

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16992 of 2021

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Ram Pravesh Chauhan S/o Jagdish Prasad Chauhan, Resident of Lane 3 B,
Bank Colony, Gola Road, P.S.- Danapur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Prohibition, Excise and Registration Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Prohibition, Excise and Registration Department, Govt. of Bihar, Patna.
3. The Special Secretary, Prohibition, Excise and Registration Department, Govt. of Bihar, Patna.
4. The Joint Secretary, Prohibition, Excise and Registration Department, Govt. of Bihar, Patna.
5. The Deputy Secretary, Prohibition, Excise and Registration Department, Govt. of Bihar, Patna.
6. The Principal Secretary, Revenue and Land Reform Department-cum-Enquiry Commissioner, (Trap Case), Bihar, Patna.
7. The Secretary, Department of Law, Bihar, Patna.

... .. Respondent/s

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For the Petitioner/s	:	Mr. Sanjay Kumar Giri, Adv., Mr. Utkarsh Bhushan, Adv., Mr. Mritunjay Harsh, Adv.
For the State	:	Mr. Manish Kumar, AC to AAG-6 (Ex) In-charge AAG-5

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

C.A.V. JUDGMENT

Date : 08-10-2024

The petitioner was a Sub-Registrar attached to the Sub-Registry Office, Hilsa in the District of Nalanda. On the basis of a complaint filed by one Yogendra Yadav, before the Vigilance Investigation Bureau, Patna alleging, inter alia, that the petitioner had asked for bribe of Rs.10,000/- for registration of a piece of

land, situated at village Madhobur within Police Station- Khodaganj, District- Nalanda, in the name of his brother-in-law Manoj Kumar and his wife. On the basis of said complaint a trap was laid and the petitioner was allegedly caught red handed while accepting bribe.

2. The petitioner was arrested and Vigilance P.S. Case No. 55 of 2014, under Section 7/8/13(2) read with Section 13 (1) (D) of the Prevention of Corruption Act, 1988 was registered against him on 26th August, 2014. As a result of arrest, the petitioner was suspended from his service. The Police Officer attached to Vigilance Investigation Bureau informed the matter to the higher Authority of the petitioner and on the basis of the said information a departmental proceeding was initiated against him. In the said departmental proceeding the petitioner was dismissed from his service. He preferred an appeal against the order of dismissal. The said Appeal was dismissed.

3. It is further contended by the petitioner that during the disciplinary proceeding, the petitioner filed a writ petition bearing C.W.J.C. No. 3803 of 2013 on the ground that the disciplinary proceeding is bad in law in view of the fact that the Memorandum of Charge had not been issued by the appropriate Authority. The said writ petition was disposed off vide order dated 11th September,

2015 by a Coordinate Bench of this Court, directing the respondents to initiate fresh departmental enquiry against the petitioner by appointing Departmental Inquiry Commissioner or Additional Inquiry Commissioner, instead of Officer of the Excise and Prohibition Department, who were made Inquiry Officer earlier.

4. As per the order of this Court in the above mentioned writ petition, fresh resolution for initiation of departmental proceeding was taken by respondent no. 3 and the Departmental Inquiry Commissioner, Bihar was made the Conducting Officer against the petitioner. The respondent no. 5 was again made the Presenting Officer in the departmental enquiry.

5. During departmental enquiry, the petitioner filed a representation on 3rd March, 2017, requesting the Inquiry Commissioner to supply relevant documents, which would be relied on by the Department during the enquiry. The Departmental Inquiry Commissioner directed the respondents to supply the documents, which the petitioner requested to him. He also requested the Superintendent of Police, Vigilance Investigation Bureau to supply the documents as requested by the petitioner. Thereafter, on 16th March, 2017, a list of documents was supplied to him. The Superintendent of Police, Vigilance Investigation

Bureau by his letter dated 11th April, 2017 refused to supply any documents stating, inter alia, that the Vigilance Investigation Bureau had supplied documents free of cost to the petitioner, as per requirement of Section 207 of the Cr.P.C. The enquiry was conducted by the Departmental Inquiry Commissioner, wherein it was pointed out by the petitioner that the registration of land in question was requested by one Baldeo Yadav as seller and two women namely Sulekha Devi and Rita Devi, who were the purchaser of the said land. Therefore, there was no connection between the petitioner and one Yogendra Yadav, who lodged complaint of demand of illegal gratification. The Inquiry Officer, on conclusion of enquiry held that the charge against the petitioner was proved. He submitted his report to the Principal Secretary, Prohibition, Excise and Registration Department, Government of Bihar. However, vide order dated 10th August, 2020, the Joint Secretary of the Department issued the order of dismissal against the petitioner.

6. It is alleged that the order of disciplinary authority was cryptic and non-speaking.

7. It is contended by the petitioner that disciplinary proceeding was conducted without supplying any document to him. The order of Disciplinary Authority was passed without any

evidence and the entire enquiry is a classical example of no evidence.

8. Respondent nos. 1 to 5 have contesting this case by filing a counter affidavit stating, inter alia, that the Department decided to punish the petitioner with major punishment of dismissal under Rule 14 (xi) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 and revised Rules of 2007 after seeking approval of the Cabinet.

9. Finally, the order of dismissal was passed under the signature of the Governor of Bihar and it was communicated by the Joint Secretary of the Department.

10. It is contended on behalf of the respondents that departmental enquiry was conducted with all fairness and on the basis of the evidence adduced by the complainant and Police report submitted in Vigilance P.S. Case No. 55 of 2014, the petitioner was recommended for dismissal.

11. By filing a rejoinder to the counter affidavit, the petitioner has reiterated his case. Subsequently, the petitioner preferred Appeal and Review against the order of dismissal, which were also dismissed. By filing Interlocutory Application the petitioner has prayed for quashing of the said order also.

12. Learned Advocate on behalf of the petitioner in course of his argument criticized the order of dismissal, passed against the petitioner, on the following grounds:-

(I) The disciplinary proceeding is a case of no evidence and on the basis of evidence adduced by the complainant, the petitioner cannot be held guilty for demanding bribe.

(II) The impugned order of dismissal was passed by the Joint Secretary, Prohibition, Excise and Registration Department, though the Disciplinary Authority of the petitioner is the Principal Secretary of the Department. Since the order of punishment was not passed by the Principal Secretary of the Department, the said order is bad in law.

13. At the outset, this Court thinks it pertinent to record that the order proposing dismissal of the petitioner was placed by the Principal Secretary of the Department before the Cabinet. The Councils of Ministers in the Cabinet upheld the order of dismissal. Thereafter, the said proposal was sent to the Governor. The Governor accepted the decision taken by the Council of Ministers. The Joint Secretary of the Department merely communicated this order. Therefore, the objection raised by the petitioner regarding the validity of the order cannot be challenged on the ground that it was signed by the Joint Secretary of the Department.

14. With regard to point no. 1, the learned Advocate on behalf of the petitioner, first takes me to Annexure-5, the Memorandum of Charge framed by the Department against the petitioner. It is stated in column-3 of the Memorandum of Charge that one Yogendra Yadav went to the Registry Office for the purpose of registration of a piece of land in the name of his Brother-in-law. At that time, the Sub-Registrar (petitioner) demanded Rs. 8,000/- from him. While accepting such bribe, the petitioner was caught red handed by the Vigilance Investigation Bureau and Vigilance P.S. Case No. 55 of 2014, dated 26th August, 2014 was registered against the petitioner under Section 7/8/13(2) read with Section 13 (1) (D) of the Prevention of Corruption Act, 1988.

15. On the basis of sanction granted on 7th November, 2014 by the Law Department and from the evidence annexed with the Police report, the allegation of demanding and accepting bribe against the petitioner was, prima facie, established. Such act amounts to mis-conduct for a Government servant and against Rule 3(i) of Bihar Government Servant Conduct Rules. In column no.-4 a letter dated 28th August, 2014, issued by the Vigilance Investigation Bureau was cited as the proposed documentary evidence was against the petitioner.

16. Learned Advocate on behalf of the petitioner next refers to Annexure-9, at page- 45 of the writ petition. The said document is the first enquiry report in connection with the departmental proceeding. With regard to defence taken by the petitioner, that the bribe amount was not recovered from his possession, the Inquiry Officer recorded that as per the post trap Memorandum, the said amount of Rs. 8,000/- was recovered from an Almirah of the Office of the Sub-Registrar. The petitioner demanded the statement of the witnesses made in connection with the above mentioned Vigilance Case. However, the said documents were not supplied on the ground that the statement of witnesses related to the criminal case, which the petitioner is not entitled to get.

17. Learned Advocate on behalf of the petitioner next draws my attention to the evidence of the complainant. In course of his evidence, he stated that on 20th August, 2014, he went to Sub-Registry Office for registration of a document in the name of the wife of his Brother-in-law, namely, Sulekha Devi. The Sub-Registrar asked some question to Sulekha Devi. When she stated that the land in question is bounded by a road on the Northern side, the Sub-Registrar told that additional stamp duty was to be paid for the purpose of registration and he had kept the deed on the

table. After 20/25 minutes, one Katib and Ravi @ Sanjay told him that they would manage to get the said deed registered and demanded a sum of Rs.12,000/-. The complainant lodged a complaint against the Sub-Registrar before the Vigilance Investigation Bureau. On 26th of the Month, the members of the trap of the Vigilance Department met him outside the Office, mixed some chemicals on the currency notes amounting to Rs.12,000/- and handed over to him and told him to give the said money to the person who demanded the amount. He handed over the said amount to Katib, who gave the said amount to Ravi and Ravi went to the Chamber of the Sub-Registrar. Immediately the members of the trap entered inside the Chamber of the Sub-Registrar and arrested all of them.

18. In cross-examination, the complainant admitted that the petitioner never demanded any bribe for registration of the deed. He also admitted that he paid the said sum to one Katib. He also mentioned in unequivocal term during cross-examination that the amount of illegal gratification was not received from the petitioner. The complainant also stated that the said Katib and Ravi @ Sanjay were the middle men in the Sub-Registry Office. The complainant did not know for whom the said persons used to work as middle men.

19. From the evidence, it is also found that the trap team recovered a sum of Rs.8,000/- from the Almirah of the Office of the Sub-Registrar. There is absolutely no evidence with regard to the balance amount of Rs.4,000/-, though the complainant stated that he gave a sum of Rs. 12,000/- to the members of the trap team and they mixed some chemicals on the said currency notes and handed over to him, directing him to pay the amount to the person who demanded the said sum.

20. It is also found from the evidence of the complainant that the seizure-list and other documents were prepared in a hotel situated at a considerable distance from the place of occurrence.

21. Thus, it is submitted by the learned Advocate for the petitioner that the evidence of the complainant before the Inquiry Officer clearly shows that the petitioner did not demand any bribe from the complainant. The amount of bribe was not recovered from his possession. He did not pay any amount as bribe to the petitioner and a sum of Rs. 8,000/-, out of Rs. 12,000/- was recovered from an Almirah, in the Office of the Sub-Registrar. There is absolutely no evidence as to whether the said Almirah was in exclusive possession of the petitioner or it is used by the other employees of the Office.

22. Having heard the learned Advocate on behalf of the petitioner and the learned counsel for the respondents, I like to state at the outset that this Court is not in a position to accept the argument advanced by the petitioner on the technical issue that the order of dismissal was bad in law, as it was not passed by the Appointing Authority. Article 311 (1) of the Constitution of India states that a member of Civil Service of the Union or the State, can only be dismissed or removed by his Appointing Authority. Same principle is laid down in Rule 15 of the ***Bihar Government Servants (Classification, Control and Appeal) Rules, 2005***. Sub-rule (2) of Rule 15 States that:-

“Without prejudice to the provisions of Sub-rule (1), any of the penalties specified in Rule 14 may be imposed on a Government servants by the Appointing Authority or any authority to which the Appointing Authority is subordinate or by any other authority in his behalf by a general or special order of the Government.

Since the final order of termination was not passed against the petitioner by his Appointing Authority or any Authority to which the Authority appointing is subordinate or by any authority empowered in this behalf by a general or special order of the Government.”

23. It is contended on behalf of the petitioner that the respondents failed to prove that the order of dismissal was passed

by the Authority empowered under Section 15(2) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005.

24. This argument cannot be accepted on the ground that the order of dismissal of the petitioner was placed before the Council of Ministers in its Cabinet. The Cabinet took the decision for dismissal. Thereafter the said order of the Cabinet was approved by the Government. The Joint Secretary of the Department only communicate the order of dismissal to the petitioner. He did not pass the order of dismissal by application of mind stating independent decision thereon. He merely communicated the order of the Government to the petitioner. Therefore, the order of dismissal cannot be quashed only on the said ground.

25. Learned Advocate on behalf of the petitioner next refers to a decision of the Hon'ble Supreme Court in the case of **B. Jayaraj Vrs. State of A.P**, reported in **2014 (13) SCC 55** to demonstrate that in so far as the offence under Section 7 of the Prevention of Corruption Act is concerned, it is a settled position in law that demand of illegal gratification is sine quanon to constitute the said offence and merely recovery of currency notes cannot constitute the offence under Section 7, unless it is proved

beyond all reasonable doubt that the accused voluntarily accepted the money, knowing it to be a bribe.

26. Coming to the instant case, he refers to the cross-examination of the complainant, who clearly stated that the petitioner did not demand any bribe from him. It was one Katib and Ravi, who demanded bribe from him and he paid the said amount to Katib. The departmental proceeding is based on the criminal case instituted against the petitioner, by the Vigilance Investigation Bureau, under Section 7/8/13(2) read with Section 13 (1) (D) of the Prevention of Corruption Act. When the ingredients of Section 7 has not been proved in the departmental proceeding, the order of dismissal is liable to be set aside.

27. Learned Advocate for the petitioner next refers to another decision of the Hon'ble Supreme Court in the case of ***United Bank of India Vrs. Bishwanath Bhattacharjee***, reported in ***(2022) 13 SCC 329***. In paragraph 19 of the above mentioned report, it is held that:-

“19. where the findings of the disciplinary authority are not based on evidence, or based on a consideration of irrelevant material, or ignoring relevant material, are mala fide, or where the findings are perverse or such that they could not have been rendered by any reasonable person placed in like circumstances, the remedies

under Article 226 of the Constitution are available, and intervention, warranted. For any court to ascertain if any findings were beyond the record (i.e., no evidence) or based on any irrelevant or extraneous factors, or by ignoring material evidence, necessarily some amount of scrutiny is necessary. A finding of "no evidence or perversity, cannot be rendered sans such basic scrutiny of the materials, and the findings of the disciplinary authority. However, the margin of appreciation of the court under Article 226 of the Constitution would be different; it is not appellate in character.

28. Learned Advocate on behalf of the petitioner next refers to another decision of the Hon'ble Supreme Court in the case of ***Union of India Vrs. H.C. Goel***, reported in ***AIR 1964 SC 364***. The following paragraph of the above decision is relevant for our purpose and quoted below:-

“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 No. 3 was proved against him? In exercising its jurisdiction under Art. 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 dealt 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 number 3 is proved against him is based on no evidence.”

29. Thus, when a departmental enquiry is concluded, where the prosecuting authority fails to produce any evidence against the petitioner, no order of punishment can be passed, because the charge on the said count is based on no evidence.

30. Learned Advocate on behalf of the petitioner also refers to another decision of the Hon'ble Supreme Court in **Roop Singh Negi Vrs. Punjab National Bank & Others.**, reported in **(2009) 2 SCC 570**. In paragraph-17 of the aforesaid Judgment, the Hon'ble Supreme Court recorded an observation made in **Moni Shankar Vrs. Union of India**, reported in **(2008) 3 SCC 484** which runs as under:-

“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."

31. In ***M.V. Bijlani Vrs. Union of India & Ors.***, reported in **(2006) 5 SCC 88**, it is held by the Hon'ble Supreme Court:-

"It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, 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.”

32. In the instant case, the Inquiry Officer did not consider the cross-examination of the complainant. On the other hand, he held the petitioner guilty of gross mis-conduct on the ground that the Vigilance Investigation Bureau instituted a criminal case against him, under the Prevention of Corruption Act. He failed to consider that the complainant, on the basis of whose complaint, the Vigilance Investigation Bureau initiated a criminal case under the Prevention of Corruption Act, on the allegation that the petitioner demanded bribe of Rs.12,000/- for registration of a deed, during enquiry stated in unequivocal term that the petitioner personally did not demand any amount as illegal gratification from the complainant. He also did not pay any bribe to the petitioner. Only because a sum of Rs. 8,000/- was recovered from an Almirah, kept in the office of the petitioner, he was made accused in a criminal case, under the Prevention of Corruption Act. From the evidence recorded in course of departmental proceeding, it is ascertained that one Katib and Ravi demanded bribe from the complainant. During departmental enquiry, it is not established

that Katib and Ravi used to maintain relationship as intermediary with the petitioner. As a matter of fact, the Memorandum of Charge does not disclose such allegation.

33. In *Arun Kumar Vrs. State of Bihar & Others*, reported in (2019) 3 BLJ 221, this Court relying on the decision of the Hon'ble Supreme Court in *Roop Singh Negi (supra)*, quashed the decision of the disciplinary authority as well as the order passed in Memorial Appeal on the ground that the finding was based on no evidence. As such, it violates Rule 17(3) as well as Rule 17 (4) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005.

34. Since the factual circumstances of the instant case is absolutely similar as decided in the aforementioned Judgments, I do not find any reason to take a contrary view against the petitioner.

35. As the report of the Inquiry Officer as well as the Disciplinary Authority and Appellate Authority in the instant case suffers from manifest illegality, in view of the fact that the findings are based on no evidence, or irrelevant consideration of evidence, the impugned orders dated 10.08.2020 and 17.01.2022 are set aside and quashed.

36. The writ petition, accordingly, stands allowed.

37. The petitioner is directed to be reinstated in service and he is entitled to all consequential benefits from the date of his initial suspension contemplating enquiry against him, which is the subject matter of this case.

38. The instant writ petition is thus allowed on contest.

39. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	NAFR
CAV DATE	24.09.2024
Uploading Date	
Transmission Date	