

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6945 of 2017

Ram Kumar Singh son of Srimant Singh, resident of Village + P.O.- Shivay Singhpur, P.S.- Mohadinagar, Distt- Samastipur at present living at village- Malahi Barh, P.S.- Barh, Distt- Patna Bihar.

... .. Petitioner

Versus

1. The State of Bihar through principal secretary, Planning and development Department, Govt of Bihar, Patna
2. The Director, Finance and Statistics Directorate, Govt. of Bihar, Patna.
3. The District Magistrate, Patna.
4. The District Magistrate, West Champaran.
5. The District Statistical Officer, Patna.
6. The District Statistical Officer, West Champaran.
7. The Treasury Officer, West Champaran.
8. The Block Development Officer, Bakhtiyarpur, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Singh, Advocate
For the Respondent/s : Mr. Harish Kr.-GP8

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 21-01-2021

The present writ application was initially preferred for the following reliefs:-

“(i) For payment of Pension, Leave encashment and gratuity admissible after retirement and other retiral benefits.

(ii) For further direction for payment of interest of 12% upon aforesaid amount till date of actual payment.

(iii) For any other relief/relief’s the petitioner entitled for in the facts and circumstances of the case.”

2. The petitioner who was holding the post of Statistical Supervisor in Bakhtiyarpur Block, Patna was arrested after he was



trapped by the Department of Vigilance while accepting a sum of Rs. 8000/- in cash from the complainant. One F.I.R. being Vigilance Case Number 3 of 2014 dated 11-04- 2014 under Section 7/13 (2) read with Section 13 (1) (a) of the Prevention of Corruption Act was registered, petitioner was suspended under rule 9 (2) (क) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules of 2005') with effect from 11-04-2014. He was granted bail in the Vigilance Case and while the said case is still pending, a departmental proceeding was initiated against the petitioner and he was served with Prapatra "क" vide memo no. 771 dated 03-06-2014 (Annexure - 2 series).

3. It is stated that after his release on bail, the petitioner joined at the headquarter Bettiah (West Champaran) from where he superannuated on 31-08-2015. The departmental proceeding initiated against the petitioner prior to his retirement was converted in a proceeding under Rule 43 (ka) of the Bihar Pension Rules (hereinafter referred to as 'the Pension Rules'). By a memo no. 1390 dated 19-07-2016 (Annexure 7 to the writ application) petitioner was communicated that the departmental proceeding against him has been converted under the Pension Rules.

4. The petitioner moved this Court with a grievance that after his retirement, though, he has been provided with his General Provident Fund (GPF) and Group Insurance amount in the month of December 2016, his other retiral dues such as gratuity, leave



encashment have not been paid and no step has been taken for fixation of his provisional pension. In this regard, he drew the attention of this Court towards his representation as contained in annexure 8 series to the writ application.

5. The petitioner submitted that he is suffering from diabetes and other medical problems and because of non-payment of legitimate retiral dues and in absence of commencement of his provisional pension he is on the verge of starvation.

6. In the counter affidavit filed on behalf of respondent nos. 4 and 6 it was informed that in the departmental proceeding, the petitioner has been awarded the punishment of withholding of his total pension under Rule 43 (ka) of the Pension Rules and in this regard memo no. 1533 dated 18-07-2017 has been issued. The said respondent took a stand that since vigilance case is still pending, after final judgment by the Hon'ble Court gratuity and pension order will be affected.

7. Counter affidavit has also been filed on behalf of respondent nos. 3 and 5 in which the stand of respondent nos. 4 and 5 has been endorsed. Annexure 'E' to the counter affidavit is the copy of Memo no. 1533 dated 18.07.2017.

8. In view of the order passed by the respondents, awarding punishment of withholdment of 100% pension which includes gratuity, the petitioner filed an application being I.A. No. 1 of 2020 seeking amendment to the writ application. In the amendment



petition, the following reliefs have been prayed:-

- “(a) To order contained in memo no-1533 dated 18.07.2017 issued by the Director, Planning and Developmental Department (Economics & Statistics Directorate), Govt. of Bihar, Patna whereby and where under the punishment of withholding of full pension has been imposed against the petitioner. **A copy of memo no. 1533 dated 18.07.2017 is annexed as ANNEXURE-9 to this application.**
- (b) To quash the Appellate order contained in memo no. 979 dated 07.05.2018, by which the appeal filed by the petitioner against the order dated 18.07.2017 (Ann-9) has been rejected by the Secretary, Economics and Statistics Directorate, (Planning and Developmental Department). **A copy of memo no. 979 dated 07.05.2018 is annexed as ANNEXURE-10 to this application.**
- (c) To direct the respondents to pay full pension and gratuity to the petitioner with appropriate statutory interest forthwith.

And for any other appropriate relief(s) as per the facts and circumstances of this case.”

9. Earlier this Court had granted the petitioner permission to file the Interlocutory Application and learned GP-8 was given an opportunity to submit an additional counter affidavit. In response, a supplementary counter affidavit has been filed on behalf of respondent nos. 1 to 4, thus the learned counsel for the parties have argued on the basis of the statements made in the writ petition as well



as the amendment petition which forms part and parcel of the writ application.

10. It is the contention of learned counsel for the petitioner that in the departmental proceeding, after submission of show cause by the petitioner, no date of hearing was ever fixed by the Inquiry Officer. No document related to alleged charges levelled against the petitioner was ever adduced and no witness was examined. It is submitted that even the Presenting Officer who is responsible for placing the case of the department has not submitted any document during the course of the departmental proceeding.

11. Learned counsel further submits that a bare reading of the inquiry report would show that the Inquiry Officer has presumed that the petitioner is guilty of the charges alleged against him. It is further submitted that the opportunity to submit a second show cause before the disciplinary authority was mere an empty formality as even the disciplinary authority has not considered the reply of the petitioner and has proceeded to simply endorse the views of the Inquiry Officer.

12. Learned counsel for the petitioner has drawn the attention of this Court towards paragraph '6' and '17' of its amendment petition and further submits that the respondents did not provide the provisional pension to the petitioner in the name of pendency of the departmental proceeding under the Pension Rules.

13. Learned counsel has drawn the attention of this Court towards Rule 43 (C) of the 'Pension Rules' and submits that the



respondents did not follow their own rules and in absence of provisional pension to the petitioner, the petitioner cannot be said to have been given proper opportunity to defend himself in the departmental proceeding and the impugned order would suffer from the vice of violation of principle of natural justice.

14. Learned counsel further submits that the petitioner retired from service on 31-08-2015, on the date of retirement of the petitioner the matters relating to payment of gratuity and pension would be guided by the provisions existing under the Pension Rules at the relevant time. It is his submission that the Hon'ble Full Bench of this Court in the case of **Arvind Kumar Singh versus the state of Bihar and Others** reported in **2018 (2) PLJR 933** has interpreted the relevant Rule 27 and 43 (C) of the Pension Rules as existing at that time. The Hon'ble Full Bench has held that when a government employee is facing a criminal proceeding and the same is pending, the government is well within its power to withhold his leave encashment but the gratuity cannot be withheld.

15. Learned counsel submits that the impugned order as contained in memo no. 1533 dated 18-07-2017 (Annexure 9) passed by the disciplinary authority and the appellate order contained in memo no. 779 dated 07-05-2018 (Annexure - 10) passed by the appellate authority are liable to be set aside on the above mentioned grounds.

16. Learned counsel further submitted that the allegation



against the petitioner is that he had demanded a bribe of Rs. 8000/- from the wife of the complainant Subodh Prasad for releasing the second installment of the sanctioned amount for construction of residential house under Indira Awas Scheme. It is submitted that on the date when the petitioner was arrested by laying down a trap, the wife of the complainant had not submitted any application for release of the second installment. In fact she had submitted her application on 06-06-2014 only which is almost two months after the arrest of the petitioner. In this regard, learned counsel for the petitioner has drawn the attention of this Court towards the letter bearing no. 1957 dated 14-04-2015 and letter number 631 dated 10-06-2014 written by the Block Development Officer, Bakhtiyarpur which is enclosed with the reply of the petitioner as contained in Annexure - '5' to the writ application.

17. Learned counsel for the petitioner submits that the reply of the petitioner has been completely misconstrued and the Inquiry Officer as well as the disciplinary authority reached to a perverse finding that the petitioner has admitted acceptance of bribe. It is submitted that the context in which the petitioner has explained the entire things in his written statements/submissions to the Inquiry Officer has not been appreciated by the Inquiry Officer and then the disciplinary authority.

18. Mr. Harish Kumar, learned GP-8 has opposed the writ application. It is his submission that the charges were framed against



the petitioner in Appendix 'A', the same was made available to him and he was called upon to furnish his show cause. It is stated that the Conducting Officer provided opportunity of hearing to the petitioner on different dates and the principle of natural justice stands fully complied with. The petitioner was given opportunity to adduce evidence to rebut the charges levelled against him as contained in Appendix "k" (प्रपत्र "क") and the petitioner failed to rebut the levelled charges and failed to prove his innocence.

19. Learned counsel submits that the representation/show cause received from the petitioner was not satisfactory, the petitioner admits that he had received cash of Rs. 8000/-, the Conducting Officer drew the inference that show cause submitted by the petitioner was not satisfactory and was not based on substantial facts, the Inquiry Officer, therefore, concluded that the charges levelled against the petitioner are prima-facie true. It is submitted that after submission of the inquiry report the Directorate of Economics and Statistics provided an opportunity of hearing to the petitioner and at this stage an opportunity to submit second show cause was given to the petitioner vide letter no. 1928 dated 22.12.2014 (Annexure 'B' to the supplementary counter affidavit). It is submitted that the petitioner failed to produce substantial evidence in his defence and consequently the disciplinary authority imposed the punishment of withholding of full pension by the impugned order.

20. Learned GP-8 has also defended the appellate order.



In course of hearing, learned counsel submitted that the word 'pension' includes gratuity, therefore, by the impugned order the pension as well as gratuity of the petitioner have been withheld.

21. In his rejoinder to the supplementary counter affidavit, the petitioner has submitted that the inquiry report is itself indicative of the manner in which the entire proceeding has been conducted. From the order sheet and the inquiry it would appear that on 06.08.2014 notice of departmental proceeding was received by the petitioner and thereafter only on two days i.e. 26.08.2014 and 06.09.2014 the so-called proceeding took place. On 07.09.2014, the proceeding was concluded. It is stated that after receiving the show cause from the petitioner, opinion was sought from the Presenting Officer and after receiving the same the proceeding has been concluded. It is the specific case of the petitioner that after submission of show cause no date of hearing was fixed by the Conducting Officer and no document relating to alleged charges against the petitioner was ever adduced. The assumption of guilt has been taken against the petitioner only because the petitioner has been arrested by the vigilance.

22. Learned GP 8 has relied upon a judgment of the Hon'ble Apex Court in the case of **Union of India and Others Versus P. Gunasekaran** reported in (2015) 2 SCC 610 (paragraph '12') to submit that this Court sitting in its writ jurisdiction would not act as the appellate authority and would not appreciate or re-



appreciate the evidences before the Inquiry Officer.

Consideration

23. Having heard learned counsel for the petitioner and learned GP-8 for the State, this Court finds that after the petitioner was arrested in the trap case and while he was on bail, the respondent no. 2 issued office order no. 144 dated 03.06.2014. On this memo, the departmental proceeding was initiated against the petitioner. Additional Collector (Departmental Inquiry), Patna was appointed as Presenting Officer on behalf of the Department. प्रपत्र "क" was served upon the petitioner while he was still in jail on 03.06.2014. The charges framed against the petitioner are as under:-

“प्रपत्र "क"”

नाम:- श्री राम कुमार सिंह

पदनाम:- प्रखंड सांख्यिकी पर्यवेक्षक

समूह:- "ख"

वेतनबैंड/ ग्रेड पे :- रू 9300-34800 (ग्रेड पे - 4200)

जन्म तिथि :- 28.08.1955

सेवानिवृत्ति की तिथि :- 31.08.2015

आरोप / विवरण	साक्ष्य
पुलिस अधीक्षक, निगरानी अन्वेषण ब्यूरो पटना ने अपने पत्रांक -840, दिनांक - 21.04.2014 द्वारा आपके विरुद्ध 8000/- रू0 रिश्वत लेते रंगे हाथ पकड़े जाने तथा उक्त आरोप के लिए निगरानी थाना कांड संख्या 031/2014, दिनांक -11.04.2014 से संबंधित विस्तृत प्रतिवेदन प्राप्त हुए । प्राप्त प्रतिवेदन में आपके विरुद्ध निम्नवत् आरोप लगाये गये है :- 1. आपके द्वारा श्री सुबोध प्रसाद, पिता-चन्द्रिका प्रसाद, ग्राम - बख्तियारपुर,	पुलिस अधीक्षक, निगरानी अन्वेषण ब्यूरो, पटना का पत्रांक -840, दिनांक - 21.04. 2014 (कुल 18 पृष्ठ)



<p>थाना बख्तियारपुर, जिला पटना से उनके पत्नी श्रीमती सोनी देवी के नाम से आवंटित इंदिरा आवास के निर्माण के लिए दुसरे किस्त के भूगतान हेतु 8000/- रिश्वत की माँग की गयी । श्री सुबोध कुमार द्वारा पुलिस अधीक्षक निगरानी अन्वेषण ब्यूरो, पटना के कार्यालय में दिनांक -07.04.2014 को आपके विरुद्ध रिश्वत मांगे जाने संबंधी शिकायत /परिवाद पत्र दाखिल किया गया । उक्त परिवाद पत्र के आलोक में निगरानी अन्वेषण के धावा दल द्वारा रिश्वत के रकम के साथ आपको गिरफ्तार किया गया । यह आपके विरुद्ध सरकारी सेवक आचार नियमावली का घोर उल्लंघन है ।</p> <p>2. रिश्वत की राशि रंगे हाथ पकड़े जाने के आलोक में आपके विरुद्ध निगरानी थाना कांड सं0 031/2014, दिनांक -11.04.2014 के तहत प्राथमिकी दर्ज की गयी है । प्रथम दृष्टया उपर्युक्त आरोप प्रमाणित पाये जाने के फलस्वरूप बिहार सरकारी सेवक (वर्गीकरण, नियंत्रण एवं अपील) नियमावली- 2005 के नियम 9 (2) (क) के आलोक में हिरासत में जाने की तिथि से निलंबित किया गया ।</p> <p>उपर्युक्त कृत कार्रवाई आपके घोर अनुशासनहीनता, कर्तव्यहीनता एवं भ्रष्ट आचरण का परिचायक है ।</p>	
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24. Petitioner submitted his reply dated 27.08.2014 (Annexure '3' to the writ application). He denied the allegations of demand of bribe for release of second installment of the sanctioned amount under Indira Awas Scheme to the wife of the complainant. He also relied upon the letters written by the Block Development Officer, Bakhtiyarpur stating therein that the wife of the complainant had submitted her application for release of second installment much after the arrest of the petitioner. In paragraph '9' of his reply the petitioner came out with a story and he tried to explain as to how and why the sum of Rs.8,000/- was received by him.



25. The order sheet of the departmental proceeding has been brought on record. Annexure '11' to the amendment petition as contained in letter no. 336 dated 21.10.2014 written by the Additional Collector (Departmental Proceeding), Patna-cum-Inquiry Officer would show that after sending the copy of प्रपत्र "क" to the delinquent employee directing him to submit his response before the Inquiry Officer, the Presenting Officer was called upon to adduce evidences on the date fixed in the matter. On 16.08.2014, the record was produced and the Inquiry Officer recorded that notice has been served but the delinquent employee is absent. The matter was fixed for 27.08.2014. On 27.08.2014 the petitioner appeared and filed his show cause. The Inquiry Officer adjourned the matter calling upon the Presenting officer to submit his opinion on the show cause of the petitioner. On 01.09.2014 the Presenting Officer submitted opinion and thereafter the case was fixed for 17.09.2014 and on 17.09.2014 the Inquiry Officer simply recorded that the opinion of the Presenting Officer has been received and the matter was fixed for order. It further appears from the inquiry report that in his inquiry report the Inquiry Officer simply reproduced the charges against the petitioner and thereafter the Inquiry Officer proceeded to conclude the matter with his opinion as under:-

“ संचालन पदाधिकारी का मन्तव्य :-

आरोपी पर श्री सुबोध प्रसाद, पिता श्री चन्द्रीका प्रसाद ग्राम –
बख्तियारपुर, से उनके पत्नी श्रीमती सोनी देवी के नाम से आवंटित इंदिरा आवास के



निर्माण के लिए दुसरे किस्त के भूगतान हेतु मो0-8000.00 (आठ हजार) रुपये रिश्वत की माँग करने तथा निगरानी धावा दल के द्वारा घूस लेते रंगे हाथो पकड़े जाने का आरोप है ।

आरोपी का कहना है कि उनकी गिरफ्तारी की तिथि तक इससे संबंधित कोई भी आवेदन पत्र प्रखंड कार्यालय में जमा नहीं किया गया था और न ही इन्दिरा आवास योजना से संबंधित कोई कार्यभार उनके जिम्मे था । आरोपी का यह भी कहना है कि आरोपी का आवेदन इन्दिरा आवास के वेवसाइट पर अपलोड भी नहीं था । आरोपी का यह भी कहना है कि परिवारी का हस्ताक्षरयुक्त आवेदन पत्र तथा अधूरे इन्दिरा आवास सहित आवेदिका को फोटो धावा दल द्वारा जप्त नहीं किया गया था । निगरानी धावा दल द्वारा जब्त किया गया परिवारी के पत्नी का आवेदन एवं फोटो मनगढ़त कागजात है । जिसे धावादल के प्रभारी सत्यापनकर्ता तथा परिवारी ने मिलकर साजिश रचकर फंसाया है । आरोपी ने परिवारी को दलाल बताया है तथा यह आरोप लगाया है कि अपनी मंशा में सफल नहीं होने के कारण परिवारी ने कर्मचारियों के बीच खौफ पैदा करने के लिए उन्हें फंसाया है ।

प्रस्तोता पदाधिकारी ने आरोपी की स्पष्टीकरण को असंतोषजनक बताया है ।

साक्ष्य के रूप में आरोपी द्वारा उपलब्ध कराये गये कागजात से यह स्पष्ट होता है कि आरोपी के गिरफ्तारी की तिथि तक परिवारी का इस मामले से संबंधित कोई भी आवेदन प्रखण्ड कार्यालय में जमा नहीं था । साथ परिवारी के चरित्र पर भी प्रश्न चिन्ह लगता है ।

आरोपी का स्पष्टीकरण मान्य योग्य नहीं है, क्योंकि परिवारी का आवेदन पत्र उनकी गिरफ्तारी की तिथि तक प्रखण्ड कार्यालय में जमा नहीं होने तथा परिवारी के दलाल होने/गलत तरिके से इन्दिरा आवास की राशी लेने से यह प्रमाणित नहीं होता है कि आरोपी निर्दोष है । आरोपी का कारण पृच्छा अपने कृत्य को छुपाने का प्रयास मात्र है ।

तथ्यों एवं साक्ष्यों के अवलोकन से स्पष्ट है कि आरोपी को रू0 मो0-8000.00 (आठ हजार) रिश्वत लेते हुए निगरानी धावा दल द्वारा रंगे हाथ गिरफ्तार किया



गया तथा निगरानी थाना कांड संख्या 031/14 दिनांक 11.04.14 धारा 7 (13) (2) सह पठित धारा 13(1) (डी) भ्र0 नि0 अधि0 1988 के प्राथमिक अभियुक्त है ।

आरोपी पर आरोप प्रपत्र "क" में गठित आरोप प्रमाणित होता है ।

(जितेन्द्र कुमार सिंह)
अपर समाहर्ता
विभागीय जाँच पटना

26. The disciplinary authority though gave an opportunity to the petitioner to submit his reply on the Inquiry report, but when the petitioner submitted his reply (Annexure '13') and controverted the finding of the Inquiry Officer, the disciplinary authority proceeded to pass the impugned order as contained in Annexure '9' enclosed with the interlocutory application without applying his own judicious mind. The disciplinary authority recorded the facts in its order and while considering the reply of the petitioner, he passed the operative order in the following terms:-

“आरोपी पर आरोप प्रपत्र "क" में गठित आरोप प्रमाणित होता है ।

4. संचालन पदाधिकारी द्वारा समर्पित जाँच प्रतिवेदन पर निदेशालय के पत्रांक 1928 दिनांक 22.12.2014 द्वारा श्री राम कुमार सिंह से द्वितीय कारण पृच्छा की माँग की गयी, जिसमें उनके द्वारा निम्नलिखित तथ्य प्रस्तुत किये गये :-

(i) आरोपी का कथन है कि स0 अ0 नि0, श्री इंद्रजीत सिंह का सत्यापन प्रतिवेदन दिनांक 10.04.2014 में आरोपी की उम्र 50-52 वर्ष तथा रंग सांवला बताया गया है । जबकि वे सांवले रंग का नहीं है तथा उनकी उम्र उस वक्त 59 वर्ष थी ।

(ii) निगरानी धावा दल द्वारा तैयार किया गया पोस्ट ट्रेप मेमोरेण्डम दिनांक 11.04.2014 में उल्लेख है कि आरोपी के बाएं हाथ की उंगली को सोडियम



कार्बोनेट के पानी के घोल में डाला गया तो सफेद घोल रंग लाल हो गया । जबकि इसी प्रतिवेदन से स्पष्ट हो जाता है कि आरोपी यह नोट को अपने दाहिने हाथ में रखे हुए थे तथा धावा दल के द्वारा आरोपी का दोनों हाथ पकड़ लिया गया था । फिर बाएं हाथ में निशान कहां से आ गया ।

5. श्री राम कुमार सिंह द्वारा समर्पित द्वितीय कारण पृच्छा में उन्ही तथ्यों का रखा गया है जो उनके द्वारा विभागीय कार्यवाही संचालन के क्रम में संचालन पदाधिकारी के समक्ष रखा गया था और उनके द्वारा कोई साक्ष्य अपने बचाव में समर्पित नहीं किया गया है । साथ ही द्वितीय कारण पृच्छा की कंडिका 9 में स्वीकार किया गया है कि उन्होंने 8000/- (आठ हजार) रुपये लिए थे ।

6. उपयुक्त कंडिका में वर्णित तथ्यों से स्पष्ट होता है कि श्री राम कुमार सिंह पर लगाये गये दोनों आरोप यथा 8000/- (आठ हजार) रुपये रिश्वत की माँग किये जाने एवं रिश्वत लेते हुए रंगे हाथ पकड़े जाना, प्रमाणित होते हैं ।

7. श्री राम कुमार सिंह को दिनांक 31.08.2015 को वार्धक्य सेवानिवृत्त हो जाने के फलस्वरूप निदेशालय के का0 आ0 सं0 -178 सहपठित ज्ञापांक -1390 दिनांक - 19.07.2016 द्वारा इन पर संचालित विभागीय कार्यवाही को बिहार पेंशन नियमावली के नियम 43 (क) के तहत सपरिवर्तित किया गया है ।

8. बिहार पेंशन नियमावली के नियम 43 (क) में यह प्रावधान है कि भविष्य सदाचार हर पेंशन प्रदान की मानी हुई शर्त है । राज्य सरकार को पेंशन या उसके किसी अंश को रोक रखने या वापस लेने का अधिकार होगा । यदि पेंशनभोगी गंभीर अपराध के लिए दोषी ठहराया जाय या और कदाचार का दोषी हो । इस नियम के अधीन समुचित पेंशन या उसका कोई अंश रोक रखने या वापस लेने के संबंध में राज्य सरकार का निर्णय अंतिम एवं निर्णायक होगा ।

अतः उपर वर्णित सभी तथ्यों को दृष्टिगत रखते हुए चूंकि श्री राम कुमार सिंह सम्प्रति सेवा निवृत्त कनीय सांख्यिकी सहायक, जिला सांख्यिकी कार्यालय, पश्चिमी चम्पारण (बेतीया) पर 8000/- (आठ हजार) रुपये रिश्वत लेते हुए रंगे हाथ पकड़ाया



जाना प्रमाणित है जो उनके भ्रष्ट आचरण का परिचायक है एवं वे घोर कदाचार के दोषी है अतः बिहार पेंशन नियमावली 43 (क) में निहित प्रावधान के आलोक में इनकी समूची पेंशन रोक रखने का दंड अधिरोपित करते हुए विभागीय कार्यवाही को समाप्त किया जाता है ।

इसपर राज्य सरकार का अनुमोदन प्राप्त है ।”

27. The appellate authority though took note of the grounds of appeal but in his order as contained in Memo no. 979 dated 07.05.2018 (Annexure ‘10’) the appellate authority did not consider the grounds of appeal. The relevant part of the order of the appellate authority are quoted hereunder for a ready reference”-

““उक्त आदेश के विरुद्ध बिहार सरकारी सेवक (वर्गीकरण, नियंत्रण एवं अपील) नियमावली- 2005 के नियम 25 (2) में किये गये प्रावधान के तहत श्री राम कुमार सिंह द्वारा अपील अभ्यावेदन दिया गया है । अपने अपील अभ्यावेदन में उनके द्वारा मुख्य रूप से निम्न तथ्यों का उल्लेख किया गया है :-

1. जब इन्दिरा आवास से संबंधित कोई कार्य मेरे जिम्मे नहीं था तब इससे संबंधित पैसे मांगने का कोई औचित्य नहीं है । परिवादी श्री सुबोध कुमार और उनकी पत्नी सोनी देवी सुख सुविधा सम्पन्न व्यक्ति है तथा उनका पक्का मकान है तो फिर उनसे इन्दिरा आवास के दुसरे किस्त के लिए पैसे मांगने का कोई आधार नहीं है क्योंकि उन्हे इन्दिरा आवास मिलना ही नहीं था । इस मामले में षडयंत्र के तहत मुझे फंसाया गया है । संचालन पदाधिकारी द्वारा परिवादी और न ही किसी अभियोजन साक्षी के साथ प्रतिपरीक्षण करवाया गया है । (emphasis supplied)

2. किसी कर्मचारी का पेंशन उसके पूर्ण सेवाकाल का कमाया हुआ सम्पति है, उसे बिना पर्याप्त साक्ष्य के जप्त कर लेना न्याया संगन नहीं है । सम्पूर्ण पेंशन रोकने का आदेश पारित करने से पूर्व निदेशक के द्वारा सरकार से परामर्श प्राप्त नहीं किया गया है । निदेशक ने अपने अधिकार क्षेत्र से बाहर होकर आदेश पारित किया है ।

श्री राम कुमार सिंह के द्वारा प्राप्त अपील आवेदन पर दिनांक 11.04.2018



को अधोहस्ताक्षरी द्वारा सुनवाई की गयी एवं उनके पक्ष को सुना गया । सुनवाई के क्रम में श्री सिंह यह स्पष्ट करने में असफल रहे की रिश्वत लेते हुए रंगे हाथ निगरानी अन्वेषण ब्यूरो के धावादल के द्वारा उन्हें गिरफ्तार नहीं किया गया था । इस प्रकार श्री राम कुमार सिंह पर 8000/- (आठ हजार) रूपये रिश्वत लेते हुए पकड़े जाने का आरोप प्रमाणित होता है, जो उनके भ्रष्ट आचरण को दर्शाता है ।

इनके भ्रष्ट आचरण के आलोक में राज्य सरकार का आदेश इनका समूची पेंशन रोक रखने का है जिसे अर्थ एवं सांख्यिकी निदेशालय के का0 आ0 सं0 255 सहपठित ज्ञापांक 1533 दिनांक 18.07.2017 द्वारा संसुचित किया गया है, जो नियमानुकूल एवं विधि-सम्मत है ।

अतः श्री राम कुमार सिंह का अपील अभ्यावेदन अस्वीकृत किया जाता है।”

28. On going through the entire materials on the record, this Court finds that the inquiry against the petitioner has been conducted in a totally perfunctory manner. After service of प्रपत्र “क” upon the petitioner in fact the Presenting Officer for the Department did not adduce any evidence even as to form prima-facie opinion as to the proof of charges. The petitioner is correct in submitting that after submission of his show cause before the inquiry officer, the inquiry officer simply called for an opinion from the Presenting Officer and then kept the matter for order. Paragraph ‘17’ of the amendment petition reads as under:-

“17. That during the course of departmental proceeding no date of hearing has ever been fixed by the conducting officer. No documents related to alleged charge against the petitioner was ever adduced. No witnesses was examined. Even the presenting officer, who is responsible for placing



the case of prosecution before the conducting officer has also not submitted any document during the course of so-called departmental proceeding.”

29. The response to paragraph ‘17’ has come in paragraph ‘23’ of the supplementary affidavit which reads as under:-

“23. That the statement made in Paragraph no.- 17 of the I.A. is not true. The conducting officer has conducted departmental proceeding taking recourse to the legal provision as prescribed and mentioned for the conducting officer. The charges sheet framed against the petitioner was made available to him and at the same time on different fixed dates, the petitioner was provided ample opportunity of hearing and to produce substantial facts in his defence to rebut the levelled charges against him. The petitioner failed to provide substantial facts to rebut the levelled charges against him.”

30. On a reading of the stand taken in the supplementary counter affidavit, this Court has no iota of doubt that respondent nos. 4 and 5 are not correct in saying that on different fixed dates the petitioner was provided ample opportunity of hearing. Respondent nos. 4 and 5 nowhere say that after service of prapatra “ka” on the petitioner, the Presenting Officer of the Department had adduced any evidence. All that said is that the petitioner did not bring evidence to rebut the charges levelled against him. This Court is unable to appreciate the stand taken on behalf of the respondent nos. 4 and 5. It



is well-settled that the charges levelled against the delinquent employee are to be proved by preponderance of possibility in course of the departmental proceeding. Strict rule of evidence will not apply in a departmental proceeding but in a case where no evidence was adduced on behalf of the Department, the petitioner had no occasion to adduce his defence. He had already submitted his show cause pursuant to the opportunity granted to him but thereafter no date was fixed by the Inquiry Officer for adducement of evidence on behalf of the parties.

31. On reading of the inquiry report as well as the impugned order passed by the disciplinary authority, this court finds that both the authorities have proceeded on assumption of guilt against the petitioner and has awarded the impugned punishment by saying that it was the petitioner who failed to prove that he is innocent.

32. This Court further finds that before the Appellate Authority the petitioner had taken a specific plea that the disciplinary authority was not justified in withholding of the entire pension and gratuity of the petitioner. The ground taken on behalf of the petitioner has been though mentioned in the order passed by the Appellate Authority but the Appellate Authority has not considered the same. This Court finds substance in the submission of learned counsel for the petitioner that the case of the petitioner would be covered by the judgment of the Hon'ble Full Bench of this Court in the case of **Arvind Kumar Singh** (Supra). This was required to be examined by the



disciplinary authority as well as the Appellate authority.

33. This Court also agrees with the submission of the learned counsel for the petitioner that after retirement of the petitioner on 31.08.2015, the respondents should have considered him for payment of provisional pension in terms of Rule 43(c) of the 'Pension Rules' for the period the departmental proceeding remained pending at the end of the disciplinary authority. At least after 31.08.2015 till 18.07.2017 the petitioner was entitled for his provisional pension to the extent of 90 per cent.

34. So far as the submission of learned GP 8 based on the judgment of the Hon'ble Apex Court in the case of **P. Gunasekaran** (supra) is concerned, this Court fully agrees with the propositions stated in paragraph '12' thereof. In this case this Court has not gone into the merit of the allegations and there is no occasion for this Court to enter into appreciation or re-appreciation of evidence.

35. For the reasons stated hereinabove, this Court sets aside the impugned orders as contained in Annexure '9' and '10' to the writ application (enclosed with I.A. No. 01/2020).

36. Since this Court has found that the inquiry has been conducted in a most perfunctory manner, this Court grants liberty to the respondents to start afresh from the stage of inquiry, if so advised, for this purpose they can appoint any other Inquiry Officer. In case the respondents decide to proceed afresh at the stage of inquiry, the inquiry proceeding be conducted and final order be passed thereon by the disciplinary authority within a period of 4 months from the date of



receipt/production of a copy of this order.

37. Needless to say that the proceeding shall be conducted in accordance with the relevant service rules and the provision of principle of natural justice shall be complied with in its terms and spirit.

38. The respondents shall look into the judgment of the Hon'ble Full Bench of this Court in case of **Arvind Kumar Singh** (Supra) in the matter of payment of gratuity and shall take an appropriate decision as regards the petitioner, based thereon while passing the final order within the stipulated period.

39. The petitioner has been found entitled for the provisional pension since the date of retirement till the date of passing of the impugned order dated 18.07.2017 in the disciplinary proceeding, therefore, this Court directs that for the said period the respondent shall calculate the provisional pension of the petitioner and pay the same within a period of two months from today.

40. This writ application as well as the interlocutory application 01/2020 stand allowed to the extent indicated above.

(Rajeev Ranjan Prasad, J)

Avinash/Rishi/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	27.01.2021
Transmission Date	

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

