

(2020) 12 PAT CK 0039

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7296 Of 2019

Shyam Babu Singh

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 04-12-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 109, 403, 406, 408, 420, 504

Prevention Of Corruption Act, 1988 — Section 13(i)(c), 13(d)

Bihar Government Servants (Classification, Control And Appeal) Rules, 2005 — Rule 14, 17, 17(16), 17(17)

Citation : (2020) 12 PAT CK 0039

Hon'ble Judges : Prabhat Kumar Jha, J

Bench : Single Bench

Advocate : Ramakant Sharma, Laxmi Kant Sharma, Manish Kumar, Ravi Verma

Final Decision : Allowed

Judgement

1. Heard Mr. Rama Kant Sharma, the learned Senior Counsel for the petitioner and Mr. Ravi Verma, the learned A.C. to G.P.4, through video conferencing.

2. The petitioner seeks following reliefs:

(I) For issuance of appropriate writ/writs, order/orders, direction/directions for quashing the order contained in Memo No.5241, dated 06.11.2017

(Annexure-1), issued under the signature of respondent no.4, Deputy Inspector General of Police, Darbhanga Range and communicated to the

petitioner by respondent no.5, the Superintendent of Police (A), Special Branch, Bihar, Patna whereby and whereunder the petitioner has been

dismissed from the post of Sub-Inspector (Special Branch) with a finding that the charges levelled against the petitioner have been found proved in

departmental proceeding and the petitioner was found guilty of those charges.

(II) For issuance of appropriate writ/writs, order/orders, direction/directions for quashing the Order No.1134/2018 (Annexure-2), issued under the

signature of respondent no.3, the Inspector General of Police and communicated to the petitioner vide Memo No.4661, dated 08.11.2018 by

respondent no.5 whereby and whereunder appeal preferred by the petitioner against order of his dismissal without considering the points raised by the

petitioner regarding non-compliance of procedures, non-supply of materials relied upon.

(III) To quash the order as contained in Memo No.1034, dated 29.01.2020 (Annexure-23) by which the Special Secretary, (Home), Government of

Bihar, Patna dismissed the memorial of the petitioner and confirmed the order passed in Departmental Proceeding No.19 of 2016 as well as the order

of the appellate authority.

(IV) For issuance of appropriate writ/writs, order/orders, direction/directions commanding the respondents to consider the contention of the petitioner

that he does not have any disproportionate asset and in shape of a house and few decimals of land was acquired by the family through their labours or

taking loan from the financial institutions and there is complete absence of any material showing disproportionate assets or materials and thus initiation

of a departmental proceeding is without any foundational fact rather initiation of proceeding is a retaliatory action based on non existent facts/ignoring

the materials produced by the petitioner and thus any penal action is not sustainable in the eye of law.

(V) For issuance of any other relief/reliefs for which the petitioner is found entitled in the eye of law and in the facts and circumstances of the present

case.

3. The question arises for consideration is whether the departmental proceeding was held in accordance with the procedures contained in Rule 17 of

Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as "the CCA Rules") meant for imposing

major punishment, such as, dismissal from service and if sufficient opportunity was provided to the petitioner in course of the departmental enquiry ?

4. Admitted factual aspects is that the petitioner was a national level Judo player. He joined BSF in 1987 on the post of Constable and he was

promoted to the post of Lans Nayak. The petitioner was offered the same rank post in Bihar Police Service by taking into consideration his sports

curriculum but since there was no provision to appoint directly on the post of Assistant Sub-Inspector, he was initially appointed on the post of

Constable on 13.03.1992. Only after four months of his joining on the post of Constable, he was promoted vide Letter No.10267, dated 06.07.1992 on

the post of Assistant Sub-Inspector of Police and later on he was also promoted on the post of Sub-Inspector of Police on 07.07.2006.

5. One Alok Kumar Singh who was the business partner of wife of petitioner and his son suffered huge business loss. Alok Kumar Singh wanted to

realize the loss from the petitioner and that is why he instituted Doranda Argora P.S. Case No.88 of 2015, under Sections 406, 420, 403, 408 and

504/34 of the Indian Penal Code. Alok Kumar Singh also forwarded the same complaint to Economic Offence Wing and on such Economic Offence

P.S. Case No.06/2015 was registered under Sections 406, 420, 403, 408 and 504/34 of the Indian Penal Code. After institution of Economic Offence

No.06/15, a departmental proceeding was initiated against the petitioner vide Memo No.3459, dated 17.07.2015. The petitioner moved before the High

Court in Cr.W.J.C. No.730 of 2015 for quashing the FIR of Economic Offence P.S. Case No.06/2015. A Bench of this Court vide order dated

18.04.2016, passed in Cr.W.J.C. No.730 of 2015 quashed the FIR of Economic Offence P.S. Case No.06/2015 holding that Economic Offence P.S.

Case No.06/15 is Hindi translation of Doranda/Argora P.S. Case No.88/15 and, therefore, no second FIR for the same occurrence should have been

instituted but liberty was given to the Economic Offence Unit that if any materials are collected against the petitioner showing any offence committed

by him, a fresh case may be instituted. On such order, the departmental proceeding initiated after institution of Economic Offence Case No.06/2015

vide Memo No.3459, dated 17.07.2015 was dropped but at the same time Economic Offence Unit registered Economic Offence P.S. Case

No.05/2016 on 17.05.2016 under Section 109 of the Indian Penal Code and under Sections 13(i) (c) read with Section 13(d) of the Prevention of

Corruption Act. After investigation it has come that the petitioner amassed huge movable and immovable property disproportionate to his known

source of income and on such, a departmental proceeding vide Memo No.3711, dated 29.07.2016 was initiated and same was communicated to the

petitioner vide Memo No.21417, dated 16.08.2016. The petitioner was served with the articles of charges along with the list of properties amassed by

him by adopting illegal method and by illegally using his official position. Sanjay Kumar, the Deputy Superintendent of Police was made Enquiry

Officer. During the course of enquiry, the petitioner submitted his show cause categorically denying his involvement in formation of the Company and

in amassing the properties disproportionate to his known source of income and filed preliminary objection on 18.11.2016.

6. During the course of departmental proceeding, the witnesses were examined and they produced the documents along with the list of movable and

immovable properties standing in the name of the petitioner, his wife and his son and acquired only after entering into his service after 2008 till the

institution of the case. The enquiry report was submitted. Second show cause notice was issued. The petitioner took adjournment after adjournments

and finally the disciplinary authority by his letter as contained in Memo No.5241, dated 06.11.2017, dismissed the petitioner from the service.

7. Mr. Rama Kant Sharma, the learned Senior Counsel for the petitioner firstly submits that the petitioner has no property disproportionate to his

known source of income. His wife and son have their independent source of income. The petitioner also filed petition after petition raising objection

with regard to impartiality of the Enquiry Officer. It is further submitted that the presenting officer examined three witnesses but when the petitioner

cross-examined they did not satisfactorily reply. The conducting officer was adamant to penalize the petitioner. Mr. R.K. Sharma, the learned Senior

Counsel for the petitioner secondly submits that after examination of the witnesses by the presenting officer, the conducting officer did not provide any

opportunity to the petitioner to bring materials and produce witnesses in support of his defence and closed the departmental proceeding. Thereafter the

enquiry officer submitted his report on 29.08.2017 holding the petitioner guilty of the charges. It is submitted that in view of the provisions enumerated

in Rule 17 of the CCA Rules, 2005, the enquiry officer after closing the case of the disciplinary authority should have called upon the petitioner to

produce his defence and give evidence in support of his case. It is further submitted that in the case of State Bank of Patiala & Ors. vs. S.K. Sharma,

reported in AIR 1996 SC 1669, the Honâ??ble Supreme Court has decided the principle to be followed in context of disciplinary enquiry and order of

punishment imposed by employer upon employee, therefore, the enquiry report is bad as the enquiry officer did not provide sufficient opportunity to the

petitioner to adduce his oral and documentary evidence in order to show that no part of his property is disproportionate to his known source of income.

Mr. Sharma also placed his reliance on a Single Bench judgment of this Court in the case of Sanjay Kumar vs. State of Bihar & Ors., passed in

CWJC No.19815 of 2018.

8. Mr. Ravi Verma, the learned A.C. to G.P.4 submits that according to the articles of charges levelled against the petitioner, the charges are that the

petitioner committed misconduct, not behooving for a government servant and thereby he accumulated huge movable and immovable property, which

is quite disproportionate to the known source of his income. During the course of investigation, the detail of property amassed by the petitioner and his

family members have been detailed and during the departmental proceeding also, the concerned officer was examined by the presenting officer in

order to prove the charge on the basis of the list of movable and immovable properties acquired by the petitioner and his family members and,

therefore, the enquiry officer submitted his report on the basis of the evidence with regard to acquisition of movable and immovable properties and

documents with regard to constitution of company and deposit in different banks and the petitioner failed to explain or failed to give evidence to show

that he amassed that property through his known source of income and, therefore, the enquiry officer has rightly held the petitioner guilty and on such,

the disciplinary authority also passed appropriate order dismissing the petitioner from service. Learned counsel for the respondents in support of his

contention placed reliance on a Single Bench judgment of this Court passed in CWJC No.8328 of 2017, Nageshwar Sharma vs. The State of Bihar &

Ors., reported in 2020 (2) BLJ 592.

9. This Court is very much aware and conscious of the fact that in a writ jurisdiction the Court should not enter into sufficiency and inadequacy of the

evidence produced by the presenting officer during the course of enquiry. Admittedly the presenting officer examined three witnesses and also

produced documents. The witnesses were cross-examined by the petitioner. The witnesses may not have answered the questions put forth by the

petitioner according to his show cause, the evidence cannot be reappreciated or

reappraised by a writ court. The writ court only interferes into the findings of the disciplinary authority if the enquiry report is based on no evidence as has also been held in CWJC No.19815 of 2018 on which the learned counsel for the petitioner placed reliance. In the aforesaid case, this Court interfered only when it was found that the findings of the enquiry officer was based on no evidence.

10. The Honâ??ble Supreme Court in the case of State Bank of Patiala & Ors. (supra) has laid down the broad and basic principles keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee. It has been held that in the case of violation of procedural provision, the position is this : procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under â??no noticeâ??, no opportunity and â??no hearingâ?? categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for.

11. In the present case, it has been stated in para 22 of the writ petition that no sufficient opportunity was given by the enquiry officer after examination of the witnesses and producing evidence on behalf of the presenting officer. The petitioner was not called upon to give his defence and adduce evidence. The State in its counter affidavit replied in para 31 of the counter affidavit and stated that the conducting officer had given ample opportunity to the delinquent (petitioner) to produce his defence/show cause, vide Special Branch Memo No.21417/SB, dated 16.08.2016, Memo No.24432/SB, dated 15.09.2016 and Memo No.29825/SB, dated 10.11.2016 by which the petitioner was called upon to submit his show cause vide Special Branch letter as contained in Memo No.7213/SB, dated 27.03.2017, Memo No.21213/SB, dated 04.08.2017 and Memo No.21815/SB, dated

10.08.2017, the copies of which memos are annexed and marked as Annexure-E series. From perusal of Annexure-E series, it transpires that after initiation of the departmental proceeding and receipt of the records on 01.08.2016, the proceedings of departmental enquiry was initiated. Articles of charge and the documents on which the disciplinary authority proposes to prove the charge were sent to the petitioner and he was asked to appear on 02.09.2016 at 11.00. On 02.09.2016, the present officer was present but no evidence was produced. The petitioner filed petition that on the basis of which application, Economic Offence Unit filed Economic Offence Unit P.S. Case No.05/16 against the petitioner. Hearing started in the court and till the order passed, the departmental proceeding be stayed but the petitioner did not file any explanation or his defence. Again on 21.10.2016, one witness was examined. The petitioner filed his typed questionnaire for the witnesses to answer and the witnesses answered the questionnaire. The petitioner filed preliminary explanation on 04.08.2017, but Annexure-E series do not show that after closing the case on behalf of the disciplinary authority, the enquiry officer provided any opportunity to the petitioner to file his defence and produce evidence in support of his defence in order to show that the properties said to have been amassed by him is disproportionate to his known source of income. If the enquiry officer does not provide such opportunity to the petitioner and submitted the enquiry report, certainly it will amount not to provide sufficient opportunity. This procedural lapse is not of such nature by which the petitioner may not have prejudiced. If sufficient opportunity is not provided after closing the case of the disciplinary authority, it will cause prejudice to the petitioner.

12. Rule 17 of the CCA Rules in which the procedure is prescribed for holding departmental enquiry in a case for inflicting major punishment have been enumerated in Sub-Clause (vi) to (xi) of Rule 14. Sub-Rule (16) and Sub-Rule (17) of Rule 17 is relevant and important for just decision of the case as to both the Sub-Rules prescribe procedure to provide opportunity to the proceedee. Sub-Rule (16) and Sub-Rule (17) of Rule 17 are reproduced, which are as follows:

â??(16) When the case for the disciplinary authority is closed, the Government Servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the

Government Servant shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Government Servant shall then be produced. The Government Servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government Servant shall then be examined and they shall be liable to examination, cross-examination and, re-examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.â??

13. On bare perusal of the provisions as contained in Sub- Rule (16) and Sub-Rule (17) of CCA Rules, it is crystal clear that the disciplinary authority is obliged after closing of the case of the disciplinary authority to call upon the proceedee to put forth his defence, get himself examined in the manner and the way prescribed under Sub-Rule (16) and Sub-Rule (17). If after closing of the evidence on behalf of the disciplinary authority, the enquiry officer fails to provide opportunity to the proceedee, it will certainly cause prejudice to the proceedee and he shall be precluded from putting forth his defence and also examine himself or examine witnesses oral as well as documentary on his behalf, therefore, I find that non-providing opportunity to the proceedee for his defence and examination of evidence will vitiate the enquiry report and the punishment on such enquiry report cannot be sustained. The appellate authority has also not given any findings with regard to non-providing of such opportunity to the proceedee, therefore, the appellate order is also not sustainable and liable to be set aside. Since the memoirs filed by the petitioner is not maintainable, therefore, it has got no value in the eye of law.

14. Having considered the facts, I find that the enquiry report on account of non-providing the sufficient opportunity to the proceedee to examine himself or to produce oral as well as documentary evidence in order to put forth his defence vitiates the enquiry report and by not providing such opportunity amounts to violation of principles of natural justice and, therefore, the punishment by the disciplinary authority on such enquiry report and the appellate order are not sustainable.

15. Accordingly, the order contained in Memo No.5241, dated 06.11.2017 (Annexure-1), issued under the signature of respondent no.4, Deputy

Inspector General of Police, Darbhanga Range and communicated to the petitioner by respondent no.5, the Superintendent of Police (A), Special

Branch, Bihar, Patna, Order No.1134/2018 (Annexure-2), issued under the signature of respondent no.3, the Inspector General of Police and

communicated to the petitioner vide Memo No.4661, dated 08.11.2018 by respondent no.5 as well as the order as contained in Memo No.1034, dated

29.01.2020 (Annexure-23) by which the Special Secretary, (Home), Government of Bihar, Patna dismissed the memorial of the petitioner and

confirmed the order passed in Departmental Proceeding No.19 of 2016 as well as the order of the appellate authority are set aside.

16. The matter is remitted to the disciplinary authority to proceed further by providing sufficient opportunity to the proceedee-the petitioner and

conclude the enquiry within four months from the date of receipt of this order. Thereupon the disciplinary authority is directed to pass order in

accordance with law within three months thereafter.

17. In the result, the writ petition is allowed as aforesaid.