

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.526 of 2023

Bhola Paswan S/o Late Ramdeo Paswan, R/o Village Khoir Manjhoul, P.S.
Cheria Bariyarpur, District- Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary to the Govt. of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Department of Industries, New Secretariat, Vikash Bhawan, Patna.
3. The Additional Secretary, Department of Industries, New Secretariat, Vikash Bhawan, Patna.
4. The Joint Secretary, Industries, Vikash Bhawan, New Secretariat, Patna.
5. The Special Secretary, Industries, Vikash Bhawan, New Secretariat, Patna.
6. The Dy. Secretary, Industries, Vikash Bhawan, New Secretariat, Patna.
7. The Joint Director Cum-Conducting Officer, Industries, Vikash Bhawan, New Secretariat, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Awadhesh Kumar Mishra, Adv., Mr. Dwivedy Surendra, Adv., Mr. Jitendra Kumar George, Adv., Mr. Biswak Sen Misra, Adv.
For the State	:	Mr. Ravish Chandra, AC to SC-6

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 07-05-2024

Heard learned Advocate for the petitioner as well as
learned counsel for the State.

2. The petitioner has invoked the extraordinary writ jurisdiction under Article 226 of the Constitution of India praying for following reliefs:-



“i. The order dated 03.08.2016 passed the Principal Secretary Department of Industries be set-aside.

ii. The revisional order issued under Memo No.4067 Patna dated 20.07.2022 passed by the Principal Secretary Industry department, Bihar Patna be set-aside whereby and whereunder the revision petition dated 03.06.2022 filed by the Petitioner has been erroneously rejected.

iii. The Respondent authorities be directed to reinstate the Petitioner in his services with all consequential benefits.”

3. Facts of the case:-

By an order dated 4th December, 1995 the petitioner was appointed on the post of Extension Officer and joined at Headquarter, Palamu under the Industries Department, Government of Bihar. Subsequently, on 17th October 2012 on promotion the petitioner joined as Circle Officer in Roh Circle Office. On or about 15th October, 2014 one Rakesh Kumar made a false complaint against the petitioner alleging acceptance of illegal gratification by him. On receipt of such allegation Vigilance Investigation Bureau (hereinafter described as V.I.B.) constituted a trap and he was allegedly caught raid handed while accepting bribe of Rs.5,000/-. The petitioner was arrested, a case being Vigilance



Case No. 75 of 2014 under various penal provisions of Prevention of Corruption Act was registered against the petitioner. The said case is under trial and the petitioner is duly contesting the said case. It is worthy to record the reference of the criminal case instituted against the petitioner, which is Roh P.S. Case No. 8 of 2006, Warsaliganj P.S. Case No. 113 of 2007 and Nawada P.S. Case No. 681 of 2014. After being arrested, the petitioner was placed in suspension. Subsequently, he was released on bail and reinstated vide order dated 16th December, 2014. On the basis of the allegation made out in complaint submitted by the competent Officer of V.I.B., departmental proceeding was initiated against the petitioner and on 19th February, 2015 he was served with the Memorandum of Charges under the signature of Deputy Secretary, Industries Department, Government of Bihar. On 7th April, 2015 the petitioner submitted his explanation denying the charges. Subsequently, departmental enquiry was conducted and the Enquiry Officer submitted a report on 19th August, 2015 that the Department failed to examine even a single witness against the petitioner in order to prove the charges and he held that the charges framed against the petitioner had not been established as this was a case of no evidence. Subsequently, on 3rd August, 2016, the Principal Secretary, Department of Industries, Government of



Bihar passed an order of dismissal against the petitioner. The petitioner previously filed a writ petition being C.W.J.C. No. 18257 of 2016 challenging the order of dismissal passed against him by respondent no. 2, this Court disposed of the said writ petition directing him to file a fresh revision before the competent authority vide order dated 11th May, 2022. The petitioner file a revision petition before the respondent no. 2 on 3rd June, 2022. However, vide order dated 20th September, 2022, the said revision was rejected in view of Rule 29 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter described as C.C.A. Rules).

4. Stand on the part of the State respondents:-

It is contended on behalf of the State respondents that the trap laid by the V.I.B., acceptance of bribe by the delinquent employee, recovery of bribe money from the possession of the delinquent employee and the complaint filed against him by the V.I.B. were placed before the appellate and revisional authority. The said documents by themselves are sufficient evidence against the petitioner and petitioner was dismissed on the basis of said evidence. The case against the petitioner has not been vitiated due to non-examination of any witness. Therefore, the decision of the appellate authority ought to be upheld by this Court. Moreover, the



departmental revision filed by the petitioner, as per the order passed by this Court in C.W.J.C. No. 18257 of 2016, was barred by limitation and accordingly the same was rejected.

5. Further proceeding:-

The petitioner submitted a rejoinder against the said counter affidavit and reiterated the same fact as stated in the writ petition.

6. Argument on behalf of the petitioner:-

It is submitted by the learned Advocate on behalf of the petitioner that the enquiry report (Annexure-4) clearly shows that not a single witness on behalf of the Department in support of the charges was examined. As a result, non-examination of the witnesses in spite of repeated chances being given to the Department, the Enquiry Officer rightly held that the charge was not proved. The appellate authority without having any basis or evidence passed an order of dismissal, which is absolutely illegal. The order of the revisional authority also suffers from manifest arbitrariness, when the revisional authority was directed by an order of this Court to consider the case of the petitioner's rejection on the technical ground of limitation was not proper.

7. In support of his contention, the learned Advocate on behalf of the petitioner refers to a decision of the Hon'ble Supreme



Court in ***Kuldeep Singh Vrs. The Commissioner of Police and Others***, reported in ***AIR 1999 SC 684***. Paragraphs 41 and 42 are relevant and quoted hereinbelow:-

“41. Smt Meena Mishra, appearing as a witness for the Department, denied having made any payment to the appellant on that day. The labourers to whom the payment is said to have been made have not been produced at the domestic enquiry. Their so-called previous statement could not have been brought on record under Rule 16(3). As such, there was absolutely no evidence in support of the charge framed against the appellant and the entire findings recorded by the enquiry officer are vitiated by reason of the fact that they are not supported by any evidence on record and are wholly perverse.

42. The enquiry officer did not sit with an open mind to hold an impartial domestic enquiry which is an essential component of the principles of natural justice as also that of “reasonable opportunity”, contemplated by Article 311(2) of the Constitution. The “bias” in favour of the Department had so badly affected the enquiry officer's whole faculty of reasoning that even non-production of the complainants was ascribed to the appellant which squarely was the fault of the Department. Once the Department knew that the labourers were employed somewhere in Devli Khanpur, their presence could have been procured and they could have been produced before the enquiry officer to prove the charge framed against the appellant. He has acted so arbitrarily in the matter and has found the appellant guilty in such a coarse manner that it becomes apparent that he was merely carrying out the



command from some superior officer who perhaps directed "fix him up".

8. In this regard, it is submitted by the learned Advocate for the petitioner that in the instant case the appellate authority failed to consider the case of the petitioner with an open mind and the impugned order of dismissal was the result of bias in favour of the Department. The "bias" had so badly affected the disciplinary authority that he had lost all faculty of reasoning that even non-production of the complainant and the witnesses was held to be non-consequential.

9. Learned Advocate on behalf of the petitioner also refers to the following unreported decisions of this Court passed by the Coordinate Benches:-

(I). C.W.J.C. No. 15747 of 2016 (*Vinod Kumar Bimal Vrs. State of Bihar and Others*).

(II) C.W.J.C. No. 18779 of 2019 (*Vijendra Prasad Vrs. State of Bihar And Others*).

(III) C.W.J.C. No. 16091 of 2014, (*Naushad Alam Vrs. The Bihar State Minorities Finance Corporation Limited And Others*).

(IV) C.W.J.C. No. 12980 of 2017 (*Naresh Prasad Sinha Vrs. The State of Bihar and Others*).



10. In C.W.J.C. No. 18779 of 2019 the fact of the case is almost similar to the fact of this case. In the said report also the petitioner was arrested by the Vigilance team and was made an accused. He was placed under suspension and subsequently on the ground of misconduct a departmental proceeding was initiated for accepting gratification. The Enquiry Officer submitted his report that there was no occasion for the petitioner to have demanded and accepted the bribe from the complainant as the department failed to examine any witness during enquiry.

11. This Court not only quashed the entire action of imposition of punishment of dismissal of petitioner from service but also imposed cost upon the Directorate of injustice.

12. **Submission on behalf of the State respondents:-**

Learned Advocate on behalf of the State respondents, on the other hand, submits that the enquiry authority may be given a chance to pass reasoned order after examination of witnesses, who were cited to establish the charges.

13. **Conclusion:-**

Having heard the learned counsels for the parties and on careful perusal of the materials on record as well as the precedence on this subject, this Court is of the view that during the departmental enquiry and specially when the order of dismissal



was passed against the petitioner, the basic rule of natural justice was not complied with.

The Enquiry Officer clearly recorded in his report:-

“ अतः गवाह एवं सूचक बार बार बुलाने पर भी उपस्थित नहीं होने के कारण मामला एक पक्षीय सुना गया। जिस आधार पर आरोप पूर्णतः नहीं बन पा रहा है और चूंकि मामला निगरानी विभाग में है इसलिए निगरानी विभाग का आदेश की सर्वमान्य होगा।”

14. The Principal Secretary passed the order of dismissal (Annexure-6) on the basis of initial statement/complaint filed by the V.I.B.

15. It is needless to say that a complaint filed by the Special Branch of Police against any person cannot be a piece of evidence. When the complaint submitted by the V.I.B is supported by any witness, who were cited in the charge-sheet, then only the statement of the witnesses can be examined on the basis of examination and cross-examination to come to a finding as to whether the charge against the petitioner is said to have been proved on the basis of preponderance of probability.

16. It is contended by the learned Advocate for the petitioner that when a criminal case is pending against the petitioner the Department is entitled to take any departmental action as per the C.C.A. Rules only on the basis of the decision to



be obtained by the Special Court under the Prevention of Corruption Act.

17. I am not in a position to accept such submission made by the learned Advocate for the petitioner. Decision of the criminal case is based on proof beyond any shadow of reasonable doubt. On the other hand, the standard of proof in a disciplinary proceeding is preponderance of probability. Therefore, it is not the law that during pendency of a criminal case a delinquent employee cannot be departmentally punished under the departmental rules in which he is governed in a departmental proceeding.

18. However, in the instant case, in the departmental proceeding charges against the petitioner was not at all proved. The Enquiry Officer held that it was a case of no evidence and, therefore, he had no alternative but to hold that Department failed to prove the charges against the delinquent employee.

19. For the reasons stated above, I find that the order of punishment dated 3rd August, 2016 is passed on an enquiry report dated 28th July, 2015, wherein the respondent authorities failed to prove the charges on account of non-examination of witnesses and failure on the part of the respondent authorities to produce any evidence in support of their charges. Therefore, this Court is of the view that the order of dismissal dated 3rd August, 2016 and order



of confirmation passed on 20th September, 2022 by the Department in revision is in gross violation of the statutory provisions as well as the principles of natural justice. The petitioner was victimized by the disciplinary authority without any basis or evidence adduced against him in support of the charges. Therefore, the order of dismissal passed by the appellate authority on 3rd August, 2016 and the order of revision passed on 20th September, 2022 are set aside and quashed.

20. Accordingly, the instant writ petition is allowed.

21. There shall be no order as to costs.

22. The petitioner is directed to be reinstated with consequential benefits.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	NAFR
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Uploading Date	
Transmission Date	

