

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1273 of 2017

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Bhola Prasad Das @ Bhola Das, Son of Late Kari Das, Resident of Village-
Matahi, P.S.- Andharamath, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Madhubani.
2. The Sub Divisional Officer, Sadar, Madhubani.
3. The Establishment Deputy Collector, Sadar, Madhubani.
4. The Treasury Officer, Madhubani.
5. The Block Development Officer, Rajnagar, Madhubani.
6. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner	: Ms. Namrata Mishra, Sr. Advocate Mr. Ratanakar Jha, Advocate
For the State	: Ms. Surekha Kumari, AC to GP-18
For the Accountant General	: Mr. Ram Kinker Choubey, Advocate

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 09-02-2026

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

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

*“(i) To issue an appropriate order/s,
direction/s preferably in the nature of
CERTIORARI for quashing the Memo No. 2015
Madhubani dated 18-11-2016 passed by the
District Magistrate, Madhubani whereby and
where under the petitioner has been inflicted
punishment of withholding 10% pension amount*



for whole life exercising powers u/s 43(B) and 139 (B) of Bihar Pension Rules, 1950.

(ii) To direct the respondents to make the full pension to the petitioner who has been wrongly and illegally issued the order of withholding 10% pension amount as such the allegation leveled against the petitioner has not been substantiated in course of departmental proceeding initiated against the petitioners with regard to make advantage to the wrong beneficiaries under the social security pension by preparing fake forged list

(iii) To direct the respondent to make the payment of arrears of pension as such he is being paid 90% pension along with other consequential benefit if not paid.

(iv) The petitioner seeks indulgence of this Hon'ble court to grant him any other relief/s to which he is entitled in the facts and circumstances of the case."

3. The case of the petitioner in brief is that while posted and working as an Upper Division Clerk in the Office of the Block Development Officer, Rajnagar, the petitioner was served with a show-cause notice on 24.5.2013, to which he filed his reply.

4. The petitioner was made accused in a criminal case being Rajnagar P.S. Case no.106 of 2013, which was registered on 15.6.2013 under sections 420, 409, 467, 468 and 471 of the



Indian Penal Code.

5. A memo of charge was served on the petitioner in *Prapatra-ka* on 31.7.2013, to which the petitioner submitted his reply.

6. An enquiry was conducted wherein enquiry report dated 28.6.2014 was submitted by the Conducting Officer finding the charge no.1 levelled against the petitioner to have been proved.

7. The petitioner having retired during pendency of the departmental proceeding on 30.6.2014, the proceedings were converted into one under Rule 43(b) of the Bihar Pension Rules, 1950.

8. A second show-cause notice was served on the petitioner to which he submitted his reply. The respondents came out with the order of punishment dated 18.11.2016 directing for permanent deduction of 10 percent of the pension of the petitioner.

9. It is against this order of punishment that the petitioner has preferred the instant writ application for the reliefs as stated herein above.

10. It is submitted by learned counsel appearing for the petitioner that it is the categorical case of the petitioner that



even after conclusion of the enquiry, the petitioner was not served with a copy of the enquiry report. The said statement made in paragraph no.11 of the writ petition has not been denied by the respondents. Further, having taken the Court through the copy of the enquiry report, it is submitted that neither any oral nor any documentary evidence was lead on behalf of the respondents and no witness having been examined in course of enquiry, no documents or the contents thereof were proved by the respondents. Thus, it is a case of no evidence against the petitioner. In such view of the matter, the order of punishment passed by the respondents is not sustainable and thus be set aside.

11. The application is opposed by learned counsel for the respondents. It is submitted that the departmental proceeding was started against the petitioner on serious charges of having furnished an incorrect list of persons who were granted pension thus leading to pecuniary loss being incurred by the respondents. On enquiry, the said list was found to be forged. Learned counsel further submits that at each stage adequate opportunity was given to the petitioner to put forward his case. There is no procedural irregularity committed by the respondents. There is no merit in the writ application and the



same be dismissed.

12. Heard learned counsel for the parties and perused the material on record.

13. The relevant facts in brief are that the respondents having served the petitioner with a memo of charge on 31.7.2013 proceeded with the conduct of a departmental proceeding against the petitioner. The Conducting Officer finally submitted his enquiry report on 28.6.2014, a copy of which has been brought on record as annexure to the supplementary counter affidavit filed on behalf of the respondents.

14. A perusal of the contents of the enquiry report would show that no witness has been examined on behalf of the Management/respondents to prove the charges levelled against the petitioner. No oral evidence having been lead, no document has been marked exhibit or contents thereof proved by any witness. Thus it is case of no evidence against the petitioner. Reference may be made in this context to the judgments of the Hon'ble Supreme Court in the case of **Roop Singh Negi vs. Punjab National Bank & Ors.**; (2009) 2 SCC 570 and **State of Uttar Pradesh & Ors. vs. Saroj Kumar Sinha**; (2010) 2 SCC 772.



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.

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 the case of **Saroj Kumar Sinha** (*supra*), the Hon’ble Supreme Court held 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 unrebutted 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.”

17. It may further be observed here that as per the categorical case of the petitioner, no enquiry report was served on him. There is no denial to the said statement by the respondents in their counter affidavit. The order of punishment



passed consequent to the said enquiry report is fit to be set aside on this ground also.

18. Without going into the merits of the other points raised on behalf of the petitioner, the Court is of the opinion that no copy of the enquiry report having been furnished on the petitioner as also no oral or documentary evidence having been lead in course of enquiry against the petitioner, the order of punishment passed against the petitioner, impugned herein, is not sustainable.

19. In view of the facts and circumstances of the case, the order dated 18.11.2016 passed by the District Magistrate, Madhubani as contained in Annexure-5 to the writ application is set aside.

20. So far as the opportunity to the petitioner to proceed with the departmental proceeding from the stage on which the illegality in the proceedings took place, it may be observed here that the petitioner retired from service on 30.6.2014. The departmental proceeding having been conducted in such a casual manner, 12 years having passed since the retirement of the petitioner, in the facts of the case, the Court finds no good grounds for remanding the matter to proceed against the petitioner.



21. The order of punishment impugned herein having been set aside, the petitioner is held entitled for all consequential benefits which shall be paid to the petitioner within a period of three months from the date of receipt/production of a copy of this order.

22. The writ application stands allowed.

(Partha Sarthy, J)

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