

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 11794 of 2023

=====

Dr. Janardan Prasad Sukumar, son of Jagdish Prasad, resident of 76/104
Nalbandh Toli, Alamganj Chok, Sampatchak, Patna, Bihar 800007.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Additional Chief Secretary, Department of Health, Government of Bihar, Patna.
3. The Additional Secretary, Department of Health, Govt. of Bihar, Patna.
4. The Joint Secretary, Department of Health, Government of Bihar, Patna.

... .. Respondent/s

=====

The present writ petition has been filed for quashing the order of punishment dated 28.10.2022, passed by the Additional Secretary, Department of Health, Government of Bihar, Patna, whereby and whereunder the petitioner has been inflicted with punishment of dismissal from service. The petitioner has further prayed for quashing the order dated 19.06.2023, issued under the Signature of the Joint Secretary, Department of Health, Govt. of Bihar, Patna, whereby the revision petition filed by the petitioner has stood rejected. Lastly, the petitioner has prayed for reinstatement in service and payment of all consequential benefits.

Petitioner placed under Suspension vide order dtd. 31/12/2021 – Departmental proceeding initiated –Enquiry officer after enquiry found all five charges Proven – He submitted enquiry Report , Accordingly – Disciplinary authority passed the Punishment order dated 28/10/2022 punishment of Dismissal from service- Petitioner preferred Review /memorial- Same had also Rejected vide order dated 19/06/2023 – Hence the present Writ Application.

The petitioner asserts that the disciplinary authority failed to comply with Rule 17(3) concerning the mandatory provision of a witness list and adequate documentation supporting the charges.- The petitioner was not given an opportunity to cross-examine witnesses, violating fundamental pr

inciples of natural justice.- The inquiry report was based solely on the unexamined statement of one witness, Kamakhya Narayan Singh, which cannot be used against the petitioner without proper examination and cross-examination.

The State contends that the procedures followed in the disciplinary proceedings were appropriate, and the High court should refrain from re-evaluating the evidence presented during those proceedings. The State maintains that the inquiry was conducted in accordance with established rules and thus, the impugned order should not be disturbed.

HELD ,

*It is found and held that, the impugned order of punishment dated 28.10.2022, based on a perfunctory and illegal enquiry report dated 08.06.2022 , it would suffice to state here that a bare perusal of the impugned order of dismissal dated 28.10.2022 would show that no clear, cogent, and succinct reasons have been furnished by the disciplinary authority for coming to a decision warranting infliction of punishment of dismissal upon the petitioner and further the same neither shows any application of mind nor depicts consideration of the issues involved nor portrays any justification for passing the order of dismissal much less demonstrates consideration of the defence put forth by the petitioner by way of reply filed by him on 26.07.2022, hence on this ground as well, the impugned order of punishment dated 28.10.2022 is fit to be set aside. Reference in this connection be had to the judgment rendered by the Hon'ble Apex Court in the case of **Oryx Fisheries Pvt. Ltd.vs. Union of India**, reported in (2010) 13SCC 427 and the one rendered by this Court in the case of **Abha Kumari** (supra).*

As a consequence of quashing of the enquiry report dated 08.06.2022 and the order of punishment dated 28.10.2022, the order dated 19.06.2023, rejecting the appeal/ review/ memorial filed by the petitioner, has got no legs to stand, hence is also quashed, since the disciplinary proceeding in question has been attended with mala fide and the action of the disciplinary authority reeks of a design to somehow inflict punishment of dismissal upon the petitioner as also the materials on record sufficiently demonstrates that the principles of natural justice have been given a go by and the petitioner has been victimized, as such this Court is of the view that as a consequence of

*quashing of the enquiry report dated 08.06.2022, the order of punishment dated 28.10.2022 and the order dated 19.06.2023, passed on the petitioner's appeal/ review/ memorial, the petitioner is entitled to full back wages along with all the consequential benefits as well as the retiral dues, in view of the law laid down by the Hon'ble Apex Court in the case of **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya & Ors.**, reported in(2013) 10 SCC 324.*

Having regard to the facts and circumstances of the case and for the foregoing reasons, the writ petition stands allowed with a direction to the respondents to pay full back wages to the petitioner along with all the consequential benefits as well as the retiral dues within a period of three months from today.

Writ application is allowed.

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 11794 of 2023

Dr. Janardan Prasad Sukumar, son of Jagdish Prasad, resident of 76/104
Nalbandh Toli, Alamganj Chok, Sampatchak, Patna, Bihar 800007.

... .. Petitioner/s

Versus

- 1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
- 2. The Additional Chief Secretary, Department of Health, Government of Bihar, Patna.
- 3. The Additional Secretary, Department of Health, Govt. of Bihar, Patna.
- 4. The Joint Secretary, Department of Health, Government of Bihar, Patna.

... .. Respondent/s

Appearance:

For the Petitioner/s : Ms. Surya Nilambari, Advocate
For the State : Mr. Mujtabaul Haque, GP-12
Mr. Vasant Vikas, AC to GP-12

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 20-04-2024

The present writ petition has been filed for quashing the order of punishment dated 28.10.2022, passed by the Additional Secretary, Department of Health, Government of Bihar, Patna, whereby and whereunder the petitioner has been inflicted with punishment of dismissal from service. The petitioner has further prayed for quashing the order dated 19.06.2023, issued under the Pen and



Signature of the Joint Secretary, Department of Health, Govt. of Bihar, Patna, whereby the revision petition filed by the petitioner has stood rejected. Lastly, the petitioner has prayed for reinstatement in service and payment of all consequential benefits.

2. The brief facts of the case, according to the petitioner, are that the petitioner had joined the service of the State Government in the year 1983 and thereafter, he has been rendering unblemished service to the satisfaction of all concerned. The petitioner is stated to have suddenly been placed under suspension, vide order dated 31.12.2021, in contemplation of initiation of departmental proceeding, whereafter a departmental proceeding was initiated qua the petitioner vide memo dated 15.02.2022. A charge-sheet in "Prapatra- Ka" dated 17.02.2022 was then served upon the petitioner, wherein five charges were levelled against the petitioner, which are being reproduced herein below:-



प्रपत्र-क

आ0 सं0	<u>आरोप / लांछन</u> का अभिकथन
1	<p>पुलिस अधीक्षक, (मुख्यालय) प्रथम डिहरी, रोहतास के ज्ञापांक- 914 दिनांक- 29.12.2021 के जॉच प्रतिवेदन के आधार पर जिला पदाधिकारी, रोहतास, सासाराम के पत्रांक- <u>3683 / गो0</u> दिनांक-30. 12.2021 द्वारा प्रतिवेदित किया गया कि सरकारी कार्यक्रम स्वास्थ्य विभाग के द्वारा निर्धारित कोविड प्रोटोकॉल के पालन हेतु आप दिनांक-23.12.2021 को होटल रोहित इन्दरनेशनल, सासाराम में आवासित थे। उक्त तिथि को रात्रि 11:00 बजे स्थानीय पुलिस द्वारा होटल के विभिन्न कमरों में छापेमारी की गयी। छापेमारी के क्रम में पुलिस द्वारा कमरा सं0- 306 को खुलवाया गया, जिसमें एक व्यक्ति, एक महिला एवं दो कम उम्र की लकड़ी आवासित पायी गयी। आपके द्वारा दरवाजे खोलने में अनावश्यक विलंब किया गया। पुनः कमरे खोलने के पश्चात आप कमरा न0- 307 में चले गए। कमरा न0- 306 में आवासित महिला द्वारा बताया गया कि वे आपकी संबंधी है। जॉच के क्रम में उनके <u>नाम / पता</u> की जानकारी होने पर यह परिलक्षित होता है कि उनकी कथन कि वे आपके संबंधी हैं, प्रथम दृष्टया गलत बयान प्रतीत होता है, क्योंकि उक्त महिला एवं लड़कियों का नाम क्रमशः रानी खातुन (उम्र- 35 वर्ष) पति- मो0 फकरुद्दीन मोहम्मद, सबा खातुन, उम्र-14 वर्ष, रुक्सार उम्र-12 वर्ष है। उक्त महिला एवं दो लकड़ी का रात्रिकाल में आपके आरक्षित कमरों में आवासित पाया जाना कही न कही आपके चरित्र / आचरण को संदिग्ध बनाता है।</p> <p>आपका यह कृत्य बिहार सरकारी सेवक आचार नियमावली, 1976 के नियम-3 (4) में निहित प्रावधानों के प्रतिकूल है।</p>
2	<p>पुलिस के छापेमारी के दौरान होटल रोहित इन्दरनेशनल, सासाराम से बिना किसी सूचना के छापेमारी स्थल से चले जाना तथा पुलिस के समक्ष ब्रेथ ऐनालाईजर के जॉच के लिए उपलब्ध नहीं होना भी आपके संदिग्ध आचरण को व्यक्त करता है। साथ ही साथ पुलिस उपाधीक्षक, (मुख्यालय) प्रथम डिहरी रोहतास के ज्ञापांक- 914 दिनांक- 29.12.2021 द्वारा समर्पित जॉच प्रतिवेदन को भी सही सम्पुष्ट करता है।</p> <p>आपका यह कृत्य बिहार सरकारी सेवक आचार नियमावली, 1976 के नियम-4 में निहित प्रावधानों के प्रतिकूल है।</p>
3	<p>होटल रोहित इन्दरनेशनल, सासाराम के कमरा नं0- <u>306 / 307</u> आपके नाम से आरक्षित था एवं पुलिस के छापेमारी के दौरान आप वहाँ आवासीत भी पाए गए, ऐसे में कमरा न0-306 से एक व्यक्ति नशे की हालत में पाए गए एवं जेल भेजे गए। इस प्रकरण से स्पष्ट परिलक्षित होता है कि उक्त कमरा में मद्यपान एवं अन्य क्रियाकलाप किया जा रहा था, उसके लिए आप प्रथम दृष्टया दोषी प्रतीत होते है।</p>
4	<p>प्रासंगिक मामले में स्थानीय थाना में प्राथमिकी दर्ज होने के उपरान्त आपके द्वारा पी0आर0 बॉण्ड भरने के उपरान्त जमानत पर विमुक्त किया गया। परन्तु आपके द्वारा इस आशय की सूचना विभाग को नहीं दी गयी, जो सामान्य प्रशासन विभाग, बिहार, पटना के</p>



	पत्रांक— 8334 दिनांक— 15.09.20 में निहित अनुदेशों के प्रतिकूल है।
5	आपका उपर्युक्त आचरण बिहार सरकारी सेवक आचार नियमावली, 1976 के नियम-3 (1)(पप) के निरूपित अनुदेश के प्रतिकूल है।

आपका उपर्युक्त कृत्य कर्तव्य के प्रति घोर लापरवाही, उदासीनता, स्वेच्छाचारिता एवं अकर्मण्यता का द्योतक है।”

The petitioner had then filed a detailed reply to the aforesaid memo of charge on 29.03.2022, whereafter the enquiry officer had proceeded with the enquiry and had ultimately submitted an enquiry report dated 08.06.2022, finding all the charges levelled against the petitioner to have been proved. The disciplinary authority had then issued a second show-cause notice dt. 06.07.2022 to which the petitioner had filed a reply dated 26.07.2022 and then, the disciplinary authority had passed the impugned order of punishment dated 28.10.2022, inflicting the punishment of dismissal from service qua the petitioner. The petitioner had then preferred a review/ memorial against the said order dt. 28.10.2022, on 30.11.2022, however, the same had also stood rejected, vide order dated 19.06.2023. This is how, the petitioner is before this Court.



3. The learned counsel for the petitioner has submitted that as far as the memo of charge is concerned, the same does not contain any list of witnesses, hence charge memo itself is defective, in view of non-compliance of Rule 17(3) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as "Rules 2005") as also contrary to Regulation 3 of the Bihar Framing of Articles of Charge against Govt. Servant Regulations, 2017. Consequently, the order of punishment dated 28.10.2022 is fit to be set aside on this ground alone. Reference in this connection has been made to a judgment rendered by a co-ordinate Bench of this Court in the case of **Ashwini Kumar vs. the State of Bihar**, reported in **2017 (3) PLJR 500**, paragraph no.9 whereof is reproduced herein below:-

"9. Before I would proceed to deal with the issue raised and contested, I deem it necessary to refer to Rule 17 of 'the Rules' which casts certain obligation on the disciplinary authority requiring a discharge before he proceeds to draw a proceeding for



*imposing a major penalty. Rule 17(3) of the rules relates to drawing of a chargesheet and which inter alia mandatorily requires the disciplinary authority not only to give a list of documents on which the charges are founded but also give a list of such witness by whom, the article of charges are to be proved. Annexure-18 is the chargesheet and which simply refers to certain documents as evidence but no list of witness accompanies the chargesheet through whom the department proposed to uphold the charges. In other words, the chargesheet itself is dehors the statutory prescriptions for until such time that a list of witness accompanies a chargesheet, the documents relied upon by the department suo motu cannot be simply relied upon for proving a charge as held by the Supreme Court in the Case of **Roop Singh Negi Vs. Punjab National Bank** since reported in **(2009)2 SCC 570**. That was a case in which the department was relying upon the First Information report to uphold the guilt but no witness was led by the Presenting Officer to prove the police report and it is taking note of such circumstance that the Supreme Court has proceeded to hold thus at paragraph 14 of the judgment:*

"14. Indisputably, a departmental



proceeding is a quasi judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry 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, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence."

(Emphasis is supplied)

On the aforesaid issue, the Ld. counsel for the petitioner has also referred to a judgment dated 22.11.2023, rendered by a co-ordinate Bench of this Court in the case of **Fredrick Julius Davi vs. State of Bihar & Ors.**, passed in CWJC No.738 of 2014.



4. The leaned counsel for the petitioner has further submitted that the enquiry report dated 08.06.2022 is based on extraneous consideration inasmuch as the same records that the petitioner is guilty of the accusation of consuming liquor, whereas the same was not even a charge, which is apparent from a bare perusal of the memo of charge dated 17.02.2022. It is, thus, submitted that enquiry officer is precluded from enquiring into an allegation which the delinquent officer has not been charged with. Reference in this connection has been made to a judgment rendered by the Hon'ble Apex Court, in the case of ***M. V. Bijalani vs. Union of India & Ors.***, reported in ***(2006) 5 SCC 88***. It is also submitted that the letter written by the Civil Surgeon, Rohtas as also the preliminary enquiry report submitted by the Deputy Superintendent of Police (Headquarters) dated 29.12.2021 have though been relied upon by the enquiry officer to come to a conclusion that the charges levelled against the petitioner have stood proved, however, neither the said



documents were ever exhibited nor the maker of the same was ever examined, hence, such extraneous materials could not have been considered by the enquiry officer for coming to a conclusion that the petitioner is guilty of the charges levelled against him. Reference in this connection has been made to a judgment rendered by the Hon'ble Apex Court in the case of **Laxmi Devi Sugar Mills Ltd. vs. Sri Nand Kishore Singh**, reported in **AIR 1957 SC 7**, as also on a judgment rendered by a co-ordinate Bench of this Court in the case of **Mithilesh Kumar vs. State of Bihar**, reported in **2021 (4) PLJR 428**, as also the one rendered by this Court in the case of **Rajendra Prasad Shah vs. the State of Bihar & Ors.**, reported in **2018 (3) PLJR 939**.

5. It is stated by the leaned counsel for the petitioner that as far as the enquiry report dated 08.06.2022 is concerned, the same is based on no evidence inasmuch as first of all, though charge No. 1 mentions that the petitioner was found in Room No.306, however, the enquiry officer has



proceeded as if the petitioner was found in Room No.307 and consequently, he has also come to a conclusion that the petitioner was recovered from Room No.307 along with one lady and two children. Thus, it is submitted that the said finding of the enquiry officer arrived at in his report dated 08.06.2022 is contrary to the charge framed and levelled against the petitioner. It is further submitted that although the enquiry officer has relied on the evidence of one Kamakhya Narayan Singh, Inspector of Police, Rohtas, who had conducted raid at Rohit International Hotel, situated at Sasaram, on 23.12.2021 as also on the written statement of one Dr. K. N. Tiwari, Incharge, Civil Surgeon, Rohtas, however, neither the said witnesses have been named in the memo of charge nor they were examined in presence of the petitioner nor the petitioner was ever granted any opportunity to cross-examine the said witnesses, resulting in violation of the principles of natural justice and on this ground alone, the enquiry report dated 08.06.2022 is fit to be set aside. Reference,



in this connection has been made to a judgment rendered by the Hon'ble Apex Court in the case of ***Brij Bihar Singh vs. Bihar State Financial Corporation & Ors.***, reported in **(2015) 17 SCC 541**. Paragraph no.9 whereof is reproduced herein below:-

“9. It is well settled that a person who is required to answer a charge imposed should know not only the accusation but also the testimony by which the accusation is supported. The delinquent must be given fair chance to hear the evidence in support of the charge and to cross-examine the witnesses who prove the charge. The delinquent must also be given a chance to rebut the evidence led against him. A departure from this requirement violates the principles of natural justice. Furthermore, the materials brought on record pointing out the guilt are required to be proved. If the enquiry report is based on merely ipse dixit and also conjecture and surmises, it cannot be sustained in law.”

6. The learned counsel for the petitioner has also relied upon a judgment rendered by this Court in the case of ***Pradeep Singh vs. the State of***



Bihar, reported in **2021 (3) PLJR 599**, paragraph no.9 whereof is reproduced herein below:-

*“9. I have heard the learned counsel for the parties and gone through the materials on record. This Court finds that firstly the petitioner has not been granted adequate opportunity for cross-examining the witnesses examined by the prosecution which has definitely resulted in violation of the principles of natural justice. This Court also finds that virtually no evidence has been led during the course of the departmental proceedings either oral or documentary, which would suggest the guilt of the petitioner, hence, the present case is a case of no evidence. In this connection, it would be relevant to refer to the judgment by the Hon’ble Apex Court in the case of **Roop Singh Negi vs. Punjab National Bank & Ors.**, reported in (2009) 2 SCC 570 and the one reported in (2010) 2 SCC 772 (The State of Uttar Pradesh vs. Saroj Kumar Sinha). It would be apt to refer to paragraphs no. 27 to 29 of the judgment rendered in the case of Saroj Kumar Sinha (supra) herein below:-*

“27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the



charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.

28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/ disciplinary authority/ Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the



charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee."

Thus, it is submitted that since no opportunity has been granted to the petitioner to cross-examine the witnesses, apart from the fact that the witnesses have also not been examined by the enquiry officer in presence of the petitioner, the principle of natural justice has definitely been violated, hence the enquiry report dated 08.06.2022 is fit to be set aside on this ground



alone.

7. The learned counsel for the petitioner has next contended that as far as charge no.2 is concerned, the same is also not made out inasmuch as firstly, no evidence has been led by the prosecution to prove the said charge and moreover, the police has admittedly not lodged any FIR against the petitioner nor there is any whisper from any quarter that the petitioner had not made himself available to the police for Breath Analyzer Test. As regards, Charge No.3, it is submitted that admittedly, the petitioner was found in Room No.307 whereas the person, who was in an intoxicated state/ drunken condition, was found in Room No.306, hence to say that since the person recovered from Room No.306 was in an inebriated condition, the conclusion would be that the petitioner had also consumed alcohol is preposterous and hypothetical. As far as charge no.4 is concerned, it is submitted that the same is factually incorrect inasmuch as neither any FIR was ever lodged against the petitioner nor the



petitioner was required to obtain bail, thus there was no requirement of informing the department with regard to a non-existent fact. Charge No.5 is formal in nature inasmuch as the same states that the conduct of the petitioner is not in consonance with the required conduct under Rule 3(1)(ii) of the Bihar Government Servant's Conduct Rules, 1976, however the same is not only factually incorrect but the same is based on no evidence.

8. It is thus stated by the Ld. counsel for the petitioner that the present case is, thus a case of no evidence inasmuch as the prosecution has failed to adduce any evidence to substantiate the charges to the effect that while the petitioner was staying at Rohit International Hotel, Sasaram, while he was on official visit to Sasaram, he was found to be in the company of a lady and two girls, inasmuch as neither the manager of the said hotel nor the said lady nor the said girls have been examined and merely on the basis of written statement of the aforesaid Kamakhya Narayan Singh, Inspector of Police, Sasaram Police Station



dated 04.05.2022, the enquiry officer has found the petitioner guilty, although the said witness was never examined by the enquiry officer much less any opportunity was granted to the petitioner to cross-examine the said witness. Reference in this connection has been made to a judgment rendered by the Hon'ble Apex Court in the case of **Roop Singh Negi vs. Punjab National Bank**, reported in **(2009) 2 SCC 570**, as also to the one rendered by the Hon'ble Apex Court in the case of **State of U.P. vs. Saroj Kumar Sinha**, reported in **(2010) 2 SCC 772**.

9. The Ld. counsel for the petitioner has next submitted that the second show-cause notice dated 06.07.2022 is also contrary to the memo of charge dated 17.02.2022 inasmuch as though the memo of charge nowhere alleges that the petitioner had consumed liquor, however, the second show-cause notice proceeds on the basis that the petitioner has been found guilty of consumption of liquor. As far as the order of punishment dated 28.10.2022 is concerned, the



Ld. counsel for the petitioner has submitted that the same is cryptic, depicts non-application of mind and has not taken into consideration the reply filed by the petitioner to the second show-cause notice dated 06.07.2022, hence, the same is fit to be set aside, moreso, since the same has been passed in contravention of the Rules, 2005, which makes it mandatory upon the authorities concerned to consider the representation made by the employees and such consideration means conscious application of mind, as also consideration of the explanation given by the employees on an objective basis. Reference in this connection has been made to a judgment rendered by a co-ordinate Bench of this Court in the case of **Dr. Ravindra Nath Singh vs. the State of Bihar & Ors.**, reported in **1983 PLJR 92**, as also the one rendered by this Court in the case of **Abha Kumari vs. the State of Bihar & Ors.**, reported in **2023 SCOnline Pat 4370**, paragraph nos. 4 to 7 whereof are produced herein below:-

“4. The learned counsel for the petitioner has



further submitted that the impugned order dated 30.6.2015, passed by the Respondent No. 3, would show that the same is mere narration of facts and has neither dealt with the defence put forth by the petitioner nor mentions instances of irregularities, alleged to have been committed by the petitioner and the proof thereof, hence, the same is also based on no evidence, apart from being a cryptic order, not depicting proper application of mind, inasmuch as no cogent or succinct reason have been furnished for inflicting punishment upon the petitioner, which is an indispensable part of a decision making process. In this regard, the learned counsel for the petitioner has referred to a judgment, rendered by a coordinate Bench of this Court in the case of Janeshwar Sinha v. State of Bihar, (2022) 1 PLJR 169, paragraphs no. 5 and 9 whereof are reproduced herein above:-

“5. Learned counsel for the petitioner submits that the disciplinary authority was exercising quasi-judicial power. Therefore, he was bound to mention the defence raised by the petitioner in his show cause which would have been material for consideration before the authority and thereafter by a reasoned order he should have rejected the same. In absence of any



reason, the impugned order suffers from non-application of mind and arbitrariness, as such is not sustainable in law.

6. The State has filed detailed counter affidavit controverting the claim of the petitioner, however does not dispute that the impugned order does not disclose the defence of the petitioner or reason for non-acceptance of the same.

7. In Roop Singh Negi v. Punjab National Bank, (2009) 2 SCC 570, relied upon by learned counsel for the petitioner, the Hon'ble Supreme Court said that "Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties." "Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned."

8. *Evidently in the case on hand, the*



disciplinary authority has not assigned any reason for awarding the punishment against the petitioner. Hence the impugned order is hereby quashed. There is no need for further remand of this matter, as sufficient injustice has been done with the petitioner who retired in the year 2001.

9. Hence authorities are directed to make payment of entire retiral dues including entire salary for the period of suspension minus already paid amount. The Suspension period was in between 08.03.1999 to 30.11.2000. If any recovery has been made from the petitioner in pursuance of the impugned order that would also be refunded to the petitioner.”

5. *The learned counsel for the petitioner has referred to yet another judgment, rendered by a coordinate Bench of this Court in the case of Dr. Kamla Singh v. State of Bihar, (2023) 1 PLJR 803, paragraph no. 7 whereof is reproduced hereinbelow:*

“7. So far as second contention of the petitioner is concerned, the same has substance. From perusal of the order of punishment, it is evident that the Disciplinary Authority, without taking into consideration or discussing show cause



reply of the petitioner, has mechanically passed the impugned order. The impugned order does not contain any discussion as to how the petitioner's reply to the second show cause notice was not acceptable to the disciplinary authority referring to the points taken therein. In this case, order of punishment does not disclose the application of mind. As per Rule 19 of the Bihar CCA Rules, 2005, it is incumbent upon the authorities concerned to consider the representation made by the employees and such consideration means a conscious application of mind and also a consideration of the explanation given by the employees in an objective basis. Reference is made to the decision of the Division Bench of this Court in case of Dr. Rabindra Nath Singh v. The State of Bihar, 1983 PLJR 92."

6. *Per contra, the learned counsel for the Respondent-State has submitted that the procedure, required to be followed in conduct of the departmental proceeding, has been followed, hence, this Court would not sit in appeal and re-appreciate the evidence, thus, there is no infirmity in the impugned order dated 30.6.2015.*

7. *I have heard the learned counsel for the*



parties and perused the materials on record. It is evident from the records, as narrated by the learned counsel for the petitioner and recorded hereinabove in the preceding paragraphs that the present case is a case of no evidence. This Court further finds that the impugned order dated 30.6.2015 is not only cryptic but also an unreasoned order, depicting complete non-application of mind inasmuch as the same has not taken into account the defence put forth by the petitioner, apart from no clear, cogent and succinct reasons, having been furnished by the Respondent No. 3, for coming to a decision warranting infliction of punishment upon the petitioner. It is a trite law that furnishing of clear, cogent and succinct reasons in support of the impugned order, is an indispensable component of a decision making process. Reference, in this connection, be had to a judgment, rendered by the Hon'ble Apex Court in the case of ORYX Fisheries Pvt. Ltd. v. Union of India, (2010) 13 SCC 427."

10. *Per contra*, the learned counsel for the respondent-State has opposed the present writ petition and has submitted that since there is no



procedural irregularity/illegality in conduct of the disciplinary proceedings, no interference is required inasmuch this Court would not sit in appeal and re-appreciate the evidence. Reference has been made by the learned counsel for the respondent-State to a judgment rendered by the Hon'ble Apex Court in the case of ***Union of India v. P. Gunasekaran***, reported in **(2015) 2 SCC 610**, paragraph nos. 12 and 13 whereof are reproduced herein below:-

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:



- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.*

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate 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."

11. At this juncture, it would suffice to state that the judgment referred to by the learned counsel for the respondent-State, rendered by the Hon'ble Apex Court in the case of **P. Gunasekaran** (supra), lays down a settled proposition of law, which is not in dispute, however the facts and circumstances of the present case and the issues involved herein are quite distinctive.

12. I have heard the learned counsel for the parties and perused the materials on record. This Court finds that the memo of charge dated 17.02.2022 does not contain the list of witnesses to be examined by the department, hence, the same is in contravention of Rule 17(3) of the Rules, 2005 read with Rule 3 of the Bihar Framing of Articles of Charge against Govt. Servant



Regulations, 2017. This aspect of the matter stands covered by the judgments rendered in the cases of **Ashwini Kumar** (supra) and **Fredrick Julius David** (supra), wherein it has been held that providing a list of witnesses for proving imputation is one of the essential ingredients, failing which the chargesheet itself is de hors the statutory prescriptions. Therefore, this Court finds that since the charge memo dated 17.02.2022 is itself defective, the entire departmental proceeding stands vitiated.

13. This Court further finds that the enquiry officer, in his enquiry report dated 08.06.2022, has considered the statement of two witnesses, namely, Kamakhya Narayan Singh and Dr. K. N. Tiwari to come to a conclusion that the charges levelled against the petitioner have stood proved, however, admittedly, neither the said witnesses were ever examined by the enquiry officer, much less in presence of the petitioner nor the petitioner was ever granted any opportunity of cross-examining the said witnesses, thus, the



statements of the said two witnesses cannot be used for the purpose of indicting the petitioner in the departmental enquiry. It is a trite law that a person, who is required to answer a charge imposed should know not only the accusation but also the testimony by which the accusation is supported and as such the delinquent must be given fair chance to hear the evidence in support of the charge and to cross-examine the witnesses and in absence thereof, the principle of natural justice would be violated warranting quashing of the enquiry report. Reference in this connection be had to the judgment rendered by the Hon'ble Apex Court in the case of **Brij Bihar Singh** (supra) and the one rendered by a co-ordinate Bench of this Court in the case of **Pradeep Singh** (supra).

14. A bare perusal of the enquiry report dated 08.06.2022 would show that the only basis for indicting the petitioner and holding him guilty of the charges levelled against him is the statement of one Kamakhya Narayan Singh, which legally cannot be used against the petitioner, since



neither the said witness was ever examined by the enquiry officer, much less in presence of the petitioner nor the petitioner was ever granted any opportunity of cross-examining the said witness, hence, upon excluding the evidence of the said Kamakhya Narayan Singh, no other evidence much less any material is available on record to hold the petitioner guilty of the charges levelled against him, especially in view of the fact that neither the Manager of the hotel nor the lady in question nor the children in question have been examined by the prosecution. This Court further finds that no other evidence (oral or documentary) has been produced by the prosecution, apart from the report of the Dy. Superintendent of Police (HQ.) dt. 29.12.2021, which again has neither been exhibited nor proved. Therefore, in the facts of this case, this Court is constrained to hold that by not producing any cogent evidence in support of its case, the respondent authorities have failed to prove the charges against the petitioner, hence the enquiry report loses all its importance, moreso on



account of the same being based on no evidence. Consequently, the report of the enquiry officer dated 08.06.2022, being perverse and based on no evidence, is quashed. This Court also comes to a conclusion that since the petitioner was not granted any opportunity to cross-examine the witnesses, the principles of natural justice have been violated, thus, on this ground also, the enquiry report dated 08.06.2022 is fit to be quashed.

15. Consequently, the impugned order of punishment dated 28.10.2022, based on a perfunctory and illegal enquiry report dated 08.06.2022, which has already stood quashed, has got no legs to stand, hence is also set aside. Nonetheless, it would suffice to state here that a bare perusal of the impugned order of dismissal dated 28.10.2022 would show that no clear, cogent, and succinct reasons have been furnished by the disciplinary authority for coming to a decision warranting infliction of punishment of dismissal upon the petitioner



and further the same neither shows any application of mind nor depicts consideration of the issues involved nor portrays any justification for passing the order of dismissal much less demonstrates consideration of the defence put forth by the petitioner by way of reply filed by him on 26.07.2022, hence on this ground as well, the impugned order of punishment dated 28.10.2022 is fit to be set aside. Reference in this connection be had to the judgment rendered by the Hon'ble Apex Court in the case of **Oryx Fisheries Pvt. Ltd. vs. Union of India**, reported in **(2010) 13 SCC 427** and the one rendered by this Court in the case of **Abha Kumari** (supra).

16. As a consequence of quashing of the enquiry report dated 08.06.2022 and the order of punishment dated 28.10.2022, the order dated 19.06.2023, rejecting the appeal/ review/ memorial filed by the petitioner, has got no legs to stand, hence is also quashed.

17. Now coming to the issue of payment of back



wages as well as grant of retiral benefits, this Court finds that since the disciplinary proceeding in question has been attended with *mala fide* and the action of the disciplinary authority reeks of a design to somehow inflict punishment of dismissal upon the petitioner as also the materials on record sufficiently demonstrates that the principles of natural justice have been given a go by and the petitioner has been victimized, as such this Court is of the view that as a consequence of quashing of the enquiry report dated 08.06.2022, the order of punishment dated 28.10.2022 and the order dated 19.06.2023, passed on the petitioner's appeal/ review/ memorial, the petitioner is entitled to full back wages along with all the consequential benefits as well as the retiral dues, in view of the law laid down by the Hon'ble Apex Court in the case of **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya & Ors.**, reported in **(2013) 10 SCC 324**.

18. Having regard to the facts and circumstances of the case and for the foregoing reasons, the writ



petition stands allowed with a direction to the respondents to pay full back wages to the petitioner along with all the consequential benefits as well as the retiral dues within a period of three months from today.

(Mohit Kumar Shah, J)

Kanchan./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17.05.2022
Transmission Date	NA

