

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6902 of 2022

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Umesh Kumar Sinha, Son of Late Akhileshwar Prasad Sinha, Resident of Village- 16, Pharmaceutical Colony, Bhootnath Road, P.S. Agam Kuan, Town and District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Food and Consumer Protection Department, Government of Bihar, Old Secretariat Bailey Road, Patna.
3. The Special Secretary, Food and Consumer Protection Department, Government of Bihar, Old Secretariat Bailey Patna.
4. The Officer on Special Duty – cum - Enquiring Officer, Food and Consumer Protection Department, Government of Bihar, Old Secretariat, Bailey Patna.
5. The Deputy Secretary, Food and Consumer Protection Department, Government of Bihar, Old Secretariat Bailey Patna.

... .. Respondent/s

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Bihar Government Servant (Classification, Control & Appeal) Rules, 2005—Rule 17—Bihar Pension Rules, 1950—Rule 43(b)—forfeiture of 100% of pension—present case is fourth round of litigation—earlier High Court already observed and hold that the Inquiry Officer and the Disciplinary Authority passed major penalty upon the Petitioner without recording any evidence against him—only document that was considered by the Disciplinary Authority is the vigilance trap memo and institution of criminal case by the Vigilance Police Station on the basis of the said vigilance trap memo and complaint made thereunder—during disciplinary proceeding not a single witness was examined and trap memo, letter of complaint, etc. were taken into consideration without being brought in evidence—delinquent officer was punished on the basis of vigilance trap memo—vigilance trap memo by itself is not a piece of evidence unless and until the contents of the same is proved by the maker of the trap memo before the disciplinary proceeding—person who made the complaint against the delinquent officer was also not examined—provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are applicable—report of the Inquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained—inference drawn by the Inquiry Officer apparently were not

supported by any evidence—in the enquiry, oral and documentary evidence, by which articles of charges are proposed to be sustained, are to be produced by or on behalf of the Disciplinary Authority—no such procedure has been adopted in the instant proceeding therefore, departmental proceeding is held unsustainable as being based on no evidence and product of surmises and conjectures in violation of Rule 17 (3) read with Rule 17 (14) Rules, 2005—orders of punishment of forfeiture of 100% pension of the petitioner passed by the Disciplinary Authority and affirmed by the Appellate Authority are quashed—writ petition is allowed—petitioner would be entitled to admissible pension and all consequential benefits.

(Para 20 to 26)

(1999) 2 SCC 10; (2009) 2 SCC 570; 2019 (4) PLJR 1046; CWJC No. 2013 of 2015—Relied Upon.

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... .. Respondent/s

Appearance :
For the Petitioner/s : Mr. Akhilesh Dutta Verma, Advocate
For the Respondent/s : Mr. Arvind Ujjwal (SC4)

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT
Date : 01-07-2024

1. This is the fourth round of litigation when the Petitioner invoked extraordinary Constitutional Writ Jurisdiction of this Court under Article 226 of the Constitution of India, challenging an order dated 2nd of June, 2023, which was communicated to him vide Memo No. 2537, dated 8th June, 2023, passed by the Minister Incharge -cum- Appellate Authority, Department of Food and Consumer Protection, Government of Bihar, affirming the departmental order of punishment of forfeiture of 100% pension passed by the



Special Secretary, Department of Food and Consumer Protection, Government of Bihar in a departmental proceeding instituted against him.

2. Pertinent to mention here that the Petitioner had been working in the Department of Food and Consumer Protection, Government of Bihar on and from 22nd of January, 1997, though he was appointed initially on 7th of March, 1989 in the Department of Revenue and Land Reforms, Government of Bihar. During September 2007, he was posted as Block Supply Officer, Dumraon, Buxar.

3. According to the Petitioner, on the basis of a false complaint alleged against him before the Vigilance Police Station under the Vigilance Investigation Bureau, Bihar, Patna that he claimed illegal gratification of Rs. 5,000/- in order to issue licence in favour of Thela Vendor, purported trap was conducted by the Vigilance Investigation Bureau on 7th of September, 2007 and he was arrested by the police attached to the V.I.B. for allegedly accepting bribe and a vigilance case was registered against him.

4. Subsequently, in compliance of Rule 9(2) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereafter referred to as "Bihar C.C.A.



Rules, 2005 for short), he was suspended in contemplation of departmental proceeding. Thereafter, charge was framed against him of departmental misconduct, and upon enquiry, the Disciplinary Authority passed an order of punishment of dismissal from service in exercise of the powers conferred under the provisions of the Bihar C.C.A. Rules, 2005.

5. The Petitioner challenged the said order of dismissal from service before this Court by filing C.W.J.C. No. 7122 of 2014. The said writ petition was disposed of, holding, interalia, that the order of Disciplinary Authority is appellable in terms of Rule 23 read with Rule 24 of the Bihar C.C.A. Rules, 2005. Therefore, the Petitioner was advised to take step in accordance with law and the aforesaid writ petition was dismissed as withdrawn.

6. Subsequently, the Appellate Authority affirmed the order of dismissal issued against the Petitioner by the Disciplinary Authority vide order dated 18th of August, 2015. The said order was also challenged in a writ by the Petitioner on the ground that the orders were passed by the Disciplinary Authority and affirmed by the appellate authority mechanically that too without considering any evidence. Practically, no evidence was led by the department against the Petitioner and



the impugned orders suffered from manifest arbitrariness and illegality. The said writ petition was registered as C.W.J.C. No. 1970 of 2016. The said writ petition was disposed of by an order dated 1st of March 2017, whereby and whereunder, the reports of the Inquiry Officer, dated 20th of March 2008 together with the order of the Disciplinary Authority, dated 28th of March 2014 and the order of the Appellate Authority, dated 18th of August 2015 were quashed and set aside. The matter was remanded back with liberty to the authorities, if so advised, to proceed in the matter afresh from the stage of enquiry and pass an appropriate order in accordance with law.

7. On the basis of the aforesaid order, the Petitioner was permitted to join his service and subsequently by an order dated 23rd of August 2017, the Secretary to the Government of Bihar, Food and Consumer Protection Department issued an order for de novo enquiry against the Petitioner and he was again suspended from the date of passing of the earlier order of the Disciplinary Authority, i.e., from 28th of March 2014 in contemplation of initiation of fresh disciplinary proceeding upon the charges previously formulated against the Petitioner. The said order was assailed by the Petitioner by filing C.W.J.C. No. 24179 of 2018. During the pendency of the writ petition, the



Petitioner superannuated from service with effect from 31st of July 2019. Subsequently, during the pendency of the said writ petition, the Disciplinary Authority passed the final order vide Memo No. 3671, dated 14th of September, 2020, by which 100% pension and gratuity of the Petitioner has been forfeited in terms of Rule 43(B) of the Bihar Pension Rules. The said order was also challenged in the above-mentioned writ petition by filing an Interlocutory Application on behalf of the Petitioner being I.A. No. 01 of 2020 with a prayer to amend the writ petition and the relief sought for. The Petitioner once again prayed for quashing of the order of punishment of forfeiture of pensionary benefits and also incidental and consequential relief. A Coordinate Bench disposed of C.W.J.C. No. 24179 of 2018 vide order, dated 18th of February, 2021, which runs hereunder :-

“In the circumstance, this Court is of the considered opinion that the impugned order passed by the Disciplinary Authority as contained in Annexure-13 to I.A. No. 1 of 2020 cannot be allowed to sustain. The order suffers from non-observance of the mandatory provisions such as Rule 17 and 18 of the Bihar Service Rules and further the findings recorded by the Disciplinary Authority is not based on any cogent evidence. The impugned order is,



thus, hereby set aside.

The matter is remitted to the Disciplinary Authority once again for taking an appropriate view of the matter in the light of the discussions made hereinabove.

If so advised, it will be open for the Disciplinary Authority to proceed afresh from the stage of enquiry, conclude the same within a period of three months and pass an appropriate order in accordance with law within a period of four months from the date of receipt/production of a copy of this order.

If the Disciplinary Authority proceeds to consider the matter afresh, he must abide by the time-frame fixed by this Court. In the meantime, the Petitioner shall be allowed provisional pension as was being made available to him earlier prior to Annexure-13 to I.A. No. 01 of 2020. If the disciplinary proceeding is not concluded within the aforesaid period of four months, the Petitioner would be at liberty to approach this court for a suitable order.

It is expected that the Petitioner shall cooperate in early conclusion of the disciplinary proceeding.

The application stands disposed of



accordingly.

The records of the disciplinary proceeding has been returned to learned counsel for the State.”

8. In terms of the order, dated 18th of February, 2021, passed in C.W.J.C. No. 24179 of 2018, the Petitioner served a copy of the said order to the Departmental Secretary vide letter, dated 23rd of February 2021. On 4th of March 2021, the Officer on Special Duty of Food and Consumer Protection Department, Government of Bihar appointed one Daya Nand Mishra, Joint Secretary, as an Inquiry Officer. Subsequently, on 23rd of September 2021, the Officer on Special Duty issued another order, stating, *inter alia*, that the above-named Inquiry Officer had superannuated and one Binod Kumar Tiwari was appointed as the Inquiry Officer.

9. The Petitioner again approached this Court with a prayer to stay the inquiry proceeding and direct the respondent authorities to release entire salary with consequential benefits to the Petitioner from 28th of March, 2014 on the ground that the disciplinary inquiry was not concluded within the time-frame fixed by this Court in C.W.J.C. No. 24179 of 2018. The said writ petition was, however, dismissed. Finally, on 11th of April, 2022, the Special Secretary passed the same order of



punishment of forfeiture of 100% pension payable to the Petitioner in terms of Rule 43(B) of Bihar Pension Rules, 1950.

10. The Petitioner preferred an appeal against the above-mentioned order which came to be dismissed vide order, dated 2nd of June 2023.

11. In the instant writ petition, the Petitioner has prayed for the following relief.

“For issuance of a writ in the nature of Certiorari for quashing of order dated 02.06.2023 vide Memo No. 2537 dated 08.06.2023 passed by Minister-cum-Appellate Authority, Department of Food and Consumer Protection, Government of Bihar, and issued under the signature of Officer on Special Duty, Department of Food and Consumer Protection, Government of Bihar, (Annexure-42) whereby and whereunder the order of forfeiture of 100% pension passed by the Special Secretary, Department of Food and Consumer Protection, Government of Bihar is unchanged and upheld by the Minister-cum-Appellate Authority, Department of Food and Consumer Protection, Government of Bihar.”

12. The charges framed against the Petitioners are as follows:-



(i) *One Mohammed Anish made an application for issuance of license of Thela Vendor before the Circle Officer, Dumrao. The Circle Officer, Dumrao tendered the said application to the Petitioner for conducting an inquiry. On 31st of August 2007, the said Mohammed Anish made a complaint before the Vigilance Investigation Bureau, stating, inter alia, that the Petitioner demanded bribe of Rs 5000/- in order to issue a character certificate in favour of him.*

(ii) *The Vigilance Investigation Bureau directed one Santosh Kumar Singh, Constable, attached to the V.I.B. to cause preliminary inquiry on veracity of the allegation. Shri Santosh Kumar Singh submitted a report stating that the allegation made by the said Mohammed Anish was prima facie found to be true.*

(iii) *On the basis of the report of Santosh Kumar Singh, dated 6th of September, 2007, a Vigilance Investigation Team was constituted and on 7th of September 2007, the Petitioner was caught red-handed by the trap members of Vigilance Investigation Bureau while taking bribe of Rs 5000/- from the said Md. Anish.*

(iv) *The heading of charge (Prapatra-K) also contained the names of the witnesses, viz., Mohammed Anish and his complaint, dated 31st of August, 2007, Santosh Kumar Singh and his*



report submitted to the Vigilance Investigation Bureau and the trap memo, dated 11th of September, 2007 prepared by the Police Officer, who led the trap on 7th of September, 2007.

13. It is also not in dispute that on the basis of a trap conducted by Sri Baleshwar Prasad Sinha, Deputy Superintendent of Police, Vigilance Investigation Bureau, Vigilance P.S. Case No. 104 of 2007, dated 7th of September, 2007, under Sections 7/13(2) read with Section 13(1)(D) of the Prevention of Corruption Act, 1988 was registered against the Petitioner and the said case is still pending for final disposal.

14. Before I embark upon the arguments made by the learned counsel appearing on behalf of the Petitioner and the respondents, at the risk of repetition, it would be pertinent to record that in C.W.J.C. No. 1970 of 2016, this Court came to a finding that disciplinary proceeding against the Petitioner was conducted without examining any witness in support of the charge. It is also observed that the decision of dismissal of the Petitioner was not passed following the procedure laid down in Rule 17 of the Bihar CCA Rules, 2005.

15. In C.W.J.C. No. 24179 of 2018, a Coordinate Bench of this Court made the same observation and for non-observance of mandatory provisions contained in Rules 17 and



18 of the Bihar C.C.A. Rules, 2005, the order passed by the Disciplinary Authority was set aside. Again the matter was remitted to the Disciplinary Authority for taking an appropriate view of the matter in the light of the discussion made in C.W.J.C. No. 24179 of 2018. Thus, the High Court already observed and hold that the Inquiry Officer and the Disciplinary Authority passed major penalty upon the Petitioner without recording any evidence against him. Only document that was considered by the Disciplinary Authority is the vigilance trap memo and institution of criminal case by the Vigilance Police Station on the basis of the said vigilance trap memo and complaint made thereunder. It is needless to say that during disciplinary proceeding not a single witness was examined and trap memo, letter of complaint, etc. were taken into consideration without being brought in evidence.

16. In such factual backdrop, learned Advocate appearing on behalf of the Petitioner refers to the decision of the Hon'ble Supreme Court in ***Kuldeep Singh v. Commissioner of Police & Ors.***, reported in ***(1999) 2 SCC 10***. It is decided by the Hon'ble Supreme Court in the above-mentioned report on the ground that the statement of the witnesses, their previous statement before the police authorities etc. were not produced



and accordingly recorded by the Inquiry Officer. As such, there was absolutely no evidence in support of the charge framed against the appellant and the entire findings recorded by the Inquiry Officer are vitiated by the reason of the fact that they are not supported by any evidence on record and are wholly perverse.

17. In paragraph 42 of the aforesaid judgment, it was held by the Hon'ble Supreme Court:-

“42. The Inquiry 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 Inquiry 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 Inquiry 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".

18. In the instant case, the High Court reminded atleast twice the Inquiry Officer and the Disciplinary Authority the way and manner in which a departmental proceeding is to be conducted. Neither the Inquiry Officer nor the Disciplinary Authority took into account the observation of this Court to act accordingly. On the contrary, time and again without recording and considering any evidence, the Petitioner was first dismissed from service and subsequently when he attained the age of superannuation, 100 % of his pensionary benefits was forfeited.

19. On the same point, the learned Advocate appearing on behalf of the Petitioner refers to the case of **Roop Singh Negi v. Punjab National Bank & Ors**, reported in (2009) 2 SCC 570. In paragraphs 14 and 15, the Hon'ble Supreme Court was pleased to discuss the role of Inquiry Officer in a departmental proceeding. It is observed by the Hon'ble Supreme Court that since a disciplinary proceeding is a quasi-judicial proceeding, the Inquiry Officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The Inquiry 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 was placed by the Inquiry Officer on the FIR which could not have been treated as evidence.

20. Similarly, in the instant case, the delinquent officer was punished on the basis of vigilance trap memo. However, the vigilance trap memo by itself is not a piece of evidence unless and until the contents of the same is proved by the maker of the trap memo before the disciplinary proceeding. The trap memo was the only basic evidence whereupon reliance has been placed by the Inquiry Officer but the said trap memo was not proved. The person who made the complaint against the Petitioner that he claimed bribe of Rs. 5,000/- was also not examined.

21 In such view of the matter, this Court has no other alternative but to hold that the orders of the Disciplinary Authority as also the Appellate Authority are not supported by



any reason. As orders passed by them have severe civil consequences, proper reasons should have been assigned. 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.

22. As the report of the Inquiry Officer was based on merely *ipse dixit* as also surmises and conjectures, the same could not have been sustained. The inference drawn by the Inquiry 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.

23. The same principle was enunciated by this Court in ***Vijendra Prasad v. State of Bihar & Ors.***, reported in ***2019 (4) P.L.J.R. 1046***. Subsequently, in C.W.J.C. No. 2013 of 2015 (Arun Kumar v. State of Bihar & Ors.), decided on 18th of January, 2019, a Coordinate Bench of this Court on similar circumstances hold that since the Inquiry Officer's report does not contain any evidence, whatsoever, the conclusions arrived at by the Inquiry Officer are unsustainable and contrary to the mandates of Rule 17 (14) of the Bihar C.C.A. Rules, 2005, which requires that in the enquiry, oral and documentary



evidence, by which articles of charges are proposed to be sustained, are to be produced by or on behalf of the Disciplinary Authority. No such procedure has been adopted in the instant proceeding. Thus, the instant departmental proceeding is held unsustainable as being based on no evidence and product of surmises and conjectures in violation of Rule 17 (3) read with Rule 17 (14) of the Bihar C.A.A. Rules, 2005.

24. Considering such view of the matter, this Court would, therefore, quash the orders of punishment of forfeiture of 100% pension of the Petitioner passed by the Disciplinary Authority and affirmed by the Appellate Authority on 11.04.2022 and 02.06.2023, respectively.

25. The writ petition is, accordingly, allowed.

26. The Petitioner would be entitled to admissible pension and all consequential benefits.

(Bibek Chaudhuri, J)

skm/-

AFR/NAFR	AFR
CAV DATE	19.06.2024
Uploading Date	01.07.2024
Transmission Date	N/A

