

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 9282 of 2023

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Devendra Kumar Dard Son of Late Ramesh Singh, resident of Flat no. 401, Baily Road,
Ambedkar Nagar (Jagdev Path), Rukanpura P.S Rupaspur, District Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of General Administration,
Govt. of Bihar, Patna.
2. The Additional Secretary, Department of General Administration, Govt. of Bihar, Patna.
3. The Joint Secretary, Department of General Administration, Govt. of Bihar, Patna.

... ... Respondent/s

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- A. Bihar CCA Rules, 1976 - Departmental Proceedings – Charges- No new Charges
could be introduced – save and accept the charge which has been framed. (Para-10),
(Reliance on; M.V Bijlani V. Union of India and Others (2006) 5 SCC 88, Para-14, 20, 23
to 26).**
- B. Order of Punishment – based on no evidence – extraneous material – levelling new
allegations – perverse – not sustainable in the eyes of law – Order of punishment fit to
be quashed. (Para-11).**

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... .. Respondent/s

Appearance:

For the Petitioner/s : Mr. Rajesh Ranjan, Advocate
For the Respondent/s : Mr. Sheo Shankar Prasad (SC-8)

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 22-01-2024

1. The present writ petition has been filed for quashing the order of punishment dated 18.10.2022, passed by the Under Secretary to the Government, General Administration Department, Govt. of Bihar, Patna, whereby and whereunder punishment of stoppage of two increments with cumulative effect has been inflicted upon the petitioner. The petitioner has also prayed for quashing of the revisional order dated 06.01.2023, passed by the Under Secretary to the Government, General Administration Department, Government of Bihar,



Patna, whereby and whereunder the revision petition filed by the petitioner has not only been dismissed but it has been additionally specified therein that the petitioner would not be entitled to any amount over and above the subsistence allowance already paid to him for the period of suspension i.e. 26.12.2017 to 21.04.2021.

2. The brief facts of the case, according to the petitioner, are that the petitioner was initially appointed in the year 2000 on the post of Deputy Collector after qualifying the 42nd examination held by the Bihar Public Service Commission, whereupon he has been working to the satisfaction of all concerned. Nonetheless, an FIR bearing Vigilance P.S. Case No.82 of 2017 was instituted against the petitioner for the offences under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988, on the allegation that he had acquired assets in his and his wife's name worth Rs.77,85,546/-, which are disproportionate to his known sources of income, whereafter the petitioner was suspended on 26.12.2017 and vide letter dated 03.04.2018, chargesheet, containing Prapatra 'Ka' was served upon the petitioner inter alia levelling three allegations, which are reproduced herein below:-



“1. पुलिस अधीक्षक, निगरानी विभाग (अनवेषण ब्यूरो), बिहार, पटना के ज्ञापांक 3346 दिनांक 22.11.2017 द्वारा श्री देवेन्द्र कुमार दर्द (बि0प्र0से0), कोटि क्रमांक 1103/11, तत्कालीन जिला आपूर्ति पदाधिकारी, भागलपुर के विरुद्ध 77,85,546/- (सत्हत्तर लाख पचासी हजार पाँच सौ छियालिस) रुपये के अप्रत्यानुपातिक धनार्जन के आरोप में निगरानी थाना कांड संख्या 082/17 दिनांक 31.10.2017 धारा- 13(2) सह-पठित धारा-13(1)(ई) भ्र0नि0अधि0, 1988 दर्ज है।

2. श्री दर्द के तत्कालीन पदस्थापन अवधि तक उनके आय एवं व्यय की गणना के अनुसार उनकी कुल सम्पत्ति 1,91,07,546/- रु0 आंकी गयी है। श्री दर्द द्वारा अर्जित की गई कुल राशि (1,91,07,546/- रु0) में से उनकी अनुमानित बचत 1,13,22,000/- रु0 है। इस प्रकार श्री दर्द की कुल सम्पत्ति में उनके ज्ञात वैध स्रोतों से कुल 77,85,546/- (सत्हत्तर लाख पचासी हजार पाँच सौ छियालिस) रुपये की अधिक सम्पत्ति पाई गई है।

3. श्री दर्द द्वारा समर्पित वर्ष 2016-17 की सम्पत्ति विवरणी में अपने एवं अपनी पत्नी के नाम से खरीदी गई अचल सम्पत्ति का पूर्ण विवरण नहीं दिया गया है जो नाजायज एवं अवैध रूप से अर्जित सम्पत्ति को छुपाने की मंशा से प्रेरित है।

उपर्युक्त से स्पष्ट है कि श्री दर्द का यह कृत्य भ्रष्ट आचरण एवं कदाचार का द्योतक है तथा बिहार सरकारी सेवक आचार नियमावली के नियम-3 के संगत प्रावधानों का उल्लंघन है। ”

3. The petitioner is stated to have filed his reply to the aforesaid charges framed against him, whereupon the Inquiry Officer had conducted the departmental enquiry and submitted the inquiry report dated 28.03.2022, finding all the charges to have not been proved. The Disciplinary Authority had then sought to differ from the opinion of the Inquiry Officer, particularly with regard to charge no.3 and had issued a 2nd show



cause notice dated 10.06.2022, to which the petitioner had again filed his reply dated 22.06.2022. The Disciplinary Authority had then passed the impugned order of punishment dated 18.10.2022, inflicting the punishment of stoppage of two increments with cumulative effect, upon the petitioner. The petitioner had then filed a revision petition, however, the same has also stood rejected by the impugned order dated 06.01.2023, however, additionally it has been specified therein that the petitioner would not be entitled to any amount over and above the amount of subsistence allowance already paid to him for the period of suspension. During the interregnum period, the Vigilance Investigation Bureau had submitted a final form in the aforesaid Vigilance P.S. Case No.82 of 2017, on 04.02.2021, leading to the same being accepted by the learned Vigilance Court and dropping of the criminal proceedings vide order dated 24.02.2021.

4. The learned counsel for the petitioner has submitted that a bare perusal of the allegations levelled against the petitioner vide chargesheet dated 03.04.2018, as also upon perusal of the Inquiry Report dated 28.03.2022, and 2nd show cause notice dated 10.06.2022, would show that ultimately, the disciplinary authority has consciously taken a decision not to



press charges nos.1 and 2, however, it has decided to punish the petitioner for charge no.3, which pertains to non-disclosure of the entire description of the immovable properties purchased by the petitioner and his wife, in the declaration of properties made for the year 2016-17. As regards the said charge no.3, the learned counsel for the petitioner has referred to the finding of the Inquiry Officer dated 28.03.2022, as contained in paragraph no.12.4 thereof, which is reproduced herein below:-

“12.4 अवचार या कदाचार के लांछनों के अभिकथन की तीसरी कंडिका में वर्णित आरोप आरोपित पदाधिकारी द्वारा समर्पित वर्ष 2016—17 की सम्पत्ति विवरणी में अपने एवं अपनी पत्नी के नाम से खरीदी गई अचल सम्पत्ति का पूर्ण विवरण नहीं देने से संबंधित है। आरोपित पदाधिकारी ने समर्पित किया कि उनके नाम से सम्पत्ति विवरणी 2016 — 17 में अंबेडकर पथ पटना स्थित सादिकपुर मौजा में रेसिडेंसियल अपार्टमेंट की खरीदगी एच0डी0एफ0सी0 पटना से लोन लेकर क्रय करने का तथ्य अंकित है। उसके अलावा दो अचल सम्पत्ति यथा मौजा रामपुर में 59 डिस्मिल जमीन और गया में 16 कट्ठा जमीन को भी वर्ष 2016 — 17 की सम्पत्ति विवरणी में दिखलाया गया है। निगरानी अन्वेषण ब्यूरो के प्रारंभिक गोपनीय जाँच में जमीन से संबंधित अनेकों दस्तावेज की विवरणी दर्शायी गयी है, जिसे पत्नी के द्वारा पूर्व में ही बिक्री की जा चुकी है। आरोपित पदाधिकारी ने यह भी समर्पित किया कि बिहार सरकारी सेवक (आचार) नियमावली, 1976 के संदर्भ में मेमो नंबर 3/आर.आई.—108/76ए—21734, दिनांक 15.11.1976 के अनुसार सरकारी सेवक के परिवार का कोई सदस्य यदि निजी स्रोत या विरासत में कोई सम्पत्ति अर्जित करता है, तो इस तरह अर्जित की गयी सम्पत्ति पर बिहार सरकारी सेवक (आचार) नियमावली 1976 के नियम—19 के उप—नियम—2 एवं 3 लागू नहीं होंगे और नियम— 19 के अधीन दिये जाने वाले सम्पत्ति संबंधी रिपोर्ट में भी इस तरह की सम्पत्ति का उल्लेख करना आवश्यक नहीं है। प्रस्तुतीकरण पदाधिकारी ने इस संबंध



में कुछ भी समर्पित नहीं किया। आरोपित पदाधिकारी ने अपना या अपनी पत्नी की सम्पत्तियों का पूर्ण विवरण 2016-17 के लिए समर्पित सम्पत्ति विवरणी में किया है और यह भी समर्पित किया कि उनकी पत्नी निजी स्रोत एवं विरासत में सम्पत्ति अर्जित की है, इसलिये बिहार सरकारी सेवक (आचार) नियमावली, 1976 के नियम-19 के उप-नियम-2 और 3 लागू नहीं होंगे। आरोपित पदाधिकारी ने भी जो तर्क दिये हैं और जिस सरकारी पत्र का जिक्र किया है, उसके अनुसार आरोपित पदाधिकारी के विरुद्ध यह आरोप प्रमाणित प्रतीत नहीं होता है।"

5. The learned counsel for the petitioner has submitted that the inquiry report dated 28.03.2022, would show that the petitioner had submitted description/details of properties being possessed by him and his wife by way of declaration for the year 2016-17 and therein he had declared that he was holding one residential apartment at Ambedkar Path, which he had purchased by taking loan from HDFC Bank, Patna and apart from the same, description of two more properties situated at mauza Rampur at Gaya had also been mentioned, however, while issuance of 2nd show cause notice dated 10.06.2022, though the disciplinary authority has sought to differ from the aforesaid opinion of the Inquiry Officer, however, the disciplinary authority has not pointed out as to which immovable property has not been disclosed by the petitioner and on the contrary has levelled new charges, which were never a part of the chargesheet dated 03.04.2018, hence the 2nd show cause notice dated



10.06.2022 is perverse and illegal. The relevant portion of the 2nd Show Cause Notice dated 10.06.2022 is being reproduced herein below:-

“उक्त नियमावली के तहत सामान्य प्रशासन विभाग के पत्रांक 946 दिनांक 24.01.2011 द्वारा राज्य सरकार के सभी पदाधिकारी/कर्मियों को विहित प्रपत्र में चल एवं अचल सम्पत्ति तथा दायित्वों की विवरणी प्रत्येक वर्ष के फरवरी माह तक सार्वजनिक किये जाने का आदेश दिया गया है। उपस्थापित मामले में संचालन पदाधिकारी महोदय द्वारा आरोपी के कथन को उल्लेखित करते हुए आरोप को प्रमाणित प्रतीत नहीं होता बताया गया है। आरोपी पदाधिकारी का कहना है कि वे अपना या अपनी पत्नी की सम्पत्तियों का पूर्ण विवरण 2016-17 के लिये समर्पित सम्पत्ति विवरणी में किया है और उनकी पत्नी जो सम्पत्ति निजी स्रोत एवं विरासत से अर्जित की है, उसका ब्योरा उसमें नहीं दिया गया है।

इस प्रकार आपके द्वारा वर्ष 2016-17 में अपनी पत्नी के नाम पर आय से कम सम्पत्ति का उल्लेख किया गया है एवं शेष सम्पत्ति के संबंध में उनकी निजी अर्जित सम्पत्ति बताया गया है, इसका आधार स्पष्ट नहीं किया गया है। इस प्रकार आपका अपनी पत्नी के सम्पत्ति के संबंध में कथन गलत मंशा को दर्शाता है। इस संबंध में संचालन पदाधिकारी द्वारा स्पष्ट मंतव्य नहीं दिया गया है। उनके द्वारा केवल आपके तर्क के आधार पर आरोप को प्रमाणित प्रतीत नहीं होता है, बताया जाना तर्क संगत नहीं है।”

6. The learned counsel for the petitioner has further submitted that though the charge no.3 pertains to non-disclosure of the complete and full details of the immovable properties, being possessed by the petitioner and his wife, however, while issuing the aforesaid 2nd Show Cause Notice dated 10.06.2022, though the disciplinary authority has failed to enumerate such



properties, which are alleged to have not been disclosed by the petitioner while submitting declaration of properties for the year 2016-17 but has instead levelled a new allegation to the effect that although for the year 2016-17, the petitioner had disclosed the details of the properties acquired by his wife less than her income, however, regarding the rest of the properties of his wife, it has been stated that the same are self-acquired properties of his wife, however, the basis for the same has not been explained. It is thus submitted that the disciplinary authority cannot at the stage of issuance of 2nd show cause notice refer to a new charge, which was never a part of the chargesheet dated 03.04.2018 containing Prapatra 'Ka', issued to the petitioner. It is also contended that Rule 19 of the Bihar Government Servants (conduct) Rules, 1976 (hereinafter referred to as the "Rules, 1976") has been clarified by the State Government vide memo dated 15.11.1976 and it has been postulated that a government servant is not required to declare the details of the properties acquired by members of the family either by personal sources or inheritance, in the asset/property declaration form. The relevant portion of the said State Government memo dated 15.11.1976 is being reproduced herein below:-

"2. बिहार सरकारी सेवक (आचार) नियमावली, 1976 के नियम-19 के



उप-नियम-2 और 3 तभी लागू होंगे जब सरकारी सेवक या तो स्वयं अपने नाम में या अपने परिवार के किसी सदस्य के नाम में सम्पत्ति अर्जित करें। सरकारी सेवक के परिवार का कोई सदस्य यदि निजि स्रोत या विरासत में (inheritance) कोई सम्पत्ति अर्जित करता है तो उस तरह अर्जित की गयी सम्पत्ति पर बिहार सरकारी सेवक (आचार) नियमावली, 1976 के नियम-19 के उप-नियम-2 एवं 3 लागू नहीं होंगे और नियम 19 के अधीन दिये जाने वाले सम्पत्ति सम्बन्धी रिपोर्ट में भी, जिसे सेवक को दाखिल करना है, इस तरह की सम्पत्ति का उल्लेख करना आवश्यक नहीं है।"

7. Thus it is the contention of the learned counsel for the petitioner that the petitioner is not obliged to disclose the details of properties acquired by his wife either from her personal sources or by way of inheritance, nonetheless he has voluntarily disclosed all the properties being held by him and his wife in a transparent manner. The learned counsel for the petitioner has next referred to the impugned order of punishment dated 18.10.2022, to submit that the same would depict that there is no evidence at all to show that charge no.3 has stood proved. In this regard, the learned counsel for the petitioner has relied upon a judgment rendered by the Hon'ble Apex Court in the case of **M.V. Bijlani Vs. Union of India and Ors.**, reported in **(2006) 5 SCC 88** to submit that the Hon'ble Apex Court has not only held that though the disciplinary proceedings are quasi-criminal/judicial in nature, there should be some evidence to prove the charge but has also held that although the charges in a departmental



proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, nonetheless, it has to be kept in mind that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record and while doing so, he cannot take into consideration any irrelevant fact, he cannot refuse to consider the relevant facts, he cannot shift the burden of proof, he cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures **and he cannot enquire into the allegations with which the delinquent officer had not been charged with.** At this juncture, it would be relevant to reproduce paragraph nos. 14, 20 and 23 to 26 of the aforesaid judgment rendered in the case of **M.V. Bijlani** (supra) herein below:-

“14. From a perusal of the enquiry report, it appears to us that the disciplinary authorities proceeded on a wrong premise. The appellant was principally charged for non-maintenance of ACE-8 Register. He was not charged for theft or misappropriation of 4000 kg of telegraph copper wire or misutilisation thereof. If he was to be proceeded against for misutilisation or misappropriation of the said amount of copper wire, it was necessary for the disciplinary authority to frame appropriate charges in



that behalf. Charges were said to have been framed after receipt of a report from CBI (Anti-Corruption Bureau). It was, therefore, expected that definite charges of misutilisation/misappropriation of copper wire by the appellant would have been framed. The appellant, therefore, should have been charged for defalcation or misutilisation of the stores he had handled if he was to be departmentally proceeded against on that basis. The second charge shows that he had merely failed to supervise the working of the line. There was no charge that he failed to account for the copper wire over which he had physical control.

20. The enquiry officer proceeded as if in the departmental proceedings the appellant was charged with misappropriation of property. The witnesses not only spoke of theft of copper wire, but also stated about the existence of muster roll diaries. According to one Daya Shankar, the work shown in the diaries was correct. According to him, apart from erection of 300 lb iron wire in Section Geedam-Bijapur, 150 lb was erected in the entire section. He stated that broken pieces of wire found were sent to Jagdalpur through SIT diary. According to him, the work of erecting copper wire started from 5-11-1969 and continued up to March 1970. One Shri K.C. Sariya who was the successor of the appellant stated about the maintenance of the muster rolls and ACE-8 Register. According to him, stores pertaining to estimate were accounted for and ACE-8 sheets attached to estimate file. He further stated that ACE-8 sheets were in



the estimate file. One Shri K.D. Shrivastava had stated that there was report of copper wire theft by one Shri Kashiram.

23. Evidently, the evidences recorded by the enquiry officer and inferences drawn by him were not commensurate with the charges. If it was a case of misutilisation or misappropriation, the appellant should have been told thereabout specifically. Such a serious charge could not have been enquired without framing appropriate charges. The charges are otherwise vague. We have noticed hereinbefore that the High Court also proceeded on the basis that the non-maintenance of diary amounted to misutilisation of copper wire.

24. Mr Verma, when questioned, submitted that the appellant might have utilised the same on unsanctioned works. If that be so, a specific charge to that effect should have been framed.

25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact.



*He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. **He cannot enquire into the allegations with which the delinquent officer had not been charged with.***

26. The report of the enquiry officer suffers from the aforementioned vices. The orders of the disciplinary authority as also the Appellate Authority which are based on the said enquiry report, thus, cannot be sustained. We have also noticed the way in which the Tribunal has dealt with the matter. Upon its findings, the High Court also commented that it had not delved deep into the contentions raised by the appellant. The Tribunal also, thus, failed to discharge its functions properly.”

(underlining mine)

8. The learned counsel for the petitioner has also relied upon a judgment rendered by the Hon'ble Apex Court in the case of **Allahabad Bank and Ors. Vs. Krishna Narayan Tewari**, reported in **(2017) 2 SCC 308** to contend that in a case where the disciplinary authority records a finding which is unsupported by any evidence, whatsoever or a finding which no reasonable person could have arrived at, the writ Court would be justified in examining the matter and granting relief in appropriate cases. Thus, it is submitted that the order of punishment dated 18.10.2022, being based on no evidence is fit to be set aside.



9. Per contra, the learned counsel for the respondent-State has submitted that there has been no irregularity in conduct of the departmental proceeding, hence this Court would not sit in appeal and re-appreciate the evidence. It is also submitted by referring to paragraphs no.30 and 31 of the counter affidavit, filed in the present case that if the petitioner had declared the properties of his wife then he should have declared the total properties, which were either in the name of the petitioner or his wife, however, the petitioner did not do so. It is also submitted that the disciplinary authority has carefully examined the explanation/representation submitted by the petitioner and it has been found that the petitioner has not mentioned his total assets in the property declaration form submitted for the year 2016-17, hence the punishments which have been imposed upon the petitioner are just, proper and legal.

10. I have heard the learned counsels for the parties and gone through the materials on record, from which this Court finds that though three charges had been levelled against the petitioner, however, the disciplinary authority has finally confined the departmental proceeding in question to charge no.3 inasmuch as the 2nd show cause notice dated 10.06.2022 has been issued to the petitioner, recording difference of opinion



with the report of the Inquiry Officer only limited to charge no.3. Nonetheless, this Court finds that though charge no.3 pertains to non-disclosure of the complete and full details of the immovable properties acquired by him and his wife, in the asset declaration form for the year 2016-17, however, the disciplinary authority has instead mentioned an alien reason for differing with the opinion of the Inquiry Officer, inasmuch as it has now been alleged that though for the year 2016-17, the petitioner had disclosed the details of the properties acquired by his wife less than her income, however, regarding the rest of the properties of his wife, although it has been stated that the same are self-acquired properties of his wife, but the basis for the same has not been explained, which was/is admittedly not a part of the chargesheet dated 03.04.2018 containing Prapatra 'Ka'. At this juncture, it may be mentioned that the disciplinary authority has also failed to specify the details of the properties in the 2nd show cause notice, which have not been disclosed by the petitioner/his wife and merely a bald allegation has been levelled without any evidence. Thus, this Court is of the view that by way of 2nd show cause notice dated 10.06.2022, no new charge could have been introduced save and accept the charges which have been framed vide the aforesaid chargesheet dated 03.4.2018, hence the 2nd



show cause notice dated 10.06.2022 is held to be illegal and contrary to the Law laid down by the Hon'ble Supreme Court of India in the case of **M.V. Bijlani** (supra).

11. Now, coming to the order of punishment dated 18.10.2022, this Court finds that admittedly no detail/description of the immovable properties alleged to have been acquired by the petitioner and his wife save and accept the aforesaid three properties declared by the petitioner in the asset declaration form for the year 2016-17, has been mentioned either in the 2nd show cause notice dated 10.06.2022 or in the order of punishment dated 18.10.2022 and merely a bald statement, not supported by any evidence, whatsoever, has been made in the order of punishment dated 18.10.2022, to the effect that in the asset declaration form of the year 2016-17, the petitioner has not disclosed the income derived by his wife from the properties sold in the past, which should have also been mentioned in the asset and liability declaration form, a statement/allegation which does not form part of the charges levelled against the petitioner vide chargesheet dated 03.04.2018, apart from the fact that even Rule-19 of the Rules, 1976 does not provide for furnishing such details. In such view of the matter, this Court holds that the order of punishment dated 18.10.2022, being based on no



evidence, is perverse, has taken into account extraneous materials, has levelled new allegations, again based on no evidence, which were never part of the chargesheet dated 03.04.2018 and in fact the same would further depict that the charges levelled vide the chargesheet dated 03.04.2018 have actually been abandoned, hence the order of punishment dated 18.10.2022 is not sustainable in the eyes of law, thus is accordingly quashed. Consequently, the revisional order dated 06.01.2023, passed by the Under Secretary, to the Government, General Administration Department, Government of Bihar, Patna has got no legs to stand, hence is also set aside.

12. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Saurav/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	11.03.2024
Transmission Date	NA

