

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19708 of 2018

Anjum Hassan Ansari, Son of Qamruddin Ahmad, Resident of Village-Surwal, Post Barauli, P.S. Barauli, Distt.-Gopalganj

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary – cum – Commissioner, Department of Personnel and Administrative reforms, Government of Bihar, Patna.
2. The Principal Secretary-cum-Commissioner, Department of Personnel and Administrative Reforms, Government of Bihar, Patna.
3. The Principal Secretary, Co-operative Department, Govt. of Bihar, Patna
4. The Deputy Secretary, Department of Personnel and Administrative Reforms, Govt. of Bihar, Patna
5. The Joint Secretary, Vigilance, Co-operative Department, Government of Bihar, Patna
6. The Under Secretary Vigilance, Co-operative Department, Govt. of Bihar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ashhar Mustafa, Advocate
Mr.Abu Nasar, Advocate
Mr.Vikash Kumar Jha, Advocate
Mr.Ashish Ranjan, Advocate
For the Respondent/s : Mr.Dhurendra Kumar, AC to GP5

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 29-11-2022

Hard copy of rejoinder, earlier filed online, is being taken on record.

2. Heard Mr. Ashhar Mustafa, learned counsel for the petitioner, and Mr. Dhurendra Kumar, learned counsel for the State.

3. The petitioner was posted as ‘District Cooperative Officer’ at Khagaria. A complaint was made by one Rishi Kant Singh, that the petitioner demanded a bribe of Rs.20,000/-



(Twenty thousand rupees) for supplying copy of voter list of a Block Level Fishery Society. The petitioner thereafter was caught red handed accepting Rs.16,000/- (Sixteen thousand rupees) as bribe money. Vigilance P.S. Case No. 57 of 2011 was instituted and petitioner was sent to judicial custody.

4. Superintendent of Police, Vigilance, sent intimation to the Department in this regard. Whereafter, petitioner was put under suspension. After his release, he joined in the Department, to be put under suspension in contemplation of departmental proceedings. The charge memo, thereafter, was issued to the petitioner on Prapatr-Ka and departmental proceedings commenced vide submission of charge memo dated 26.06.2012.

5. The charge memo contained four charges. Charge No.1 alleged that he had refused to give copy of the voter list to the complainant and demanded bribe, Charge No.2 alleged that the petitioner thereafter called the complainant to his residence for giving him a copy of the voter list, and Charge No.3 contained allegation that when the complainant arrived at the petitioner's residence, he demanded Rs.20,000/- (Twenty thousand rupees) bribe and told him that unless he paid the illegal gratification, the voter list would not be made available to him. It is also alleged that the petitioner accepted Rs.2,000/- (Two thousand rupees) on that day and directed the complainant to come after arranging the balance. Charge No.4 contained a reiteration of charges 1 to 3 and incorporated the fact of complaint being made in this regard to the Superintendent of Police, Vigilance Investigation Bureau, Bhagalpur, by the complainant. It further stated that trap team was constituted and the petitioner was caught red handed while accepting Rs.16,000/- (Sixteen thousand



rupees) bribe and sent to judicial custody. The list of evidence contains copy of the F.I.R., total 19 pages, which apparently includes the verification report, pre-trap memorandum, post-trap memorandum, complaint, F.I.R., arrest memo, etc..

6. The learned counsel for the petitioner submits that the petitioner was not the custodian of the voter list and, therefore, the allegation itself was baseless that he would be demanding bribe for handing over copy of the same. The petitioner on various dates has appeared in the proceedings and demanded various documents.

7. The enquiry officer submitted his enquiry report under communication dated 12.11.2013. In the enquiry report, he has taken note of the fact that the petitioner has not submitted his reply to the charge memo, nor made any submissions in the proceedings. He has just placed on record his denial of charges 1, 2 and 3. The enquiry officer has proceeded to hold the petitioner guilty of these three charges. In respect of charge no.4, the enquiry officer, on account of pendency of the criminal proceedings in vigilance case, did not return any finding.

8. The petitioner thereafter was asked to submit second show cause/representation against the enquiry report. The petitioner submitted a detailed and elaborate response/representation. Whereafter, upon consideration of the petitioner's response, the Disciplinary Authority remitted the matter to the conducting officer for submitting modified/supplementary report with reference to the points raised by the petitioner in his reply to second show cause. The enquiry officer was required to submit a report with more clarity and based on material.



9. On 05.02.2014 the revised supplementary enquiry report was submitted. This time, the enquiry officer has submitted a report based on inferences and surmises. In the proceedings, before the enquiry officer, the petitioner had taken a stand that it was not possible for him to submit his written statement of defense until documents were supplied. This stand of the petitioner has been made the basis of an inferential conclusion based on surmises, which reads as follows:-

"उपर्युक्त तथ्यों से यह स्पष्ट है कि श्री अंजुम हसन अंसारी, तत्कालीन जिला सहकारिता पदाधिकारी, खगड़िया द्वारा इस मामले में न तो कहने के लिए कुछ था, न है और न ही उन्होंने कुछ कहा ही है। इसीलिए इन्होंने न तो अधोहस्ताक्षरी के समक्ष अपना कोई कारण-पृच्छा ही दिया और न ही बहस किये। इस आशय की पुष्टि इनके द्वितीय कारण-पृच्छा से होती है जिसमें इन्होंने इस तथ्य से इंकार नहीं किया है कि इन्होंने ऋषिकांत सिंह से राशि प्राप्त की है, भले ही रिश्त का न होकर अन्य कारणों से हो।

श्री अंसारी ने स्वतः स्वीकार किया है कि विभागीय कार्यवाही Quasi Judicial Process जिसमें अन्यथा साक्ष्य उपलब्ध न हो (प्रथम दृष्टया प्रमाणित आरोप के संबंध में) या नहीं उपलब्ध कराया गया हो तब तक आरोप के विरुद्ध जाने का कोई कारण नहीं दीखता है।

इस प्रकार श्री अंसारी द्वारा दिये गये द्वितीय कारण-पृच्छा में किसी प्रकार के साक्ष्य का अभाव है जो प्रथम दृष्टया प्रमाणित आरोप संख्या-1, 2 एवं 3 को अप्रमाणित कर सके।"

10. The findings of the Inquiry Officer are thus without reference to any material in support of the charges. Other than the F.I.R., containing copies of the documents prepared in course of criminal investigation, no other document has been adduced in the enquiry. Not a single witness, let alone the complainant, has been examined in the enquiry. From perusal of the conclusions, quoted above, it is obvious that the onus of disproving the charges has been cast upon the petitioner; and failure of the delinquent to disprove the charges apparently has led to the charges



1, 2 and 3 having been proved. The same, though legally impermissible, is apparent from bare reading of the enquiry report along with the supplementary enquiry report.

11. The findings thus are clearly unsustainable for the following reasons– 1. That the enquiry report is without reference to any material adduced in the course of enquiry. 2. No witness was examined. 3. The conclusions are based on surmises and conjectures and a product of inferential process. The same is thus in violation of the procedure prescribed under Rule 17 (14) of the Bihar C.C.A. Rules, 2005, which requires the oral and documentary evidence to be produced in the enquiry and opportunity of cross-examination to be given to the delinquent. In the instant case, no evidence oral or documentary has been examined to prove the charges.

12. The Authorities also cannot rely upon the F.I.R. and the documents along with the F.I.R., which were prepared in the course of investigation leading to the petitioner's arrest. The law in this regard is well settled by the Apex Court in the case of **Roop Singh Negi vs. Punjab National Bank and Others** reported in **(2009) 2 SCC 570**. Paragraph 14 of the said judgment, relevant to the instant case, is, therefore, being reproduced, which reads as follows:-

"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."

13. Even otherwise, the conclusions of the Disciplinary Authority in the impugned notification dated 22.05.2014 are manifestly violative of Rule 18 (5) and (6) of the Bihar C.C.A. Rules, 2005, inasmuch as it is not based on any evidence adduced in the enquiry, based on which the decision has been taken by the Disciplinary Authority.

14. The order of the Disciplinary Authority dated 22.05.2014, therefore, being the product of such illegal procedure and showing total non-application of mind, as also in contravention of Rule 18 (5) and (6) is hereby quashed. The order of the Revisional Authority dated 27.07.2017, being an affirmation of such an illegal order and sans reasons, is also found to be unsustainable and is hereby quashed.

15. The writ application is allowed.

16. The petitioner shall be entitled to his consequential benefits as a result of quashing of the impugned orders.

(Madhuresh Prasad, J)

shashank/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	30.12.2022
Transmission Date	NA

