

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2962 of 2021

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Sudeshwar Sah, Son of Late Gaya Sah, Resident of Village-Gopalpur, P.S.-
Naubatpur, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Primary Education, Department of Education, Bihar, Patna.
4. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur.
5. The District Programme Officer, Establishment, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar
Mr. Kundan Kumar
For the Respondent/s : Mr. Madhaw Prasad Yadav, GP 23
Mr. Arvind Kumar, AC to GP 23

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 04-12-2023

The present writ application has been filed by the petitioner for setting aside the order of punishment, as contained in Memo No. 8/अ-05-37/2014 931, dated 01.12.2020, issued by the Director, Primary Education, Education Department, Government of Bihar, Patna, whereby 100 per cent pension of the petitioner has been withheld and further it has been ordered that he shall be entitled for subsistence allowance from the date of suspension till his superannuation, i.e., from 01.04.2014 to 31.01.2017 and from 01.02.2017 till the date of passing of the impugned order, the



petitioner shall be entitled for provisional pension along with leave encashment.

2. The brief facts, giving rise to the present writ application, is that at the relevant point of time, the petitioner was posted as Block Education Officer in the District of Samastipur. One Sunil Kumar lodged a complaint with the Vigilance Investigation Bureau, alleging that the petitioner was demanding Rs. 50,000/- for himself as well as for District Programme Officer for submitting favorable report for upgradation of a school, namely, Upgraded Middle School, situated at Village- Silaut, Pokhraira, in the district of Samastipur.

3. On the basis of said complaint, the Vigilance Investigation Bureau led a trap on 01.04.2014 and arrested the petitioner, along with a sum of Rs. 25,000/-, which was taken by him as bribe, lodged First Information Report, bearing Vigilance Police Station Case No. 25 of 2004, for the offences punishable under Sections 7/13 (1-d) of the Prevention of Corruption Act. The petitioner was taken into custody on the same day. The Director, Primary Education, Bihar, Patna, vide Memo No. 569, dated 29.04.2014, suspended the petitioner with effect from 01.04.2014.

4. After grant of bail, the suspension of the petitioner was revoked with effect from 11.08.2014 and was again suspended



vide order, contained in Memo No. 1151, dated 26.09.2014, with effect from 11.08.2014, by the Director, Primary Education, Patna, in contemplation of initiation of departmental proceeding. Vide order, contained in Memo No. 1411, dated 15.12.2014, the Director, Primary Education, Bihar, Patna, appointed the Regional Deputy Director, Department of Education, Tirhut Division, Muzaffarpur, as Enquiry Officer and the District Programme Officer (Establishment), Muzaffarpur, as Presenting Officer in the departmental proceeding initiated against the petitioner.

5. The petitioner was served with memo of charges (Prapatra क), by the aforesaid Memo No. 1411, in which five charge were levelled against him, which are as follows:

1. Charge No. 1 – demanded bribe of Rs. 50,000/-for discharge of official duty from Sri Sunil Kumar Jha, son of Sri Dayanand Jha, village- Silaut, Poost Pokhaira, Police Station Mufassil, District Samastikpur for District Programme Officer, Secondary Education and himself;

2. Charge No. 2 – was arrested red-handed while taking bribe amount of Rs. 25,000/- by the Vigilance Investigation Bureau;

3. Charge No. 3 – Acted in contravention of the Government Servant Conduct Code;



4. Charge No. 4 – carelessness in discharge of official duty; and

5. Charge no. 5 – indulged in corrupt practice.

6. The enquiry report (Annexure 4) was submitted on 10.03.2015 by the Enquiry Officer and as per the enquiry report, four charges were not proved and regarding the charge no. 2, which relates to the arrest of the petitioner red-handed with Rs. 25,000/-, the Enquiry Officer has opined that since criminal case is going on, therefore, it would be better to wait for the conclusion of the criminal trial. In other words, the Enquiry Officer has exonerated the petitioner from all the charges levelled against him.

7. The Director, Primary Education, issued second show cause, vide letter no. 303, dated 18.05.2015, and directed the petitioner to submit reply to the second show cause.

8. The petitioner filed CWJC No. 8697 of 2015 for stay of the departmental proceeding pending final disposal of the criminal trial. The writ application was disposed vide order, dated 05.01.2016, whereby the second show cause notice, dated 18.05.2015, was set aside, with further observation that the departmental proceeding may proceed afresh in accordance with law, but only after issuance of reasons of disagreement with the enquiry report.



9. The Director, Primary Education, thereafter, vide Memo No. 454, dated 06.05.2016, issued fresh second show cause notice to the petitioner with reasons of disagreement requiring him to submit the reply.

10. The petitioner submitted his reply on 12.05.2016 and denied the allegation/charges, but the Director, Primary Education, dismissed the petitioner vide Memo No. 725, dated 29.07.2016, against which the petitioner preferred service appeal before the Principal Secretary, Education Department, Bihar, Patna, on 30.11.2017, which was disposed on 24.09.2018, whereby the service appeal of the petitioner was rejected and the order of dismissal was affirmed.

11. The petitioner superannuated in the meanwhile on 31.01.2017.

12. The petitioner being aggrieved by the order of dismissal filed another writ application, bearing CWJC No. 21447 of 2018, which was disposed by order, dated 27.02.2020, whereby the order of dismissal of the petitioner was quashed with liberty to the respondent authorities to take appropriate fresh decision by giving opportunity of hearing to the petitioner on the point of difference of opinion in terms of Rule 18 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (in



short, 'C.C.A. Rules, 2005') and the principles laid down in the case of **Punjab National Bank and Others v. Kunj Behari Misra**, reported in (1998) 7 SCC 84. Since the petitioner had already retired, this Court further observed that the Disciplinary Authority is required to follow Rule 43 (b) of the Bihar Pension Rules, 1950, in the present matter.

13. The proceeding was converted under Section 43 (b) of the Bihar Pension Rules, 1950, vide Memo No. 673, dated 15.07.2020, and a show cause/point of difference was issued to the petitioner vide letter, dated 09.09.2020 (Annexure 17), asking him to submit his reply.

14. The petitioner submitted his reply denying all the charges, but the impugned order, dated 01.12.2020 was passed, which is under challenge in the present writ application before this Court.

15. Learned Counsel for the petitioner, assailing the impugned order, argued that the Presenting Officer, during the course of enquiry, did not produce any witness for recording oral evidence in support of the charges and the enquiry report was submitted merely on the basis of the reply filed by the Presenting Officer. No oral evidence was led to prove the charges and/or no documents were exhibited by producing any witness. The contents



of the documents, viz. the First Information Report, the sanction order etc. were also not proved in course of enquiry. The enquiry report does not show that any of the charges were proved against the petitioner and accordingly, the finding of the Enquiry Officer is that four charges were not proved and regarding charge no. 2, i.e. arrest of the petitioner red-handed with Rs. 25,000/-, the Enquiry Officer opined that since criminal case is going on, therefore, it would be better to wait for the conclusion of the criminal trial.

16. Learned Counsel further argued that the Disciplinary Authority merely reiterated the charge nos. 1 and 2 in his second show cause, dated 09.09.2020 (Annexure 17), making it the point of difference recorded in the enquiry report, which is not in conformity with Section 18 of the C.C.A. Rules, 2005. As per Rule 18 (2) of the C.C.A. Rules, 2005, if the Disciplinary Authority, disagrees with the findings of the inquiring authority on any article of charge, he is required to record his reasons for such disagreement and to record his own finding on such charge, if the evidences on record is sufficient for the purpose.

17. Lastly, he argued that the present case is a case of no evidence and the punishment awarded against the petitioner is in violation of principles of natural justice.



18. In support of his contention, learned Counsel for the petitioner relies upon the decisions of the Supreme Court, in the cases of **Roop Singh Negi v. Punjab National Bank and Others**, reported in **(2009) 2 SCC 570**, **State of Uttar Pradesh and Others v. Saroj Kumar Sinha**, reported in **(2010) 2 SCC 772**, and one decision of this Court rendered in the case of **Anil Kumar v. The State of Bihar and Others (CWJC No. 280 of 2016)**.

19. Per contra, learned Counsel for the State argued that the petitioner, while being posted as Block Education Officer, Samastipur, was caught red-handed taking bribe, for which Vigilance Police Station Case No. 25 of 2014 was instituted for corruption charges.

20. He further submits that in the departmental proceeding, the entire facts and circumstances of abuse of office and corruption charges were examined and in furtherance of the government policy of Zero tolerance in corruption matters, the petitioner was awarded punishment as such officer is unbecoming and threat to good governance and in that view of the matter, the order of punishment forfeiting 100 per cent pension of the petitioner to cleanse the department from corrupt officers cannot be faulted.



21. He further argued that principle of natural justice is not a straight jacket formula and its application depends on attending facts and circumstances. The petitioner, who was caught red-handed taking bribe, cannot complain any violation of natural justice or infringement of fundamental right as there is no fundamental right to demand bribe and indulge in corruption.

22. He next argued that the petitioner was provided with opportunity in consonance with the principles of natural justice in the entire disciplinary proceeding, which culminated into the order, dated 01.12.2020, by which 100 per cent pension of the petitioner was forfeited.

23. Rule 3 (i) of the Bihar Government Servants Conduct Rule 1976, provides that every government servant shall at all times maintain absolute integrity and do nothing which is unbecoming of a Government servant.

24. At last, he submits that departmental proceeding was conducted in accordance with the provisions of law and the petitioner was given opportunity to produce his defence and after consideration of his defence and after proper enquiry, the enquiry report was submitted and charges were proved. He next submits that after giving opportunity to the petitioner to submit his second



show cause, the Disciplinary Authority passed the order of dismissal, which has been upheld by the Appellate Authority.

25. I have heard learned Counsel for the parties concerned and have carefully gone into the materials available on record.

26. From perusal of the memo of charges, it appears that five charges were levelled against the petitioner, which related to the petitioner's allegedly accepting bribe of Rs. 25,000/- and the petitioner was caught red-handed, along with the bribe amount. The petitioner has denied all the allegation in his statement of defence submitted in course of enquiry and in reply to the second show cause notice. The criminal case is still pending. The Disciplinary Authority differed with the report of the Enquiry Officer, who exonerated the petitioner from all the charges levelled against him and for charge no. 2, it has been observed that since criminal case is going on, therefore, it would be better to wait for the conclusion of the criminal trial.

27. While differing and communicating the points of difference, vide letter, dated 09.09.2020, the Disciplinary Authority made the ground for differing with charge nos. 1 and 2 only on the basis of the sanction letter of the Superintendent of Police, Vigilance Investigation Bureau, dated 24.04.2014 and



under Clause I of the said letter, Rs. 50,000/- was demanded by the petitioner, which was verified by the Vigilance Investigation Bureau. While differing with the charge no. 2, the Disciplinary Authority has taken into account that the raiding team has arrested the petitioner with the bribe money of Rs. 25,000/- and recovered notes were compared with the G. C. Notes mentioned in the pre-trap memorandum and found to be the same. The Disciplinary Authority, on the basis of the aforesaid points of difference, has come to the conclusion that the petitioner was caught red-handed with the bribe money of Rs. 25,000/- and was arrested and accordingly passed the impugned order of punishment.

28. It is apparent that no witness was examined during the course of enquiry or after the Disciplinary Authority differed with the enquiry report to prove the documents regarding sanction of prosecution, including the contents of the documents relied upon for passing the impugned order. The memo of charges does not mention the name of any witness to be examined/produced during the course of enquiry by the Department. The complainant, Sanjay Kumar Jha, the Investigating Officer, or the witness to the pre-trap memorandum and post-trap memorandum, all other witnesses to the occurrence were not examined during the course of enquiry. Even, the sanction/prosecution letter of the



Superintendent of Police, Vigilance, relied upon by the Disciplinary Authority, as a point of difference, was not produced or proved at any stage of the enquiry and/or after the issuance of the second show cause notice with points of difference served upon the petitioner. It is a case of no evidence. In the present case, no evidence was led at all during the course of enquiry, as such, recording of reasons by the Disciplinary Authority for disagreement with the findings of the Enquiry officer and recording of his own finding is also based on no evidence.

29. In the case of **Roop Singh Negi** (Supra), the Supreme Court has held thus:

“**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 herein before 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.

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.”

30. In **Roop Singh Negi** (Supra), only evidence available with the Disciplinary Authority was the confession of the delinquent and the First Information Report. Like the present case, no witness was examined in the said case to prove the documents and the management merely tendered the documents as in the present case and the Supreme Court held that the materials brought on record pointing out the guilt are required to be proved and the decision must be arrived at on some evidence, which is legally admissible and also held that the allegation made in the First Information Report simpliciter unless proved by leading evidence, by itself can not be treated as evidence.

31. In the case of **State of Uttar Pradesh and Others v. Saroj Kumar Sinha**, reported in **(2010) 2 SCC 772**, the Supreme Court, in paragraphs 27 and 28, has held as follows:-



“27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.

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.”



32. The Supreme Court, in the aforesaid case, has defined the role of the Enquiry Officer, who acts as a quasi judicial authority while holding enquiry and is in a position of an independent adjudicator. His function is to examine the evidence presented by the Department, even in absence of delinquent officer to see as to whether the unrebutted evidence is sufficient to hold the charges as proved but in the present case, the Enquiry Officer did not examine any witness presented by the Department and found the charges not proved.

33. A Single Bench of this Court, in the case of **Anil Kumar** (supra), in which the Presenting Officer except for relying upon two documentary evidences led no other evidence to prove the documents or the charges in order to bring home the allegations, set aside the order of initiation of disciplinary proceeding, punishment order as well as the appellate order. The aforesaid decision of the Single Bench, in **Anil Kumar** (supra) has been upheld by a Division Bench of this Court, in L.P.A. No. 63 of 2017.

34. In view of the materials available on record and the discussion held herein before, it is established that during course of enquiry, no oral enquiry was conducted, no oral evidence was



produced/examined, no documents have been proved, accordingly, in my opinion, the enquiry itself has vitiated.

35. The Disciplinary Authority did not record the valid reasons for disagreement and recorded its finding on charge nos. 1 and 2 without any evidence on record, either collected during the course of enquiry or at the time of recording of reasons of disagreement with the findings of the Enquiry Officer.

36. Accordingly, I find that there is serious procedural lapses at the stage of enquiry as well as at the stage of recording of disagreement by the Disciplinary Authority. This is a case of no evidence. As such, the entire enquiry proceeding vitiates.

37. Thus, in my opinion, the order of punishment as well as order of the Appellate Authority, imposing 100 per cent forfeiture of pension of the petitioner cannot sustain and is set aside. The enquiry report as well as the disagreement rendered are also set aside and the matter is remitted back for fresh enquiry, after giving adequate opportunity to the petitioner.

38. The fresh enquiry must be concluded within a maximum period of six months from the date of receipt/production of a copy of this order.



39. Liberty is given to the respondents to serve a supplementary memo of charge(s), along with the list of witnesses and documents to the petitioner, relied upon by the Department.

40. Since, the order of punishment has been quashed, the petitioner shall be paid provisional pension and other retiral dues admissible in law.

41. In the result, this writ application is allowed.

42. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	04-10-2023
Uploading Date	04-12-2023
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