IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2410 of 2021

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Chandra Bhushan Pravin, the then Revenue Clerk, Halka No. 5 and 6, Anchal Navanagar, Son of Late Ramji Ram, Resident of Village- Sripur, P.O.-Kahen, P.S.- Aayar Jagdishpur, District- Bhojpur.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Land and Revenue, Government of Bihar, Patna.
2. The Divisional Commissioner, Patna Division, Patna.
3. The District Magistrate, Buxar.
4. The Additional Collector, Establishment, Buxar.
5. The Deputy Development Welfare Commissioner cum Presiding Officer, Buxar.
6. The Circle Officer cum Presenting Officer, Navanagar, Buxar.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Ranjeet Kumar, Advocate
Mr. Shikhar Mani, Advocate
Ms. Lakshmi Kumari, Advocate
For the Respondent/s : Mr. Sajid Salim Khan, SC- 25

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT
Date : 21-07-2025

Heard Mr. Ranjeet Kumar, learned Advocate for the petitioner and Mr. Sajid Salim Khan, learned SC-5 for the State.

2. The challenge in the present writ petition is made to the order no. 92/2018-19, as contained in Memo No. 01-1490/Estab., Buxar dated 10.09.2018, issued by the District Magistrate, Buxar, whereby the petitioner has been dismissed from service and further restrained from any future appointment under the Government. Besides, he is held not entitled for any benefits, except subsistence allowance for the period of

suspension. The petitioner is further aggrieved with the order dated 07.02.2020, in Service Appeal No. 190/2018, issued by the Divisional Commissioner, Patna Division, Patna whereby the appeal preferred by the petitioner came to be rejected and the order of disciplinary authority, aforenoted, is duly affirmed. The enquiry report is also under challenge, on the ground of being based on no evidence.

3. The briefly stated facts of the case are the petitioner was duly appointed on compassionate ground as Revenue Clerk and while he was discharging the duty in Circle Office, Navanagar, Buxar, a complaint was made by one Rajesh Kumar Singh alleging illegal demand of gratification. Based on such complaint, a Trap team was constituted and on 30.08.2016 the petitioner was caught red handed while allegedly receiving bribe of Rs.9000/- from one Ajay Kumar. The aforesaid incident led to institution of an F.I.R., bearing Vigilance P.S. Case No. 83 of 2016 dated 30.08.2016 for the offences punishable under Section 7/13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

4. On 07.09.2016, the Superintendent of Police, Vigilance Investigation Bureau, Patna requested the District Magistrate, Buxar to take action as per Rule 99 of the Bihar

Service Code. The petitioner was placed under suspension vide order dated 19.09.2016 (Annexure-3 to the writ petition) with effect from the date of his arrest. Further direction was given to the Circle Officer, Navanagar, Baxar to ensure service of a Memo of Charge along with the evidence. Meanwhile, the petitioner was granted bail vide order dated 02.11.2016.

5. A Departmental proceeding was initiated vide Order no. 118/2016-17 dated 15.11.2016. The Deputy Development Welfare Commissioner, Buxar was appointed as the Conducting officer whereas the Circle Officer, Navanagar, Buxar as the Presenting officer. The Memo of charge was duly served upon the petitioner and was asked to submit his show-cause, vide Annexure-5 to the writ petition. In response to the letter aforenoted, the petitioner submitted application requesting therein to supply necessary documents. The date of hearing rescheduled, however the petitioner again submitted application for non-supply of documents. Finally, the petitioner submitted a detailed reply on 31.03.2017 denying all the charges. Upon completion of the enquiry, the enquiry officer submitted enquiry report finding the charges proved against the petitioner. The petitioner was served with the second show-cause notice. On request of the petitioner, some relevant documents were

provided to him, thereupon the petitioner submitted a detailed show-cause reply. The District Magistrate, Buxar whereupon vide order dated 10.09.2018 inflicted the punishment of dismissal from service as well as restricted from future appointment under any Government service and also ordered that the petitioner shall not be entitled to any other benefits, except subsistence allowance for the suspension period.

6. The petitioner aggrieved with the order of dismissal preferred Service Appeal No. 190 of 2018 before the Divisional Commissioner, Patna Division, Patna, however, the same did not find any favour and the appeal was rejected.

7. Mr. Ranjeet Kumar, learned Advocate for the petitioner while assailing the impugned order has submitted that the impugned order of punishment and the Appellate order have been passed in clear violation of the provisions of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as ‘the Rules, 2005’) as well as in utter disregard to the principles of natural justice. In order to prove such serious charges no witnesses were examined and the charges are proved only on the basis of the F.I.R.

8. Referring to the judgment rendered by the Hon’ble Supreme Court in the case of **Roop Singh Negi Vs.**

Punjab National Bank & Ors., reported in, **2009 (2) SCC 570** and **State of U.P. & Ors. Vs. Saroj Kumar Sinha**, reported in, **(2010) 2 SCC 772**, he would thus contended that the case of the petitioner is fully covered with the pronouncement rendered in the aforesaid cases.

9. Mr. Kumar further submitted that the finding of the enquiry officer is based on conjectures and surmises and the Presenting Officer did not produce any witness or supporting evidence to prove the charges levelled against the petitioner and hence the finding of the enquiry officer is based on no evidence. The Department is, in fact, failed to discharge its burden of proof. The Presenting officer also failed to discharge his duty and he was all along absent in the proceeding. The petitioner has also not been supplied the necessary documents and thus the petitioner has been denied from fair opportunity to defend his case. Reliance has further been placed on a Bench decision of this Court in the case of **Pankaj Kumar Vs. State of Bihar & Ors. (CWJC No. 5042 of 2016)** and further in the case of **Mohan Kumar Vs. State of Bihar & Ors. (CWJC No. 8652 of 2021).**

10. Referring to the impugned order of punishment, it is further contended that apart from the same being cryptic

and non-speaking, the reply to the second show-cause has also not been taken note of, which was duly filed on 02.07.2018 itself, but contrary to the fact the disciplinary authority has returned a finding that despite repeated opportunity given to the petitioner, he failed to ensure filing of the reply to the second show-cause. The Appellate authority also failed to discharge his duty, as was incumbent upon him under Rule 27 of the Rules, 2005.

11. Refuting the aforenoted contention, Mr. Sajid Salim Khan, learned Senior Advocate representing the State has contended that the principle governing the departmental proceeding has enumerated in various decisions and it is well settled that interference with the orders passed pursuant to departmental enquiry can be only in case of no evidence. Sufficiency of evidence is not within the realm of judicial review. The standard of proof as required in a criminal trial is not the same in a departmental inquiry. Strict rules of evidence are to be followed by the criminal court where the guilt of the accused has to be proved beyond reasonable doubt. On the other hand, preponderance of probabilities is the test adopted in finding the delinquent guilty of the charge. The aforesaid proposition has been placed by referring to a decision rendered

by the Hon'ble Supreme Court in the case of the **State of Bihar & Ors. Vs. Phulpari Kumari**, reported in, (**2020) 2 SCC 130** where the order of the learned Single Judge setting aside the order of dismissal and duly affirmed by the learned Division Bench, overturned by the Hon'ble Supreme Court.

12. Learned Senior Advocate for the State further contended that the examination of the witnesses is not mandatory in each and every case; based upon the documentary evidence, the charges can also be proved. Reliance has also been placed on a decision of the Hon'ble Supreme Court in the case of **Tara Chand Vyas Vs. Chairman & Disciplinary Authority & Ors.**, reported in **(1997) 4 SCC 565**, especially paragraph 3 thereof.

13. Taking this Court through the materials available on record, it is further contended that the document, which were demanded by the petitioner were not relevant for the petitioner; all the more, when the petitioner failed to raise the grievance as to what prejudice has been caused to him in absence of such documents.

14. It is further contended that in a disciplinary proceeding it is not necessary for the disciplinary authority to deal with each and every grounds raised by the delinquent

officer in the representation against the proposed penalty and detailed reasons are not required to be recorded in the order imposing punishment, if the findings recorded is based on sufficient evidence by the enquiry officer. The aforesaid view has been fortified in the decision of the Hon'ble Supreme Court in the case of **Boloram Bordoloi Vs. Lakhimi Gaolia Bank & Ors.**, reported in, **(2021) 3 SCC 806**. The decision in the case of **Airports Authority of India Vs Pradip Kumar Banerjee**, reported in **(2025) 4 SCC 111** where the Court in para. 36 of the decision ruled that "all that is required on the part of the Disciplinary Authority is that it should examine the evidence in the disciplinary proceedings and arrive at a reasoned conclusion that the material placed on record during the course of enquiry establishes the guilt of the delinquent employee on the principle of preponderance of probabilities."

15. This Court has bestowed anxious consideration to the submissions advanced by the learned Advocate for the respective parties and also perused the materials available on record. Undoubtedly, charge of corruption, including demand and acceptance of bribe is a rather serious charge and if confirmed in a disciplinary proceeding or a judicial proceeding, the opinion expressed by the presiding/disciplinary authority

cannot be interfered with on misplaced sympathy. Time and again, the Court on enumerable occasion has, however, cautioned that an extreme charge of such nature warrants an extreme action, hence any action initiated by the State in such matter should be lawful and by following the prescribed statutory procedure. The opinion of the disciplinary authority should be formed on the basis of legal evidence and it should not be swayed merely on the seriousness of the charges.

16. In the case in hand, the charges against the petitioner, *prima facie*, in the opinion of this Court is extremely serious in nature and thus the enquiry officer as well as disciplinary authority is under lawful obligation to follow the prescribed statutory procedures in order to bring home the charges. The procedure for carrying out a disciplinary proceedings against a Government servant is duly governed under the Rules, 2005. Rule 17 thereof prescribed the Procedure for imposing major penalties. The disciplinary proceeding is said to be initiated against the petitioner after service of charge memo as provided under Rule 17(3) of the Rules, 2005, which, inter alia, postulates the disciplinary authority shall draw up or cause to be drawn up definite and distinct article of charge containing the substance of the imputations of misconduct or

misbehaviour. It further obliges that the charge memo should contain (a) a statement of all relevant facts including any admission or confession made by the Government Servant; (b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained. The disciplinary authority before initiation of the disciplinary proceeding must be satisfied with whether the explanation of the delinquent is satisfactory or either there is a requirement to enquire into the allegation himself or appoint an enquiry officer.

17. Rule 17(14) of the Rules, 2005 mandates that on the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved should be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government Servant. The Presenting Officer may re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority.

18. After the conclusion of the inquiry, a record shall be prepared and it shall contain the articles of charge and the statement of the imputations of misconduct or misbehaviour

along with defence of the Government Servant and an assessment of the evidence in respect of each article of charge, as also the findings on each article of charge and the reasons thereof.

19. Now coming to the Memo of charge, the copy of which is duly marked as Annexure-A/5 at page 39. Altogether three charges have been levelled against the petitioner, based upon the allegation of the complainant, leading to institution of the F.I.R. with regard to demand of bribe and acceptance of the same at the hands of the petitioner, who was apprehended by the raiding party of the Vigilance Department. The charges were proposed to be proved only on the basis of the documentary evidence, including the F.I.R. and letter of the Superintendent of Police (Vigilance Department) informing the department, besides the report containing the statement of the complainant. There is no list of witnesses; and this position is also admitted that in course of enquiry, none of the witnesses either any member of the raiding party or the officer, who prepared the Pre and Post Trap Memorandum, and above all even the complainant has not been examined.

20. True it is that the departmental proceeding is a quasi judicial proceeding and the enquiry officer performs a

quasi judicial function. The enquiry officer has a duty to arrive at a finding after taking into consideration the materials available on record by the parties. The proposition of law that the evidence collected during the investigation by the investigating officer against the accused cannot be treated to be evidence in the departmental proceeding has been succinctly held in the case of **Roop Singh Negi (**supra). The Court further held that in such cases charges would have to be proved by examination of witnesses and mere tendering the documents would not prove the contents thereof. It was categorically observed that the F.I.R. itself can not be considered sufficient evidence even in the departmental proceeding.

21. The learned Division Bench of this Court in the case of **Rajendra Prasad Vs. State of Bihar and Ors**. [L.P.A. No.366 of 2022], reported in **2024 SCC Online Pat 3890,** highlighting the observations made by the Apex Court in the case of **Anil Kumar Vs. Presiding Officer & Ors. [(1985) 3 SCC 378]** and **Saroj Kumar Sinha** (supra) as also **Roop Singh Negi** (supra) held in paragraph nos. 8, 15 and 16 as follows:

> *"8. The cited decision and the decision in the case of Anil Kumar Vs. Presiding Officer & Ors. reported in (1985) 3 SCC 378 emphasized the well-*

heeled principle that a disciplinary enquiry is a quasi-judicial enquiry regulated by the principles of natural justice and the Enquiry Officer being obliged to act judicially. Anil Kumar (supra) was a case where the enquiry officer was found to have not applied his mind to the evidence, since, but for setting out the names of the witnesses, the evidence laid was not discussed at all, which led to the finding of guilt, being termed as one arrived at on the ipse dixit of the Enquiry Officer. State of U.P. & Ors Vs. Saroj Kumar Sinha reported in (2010) 2 SCC 772, held that an Enquiry Officer acting in a quasi-judicial capacity, is in the position of an independent adjudicator and even in the absence of the delinquent, his function is to examine the evidence presented by the department to see as to whether the evidence is sufficient to hold that the charges are proved.

15. We have also looked at the enquiry report which merely records that the allegation registered under clause 1 & 2 prima facie appears to be in violation of Rule 9(1)(c) of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. The

employee's contention that the allegation is in the nature of a conspiracy was disbelieved for no evidence having been led to prove the conspiracy. The Vigilance Court was found to have the right to hear and decide the allegations registered under Case No. 72 of 2001. The Enquiry Report further states that it is from the above recorded facts and observations in the show cause notice filed by (sic) the accused employee that an FIR was registered, and the charges framed in Form-A was held to be proved. The findings are perfunctory, presumptive and unsupported by any valid evidence. Mere registration of an FIR would not bring in the preponderance of probability to prove the charge against the accused, even in a disciplinary enquiry, is our definite opinion.

16. We also notice the decision of the Hon'ble Supreme Court in the case of Roop Sing Negi Vs. Punjan National Bank reported in (2009) 2 SCC 570, which categorically held that mere production of documents is not proof even in a departmental enquiry and the contents of documentary evidence will have to be proved by examining

witnesses. It was categorically held that an FIR in itself is not evidence without actual proof of facts stated therein. The Department could have examined the witnesses, as we noticed; the Complainant, members of the trap team or even the independent witnesses to the trap, to prove the facts as stated in the FIR."

22. There is no confrontation with the settled proposition that in a criminal trial, the finding of guilt is to be proved beyond reasonable doubt whereas in a departmental enquiry, the charges are to be proved on mere preponderance of probabilities. However, even for arriving at a finding on preponderance of probability, there should be some evidence led regarding the charges. In the case of **Rajendra Prasad** (supra), learned Division Bench in identical facts has observed that when the allegation is of demand and acceptance of bribe, there should be some semblance of evidence regarding such demand and acceptance, by either examining the complainant or a member of the trap team, in which case, there could be a finding on preponderance of probabilities. However, in the said case also nothing of sort was done, which led to setting aside the judgment of the learned Single Judge, who did not find error in the enquiry.

23. In the case of **Sher Bahadur Vs. Union of India & Ors.**, reported in (2**002) 7 SCC 142**, the Hon'ble Supreme Court observed that expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however, voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report; "in view of oral, documentary and circumstantial evidence as adduced in the enquiry"; would not in principle satisfy the rule of sufficiency of evidence.

24. This Court is conscious of the scope of writ jurisdiction while exercising the power of judicial review in a departmental proceeding. It is not in dispute that under Articles 226/227 of the Constitution of India, the High Court shall not (i) re-appreciate the evidence, (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law; (iii) go into the adequacy of the evidence; (iv) go into the reliability of the evidence; (v) interfere, if there be some legal evidence on which findings can be based. (vi) correct the error of fact however grave it may appear to be; (vii) go into the

proportionality of punishment unless it shocks its conscience. The aforesaid principle has been assiduously enunciated by the Hon'ble Supreme Court in the case of **Union of India & Ors. Vs. P. Gunasekaran**, reported in **(2015) 2 SCC 610;** with a precise clarification the Court can interfere in a case where the enquiry is not held according to the procedure prescribed in that behalf and if there is violation of the principles of natural justice in conducting the proceedings or the finding of fact is based on no evidence, besides the other grounds mentioned in paragraph12 of the said decision.

25. The aforesaid principles has also been reiterated and underscored by the Hon'ble Supreme Court in the case of **SBI Vs. Ajai Kumar Srivastava,** reported in**, (2021) 2 SCC 612,** wherein the Court held as follows**:**

> *"24. It is thus settled that the power of judicial review, of the constitutional courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory*

rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact."

25. When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the Court is to examine and determine:

(i) whether the enquiry was held by the competent authority;

(ii) whether rules of natural justice are complied with;

(iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion."

26. In the subjected departmental proceeding, the

statutory rules, which prescribed the specific prescriptions to be followed in a departmental proceeding under Rule, 2005 has been given a complete go-bye. Non-examination of the oral evidences makes the finding of the enquiry officer susceptible to challenge, based upon no evidence, especially when the charges cannot be proved merely on a documentary evidence in a case like the present.

27. The reliance on the decisions placed by the learned Senior Advocate representing the State so far in the case of **Tara Chand Vyas** (supra) is concerned, the charge against the delinquent was only based upon the documentary evidence and the Hon'ble Supreme Court found that there is clinching documentary evidence, the authenticity of which has not been questioned and thus is sufficient to prove the charges. However, the case in hand, the charges of demand and acceptance of gratification, cannot be proved merely by tendering the F.I.R. without the examination of the witnesses. Further, in the case of **Phulpari Kumari** (supra), the Hon'ble Supreme Court has been pleased to over turn the decision of the learned Single Judge as well as Division bench, as both the Courts have committed an error in re-appreciating the evidence and coming to a conclusion that the evidence on record was not sufficient to point out the

guilt of the Respondent. However, in the case in hand, the respondent authorities failed to follow the statutory prescription as provided under Rules, 2005, apart from non-observance of the principles of natural justice and the finding of the enquiry officer is based on no legal admissible evidence.

28. Once this Court comes to the conclusion that the finding of the enquiry officer in the case in hand is based upon no legal evidence, inasmuch as no oral evidence has been produced to prove the charges, as has been held in the case of **Roop Singh Negi** and **Saroj Kumar Sinha** (supra) any decision of the disciplinary authority also stands vitiated.

29. Further, while passing the impugned order of punishment, the disciplinary authority has said that no show-cause explanation has been filed on behalf of the petitioner, despite the opportunity afforded to him, but this fact has been denied by the petitioner and a detailed reply to the show-cause explanation is said to have been filed on 02.07.2018. Even if this finding is accepted for the while, neither the enquiry officer can absolve from its duty to ensure the compliance of the mandatory prescription of Rules, 2005 nor the disciplinary authority shut his eyes to see as to whether the rules have been followed or not. The appellate authority fell into similar error

when he failed to consider all the grounds taken by the petitioner, as mandated under Rule 27 of Rules, 2009 while considering the challenge to the impugned order of dismissal.

30. It would be pertinent to refer here Rule 27 of the Rules, 2005, which stipulates the scope of consideration of the appeal by making it clear that the appellate authority shall consider all the circumstances of the case and make such order, as it may deem just and equitable after examining the finding of the disciplinary authority as to whether it was warranted on the evidence on record. The appellate authority was also obliged to consider as to whether the procedure laid down in these Rules have been complied with and if not whether such non-compliance has been resulted into violation of any provisions of the Constitution of India or in the failure of justice. This Court is of the opinion that the appellate authority has also failed to discharge its duty in terms with Rule 27 of the Rules, 2005.

31. In view of the discussions made hereinabove, this Court comes to the conclusion that the enquiry officer has returned his finding *ipse dixit* on no legal evidence, based upon which the impugned order of punishment came to be passed by the disciplinary authority, which is cryptic and non-speaking, besides in violation of statutory prescription; similar mistake has

also been committed by the appellate authority, who failed to take into account the infirmities pointed out in the appeal. Accordingly, the impugned orders, as contained in Memo No. 01-1490/Estab., Buxar dated 10.09.2018 (Annexure-21) and order dated 07.02.2020, in Service Appeal No. 190/2018 (Annexure-22) are hereby set aside.

32. The writ petition stands allowed. The petitioner is directed to be reinstated, however, with a liberty to the respondents to proceed further, in case the outcome of the criminal case goes against the petitioner.

33. So far the consequential benefits are concerned, the same shall be examined by the respondents in view of the mandate of the Hon'ble Supreme Court in the case of ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) & Ors.***, *reported in,* ***(2013) 10 SCC 324*** preferably within twelve weeks.

(Harish Kumar, J)

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