

IN THE HIGH COURT OF JUDICATURE AT PATNA

Hari Shankar Prasad Kushvaha

vs.

The State of Bihar & Ors.

Civil Writ Jurisdiction Case No. 336 of 2021

03 August 2023

(Hon’ble Mr. Justice Madhuresh Prasad)

Issue for Consideration

- Whether the disciplinary proceedings against the petitioner were sustainable when the enquiry report found Charge No. 1 not proved and Charge No. 2 only partially proved.
- Whether dismissal from service could be upheld solely on the basis of documents from criminal investigation without examination of the complainant.

Headnotes

The petitioner participated in the enquiry. The inquiry officer has returned a finding of charge No. 1 not being proved. The charge No. 2 is as a consequence and dependent upon charge No. 1. Finding of the first charge not being proved and the second charge being proved is self- contradictory. (Para 7, 10)

The correspondence and documents in the routine course of lodging of any criminal case and its investigation per se cannot be made the basis of concluding the petitioner's guilt in the proceedings, wherein the allegation is of accepting illegal gratification. (Para 13)

Allegationist had not appeared in the proceedings to support the charge against the petitioner. The findings of the inquiry officer holding charge No. 2 to be partially proved therefore is unsustainable. The disciplinary authority has accepted the findings of the Enquiry Officer and proceeded to award the extreme punishment of dismissal, which having regard to the manner in which the conclusion has been arrived is itself unsustainable. The Court would find that the order of punishment dated 8-7-2019 is the product of an illegal process and without any basis. The order of punishment is hereby quashed. (Para 14, 15)

Petition is allowed. (Para 18)

Case Law Cited

Roop Singh Negi v. Punjab National Bank & Ors., (2009) 2 SCC 570

List of Acts

Bihar Government Servants (Classification, Control & Appeal) Rules, 2005

List of Keywords

Departmental proceedings; Vigilance trap case; Illegal gratification; Enquiry officer report; Dismissal from service; Appellate authority review; Quashing of disciplinary action

Case Arising From

Departmental proceedings initiated against the petitioner following his arrest in Vigilance P.S. Case No. 14 of 2016 for allegedly accepting a bribe while serving as LRDC, Samastipur.

Appearances for Parties

For the Petitioner(s): Mr. Ranjan Kumar Srivastava, Advocate ; Mr. Rajniagntha,Advocate; Mr. Shaswat Srivastava, Advocate; Mr. Sunny Raman, Advocate; Mr. Abhijeet Kumar Srivastava, Advocate

For the Respondent(s): Mr. Sheo Shankar Prasad (SC-8)

Headnotes Prepared by Reporter: Amit Kumar Mallick, Advocate

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.336 of 2021

Hari Shankar Prasad Kushvaha, S/o Dip Narayan Prasad Ram, R/o Village-
Chilmara Simea, Katihar, P.S.-katihar, District-Katihar (Bihar)

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Departmental Inquiry Officer, General Administrative Department, Government of Bihar, Patna.
4. The Additional Secretary, General Administration Department, Government of Bihar, Patna.
5. The Under Secretary, General Administration Department, Government of Bihar, Patna.
6. The Deputy Secretary, General Administration Department, Government of Bihar, Patna.
7. The District Magistrate, Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ranjan Kumar Srivastava, Advocate
Mr. Rajniagnidha, Advocate
Mr. Shaswat Srivastava, Advocate
Mr. Sunny Raman, Advocate
Mr. Abhijeet Kumar Srivastava, Advocate
For the Respondent/s : Mr. Sheo Shankar Prasad (SC-8)

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 03-08-2023

1. Heard learned counsel for the petitioner and learned State counsel.
2. For passing of an order while working as a Land Reforms Deputy Collector (LRDC) at the Collectorate, Samastipur, the petitioner has been proceeded against.
3. The brief background is that the petitioner joined at



the said place of posting on 17-08-2015. He took up a dispute bearing Case No. 17 of 2015 wherein one, *Amarnath Chaudhary* was the complainant. The last date in the said proceedings, on which the matter was heard by the petitioner, is 17-12-2015. He has recorded an order that the parties were heard and the record was reserved for passing of orders. The complainant of the case approached the vigilance authorities with a complaint that the orders were not being passed by the petitioner for which he was demanding some illegal gratification.

4. The petitioner in the aforesaid circumstances was arrested in a trap case leading to lodging of vigilance P.S Case No. 14 of 2016 by the vigilance investigation department. He was arrested while allegedly accepting a bribe of Rs. 10,000/- from the complainant. He was taken into custody and after his release he has rejoined the department.

5. The District Magistrate, Samastipur under his communication dated 18-05-2016 communicated the charge-memo to the petitioner. The charge-memo contains two charges. The first charge is that the petitioner has committed an administrative lapse and negligence of his duty by not passing the order in the land dispute Case No. 17 of 2015. The second



charge is that the petitioner was caught red handed while taking bribe from the complainant of the said case.

6. The charge memo contains a list of three documents based on which the department intended to bring home the charges. The order sheet of the complaint Case No. 17 of 2015 was one piece of evidence in support of the first charge. The second evidence was the written application filed by the complainant on 10-3-2015, based on which the case had been lodged. In support of the second charge, the authorities proposed to rely upon the letter of the Superintendent of Police, Vigilance Investigation Bureau dated 11-2-2016 and the FIR in Vigilance Case No. 14 of 2016.

7. The petitioner participated in the enquiry. The inquiry officer has returned a finding of charge No. 1 not being proved. Charge No. 2 has been found to be proved by the inquiry officer, but partially. Which part of charge No. 2 has been proved cannot be deciphered from the inquiry report.

8. Based on such inquiry report, the inquiry was concluded and petitioner was asked to submit his second show-cause in response to the inquiry report before the disciplinary authority which he has submitted after following the procedure as prescribed under the Bihar Government Servants



(Classification, Control & Appeal) Rules, 2005.

9. The disciplinary authority has passed the order dismissing the petitioner from service by resolution dated 8-7-2019. The petitioner has preferred a review by way of memorial against the order of punishment, which also has been rejected by the competent authority under order dated 23-6-2020.

10. The submission of the petitioner's counsel is that the orders of punishment and the appellate authority are unsustainable in the eyes of the Law. The charge No. 2 is as a consequence and dependent upon charge No. 1. Both arise out of the same fact of the petitioner demanding illegal gratification for passing orders in the complaint case No. 17 of 2015, while he was posted as the LRDC at Samastipur. Learned counsel for the petitioner submits that the finding of the first charge not being proved and the second charge being proved is self-contradictory and perverse in itself. The substratum of both the charges lies on the petitioner's demand for illegal gratification for passing orders in the case. It is thus beyond comprehension that one charge can be proved and the other not proved.

11. It is also submitted that in the inquiry, even the allegationist has not been examined and the documents which have been relied upon to conclude the second charge to be



proved, are documents issued by the police authorities in the normal course, while lodging any police case. The documents showing lodging of the case and the pre-trap memorandum which has been discussed by the inquiry officer, *per se* cannot be made the basis of concluding that the petitioner was guilty of the allegations. The charges could not be proved based on such documents which form part of the criminal investigation. The submission is that the authority has proceeded with a pre conceived notion and therefore such a conclusion has been arrived at.

12. The learned counsel for the State on the other hand submits that a charge memo was served on the petitioner. Due opportunity was granted to him during the inquiry and after a second show-cause and considering the petitioner's response, the impugned order of punishment has been passed, dismissing the petitioner from service.

13. On consideration of the rival submissions and having regard to the legal position emanating from decision of the Hon'ble Apex Court in the case of ***Roop Singh Negi v. Punjab National Bank & Ors.*** reported in ***(2009) 2 SCC 570***, this Court would record agreement with the submission of the petitioner's counsel. The correspondence and documents in the



routine course of lodging of any criminal case and its investigation *per se* cannot be made the basis of concluding the petitioner's guilt in the proceedings, wherein the allegation is of accepting illegal gratification.

14. The other aspect of the matter which needs to be taken note of is that even the allegationist had not appeared in the proceedings to support the charge against the petitioner. The findings of the inquiry officer holding charge No. 2 to be partially proved therefore is unsustainable. The disciplinary authority has accepted the findings of the Enquiry Officer and proceeded to award the extreme punishment of dismissal, which having regard to the manner in which the conclusion has been arrived is itself unsustainable.

15. The Court would find that the order of punishment dated 8-7-2019 is the product of an illegal process and without any basis. The order of punishment is hereby quashed.

16. The appellate authority considering the petitioner's appeal has also failed to act in accordance with law. The appellate authority has merely recorded the entire proceedings as they have proceeded as if his order is nothing more than a journal of dates in appeal. Thereafter without considering anything the illegal order of dismissal has been affirmed. Such



affirmation of an illegal order therefore is also unsustainable.
The entire exercise of appeal has been rendered a futile exercise
having regard to the manner in which the order has been passed
by the appellate authority.

17. The order dated 23-6-2020 passed by the appellate
authority therefore must also collapse and is hereby quashed.
18. The writ petition is allowed with all consequential
benefits.

(Madhuresh Prasad, J)

SUMIT/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27.08.2023
Transmission Date	NA

