings forth a probability that the delinquent has committed the misconduct. He further submits that no inquiry report based on conjectures and surmises can be sustained and the proof, which is preponderance of probabilities cannot be based merely on suspicion it is submitted however high the degree of suspicion, it cannot be a substitute for legal proof.

11. Learned counsel for the petitioner further submits that during a departmental inquiry, mere production of a document is not enough and the contents of the document has to



be proved by examining the witnesses but the same has not been done in the present case.

12. Lastly, learned counsel for the petitioner, in support of his submissions has relied upon the Judgment rendered by the Hon'ble Apex Court in the case of ***Roop Singh Negi vs. Punjab National Bank***; reported in (2009) 2 SCC 570.

13. Learned counsel for the the State, relying upon the counter affidavit, has opposed the application of the petitioner and has supported the impugned orders.

14. I have considered the submissions of the parties and perused the materials available on record.

15. It is settled that the departmental proceedings are quasi-judicial in nature and therefore strict adherence to the principles of natural justice is *sine qua non*. Any order passed against the petitioner in flagrant violation of such principles are a nullity and can not be sustained.

16. It would be apposite to reiterate the law laid by the Hon'ble Supreme Court in the case of ***Roop Singh Negi vs. Punjab National Bank (Supra)***:-

*“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.*

*15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was*



*left.*

16. *In Union of India v. H.C. Goel [AIR 1964 SC 364 : (1964) 4 SCR 718] it was held: (AIR pp. 369-70, paras 22-23)*

*“22. ... The two infirmities are separate and distinct though, conceivably, in some cases both may be present. There may be cases of no evidence even where the Government is acting bona fide; the said infirmity may also exist where the Government is acting mala fide and in that case, the conclusion of the Government not supported by any evidence may be the result of mala fides but that does not mean that if it is proved that there is no evidence to support the conclusion of the Government, a writ of certiorari will not issue without further proof of mala fides. That is why we are not prepared to accept the learned Attorney General's argument that since no mala fides are alleged against the appellant in the present case, no writ of certiorari can be issued in favour of the respondent.*

*23. That takes us to the merits of the respondent's contention that the conclusion of the appellant that the third charge framed against the respondent had been proved, is based on no evidence. The learned Attorney General has stressed before us that in dealing with this question, we ought to bear*



*in mind the fact that the appellant is acting with the determination to root out corruption, and so, if it is shown that the view taken by the appellant is a reasonably possible view this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not. This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondent's case is, is there any evidence on which a finding can be made against the respondent that Charge 3 was proved against him? In exercising its jurisdiction under Article 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine*



*whether on that evidence legally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well founded, because, in our opinion, the finding which is implicit in the appellant's order dismissing the respondent that Charge 3 is proved against him is based on no evidence.”*

*17. In Moni Shankar v. Union of India [(2008) 3 SCC 484 : (2008) 1 SCC (L&S) 819] this Court held: (SCC p. 492, para 17)*

*“17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the*



*requirements of burden of proof, namely, preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality.”*

18. *In Narinder Mohan Arya v. United India Insurance Co. Ltd. [(2006) 4 SCC 713 : 2006 SCC (L&S) 840] whereupon both the learned counsel relied, this Court held: (SCC p. 724, para 26)*

*“26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the enquiry officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it, it should keep in mind the following: (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. (See State of Assam v. Mahendra Kumar Das [(1970) 1 SCC 709] .) (2) In a domestic enquiry fairness in the procedure is*



*a part of the principles of natural justice. (See Khem Chand v. Union of India [AIR 1958 SC 300 : 1958 SCR 1080] and State of U.P. v. Om Prakash Gupta [(1969) 3 SCC 775] .) (3) Exercise of discretionary power involves two elements—(i) objective, and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. (See K.L. Tripathi v. SBI [(1984) 1 SCC 43 : 1984 SCC (L&S) 62] .) (4) It is not possible to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstances of each case but the concept of fair play in action is the basis. (See Sawai Singh v. State of Rajasthan [(1986) 3 SCC 454 : 1986 SCC (L&S) 662] .) (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject-matter of the charges is wholly illegal. (See Export Inspection Council of India v. Kalyan Kumar Mitra [(1987) 2 Cal LJ 344] .) (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. (See Central Bank of India Ltd. v. Prakash Chand Jain [AIR 1969*



*SC 983 : (1969) 1 SCR 735] and Kuldeep Singh v. Commr. of Police [(1999) 2 SCC 10 : 1999 SCC (L&S) 429] .)”*

*19. The judgment and decree passed against the respondent in Narinder Mohan Arya case [(2006) 4 SCC 713 : 2006 SCC (L&S) 840] had attained finality. In the said suit, the enquiry report in the disciplinary proceeding was considered, the same was held to have been based on no evidence. The appellant therein in the aforementioned situation filed a writ petition questioning the validity of the disciplinary proceeding, the same was dismissed. This Court held that when a crucial finding like forgery was arrived at on an evidence which is non est in the eye of the law, the civil court would have jurisdiction to interfere in the matter. This Court emphasised that a finding can be arrived at by the enquiry officer if there is some evidence on record. It was furthermore found that the order of the appellate authority suffered from non-application of mind.*

*20. This Court referred to its earlier decision in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. [(1999) 3 SCC 679 : 1999 SCC (L&S) 810] to opine: (Narinder Mohan Arya case [(2006) 4 SCC 713 : 2006 SCC (L&S) 840] , SCC p. 729, paras 41-42)*

*“41. We may not be understood to have laid down a law that in all such circumstances the decision of the civil court or the criminal*



*court would be binding on the disciplinary authorities as this Court in a large number of decisions points out that the same would depend upon other factors as well. See e.g. Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh [(2004) 8 SCC 200 : 2004 SCC (L&S) 1067] and RBI v. S. Mani [(2005) 5 SCC 100 : 2005 SCC (L&S) 609] . Each case is, therefore, required to be considered on its own facts.*

*42. It is equally well settled that the power of judicial review would not be refused to be exercised by the High Court, although despite it it would be lawful to do so. In RBI [(2005) 5 SCC 100 : 2005 SCC (L&S) 609] this Court observed: (SCC p. 116, para 39) '39. The findings of the learned Tribunal, as noticed hereinbefore, are wholly perverse. It apparently posed unto itself wrong questions. It placed onus of proof wrongly upon the appellant. Its decision is based upon irrelevant factors not germane for the purpose of arriving at a correct finding of fact. It has also failed to take into consideration the relevant factors. A case for judicial review, thus, was made out.' ” In that case also, the learned Single Judge proceeded on the basis that the disadvantage of an employer is that such acts are committed in secrecy and in conspiracy with*



*the person affected by the accident, stating:  
(Narinder Mohan Arya case [(2006) 4 SCC  
713 : 2006 SCC (L&S) 840] , SCC p. 730,  
paras 44-45)*

*“44. ... No such finding has been arrived at even in the disciplinary proceedings nor was any charge made out as against the appellant in that behalf. He had no occasion to have his say thereupon. Indisputably, the writ court will bear in mind the distinction between some evidence or no evidence but the question which was required to be posed and necessary should have been as to whether some evidence adduced would lead to the conclusion as regards the guilt of the delinquent officer or not. The evidence adduced on behalf of the management must have nexus with the charges. The enquiry officer cannot base his findings on mere hypothesis. Mere ipse dixit on his part cannot be a substitute of evidence. 45. The findings of the learned Single Judge to the effect that ‘it is established with the conscience (sic) of the Court reasonably formulated by an enquiry officer then in the eventuality’ may not be fully correct inasmuch as the Court while exercising its power of judicial review should also apply its mind as to whether sufficient material had been brought on record to sustain the*



*findings. The conscience of the court may not have much role to play. It is unfortunate that the learned Single Judge did not at all deliberate on the contentions raised by the appellant. Discussion on the materials available on record for the purpose of applying the legal principles was imperative. The Division Bench of the High Court also committed the same error.”*

21. Yet again in *M.V. Bijlani v. Union of India* [(2006) 5 SCC 88 : 2006 SCC (L&S) 919] this Court held: (SCC p. 95, para 25)

*“25. ... Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged*



with.”

22. Yet again in *Jasbir Singh v. Punjab & Sind Bank* [(2007) 1 SCC 566 : (2007) 1 SCC (L&S) 401] this Court followed *Narinder Mohan Arya v. United India Insurance Co. Ltd.* [(2006) 4 SCC 713 : 2006 SCC (L&S) 840] , stating: (*Jasbir Singh case* [(2007) 1 SCC 566 : (2007) 1 SCC (L&S) 401] , SCC p. 570, para 12) “12. In a case of this nature, therefore, the High Court should have applied its mind to the fact of the matter with reference to the materials brought on records. It failed to do so.”

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could



*not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.<sup>14</sup>. 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.”*

17. The disciplinary proceeding being a quasi-judicial proceeding must have strict adherence to the principles of natural justice. Since the impugned order fails to comply with the principles therefore the same is unsustainable. The petitioner had submitted a detailed defence which was not considered by the disciplinary authority while passing the order inflicting punishment. Moreover, the evidence has not been proved with the threshold of preponderance of probabilities. The arrival of a



finding of guilt cannot be based solely on unproven evidences and statements. The fact that the evidences have not been proved in the disciplinary proceeding vitiates the conclusion of guilt.

**18.** In a disciplinary proceeding, the threshold of prima facie guilt cannot be used for arriving at a conclusion of guilt. The finding of guilt must rest upon a reasonable finding upon preponderance of possibilities i.e. upon evaluation of all relevant evidences, documentary and oral and the defence, it is more likely than not that the alleged misconduct occurred. This standard is much lower than 'beyond reasonable doubt' but is still substantially higher than prima facie satisfaction. It is settled that absence of reasons or infirmity in the process of arrival at the conclusion of the guilt cannot be substituted or compensated by reasons being supplied at the appellate stage.

**19.** In the present case, the disciplinary authority has neither adduced any documentary or oral evidence and the onus cannot ordinarily and conveniently be shifted on the delinquent public servant. Moreover, the appellate authority has arrived at a prima facie satisfaction which vitiates the process.

**20.** In view of the above discussion and considering the law laid down by the Hon'ble Supreme Court in the case of



*Roop Singh Negi vs. Punjab National Bank (Supra)*, this application is allowed.

21. Accordingly, the impugned order dated 7.8.2019 inflicting punishment as well as the order dated 14.09.2023 whereby the appeal was rejected, are hereby set aside.

(Sandeep Kumar, J)

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