

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14897 of 2011

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SUDHANSU KUMAR LAL S/O Late Indrajeet Lal R/O Chirayatand,
Prithvipur, P.S.-Jakkanpur, Distt. And Town-Patna.

... .. Petitioner/s

Versus

1. High Court Of Judicature At Patna through its Registrar General, Patna
2. The State Of Bihar Through Principal Secretary, General Administration,
Old Secretariat, Patna.

... .. Respondent/s

with

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Versus

1. High Court Of Judicature At Patna through its Registrar General, Patna
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... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 14897 of 2011)

For the Petitioner/s : Mr. Jitendra Singh, Sr. Advocate
Mr. Harsh Singh, Advocate
For the PHC : Mr. Sanjeev Kumar, SC
For the State : Mr. Md. N. Hoda Khan, SC-18
Mr. Md. Harun Qureshi, AC to SC-01
Mr. Md. Irshad, AC to SC-01

(In Civil Writ Jurisdiction Case No. 14896 of 2011)

For the Petitioner/s : Mr. Harsh Singh, Advocate
For the PHC : Mr. Sanjeev Kumar, SC
For the State : Mr. Kumar Alok, SC-7

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 02-12-2024

The writ petitions are filed by the very same person; a retired District & Sessions Judge, against two different penalties imposed. We are hearing the matter together since the order



impugned in CWJC No. 14896 of 2011 imposed a censure while the order impugned in CWJC No. 14897 of 2011 imposed a punishment of deferring the super-time scale as applicable to the petitioner for a period of one year from 21.10.2008. The petitioner while challenging the penalties also seek for conferring super time scale from the due date; the entitlement to which will be affected, probably, on whether the penalties imposed are upheld or not.

2. We take up CWJC No. 14897 of 2011, first for consideration since it challenges the order dated 07.12.2009 while the order challenged in the other writ petition is dated 13.04.2010.

3. We heard learned Senior Counsel Shri Jitendra Kumar Singh in CWJC No. 14897 of 2011 and learned Counsel, Shri. Harsh Singh in CWJC No. 14896 of 2011 for the petitioner and Shri Sanjeev Kumar, learned Standing Counsel for the High Court, appearing in both cases.

4. The learned Senior Counsel argued that the petitioner while designated as a Special Judge C.B.I. had conducted trial of the cases relating to the fodder scam and his conduct was appreciated by the Single Man Commission constituted by the Parliament to enquire into the allegations. The



petitioner while he was posted as District & Sessions Judge, Jehanabad had difficulty in attending Court on 11.02.2004 and wanted to perform his duties from home. The aforesaid practice was prevalent at that time and he made an application for 'current duty' to the Registrar General and the same was also informed to the Additional District and Sessions Judge-I, Jehanabad who was designated to attend urgent applications of the District & Sessions Judge's Court. The petitioner was subsequently informed that his aged mother had fallen sick and he had to rush to Patna. Since he had not informed the High Court about his leaving the station, he had come to the High Court at Patna to inform the Inspecting Judge who was attending an oath ceremony, which was scheduled on that day at the High Court of Patna.

5. Later an allegation petition was filed by one Navin Prakash, a fictitious person that the petitioner had misused the 'current duty' sought for and attended the oath ceremony in the Patna High Court and had later participated in the Lok Adalat and signed the orders in the cases heard by ADJ-I. The petitioner's response was found to be unsatisfactory and he was proceeded departmentally with respect to the said allegation and also three other allegations. The three other allegations were



found to be not proved. However, on the allegation of misuse of 'current duty', the petitioner was found guilty and imposed with the punishment of deferring the super-time scale for one year. The learned Senior Counsel pointed out that there was none examined before the Enquiry Officer. Reliance was placed on the judgment of Division Bench of this Court in ***L.P.A. No. 1302 of 2017 (Devendra Prasad vs. The State of Bihar and Others)*** which had set aside the punishment in an enquiry; where no witness was examined, relying on ***Roop Singh Negi v. Punjab National Bank, (2009) 2 SCC 570.***

6. The learned Standing Counsel for the High Court argued with reference to the enquiry report and sought to sustain the punishment imposed.

7. The enquiry report is produced as Annexure-10 series. The specific charge against the petitioner was that the delinquent employee without taking permission to visit the High Court, clandestinely attended the oath ceremony of one of the Judges newly elevated on 11.02.2024 and returned to Jehanabad at about 2:00 P.M. to attend the Lok Adalat for Banks and also signed the court diary of that day and the order-sheet of the cases heard in the delinquent officer's absence by the ADJ-I. The said acts were alleged to be in flagrant violation of judicial



and official norms and the aforesaid acts were attempted to be covered up by sending an application dated 11.02.2004 for permission to do current duty on the aforesaid date.

8. The petitioner submitted a written defence at the outset pointing out that the complaint has been made by a fictitious person. It was also submitted that the petitioner had applied for 'current duty' and only after the same was transmitted to the High Court and the ADJ-I, he was informed that his aged mother, who was a cardiac patient, was having chest pain and breathing trouble. The petitioner, hence, rushed to Patna and since his mother's condition was found to be improving, he went to the residence of the Inspecting Judge to inform him about his having visited Patna after leaving his station. The exigency of situation was a reason cited for not sending a written application seeking permission to leave his station. The Inspecting Judge being not available at the residence, the delinquent employee had come to the High Court, where the oath ceremony was scheduled. As soon as the ceremony was over, he informed the Inspecting Judge about the urgent visit undertaken to Patna, and returned to Jehanabad. On his returning to Jehanabad, he had participated in the Lok Adalat and also signed the orders for adjournment. One bail application



heard by the ADJ-I was signed by the ADJ-1 himself.

9. At the enquiry, no witnesses were examined on the side of the prosecution. The delinquent officer examined two witnesses; the doctor, who was treating his mother as D.W.-1 and the Stenographer of the Civil Court, Jehanabad as D.W.-2. D.W.-1 deposed that the delinquent's mother was taken ill on 11.02.2004 at her residence. D.W.-2 deposed that the application for 'current duty' was dictated at the residence of the delinquent at about 7:00 A.M. on 11.02.2024. The original of the application was sent to the office of the Civil Court, Jehanabad and the carbon copy placed before the ADJ-I, who had perused the said application and endorsed it. The Bench Clerk of the District Judge was on casual leave and the Stenographer served as Incharge-Bench Clerk on that day. Only one bail application out of several bail applications were listed for that day to be taken up by ADJ-I. The ADJ-I called for the case diary and passed an order in the said bail application. The other cases were not taken up by ADJ-I and were placed for signature of the delinquent, who was on 'current duty'.

10. The Enquiry Officer found that the application for current duty was made in the morning of 11.02.2004 at 7:00 A.M. and the same was forwarded to the office of the Civil



Court and the ADJ-I. There was also sufficient substantiation of the contention taken up that the petitioner had to urgently leave for Patna, since his mother had fallen sick, as was deposed by D.W.-1, the doctor who was attending the mother. The said evidence was uncontroverted. The submission with respect to the delinquent having approached the Inspecting Judge at his residence and then come to High Court of Patna was also recorded. The delinquent was found to have returned to Jehanabad at about 11:30 A.M. and attended both judicial and administrative work at his residence and later attended the Lok Adalat at 1:00A.M.

11. It was also found by the Enquiry Officer that it is difficult to find out as to when the order-sheets were signed by the delinquent. However, it was found that the authorisation of ADJ-I to hear the bail applications while carrying on current duty at home is contrary to official norms. This was the finding on which the petitioner was found guilty of acting contrary to official norms on 'current duty', at the enquiry, based on which he was issued with the order of punishment.

12. It is very pertinent that the application for 'current duty', the order-sheets which were signed by the delinquent and the solitary order in bail petition, which was signed by the ADJ-



I were not produced before the Enquiry Officer, properly through an official witness. There was no witness examined before the Enquiry Officer to produce and prove the said documents and there was no documentary proof of the official norms regarding 'current duty'; produced or even referred to at the enquiry. The ADJ-I could have been examined to find out whether he had heard the applications for adjournment; the orders of which was signed by the petitioner, which was also not done. The allegations made were not at all proved by production of documents and examination of witnesses who could speak on the documents and the official norms that were available and existing in the records.

13. *Devendra Prasad (supra)* interfered with the dismissal from service of a Senior Jail Superintendent; pursuant to enquiry proceedings. Therein, a vigilance report together with six enclosures forming the basis of the disciplinary proceedings was supplied to the delinquent. The learned Single Judge had found that the disciplinary proceeding is to be tested on the touchstone of preponderance of probability and since the criminal case against the officer was still pending, for the present, no indulgence is called for. The delinquent therein was left to the remedy, if any, after the criminal case was ultimately



settled. ***Roop Singh Negi (supra)*** was relied on, wherein it was held that the documents produced in the departmental enquiry has to be proved by examining witnesses. Even an F.I.R. was held to be not evidence by itself without actual proof of facts stated therein. The departmental enquiry is a quasi-judicial proceeding and the Enquiry Officer functions in the status of a Quasi-Judicial Authority. Not only should evidence be led in a departmental enquiry, but the conclusions arrived at should be based on evidence, which brings forth the preponderance of probability that the delinquent has committed the misconduct alleged and charged against him; as distinguished from a finding of guilt beyond all reasonable doubt in a criminal proceeding.

14. A recent judgment of the Hon'ble Supreme Court in ***SLP (Civil) No. 29758 of 2018 (Satyendra Singh vs. The State of Uttar Pradesh and Anr.)*** referred with approval to ***Roop Singh Negi (supra), Nirmala J Jhala vs. State of Gujrat (2013 4 SCC 301)*** and ***State of U.P. v. Saroj Kumar Sinha, (2010) 2 SCC 772***. In ***Saroj Kumar Sinha (supra)*** the Hon'ble Supreme Court held that even in an *ex parte* enquiry, it is the duty of the Enquiry Officer to examine the evidence presented by the Department to find out whether the un-rebutted evidence is sufficient to hold that the charges are proved. It was



concluded based on the aforesaid judgments that the enquiry proceedings conducted against the appellant therein were totally vitiated and *non est* in the eyes of law, since no oral evidence whatsoever was recorded by the department in support of the charges. We find that the said dictum is squarely applicable in the present case.

15. Learned Standing Counsel for the High Court had argued that the authorisation of ADJ-I for hearing cases, which was admitted, was against the norms prescribed by the High Court. The petitioner, however, has produced documents (Annexures-2 & 3) to indicate that there have been instances when, on 'current duty' another officer is designated for the purpose of hearing cases in Court. Be that as it may, there is nothing produced to show that there could be no such designation permissible on 'current duty'; either by way of such a norm having been issued by the High Court. through an official memorandum or at least a witness examined as to such a practice not prevailing in the judiciary of the State.

16. We find absolutely no reason to sustain the punishment pursuant to the enquiry proceedings. We set aside the impugned order of punishment in CWJC No. 14897 of 2011.

17. The petitioner in CWJC No. 14896 of 2011 is



concerned with the order dated 13.04.2010 (Annexure-8) bearing Memo No. 503 by which the High Court on the administrative side imposed a punishment of censure on the petitioner. On a complaint received of an order passed without jurisdiction in a criminal revision, an explanation was sought for from the subject Officer, who was working as a District and Sessions Judge, Begusarai as per Annexure-1 dated 02.09.2009. The allegation was that, in a criminal revision petition filed, which was not maintainable, the petitioner had passed an interim order staying the warrant issued against the revision petitioner. Later, criminal revision itself was dismissed as not maintainable, which order is also produced along with the writ petition. The petitioner submitted Annexure-5 explanation in pursuance of Annexure-1.

18. The petitioner contended that the complaint was fictitious, since there was no Advocate by that name; who is said to have sent a complaint, practicing in the District Bar Association of Begusarai. As far as the interim stay granted of the warrant, it was contended that the matter was argued at the fag end of the working hours of 23.04.2009 and the arguments having not been completed the Judge was constrained to issue the order, which stood vacated on the dismissal of the revision



itself at the next hearing date. In addition, it was also submitted that the Counsel appearing for the petitioner being a person of sufficient influence and clout in the local bar, as also being of a short temper, a stay was granted, but within five days, on 28.04.2009, it was vacated and the revision application itself dismissed.

19. It was argued by the learned Counsel for the petitioner that without any show-cause and consideration of his explanation, the punishment order was issued. It was also argued that the order passed being a judicial order, there can be no punishment imposed or even a departmental proceeding initiated.

20. Admittedly, show-cause was issued as is produced at Annexure-6 to which the petitioner also filed an explanation at Annexure-7. The show-cause notice proposed a disciplinary enquiry against the petitioner, however, the punishment issued was one of censure which is a minor penalty under Rule 14 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005. Censure being a minor penalty, under Rule 14, there is no requirement for holding an enquiry as is provided under Rule 17; which mandates a departmental enquiry for imposing any of the penalties specified in Clauses (vi) to (xi)



with a nomenclature of major penalties, as is distinguished from Clause (i), censure falling under minor penalties. The explanation of the petitioner was considered and punishment of censure was imposed on the petitioner. It is an admitted case of the petitioner that the order passed was without jurisdiction.

21. On the facts and circumstances, we are not inclined to interfere with the punishment imposed. However, we make it clear that the punishment of censure imposed as per Explanation (2)(i) though entered in the character roll of the year; the allegation or omission and commission occurred, the adverse effect on confirmation and promotion of the concerned government servant for the next three consecutive years, is after the year of allegation or omission and commission for which he or she is censured. The allegation is of an occurrence in the year 2009; specifically the date on which the interim stay was granted in the revision and the denial of super time scale can only be imposed if, the due date fell after the date of commission of misconduct, which led to the censure being imposed.

22. We allow CWJC No. 14897 of 2011 and reject CWJC No 14896 of 2011. Insofar as the grant of selection grade, the Registry of the High Court has to examine the files



relating to the order passed which was impugned in CWJC No. 14896 of 2011; imposing a punishment of censure and consider the claim of the petitioner for such conferment, if due date for that is prior to 02.09.2009 on which the allegation in CWJC No. 14896 of 2011 concluded with a censure, especially since the punishment deferring selection grade conferment has been set aside by us. However, if the due date falls after 02.09.2009, necessarily there shall be no such grant for the next three years. The Registry will take follow up action and inform the petitioner as to the grant of selection grade and if it is granted, there shall be consequential release of the excess pay & allowances eligible, while in service and the pension shall also be redetermined based on the re-computation of last pay drawn, and the arrears paid within a period of six months from the date of consideration by the High Court.

23. Ordered accordingly.

(K. Vinod Chandran, CJ)

Partha Sarthy, J I agree

(Partha Sarthy, J)

Anushka/-

AFR/NAFR	
CAV DATE	21.11.2024
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