IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 2114 of 2020

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Mukesh Kumar Son of Late Dineshwar Singh Rathour Resident of Village Ranipur, Post Office- Kodra, Police Station- Paliganj, District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Minor Water Resources Department, Government of Bihar, Patna, Bihar.
3. The Deputy Secretary, Minor Water Resources Department, Government of Bihar, Patna, Bihar.
4. The Chief Engineer, Minor Water Resources Department, Government of Bihar, Patna.
5. The Chief Engineer (Planning, Monitoring, Ground Water), Minor Water Resources Department, Bihar, Patna.
6. The Superintending Engineer, Minor Irrigation Circle, Gaya.
7. The Executive Engineer, Minor Irrigation Circle, Gaya.
8. The Executive Engineer, Minor Irrigation Division, Jehanabad.

... ... Respondent/s

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Acts/Sections/Rules:

- *Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act*
- *Rule 17(3)(4) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005*

Cases referred:

- *Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd.& Ors.[(1999) 3 SCC 379*
- *G.M. Tank vs. State of Gujarat & Ors.[(2006) 5 SCC 446]*

- *Roop Singh Negi v. Punjab National Bank & Ors. [(2009) 2 SCC 570]*
- *Kerns Services Private Limited vs. The State of Bihar and Ors. [2014 (1) PLJR 622]*
- *Uttar Pradesh & Ors. vs. Saroj Kumar Sinha [(2010) 2 SCC 772]*
- *Commissioner of Police, Delhi and Ors vs. Jai Bhagwan, (2011) 6 SCC 376*
- *Ram Lal vs. State of Rajasthan & Ors. [(2024(1) SCC 175]*
- *Deepali Gundu Surwase vs Kranti Junior Adhyapak Mahavidyalaya & Ors [(2013) 10 SCC 324]*

Petition - filed against order issued by the Chief Engineer, Minor Water Resources Department, Government of Bihar whereby the petitioner has been inflicted with the punishment of dismissal.

Held - There is no discussion of the show cause explanation of the petitioner wherein he raised several legal points, apart from dispelling the charges. The disciplinary authority has inflicted the punishment of dismissal only on the ground that no clear explanation of the charges has been rendered by the petitioner. The charges are said to be proved only on the basis of FIR and the complaint filed by the complainant, which cannot be said to be legal evidence. The finding of the disciplinary authority is based upon no evidence; there is no discussion with regard to the show cause explanation furnished by the petitioner as to why the same are not accepted. (Para 15)

Having considered the judgment of the trial court and on being found that the prosecution has miserably failed to prove the charges, this Court finds that the Appellate Authority failed to consider the admitted settled legal position despite the direction of this Court. (Para 20)

Writ petition is allowed. (Para 22)

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8. The Executive Engineer, Minor Irrigation Division, Jehanabad.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Parijat Saurav, Advocate

For the Respondent/s : Mr. Krityanand Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

C A V JUDGMENT

Date : 18-02-2025

This Court has heard Mr. Parijat Saurav, learned Advocate for the petitioner and Mr. Krityanand Jha, learned Advocate for the State.

2. The petitioner is aggrieved with the order as contained in Memo No. 1042 dated 18.06.2014 issued by the Chief Engineer, Minor Water Resources Department, Government of Bihar, Patna, whereby the petitioner has been inflicted with the punishment of dismissal. The petitioner also seeks quashing of the order contained in Memo No. 7466 dated 17.10.2019 issued under the signature of the Under Secretary, Minor Water Resources Department, Government of Bihar, Patna whereby the appeal preferred by the petitioner against the order of dismissal, afore noted, also came to be rejected. In sum and substance, the petitioner challenged the entire departmental proceeding, including the memo of charge as well as the enquiry report based upon which the order of dismissal has been passed.

3. The relevant necessary facts, as culled out from the materials available on record, are summarised hereinbelow:

(i) The petitioner was duly appointed on compassionate ground on the post of Correspondence Clerk in the Minor Irrigation Division, Gaya. At the relevant time, while

the petitioner was working on the said post on 24.12.2005, a complaint was lodged by one Amar Kumar Shrivastava alleging therein that there is a demand of illegal gratification on the part of the petitioner for movement of the file in relation to his appointment on compassionate ground. On the basis of the aforesaid complaint, the Vigilance Department constituted a trap team and apprehended the petitioner while accepting the bribe of Rs.2500/-, leading to institution of Vigilance P.S. case No. 18 of 2005 under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. The petitioner was immediately sent to judicial custody and placed under suspension with effect from 29.12.2015.

(ii) Upon being released from the judicial custody, suspension of the petitioner was revoked vide Memo no. 468 dated 07.06.2006. On the said charge of accepting bribe and being apprehended by the Vigilance police, a memo of charge was duly framed vide Memo No. 883 dated 25.07.2006 and a show cause was issued to the petitioner to submit his reply. The petitioner immediately submitted his reply on 14.08.2006 and denied the allegation of demanding and accepting any bribe. The petitioner also requested the Conducting Officer to stay the further proceeding in the departmental proceeding till

conclusion of the trial since the allegation in the departmental proceeding was mirror image of the allegation in the FIR of Vigilance P.S. Case No. 18 of 2005. The petitioner ensured his appearance in the departmental proceeding and submitted further reply with all his defence and contention that the memo of charge is defective, in as much as, it does not contain the list of witnesses and evidences; copies of such application have been placed on record as Annexures-4, 5 and 6 series.

(iii) After submission of the afore noted application/reply of the petitioner, there had not been any substantial progress in the departmental proceeding. However, in the year 2014, the departmental proceeding was again revived and the petitioner was again placed under suspension vide Memo No. 389 dated 22.02.2014 with immediate effect. The petitioner submitted his further reply on 20.03.2014 before the newly appointed Enquiry Officer and denied the charges levelled against him with further prayer to exonerate him in the departmental proceeding. The Superintending Engineer, Minor Irrigation Circle, Gaya, who was the Enquiry Officer of the departmental proceeding, finally submitted his enquiry report contained in letter No. 325 dated 28.05.2014 holding the petitioner guilty of the charge; copy of which is marked as

Annexure-12 to the writ petition.

(iv) The disciplinary authority, the Chief Engineer, Minor Water Resources Department, Patna vide its letter No. 916 dated 30.05.2014 invited response of the petitioner on the enquiry report. The petitioner submitted his second show cause reply on 14.06.2014 as contained in Annexure-14. However, second show cause reply of the petitioner did not find any favour and the disciplinary authority vide its Memo No. 1042 dated 18.06.2014 inflicted the punishment of dismissal from service. The petitioner was further held entitled to only subsistence allowance during the period of suspension.

(v) Being aggrieved, the petitioner preferred his statutory appeal on 03.07.2014 and also filed supplementary application in continuance with his memo of appeal. Since there was no consideration of the appeal, the petitioner was constrained to file CWJC No. 14095 of 2014 before this Court. While the matter was pending consideration, in the meantime the criminal case against the petitioner was finally came to be decided by the learned Trial Court and the petitioner has been acquitted from all the charges.

(vi) The Hon’ble Court, noticing the fact of acquittal during the pendency of the appeal of the petitioner, disposed off

the writ petition vide order dated 06.08.2019 directing the petitioner to supplement his appeal by placing the fact of his acquittal and the law laid down by the Hon'ble Supreme Court in the cases of ***Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd.& Ors.[(1999) 3 SCC 379*** and ***G.M. Tank vs. State of Gujarat & Ors.[(2006) 5 SCC 446]***. The Appellate Authority was directed to give due consideration to the aforesaid development of acquittal of the petitioner in criminal case in the light of the law declared by the Hon'ble Supreme Court by a reasoned a speaking order.

(vii) In compliance with the direction of the Writ Court, the petitioner filed a supplementary petition on 13.08.2019 as well as on 16.08.2019 before the Appellate Authority highlighting the fact of his acquittal in the criminal case and the judgment of the Hon'ble Supreme Court. Finally the appeal preferred by the petitioner came to be dismissed by the Appellate Authority vide order contained in Memo No. 7466 dated 17.10.2019.

(viii) Both the orders of the disciplinary authority, inflicting punishment of dismissal and the order of the Appellate Authority affirming the aforenoted order are put to challenge before this Court.

4. Learned Advocate for the petitioner Mr. Parijat Saurav, while questioning the legality of the entire departmental proceeding as well as the impugned order of dismissal and its affirmance, has contended that the very memo of charge is in the teeth of the prescription of Rule 17(3)(4) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (for brevity 'Rules, 2005'), in as much as, no list of documents or witnesses, on which the Department proposed to prove the charges, was furnished. In the departmental proceeding, two of the witnesses namely, Sri Nawal Kishore Prasad and Sri Devendra Nath Mishra, who were said to be seizure list witnesses, were examined on behalf of the Department. They have given their statement in writing and denied the allegations against the petitioner. They have categorically stated that the petitioner was neither apprehended in their presence nor they had seen the petitioner was accepting bribe nor any bribe money was recovered from him. Both the witnesses have said that they were made to sign on pre trap and post trap memorandum and other documents in the Police Station. No other witnesses, except the aforesaid two witnesses, were examined, nor even the complainant and any member of the Vigilance Team was examined and cross examined and as

such charges do not stand proved.

5. Learned Advocate for the petitioner contended that the reliance upon the FIR and the documents appended with the FIR viz. complaint of Amar Kumar Srivastava, pre-trap and post trap memorandum, which were prepared during the course of investigation, without proof of contents thereof, is wholly impermissible in law. To support the aforesaid contention, reliance has also been placed on a decision of the Hon'ble Supreme Court in the case of ***Roop Singh Negi v. Punjab National Bank & Ors. [(2009) 2 SCC 570]***.

6. Learned Advocate further urged that the petitioner was honourably acquitted in the criminal trial by the learned trial by the Court of learned Special Judge, Vigilance-1st, Patna in Special Case No. 31/2005 vide judgment dated 18.05.2016; the prosecution has miserably failed to establish the charge of demand of bribe and recovery of bribe money from the petitioner. In view of the acquittal in the contested trial against which the appeal of the Vigilance was also dismissed, coupled with the fact that there is no evidence in the departmental proceeding to prove the allegation levelled against the petitioner, the order of dismissal dated 18.06.2014 and its appellate order dated 17.10.2019 cannot be sustained. Reliance

has also been placed on the decisions rendered in the case of ***Capt. M. Paul Anthony*** (supra) and ***G.M. Tank*** (supra). It is also the contention of the petitioner that the disciplinary authority has completely failed to consider the explanation submitted by the petitioner and has rejected the same in one line, which is in complete defiance of the principles of natural justice and fair play. Similarly the Appellate Authority has also not discussed the grounds taken by the petitioner in his memo of appeal. To buttress the aforesaid contention, reliance is placed on the report of the learned Division Bench of this Court in ***Kerns Services Private Limited vs. The State of Bihar and Ors. [2014 (1) PLJR 622]***, especially paragraph no. 11 thereof.

7. Dispelling the afore noted contention raised by the learned Advocate for the petitioner, Mr. Krityanand Jha, learned Advocate for the State submitted that on a complaint made by Amar Kumar Srivastava, the Vigilance Investigation Bureau, Patna constituted a trap team and caught hold the petitioner red handed on 29.12.2005 while he was accepting bribe of Rs. 2500/-. The petitioner was put under suspension and after his release from judicial custody, memo of charge was served upon him which was responded by the petitioner with a request that

no further step be taken in the disciplinary proceeding awaiting the result of criminal proceeding. On the prayer made by the petitioner, the departmental proceeding was kept pending for a pretty long period but when it has found that there is no likelihood of the early conclusion of the criminal case it was decided to proceed further and accordingly the departmental proceeding was revived in the year 2014. By the order of the Chief Engineer, the Superintending Engineer, Minor Irrigation Circle, Gaya was appointed as Enquiry Officer and the Executive Engineer, Minor Irrigation Division, Gaya was appointed as the Presenting Officer. The petitioner submitted his written defence submission which was duly considered and finally the Enquiry Officer submitted the enquiry report vide letter No. 325 dated 28.05.2014 holding the charges proved against the petitioner. Second show cause notice was duly issued to the petitioner which was also responded by the petitioner and finally the disciplinary authority has inflicted punishment vide Memo No. 1042 dated 18.06.2014. The order passed by the disciplinary authority also stood affirmed by the Appellate Authority.

8. It is the contention of the learned Advocate for the State that pursuant to the order of the Hon’ble Court in CWJC

No. 14095 of 2014, the Appellate Authority sought opinion of the Law Department on the judgments referred by the petitioner in his supplementary appeal petition. The Law Department categorically opined that the Hon'ble Supreme Court in numerous judgments held that the departmental proceeding and the criminal proceeding can be initiated against a delinquent simultaneously and result of either of the proceeding cannot affect the another proceeding as in both the proceedings the charges are to be proved on different yardstick. It is lastly contended that it is an open and shut case where the petitioner was apprehended while accepting bribe and on being found the charges proved, he has been inflicted with the punishment; moreover the impugned orders do not suffer from any infirmity and thus requires no interference.

9. This Court has anxiously heard the learned Advocates for the respective parties and perused the materials available on record, and also minutely gone through the memo of charge, enquiry report as well as the impugned orders. Before coming to the merits of the case, this Court is constrained to observe the sorry state of affairs of the departmental authorities, who sat over the mater for more than one and a half decades to decide the departmental proceeding. Albeit, Article 21 of the

Constitution of India within its ambit not only includes the right to speedy disposal of trial, only in criminal cases, but even the cases which are of civil in nature and of the departmental proceeding, the same are ought to be disposed of without undue delay. A person who has been facing a sword, hanging over his head for over a decade is but obvious a sheer infarction of right to speedy disposal of cases as guaranteed under the Constitution of India. Time without number the Government of Bihar in the Department of General Administration has issued letters prescribing time limits for disposal of departmental proceeding, especially in trap cases since corruption in any manner is required to be dealt with iron hand and must be brought to its logical conclusion so that the guilty may be punished appropriately within a reasonable period of time. The General Administration Department vide its Letter No. 2324 dated 10.07.2007 further through letter No. 1893 dated 14.06.2011, No. 2763 dated 26.02.2024 and in the year 2015 vide letter No. 12787 dated 28.08.2015 stipulated the timelimits and stage wise disposal of the departmental proceeding since the respondent authorities are oblivious to all such kind of instructions and there is no adherence to the timelimits as prescribed by the Government of Bihar itself, this Court is constrained to quote

part of the relevant letter No. 12787 dated 28.08.2015 prescribing the timelimits for stage-wise disposal of the departmental proceeding.

"..... 2. इसके बावजूद सरकार के समक्ष ऐसे दृष्टांत आ रहे है जिनमें विभागीय कार्यवाहियॉ कई वर्षों तक लंबित रहती है। विशेष कर निगरानी विभाग द्वारा रंगे हाथों पकड़े जाने वाले मामलों में (tap cases) में साक्ष्य की अनुपलब्धता का हवाला देकर विभागीय कार्यवाहियों को 6–7 वर्षों तक तार्किक परिणति तक नहीं पहुॅचाया जाता है। ऐसा होने स न केवल भ्रष्टाचार के प्रति सरकार के zero tolerance की नीति पर आघाता होता है, बल्कि रंगे हाथों पकड़े गये सरकारी सेवकों को ससमय उचित दंड नहीं मिलने से अन्य सरकारी सेवकों में भी गलत संदेश जाता है। सरकार द्वारा इसे काफी गंभीरता से लिया गया है।

3. निगरानी विभाग द्वारा रंगे हाथों पकड़े जाने वाले मामलों (tap cases) में विभागीय कार्यवाही के त्वरित संचालन हेतु साक्ष्य की उपलब्धता सुनिश्चित करने के संबंध में विभागीय परिपत्र सं0–17696 दिनांक –23.12.2014 द्व ारा विस्तृत दिशा निदेश दिये गये हैं। सरकार विशेष कर ऐसे मामलों में विभागीय कार्यवाही के कालबद्ध निष्पादन एवं उसे तार्किक परिणति तक पहुॅचाने को प्रतिबद्ध है। इस उद्देश्य से सम्यक विचारोपरांत सरकार द्वारा ऐसे मामलों में विभागीय कार्यवाही के विभिन्न चरणों को पूरा करने के निमित्त निम्नवत् समय–सीमा निर्धारित की जाती है–

विभिन्न चरण	समय–सीमा
(1) रंगे हाथों पकड़े जाने के उपरांत निगरानी विभाग द्वारा आवश्यक साक्ष्य से संबंधित सभी कागजातों के साथ संबंधित सरकारी सेवक के संवर्ग नियंत्री विभाग एवं पदस्थापना विभाग को सूचना का प्रेषण।	एक सप्ताह
(2) संबंधित अनुशासनिक प्राधिकार द्वारा उक्त साक्ष्यों एवं कागजातों के आधार पर आरोप–पत्र 'प्रपत्र–क' गठन।	तीन सप्ताह
(3) आरोप पत्र (साक्ष्य सहित) आरोपित सरकारी सेवक को भेजा जाना/ आरोपित सरकारी सेवक द्वारा लिखित बयान देना/लिखित बयान के आधार पर निष्कर्ष का अभिलेखन एवं अनुशासनिक प्राधिकार द्वारा विभागीय कार्यवाही हेतु अग्रेतर कार्रवाई का विनिश्चय।	दो माह
(4) संचालन पदाधिकारी के द्वारा बिहार सरकारी सेवक (वर्गीकरण, नियंत्रण एवं अपील) नियमावली, 2005 (समय–समय पर यथा संशोंधित) के नियम–17	तीन माह

के अनुसार विभागीय जॉच की कार्रवाई संपन्न करने एवं जॉच प्रतिवेदन समर्पित करने की अवधि।

(5) उक्त नियमावली के नियम–18 के अनुसार कार्रवाई करते हुए मामले को तार्किक परिणति तक पहुॅचाना। दो माह

कुल – आठ माह

…….”

10. From the reading of the aforesaid letter, the departmental proceedings in relation to trap cases are required to be brought to its logical conclusion especially within a period of 8 months but in the case in hand, it is rather unfortunate that the authorities have exhausted more than a decade in disposing the departmental proceeding, which is alarming in nature and this Court is appalled to see the apparent infraction of own guidelines framed by the State.

11. Now coming to the issue with regard to the statutory prescriptions which are required to be followed while conducting departmental proceeding in terms of CCA Rules, 2005. It is made clear that any infraction of the statutory rules makes the action of the authorities and their order vulnerable to be adjudged as unsustainable in law. Rule 17 of the Rules, 2005 prescribed the procedure for imposing major penalties. Rule 17(1) and (2) obligates the disciplinary authority that no order imposing any of the penalties specified in Rule 14 shall be made without holding an enquiry, in the manner provided in these

Rules. If the disciplinary authority is of the opinion that there are grounds for inquiring about the truth of any imputation of misconduct or misbehaviour against a government servant, he may himself inquire into it, or appoint under these Rules an authority to inquire about the truth thereof. Rule 17(3) further directs that in order to hold an inquiry against a government servant under this Rule, the disciplinary authority shall draw up or cause to be drawn up the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge, the memo of charge shall further contain a list of such documents by which and a list of such witnesses by whom, the articles of charge are proposed to be sustained. Rule 17 (4) obligates the disciplinary authority to deliver a copy of the articles of charge with the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses with a direction to submit written statement of his/her defence. The duty is also cast upon the enquiry authority to produce the necessary documents to the delinquent provided that the enquiry authority may, for reasons to be recorded by it in writing refuse to requisition such of the documents as are, in its opinion, not relevant to the case. Rule 17(16) shows that when the case of the disciplinary authority is closed the

Government Servant shall be required to state his defence, orally or in writing as he may prefer. The defence on behalf of the Government servant shall then be produced and the witnesses produced shall be examined and liable to be cross examined.

12. In the case in hand the charge is one and identical to the allegation levelled in the FIR of demand of illegal gratification and the petitioner being apprehended while accepting bribe of Rs.2500/- from the complainant, Amar Kumar Srivastava. Admittedly, the memo of charge neither contains the list of documents nor list of witnesses by which and whom articles of charge are proposed to be sustainable. It is well settled that the charges levelled against the delinquent officer must be found to have been proved on the basis of the evidence. The Hon'ble Supreme Court in innumerable decisions made it clear that the recording of evidence in a disciplinary proceeding holding the charges of major punishment is a s*ine qua non.* In the case of ***Roop Singh Negi*** (supra) while dealing with the identical issue, the Hon'ble Supreme Court has held that 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.

Moreover, the FIR itself could not have been treated as evidence unless the content thereof is proved by the witnesses. It would be apt to encapsulate the relevant paragraphs of the said decision for highlighting the issue:

> ***"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.*
>
> ***23.*** *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. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on*

> *record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."*

13. Now coming to the enquiry report as contained in Annexure-12 to the writ petition, this Court finds that there is nothing but a casual exercise on his part and the enquiry is only for a namesake. Neither the oral evidence to prove the documents nor the defence explanation of the petitioner has been taken into consideration before coming to the finding that the charges stood proved. It would be worthwhile to note that the seizure list witnesses namely, Sri Nawal Kishore Prasad and Sri Devendra Nath Mishra were duly examined by the Enquiry Officer but none of them supported the charge rather they categorically stated that the petitioner was neither apprehended in their presence nor they had seen the petitioner accepting the bribe or any recovery from his possession. It is the fact that the

recovery of bribe money has been made from a table desk. There is nothing in the enquiry report as to how the Enquiry Officer has come to the finding that the charges stood proved. In order to come on such conclusion, the Enquiry Officer has placed reliance upon the copy of the FIR, containing the complaint filed by the complainant and pre and post trap memorandum. There is only a narration of the FIR and on that basis, the enquiry was concluded by holding the charges to be proved. It would be worthy to note that without examination of any oral evidence, the documents and its contents cannot be proved automatically, unless the documents are admitted or public in nature. The Hon'bl Apex Court while highlighting the status and duties of the Enquiry Officer has held in the case of State of ***Uttar Pradesh & Ors. vs. Saroj Kumar Sinha [(2010) 2 SCC 772]*** that an employee should be treated fairly in any proceeding which may culminate in punishment being imposed upon him. In the afore noted decision, the Hon'ble Supreme Court in no uncertain terms observed that an Enquiry Officer acting in a quasi judicial authority is in the position of an independent adjudicature, he is not supposed to be the representative of the department/disciplinary authority/government. The relevant paragraph no. 28 of the said

judgment is quoted hereinbelow for ready reference:

> ***"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."*

14. It is also relevant to observe here that non-examination of the complainant during departmental proceeding leads to denial of an opportunity to a Government servant of cross examination and would certainly cause prejudice to the right of the delinquent. [***vide; Commissioner of Police, Delhi and Ors vs. Jai Bhagwan, (2011) 6 SCC 376***]

15. Now coming to the impugned order of dismissal, this Court further finds that there is no discussion of the show cause explanation of the petitioner wherein he raised several legal points, apart from dispelling the charges. The disciplinary authority has inflicted the punishment of dismissal only on the ground that no clear explanation of the charges has been

rendered by the petitioner. The charges are said to be proved only on the basis of FIR and the complaint filed by the complainant, which cannot be said to be legal evidence. The finding of the disciplinary authority is based upon no evidence; there is no discussion with regard to the show cause explanation furnished by the petitioner as to why the same are not accepted.

16. Now coming to the issue as to what would be effect of acquittal in criminal proceeding since the order of acquittal has been passed during the pendencey of the appeal preferred by the petitioner; hence this issue also warrants consideration at this stage. In the case of ***G.M. Tank*** (supra) the delinquent was charged for offence of accusation of movable or immovable properties disproportionate to his known sources of income. After holding departmental enquiry he was dismissed from service against the said dismissal order, he preferred the writ petition wherein the learned Single Judge concluded that there was sufficient evidence against the delinquent and thus dismissed the petition. The delinquent preferred Letters Patent Appeal which also came to be dismissed. Both these orders were challenged before the Hon’ble Supreme Court with the contention that the criminal complaint was also lodged against the delinquent under the penal provisions of the Prevention of

Corruption Act, 1947 based on same set of facts, charges, evidence and witnesses wherein the criminal court hounarbly acquitted the appellant of the said offence by holding that the prosecution failed to prove the charges levelled against the appellant. The fact of acquittal by the trial court was brought to the notice of the learned Division Bench of the High Court but it was not considered by it.

17. In the aforesaid facts, the Hon'ble Supreme Court while allowing the appeal has held that if the departmental proceeding and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncements, it would be unjust and unfair and rather oppressive to allow the finding recorded in the departmental proceeding. The Hon'ble Court further opined that since the facts and evidence in departmental as well as criminal proceeding were the same, the appellant should succeed. The distinction, which is usually proved between the departmental and criminal proceeding on the basis

of the approach and burden of proof, would not be applicable in the facts and circumstances of the case.

18. The Hon'ble Supreme Court in the case of ***Ram Lal vs. State of Rajasthan & Ors. [(2024(1) SCC 175]*** while addressing the effect of acquittal in the criminal proceeding has held that the acquittal in criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge; thus it can only be arrived at after reading of the judgment in its entirety. The Court in judicial review is obliged to examine the substance of the judgment and not go by form of expression used. The expressions "benefit of doubt" and "honorably acquitted", used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. The Hon'ble Court on being found the charges were not just similar but identical and the evidence, witnesses and circumstances were all the same, quashed the orders of the disciplinary authority as well as the appellate authority as allowing them to stand will be unjust, unfair and oppressive.

19. This Court having gone through the judgment passed by the trial court also finds that in order to prove the charge of acceptance of bribe, altogether 17 witnesses were

examined and besides the oral evidences the prosecution has also brought various documentary evidences. However, the trial court after giving proper consideration to the evidences of all the prosecution witnesses has held as follows:

> *"In view of the aforesaid evidence brought on the record making of demand of bribe by the accused and giving of bribe money to him by the complainant and its recovery from the possession of the accused appears to be totally false because if the raiding party arrested the accused at 2.00 pm. how they reached along with the accused in Gaya Kotwali P.S at 12.30 pm. as deposed by P.W.16.*
>
> *Considering the aforesaid facts, circumstances, evidence and materials available on record I find and hold that the prosecution has miserably failed to prove the charge U/s 7 and S. 13(1)(d) r/w.13(2) of the P.C. Act, 1988 against the accused Mukesh Kumar and accordingly he is held not guilty for the said offences and is ultimately acquitted from this case. As the accused is on bail, he is also discharged from the liabilities of his bail bonds, which is hereby cancelled.*
> *Dictated and corrected"*

20. Having considered the judgment of the trial court and on being found that the prosecution has miserably failed to prove the charges, this Court finds that the Appellate Authority failed to consider the admitted settled legal position despite the direction of this Court in CWJC No. 14095 of 2014. Further the appellate order apart from being cryptic, there is no discussion

on the grounds taken in the memo of appeal and as such non speaking in as much as the impugned order passed by the appellate authority is completely based upon the opinion of the Law Department without due application of independent mind. It is well settled that the provision of appeal is not a mere formality but a statutory mechanism where an error in the order of the original authority can be corrected, if the same is found to be erroneous on the grounds raised in the memo of appeal. Here, it would be proper to encapsulate the relevant paragraphs of the decision of ***Kerns Service Private Limited*** (supra), where the learned Court while emphasizing the importance of assigning the reason has held that the final order must display complete application of mind to the grounds taken by the delinquent. Paragraph-11 thereof is quoted hereunder:

> *"11. Natural justice is a word of very wide connotation. It cannot be put in any straight jacket formula. Its applicability shall depend on facts of each case. It cannot mean only fulfillment of the formality for giving of a show cause notice and acceptance of a reply. The final order must display complete application of mind to the grounds mentioned in the show cause notice, the defence taken in reply, followed by at least a brief analysis of the defence supported by reasons why it was not*

acceptable. To hold that the cause shown can be cursorily rejected in one line by saying that it was not satisfactory or acceptable in our opinion shall be vesting completely arbitrary and uncanalised powers in the authority. In a given situation if the authority concerned finds the cause shown to be difficult to deal and reject, it shall be very convenient for him not to discuss the matter and reject it by simply stating that it was not acceptable. The giving of reasons in such a situation is an absolute imperative and a facet of natural justice. Reasons have been held to be the heart and soul of an order giving insight to the mind of the maker of the order, and that he considered all relevant aspect and eschewed irrelevant aspects."

21. In view of the aforesaid legal position, this Court finds that the impugned orders dated 18.06.2014 contained in Memo No. 1042 as well as dated 17.10.2019 in Memo No. 7466 are held to be unsustainable in law; and thus are hereby set aside. In consequent to setting aside the impugned orders, the respondent authorities are hereby directed to reinstate the petitioner in service with all consequential benefits in terms of Rule 13(3) of the Rules, 2005 and the mandate of the Hon'ble Supreme Court as also the decision in the case of ***Deepali***

Gundu Surwase vs Kranti Junior Adhyapak Mahavidyalaya & Ors [(2013) 10 SCC 324], especially paragraph-38 thereof.

22. The writ petition stands allowed with the aforesaid observations and directions.

23. Pending application(s), if any, shall also stand disposed off.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	AFR
CAV DATE	04.02.2025
Uploading Date	18 .02.2025
Transmission Date	