

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23415 of 2019

Dr. Amjad Ali Son of Md. Iliyas Resident of Village- Aghari, P.O.- Tehwara,
Via- Singhwara, P.S.- Katra, District- Darbhanga, Presently residing at Flat
No.210, SBI Campus Building, Mahendru, P.S.- Pirmahore, Near Gandhi
Chawk, District and Town- Patna ... Petitioner

Versus

1. The National Institute of Technology, Patna through its Registrar.
2. The Director, National Institute of Technology, Patna.
3. The Registrar, National Institute of Technology, Patna.
4. The Board of Governor (BOG) through its Chairman, National Institute of Technology, Patna.
5. Dr. Rajiv Sinha, (Enquiry Officer), Professor, Earth Science Department, IIT Kanpur (U.P.). ... Respondents

Appearance :

For the Petitioner	:	M/s Satyendra Rai & Shekhar Singh, Advs.
For the Respondents	:	Mr. Y.V. Giri, Sr. Adv. with M/s Sanjay Kumar Giri & Sumit Kumar, Advs.

**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

RESERVED JUDGMENT

Date : 19.04.2022

Heard the parties.

2. By way of this writ petition the petitioner assails the order of punishment, dated 15.10.2019, passed by the Director, National Institute of Technology, Patna, whereby he has been removed from the service of Assistant Professor on contract in the Department of Humanities and Social Sciences.

3. The brief facts as stated are that the petitioner was appointed as Assistant Professor on contract basis in the Department of Humanities and Social Sciences of National Institute of Technology, Patna, (hereinafter referred to as, “the NIT”). He was placed in the regular pay scale and he joined on



30th September, 2014. After his joining he attended the International Conference on Well-Being and Human Development and presented paper at Department of Psychology, Aligarh Muslim University, Aligarh (UP) on 24 to 26 November, 2014. The visit was post facto approved and the petitioner thereafter submitted his travel bills on 8th December, 2014.

4. Show cause notice, dated 20th March, 2015, was served upon him alleging certain discrepancies in the bill to which he submitted his reply on 31st March, 2015.

Learned counsel submits that the Board of Governors in an agenda taken in its 27th BoG meeting of NIT resolved to show cause notice to the petitioner as to why disciplinary proceedings including termination from service may not be initiated against him for producing forged tickets.

Learned counsel submits that a decision was already taken to terminate the services and the entire departmental proceedings were mere hoax. It was his case that the bills which he had submitted, contained erroneous PNR numbers which occurred on account of the fact that the travelling agent has sent him duplicate details of his travel which contained erroneous details. He pointed out that it was an admitted position that petitioner was earlier working in Rourkela had travelled with his



wife to join at Patna for which he was claiming his T.A. and mistakenly different tickets have been submitted. Similarly it was also an admitted position that the petitioner had been to Aligarh Muslim University for presenting a paper for which he had submitted his travel allowance reimbursement. The tickets were purchased through one travel agent situated at New Delhi and the travel agent had arranged tatkal e-ticket for himself and his wife to travel from Rourkela to Patna and thereafter from Patna to Aligarh. The tatkal e-ticket was arranged by the travel agent and the travelling on tatkal e-ticket was arranged by the travel agent and travelling on tatkal e-ticket containing some discrepancies ought not be treated as misconduct. The claim of reimbursement was admitted to him and it is not a case where the claim was being made relating to inadmissible travel nor it is a case where the petitioner had not travelled.

Learned counsel for the petitioner submits that the enquiry was directed to be conducted by one Dr. Rajiv Sinha who could not have conducted enquiry as Dr. Rajiv Sinha was having a personal bias against the petitioner and he was also prejudiced since he was member of the Board of Governors who had taken a decision to conduct a departmental enquiry and issue order of termination.



5. It is submitted that the enquiry officer acted in biased and prejudiced manner during the course of enquiry. It is alleged that in the in the course of enquiry, one prosecution witness Dr. Sunil Kumar Yadav asked the petitioner to show the e-mail through which the travel agent had sent him tickets, the snap shot of which was earlier submitted by the petitioner. The enquiry officer asked the petitioner login e-mail through which the enquiry officer downloaded the PDF format of the tickets and tampered with his e-mail account and deleted the relevant mail in reference to which a detail information/complaint was submitted by the petitioner to the Director of NIT, Patna, on 17.10.2015. The prejudice of enquiry officer has also been alleged to reflected from the fact that that he concluded the enquiry in one sitting without providing opportunity to submit defence and prepared his report holding the petitioner guilty of all the charges on 10.02.2016. In the enquiry report the enquiry officer has not only held the charges proved against the petitioner but proceeded to recommend that an “exemplary punishment must be awarded to him for his misconduct”.

6. Learned counsel also further pointed out that the petitioner had not received the reimbursement of travelling and the tickets which were allegedly said to be for a different person, on



the basis that the PNR number was not correct, by the railways was not proved by any witness from the railway. There was no evidence produced during the enquiry and the enquiry officer has prepared his report based on the file available with him. Neither the documents were exhibited nor they were proved by any departmental witness. Learned counsel therefore submits that the enquiry being wholly vitiated.

Learned counsel further submits that the disciplinary authority failed to take into consideration the specific allegation which the petitioner raised against the enquiry officer. He submitted that the enquiry can not be said to be fair and impartial. The enquiry officer has in the present case himself become the prosecutor. However, the disciplinary authority did not take into consideration these aspects and proceeded to pass this order for removal from service. Learned counsel has also pointed out that in the memorandum of charges it was specifically mentioned that the documents by which the articles of charge framed against are proposed to be sustained. However, the said documents which are mentioned in Annexure 3 to the charge sheet were not produced nor copy thereto was made available to the petitioner in spite of asking for them. Thus, he submits that as the necessary documents



were not made available the entire enquiry stands vitiated in law and punishment also therefore deserved to be set aside.

7. Per contra learned counsel appearing for the Institute has supported the action and submitted that the petitioner was given ample opportunity and the enquiry was done fairly. The enquiry officer has looked into the documents available with him to reach to the conclusion and the enquiry would have been completed within one day and no adverse inference can be drawn on the said basis.

Learned counsel further submits that the scope to interfere in departmental enquiry is too narrow. The jurisdiction is supervisory and not appellate and the writ Court should not reappreciate the evidence. The finding of facts are ordinarily a matter of halftones for the writ Court. He relies on **(2019) 10 SCC, 695 (General Manager, Electrical Vrs. Sri Gridhari Sahu & Ors.)**.

Learned Senior Counsel has relied on **Union of India Vrs. P. Gunasekaran [reported in (2015) 2 SCC 610]** to highlight the scope of interference in writ jurisdiction relating to departmental enquiry. Learned counsel has also relied on **State Bank of Bikaner and Jaipur Vrs. Nemi Chand Nalwaya** reported in **(2011) 4 SCC 584** to submit that the evidence is not



required to be re-assessed by this Court and even if there is any another view possible on the material on record, this Court would not substitute its opinion to that of the disciplinary enquiry.

8. I have considered the submissions.

9. Before advertng to the facts of the case, it would be apposite to first consider the law as laid down by the Apex Court with regard to the scope of interference with disciplinary proceedings. **Union of India Vrs. P. Gunasekaran** (supra) the Apex Court having considered the law as laid down in State of **Andhara Pradesh Vrs. S. Sree Rama Rao** reported in **AIR 1963 SC, 1723** and **State of Andhara Pradesh & Ors. Vrs. Chitra Venkata Rao** reported in **(1975) 2 SCC 557** and **Railway Board Vrs. Niranjan Singh** reported in **(1969) 1 SCC 502**, laid down as under :

“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, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. 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 [Article 226/227](#) of the Constitution of India, shall not venture into re-



appreciation 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 [Article 226/227](#) of the Constitution of India, the High Court shall not:

- (i). re-appreciate 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.”

10. A larger Bench of the Supreme Court after having considered the aforesaid law in **State Bank of Bikaner and Jaipur** (supra) reiterated what was stated in **Union of India Vrs. P. Gunasekaran** (supra) has held as under :

“The High Court should not have entered into the arena of facts which tantamount to re-appreciation of evidence. It is settled law that re-appreciation of evidence is not admissible in exercise of jurisdiction under Article 226 of the Constitution of India.”

In **(2019) 10 SCC, 695** (supra) the Supreme Court again examined and held as under :

“An erroneous decision in respect of a matter which falls within the authority of the Tribunal would not entitle a writ applicant for a writ of certiorari. However, if the decision relates to anything collateral to the merit, an erroneous decision upon which, would affect its jurisdiction, a writ of certiorari would lie.”



In **AIR 1964 SC, 477 (Syed Yakoob Vrs. K.S. Radhakrishnan & Ors.)** Constitution Bench of the Apex Court held as under :

The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under [Art. 226](#) has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a



writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was 'insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under [Art. 226](#) to issue a writ of certiorari can be legitimately exercised.”

The Apex Court in **General Manager, Electrical Vrs.**

Sri Gridhari Sahu & Ors. (supra) further held as under

“28. In fact, in the decision relied upon by the applicants, viz., S. Viswanathan (supra), it is, inter alia, held as follows:

“12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of



facts in these types of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under [Article 226](#) or under [Article 227](#) of the Constitution can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon....” (Emphasis supplied)

In **(State of Uttar Pradesh & Ors. Vrs. Saroj Kumar Sinha)** reported in **(2010) 2 SCC 772** the role of enquiry officer was highlighted by the Apex Court and it was stated as under :

“28. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service. In the case of *Shaughnessy v. United States*, 345 US 206 (1953) (Jackson J), a judge of the United States Supreme Court has said "procedural fairness and regularity are of the indispensable essence of liberty. Severe



substantive laws can be endured if they are fairly and impartially applied."

For the manner in which the departmental enquiry should be conducted, the Apex Court has observed :

"30. The applicants were NMR workers. They moved the application before the Labour Court alleging violation of [Section 33\(1\)](#) of the Act. [Section 33](#) (1) of the Act, reads as follows:

"33(1) During the pendency of any conciliation proceeding before a

conciliation officer or a Board or of any proceeding before 2 an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall--

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending."

In Kashinath Dikshita Vrs. Union of India & Ors.

reported in **(1986) 3 SCC 229**, the Apex Court stated the rational for the role requiring supplies of copies of documents sought to be relied upon by the authorities to prove the charges levelled against



the Government servant. In spite of the request made for supply of the document and the Apex Court held as under :

“10. And such a stance was adopted in relation to an inquiry whereat as many as 38 witnesses were examined, and 112 documents running into hundreds of pages were produced to substantiate the charges. In the facts and circumstances of the case we find it impossible to hold that the appellant was afforded reasonable opportunity to meet the charges levelled against him. Whether or not refusal to supply copies of documents or statements has resulted in prejudice to the employee facing the departmental inquiry depends on the facts of each case. We are not prepared to accede to the submission urged on behalf of the respondents that there was no prejudice caused to the appellant, in the facts and circumstances of this case. The appellant in his affidavit page 309 of the SLP Paper book has set out in a tabular form running into twelve pages as to how he has been prejudiced in regard to his defence on account of the nonsupply of the copies of the documents. We do not consider it necessary to burden the record by reproducing the said statement. The respondents have not been able to satisfy us that no prejudice was occasioned to the appellant.

12. The appellant relied on [Tirlok Nath v. Union of India](#) 1967 SLR 759 in support of the proposition that if



a public servant facing an inquiry is not supplied copies of documents, it would amount to denial of reasonable opportunity. It has been held in this case:

Had he decided to do so, the documents would have been useful to the appellant for cross-examining the witnesses who deposed against him. Again had the copies of the documents been furnished to the appellant he might, after perusing them, will have exercised his right under the rule and asked for an oral inquiry to be held. Therefore, in our view the failure of the Inquiry Officer to furnish to the appellant with copies of the documents such as the FIR and statements recorded at Shidhipura house and during the investigation must be held to have caused prejudice to the appellant in making his defence at the inquiry.

Reliance has also been placed on [State of Punjab v. Bhagat Ram S.C R.](#) 1975 (2) p. 370 and [State of Uttar Pradesh v. Mohd. Sharif](#) (dead) through LRs LLJ 1982 (2) 180 in support of the proposition that copies of statements of witnesses must be supplied to the Government servant facing a departmental inquiry. It has been emphatically stated in [State of Punjab v. Bhagat Ram S.C R.](#) 1975 (2) p. 370 by this Court as under:

The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given an opportunity to cross-examine the witnesses and during



the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the Government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The Government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the Government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the Government servant. Unless the statements are given to the Government servant he will not be able to have an effective and useful cross-examination.

It is unjust and unfair to deny the Government servant copies of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the Government servant. A synopsis does not satisfy the requirements of giving the Government servant a reasonable opportunity of showing cause against the action proposed to be taken”



It may not be out of place to mentioned in **Triloki Nath Vrs. Union of India** reported in **1967 SLR 759 SC**, it has been held that non-supply of documents amounts to deny of reasonable opportunity. In **Union of India Vrs. H.C. Goel**, reported in **AIR 1964 SC, 364** it was held as under :

“20 : This conclusion does not finally dispose of the appeal. It still remains to be considered whether the respondent is not right when he contends that in the circumstances of this case, the conclusion of the Government is based on no evidence whatever. It is a conclusion which is perverse and-, therefore, suffers from such an obvious and patent error on the face of the record that the High Court would be justified in quashing it. In dealing with writ petitions filed by public servants who have been dismissed, or otherwise dealt with so as to attract [Art. 311 \(2\)](#), the High Court under [Art. 226](#) has Jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. It is true that the order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order; nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charge framed against him are in the nature of quasijudicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a public



servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings which is the basis of his dismissal is based on no evidence. In fact, in fairness to the learned Attorney-General, we ought to add that he did not seriously dispute this, position in law.

21 : He, however, attempted to argue that if the appellant acted bona fide, then the High Court would not be justified in interfering with its conclusion though the High, Court may feel that the said conclusion is based on no evidence. His contention was that cases where conclusions. are reached by the Government without any evidence, could Dot, in law, be distinguished from cases of mala fides; and so he suggested that perverse conclusions of fact may be and can be attacked only on the ground that, they are mala fides, and since mala fides were not alleged in the present case, it was not open to the respondent to contend that the view taken by the appellant can be corrected in writ proceedings. We are not prepared to accept this contention. Malafide exercise of power can be attacked independently on the ground that it is mala fide. Such an exercise of power is always liable to be quashed on the main ground that it is not a bona fide exercise of power. But we are not prepared to hold that if mala fides are not alleged and bona fides are assumed in favour of the appellant, its conclusion on a question of fact cannot be successfully challenged even if it is manifest that there is no evidence to support it. The two



infirmities are separate and distinct though, conceivably, in some cases, both may be present. There may 47- 2 S. C. India/64 be cases of no evidence even where the Government is acting bona fide; the said infirmity may also exist where the Government is acting mala fide and in that case, the conclusion of the Government not supported by any evidence may be the result of mala fides, but that does not mean that if it is proved that there is no evidence to support the conclusion of the Government, a writ of certiorary will not issue without further proof of mala fides. That is why we are not prepared to accept the learned AttorneyGeneral's argument that since no mala fides are alleged against the appellant in the present case, no writ of certiorari' can be issued in favour of the respondent.

22 : We are not prepared to accept this contention. Malafide exercise of power can be attacked independently on the ground that it is mala fide. Such an exercise of power is always liable to be quashed on the main ground that it is not a bona fide exercise of power. But we are not prepared to hold that if mala fides are not alleged and bona fides are assumed in favour of the appellant, its conclusion on a question of fact cannot be successfully challenged even if it is manifest that there is no evidence to support it. The two infirmities are separate and distinct though, conceivably, in some cases, both may be present. There may 47- 2 S. C. India/64 be cases of no evidence even where the Government is acting bona fide; the said infirmity may



also exist where the Government is acting mala fide and in that case, the conclusion of the Government not supported by any evidence may be the result of mala fides, but that does not mean that if it is proved that there is no evidence to support the conclusion of the Government, a writ of certiorary will not issue without further proof of mala fides. That is why we are not prepared to accept the learned AttorneyGeneral's argument that since no mala fides are alleged against the appellant in the present case, no writ of certiorari' can be issued in favour of the respondent.

23 : That takes us to the merits of the respondent's contention that the conclusion of the appellant that the third charge framed against the respondent had been proved, is based on no evidence. The learned Attorney-General has stressed before us that in dealing with this question, we ought to bear in mind the fact that the appellant is acting with the determination to root out corruption, and so, if it is shown that the view taken by he appellant is a reasonably possible view, this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not. This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondent's case is, is there any evidence on which a finding can be made against the respondent that charge No. 3 was proved against him? In exercising its jurisdiction under [Art. 226](#) on such a plea, the High Court cannot consider the question



about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which dealt with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well-founded because, in our opinion, the finding which is implicit in the appellant's order dismissing the respondent that charge number 3 is proved against him is based on no evidence. “

Moni Shanker Vrs. Union of India & Anr. reported in
(2008) 3 SCC, 484

“The departmental proceeding is a quasi judicial one. Although the provisions of the [Evidence Act](#) are not applicable in the said proceeding, principles of natural justice are required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and



irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality.”

In (2009) 4 SCC 570 (Roop Singh Negi Vrs. Punjab National Bank & Ors.) Supreme Court has held as under :

“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 self-same 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. “

11. In the aforesaid background if the present case is considered this Court finds that the petitioner has made specific allegations of bias and prejudice against the enquiry officer who has also been impleaded as a party or person to the writ proceedings. There is no affidavit of respondent no. 5 denying the allegation of bias as against him. He has chosen not to file his reply.

12. The respondents have not denied the fact that respondent no. 5 was a member of the Board of Governors which resolved to take departmental action against the petitioner and also resolved to terminate his services if found guilty. Once a member of the Board of Governors has already taken such a decision or is a party to such a decision he ought not have been the enquiry officer. It is also not the case of the respondents that there was no other officer to conclude the enquiry.



13. This Court agrees with the contentions of the counsel for the petitioner that the enquiry officer bore prejudice against the petitioner, the tenor of the enquiry report reflects the manner in which he has conducted the enquiry. The enquiry officer has himself asked questions directly to the charged officer and his conclusions are based on the answers received to him, he, thus, has acted as prosecutor. In a single day he has concluded the enquiry, no evidence was produced by the prosecution before him. The petitioner was not given any opportunity by the Committee to examine any witness nor any one was produced before him. The entire tenor of the enquiry report reflects as if the enquiry officer had with him the entire file containing all the documents which included the documents which have been relied upon for initiating the charge sheet against the petitioner, such documents were required to be made available to him, those documents were also required to be proved. It is not necessary that the gravity of proof has to be to the hilt however as held in **Roop Singh Negi** (supra) there ought to be documents produced during enquiry. This Court finds that the enquiry officer has flagged the documents from the file and proceeded to draw his conclusion.

14. A biased and prejudiced person can not be expected to act impartially. The basic principle of enquiry is to conduct



impartial inquest and report to be submitted based on evidence produced before the enquiry officer by the prosecution as well as by the charged delinquent. The procedure under Rule 18 of the Rules of 2005 also requires such course to be adopted. However, the said process is found to be lacking.

15. It would be safe to conclude that the enquiry officer as well as the departmental authorities have allowed themselves to be influenced by the extraneous considerations. They have disabled themselves from reaching to fair conclusion by considering documents which are extraneous to the evidence. The fact regarding the petitioner having travelled from Rourkela to join at Patna has been ignored if the PNR number has been wrongly mentioned in the TA bill, factum of the petitioner having travelled ought to be taken into consideration. Thus, on all the counts as mentioned and highlighted in paragraph 12 of **Union of India Vrs. P. Gunasekaran** (supra) this Court concludes that the decision making process stood vitiated and, therefore, the decision arrived at itself would stand vitiated in law.

16. This Court finds that the entire proceedings have been actuated on the basis of malice and the allegations of the petitioner's e-mail having been tampered with by the enquiry officer were not examined by the disciplinary authority on the



complaint made by the petitioner. The fact of such an incident having occurred, is also borne out from the enquiry report submitted by the enquiry officer. The malice and inherent bias of the enquiry officer is also reflected from the facts that he has stated in the enquiry report as under :

“Hence, I as inquiry officer strongly recommend that an exemplary punishment must be awarded to him for his misconduct.”

The aforesaid given strength to the allegation of the petitioner of enquiry officer being biased and prejudiced.

In the case of **Professor Rameshchandra Vrs. University of Delhi & Ors.**, reported in (2015) 5 SCC, 549, the Apex Court observed :

“15. Element of bias is to be inferred from their supervening circumstances available on record least a bald assertion of bias is to be ignored, if specific allegation of bias has been alleged against an individual which is also impleaded as a party to the proceedings and supervening circumstances show that a prejudice has been caused on account of bias, this Court would strike down such action, reference [**A.K. Kraipak & Ors. Vrs. Union of India & Ors.**, reported in (1969) 2 SCC 262], [**Ranjit Thakur Vrs. Union of India &**



**Ors., reported in (1987) 4 SCC 611], [Amar Nath De
Vrs. State of West Bengal & Ors. reported in (2002) 1
SLR, 215].”**

The disciplinary authority has failed to examine these aspects as asserted in the representation made by the petitioner.

17. This Court also finds that the petitioner was claiming reimbursement for the railway fare for the travel which he actually conducted. The enquiry officer has not stated that the petitioner did not travel on the day for which he had submitted the tickets. He has relied on the report of the Railway Officer, who was never produced during enquiry, to conclude that the tickets were forged. For reaching to such conclusion, the minimum required is, some evidence should be on record. The report of the Railway Officer was not made available to the petitioner. Thus, principles of natural justice have been violated and the enquiry can not be said to be fair and impartial. Therefore, the order of termination based on such enquiry is not sustainable.

18. Accordingly, the order dated dated 15.10.2019, passed by the Director, National Institute of Technology, Patna, is quashed and set aside.

19. The petitioner would be entitled to reinstatement and continuity of service for intent and purposes. He would be



also entitled to salary for the intervening period if he has not worked else where for which he shall submit a certificate along with the sworn affidavit to the University. Costs made easy.

20. The writ petition is accordingly allowed with all consequential benefits.

(Sanjeev Prakash Sharma, J)

Shamshad/-

AFR/NAFR	AFR
CAV DATE	22.03.2022
Uploading Date	11.05.2022
Transmission Date	

