

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.931 of 2024

In

Civil Writ Jurisdiction Case No.3397 of 2021

Om Prakash Manjhi Son of late Lakshmi Manjhi, Resident of M.I.G. -208, Hanuman Nagar, P.S. Patrakar Nagar, District-Patna, dismissed from Superintending Engineer, Rural Works Department, Work Circle, Siwan.

... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Deputy Secretary, Rural Works Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Y.V.Giri, Sr. Advocate

Mr. Sumit Kumar Jha, Advocate

For the Respondent/s : Mr. Ajay, G.A.5

Mr. Pratik Kumar Sinha, A.C. to G.A.5

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date :28-03-2025

1. Heard learned Senior counsel for the appellant and learned counsel for the respondents.

2. The appellant has preferred this appeal against the judgment dated 9.8.2024 whereby the learned Single Judge was pleased to dismiss the writ application and the order of dismissal from service of the appellant was upheld.

3. The relevant facts in brief are that while posted as the Superintending Engineer, Work Circle, Siwan, an FIR being



Vigilance P.S. Case no.145 of 2016 was registered against the appellant under sections 13(1)(e) read with section 13(2) of the Prevention of Corruption Act, 1988 ('P.C. Act' in short) alleging the appellant to have acquired assets disproportionate to his known sources of income.

4. On the Vigilance Department informing the Rural Works Department about the institution of the vigilance case, the appellant was placed under suspension on 13.1.2017 in exercise of powers under the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the 'C.C.A. Rules') and a departmental proceeding was decided to be initiated against him. The appellant was served with a chargesheet in Form 'ka' stating therein that he had been accused of having assets beyond his known sources of income to the tune of Rs.1.16 crores, the same had led to registration of Vigilance Case no.145 of 2016 under section 13(2) read with section 13(1)(e) of the P.C. Act and the charge of grave misconduct and violation of the Bihar Government Servant's Conduct Rules, 1976 ('Rules of 1976' in short).

5. The appellant was provided with a copy of the report of the S.P., Vigilance Investigation Bureau, Bihar, Patna submitted on 27.12.2016 to which he submitted his defence on



12.6.2017. In the meantime, the appellant challenged his order of suspension in CWJC no.714 of 2017 which was withdrawn on 5.9.2017. The same was followed by the appellant filing CWJC no.1002 of 2017 challenging the initiation of the departmental proceeding but the same was dismissed. LPA no.1668 of 2017 preferred against the said order of dismissal passed in the writ application was also dismissed on 19.6.2018 and the S.L.P. (c) no.16255 of 2018 preferred against the order in LPA was also dismissed.

6. In the meantime, the department submitted their response in the departmental proceeding on 14.7.2017. In addition to the letter of the S.P., Vigilance Investigation Bureau dated 27.12.2016, the appellant was also served with a copy of the reply submitted by him before the D.S.P.-cum-Investigating Officer, Vigilance Investigation Bureau on 20.6.2017. He was heard on 12.6.2017 and 29.6.2017. The appellant on 30.8.2017 submitted his reply on merits as also his response to the departmental comments and was heard in detail in presence of the presenting officer once again. He also filed his third reply/defence on 6.9.2017.

7. The Enquiry Officer in his enquiry report dated 14.9.2017 found all the three charges to have been proved. The



appellant was served with a second show cause notice, enclosing with the same a copy of the enquiry report. The appellant not having replied to the same was served with a reminder to which he replied. In exercise of powers conferred under the C.C.A. Rules, by order dated 28.2.2020, the appellant was dismissed from service. The appellant filed a review petition on 27.4.2020 which was also rejected on 12.6.2020.

8. The appellant thereafter filed CWJC no.3397 of 2021 praying to set aside the order of dismissal dated 28.2.2020, for being reinstated in service and payment of full salary right from the date when he was put under suspension and also for setting aside the order dated 12.6.2020 whereby the review application filed by the appellant against the order of dismissal was rejected. The writ application was dismissed by order dated 9.8.2024 against which the instant appeal has been preferred.

9. Mr. Y.V. Giri, learned Senior counsel appearing for the appellant submitted that the memorandum of charge as contained in Prapatra 'ka' does not contain the name of any witness but only mentions about the letter dated 27.12.2016 of the S.P., Vigilance Investigation Bureau. Further, no witness has been mentioned to prove the said letter. The Enquiry Officer also has just reiterated the case of the Vigilance Investigation



Bureau as mentioned in the aforesaid letter. Thus, it was submitted that it is a case of no evidence as against the appellant and the order of punishment as also all other successive orders passed in review and also by the learned Single Judge cannot be sustained.

10. In support of his contention, Mr. Y.V.Giri, learned Senior counsel has relied on the judgments of the Patna High in the case of Ram Lagan Ram vs. The State of Bihar and Ors. (LPA no.389 of 2024), Rajendra Prasad vs. The State of Bihar & Ors. (LPA no.366 of 2022), The State of Bihar & Ors vs. Vikash Kumar (LPA no.446 of 2024) and in the case of Srikant Singh vs. The State of Bihar & Ors. (LPA no.58 of 2024). He has further relied on the judgments of the Hon'ble Supreme Court in the case of Roop Singh Negi vs. Punjab National Bank & Ors. [(2009) 2 SCC 570], State of Uttar Pradesh & Ors. vs. Saroj Kumar Sinha [(2010) 2 SCC 772] and Satyendra Singh vs. State of Uttar Pradesh & Anr., 2024 SCC Online SC 3325.

11. In response, it was submitted by learned counsel appearing for the State of Bihar that on institution of the FIR by the Vigilance Investigation Bureau against the appellant in the year 2016 making allegations of the appellant having acquired



assets disproportionate to his known sources of income that the departmental proceeding was commenced and which ended in passing of the order of dismissal against the appellant on 28.2.2020. The review preferred against the said order was also rejected. It was submitted that the appellant has not been able to show any irregularities, procedural or otherwise, in conduct of the departmental proceeding. Further, it was only after giving ample opportunity to the appellant to submit his reply to the charges levelled and after giving him an opportunity of detailed hearing, the charges having been proved in the departmental enquiry that the order of punishment of dismissal of the appellant was passed. Learned counsel submitted that there is no illegality in the order of dismissal nor in the order of the learned Single Judge and there being no merit in the instant appeal, the same be dismissed.

12. Heard learned counsel for the parties and perused the material on record.

13. An FIR being Vigilance P.S. Case no.145 of 2016 came to be registered against the appellant, the Superintending Engineer on 19.12.2016 under different sections of the P.C. Act. On receiving information about the registration of the FIR, a departmental proceeding was started against the appellant on the



charges of his having assets beyond his known sources of income to the tune of Rs.1.16 crores leading to registration of Vigilance Case no.145 of 2016 under the P.C. Act and the charge of grave misconduct and violation of the Rules of 1976. The argument on behalf of the appellant was to the effect that no witness having been named in the memo of charges nor any witness having proved the document being relied upon on behalf of the respondents, this was a case of no evidence, the charges were not proved and the order of punishment could not be sustained.

14. It is not in dispute that the chargesheet in the departmental proceeding clearly mentioned about registration of Vigilance P.S. Case no.145 of 2016 against the appellant on 19.12.2016 under different sections of the P.C. Act as also the appellant having assets to the tune of Rs.1,16,98,070/- beyond his known sources of income. As stated above, the appellant was served with the letter dated 27.12.2016 of the S.P., Vigilance Investigation Bureau enclosing with the same a copy of the F.I.R. of Vigilance Case no.145 of 2016 as also the reply submitted by the appellant on 20.6.2017 before the D.S.P.-cum-Investigating Officer, Vigilance Investigation Bureau.

15. On perusal of the documents available on record,



it transpires that not only the appellant gave a detailed reply to the charges mentioned in the chargesheet but on being served with a second show cause notice, the appellant filed a detailed reply on 15.10.2019. The reply which has been brought on record as Annexure-21 to the writ application running into 156 pages.

16. It may be mentioned here itself that while on one hand, he claims that his wife who has independent source of income and has been filing tax returns from the financial year 2005-06 to 2015-16, in the year 2005-06, she filed a zero tax return and in the year 2015-16, the total income tax was Rs.50,000/ only and the refund claim from the income tax was Rs.35,680/.

17. Rule 19(1) of the Rules of 1976 provides that every Government servant on his first appointment and thereafter at the interval of every 12 months is required to submit to the Prescribed Authority his assets and liabilities in the prescribed format with respect to the immovable property owned, acquired or inherited by him or held by him or in the name of any member of his family. 'Member of Family' as defined in section 2(c) in relation to the Government servant includes the wife or husband as the case may be. Further, Rule



19(6) provides that a Government servant found to be in possession of pecuniary resources or property disproportionate to his known sources of income shall unless the contrary is proved, be presumed to have been guilty of grave misconduct. The relevant Rule 19(1), 19(6) and 2(c) of the Rules of 1976 are quoted herein below for ready reference:

“19. Movable, immovable and valuable property.

(1) Every Government servant shall on his first appointment, to any service or post and thereafter at the interval of every twelve months submit to the prescribed authority return of his assets and liabilities in such form as may be prescribed by the Government giving full particulars regarding-

(a) immovable property owned, acquired or inherited by him or held by him on lease or mortgage, either in his own name or in the name of any member of his family or in the name of any other person;

(b) shares, debentures, cumulative time deposits and including bank deposits owned, acquired or inherited by him or held by him, either in his own name or in the name of any member of his family or in the name of any other person;

(c) other movable property inherited by him or similarly owned, acquired or held by him; (d) debts and other liabilities, if any, incurred by him directly or indirectly.

.....
(6) A Government servant found to be in possession of pecuniary resources or property disproportionate to his known sources of income for which he cannot satisfactorily account, shall unless the contrary is proved, be presumed to have been guilty of grave misconduct in the discharge



of his official duty for which he will be liable for criminal action besides departmental proceeding.

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2.Definitions.

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(c)"Member of family" in relation to Government servant includes-

(1)The wife or husband as the case may be, of the Government servant, whether residing with the Government servant or not but does not include a wife or husband, as the case may be, separated from the Government servant by a decree/order of a competent court."

.....

18. Thus, from the relevant provisions of the Rules of 1976 quoted herein above, it is clearly evident that it was for the appellant to satisfactorily account for his property disproportionate to his known sources of income and unless the same was done there was presumption in law of the appellant being guilty of grave misconduct in the discharge of his official duty.

19. On perusal of the enquiry report as also the other documents brought on record by the appellant in the writ application, the Court is of the opinion that the appellant has miserably failed in explaining the properties disproportionate to his known sources of income as is spelt out in the letter dated 27.12.2016.

20. Coming to the judgments relied on by learned



Senior counsel appearing for the appellant, it may be observed that there is no dispute with the contention of learned Senior counsel appearing for the appellant that evidence lead in course of the departmental proceeding is required to be proved by examining witnesses. However, the Hon'ble Supreme Court in the case of ***State Bank of India & Ors. vs. Narendra Kumar Pandey [(2013) 2 SCC 740]*** held that in some cases the proof may only be documentary and in some cases oral. The requirement of proof depends on the facts and circumstances of each case. The relevant part of the judgment in the case of Narendra Kumar Pandey (supra) is being reproduced herein below for ready reference:

“20. We are of the view that the High Court has committed an error in holding that the charge-sheet should have mentioned about the details of the documents and the names of the witnesses which the Bank proposed to examine and a list to that effect should have been appended to the charge sheet. We may point out that the charge-sheet need not contain the details of the documents or the names of the witnesses proposed to be examined to prove the charges or a list to that effect unless there is a specific provision to that effect. Charge-sheet, in other words, is not expected to be a record of evidence. Fair procedure does not mean giving of copies of the documents or list of witnesses along with the charge-sheet. Of course, statement of



allegations has to accompany the charge-sheet, when required by the Service Rules.

.....
22. *We are of the view that the High Court also committed an error in holding that since no witness was examined in support of the charges, it was a case of no evidence. In an ex parte inquiry, in our view, if the charges are borne out from documents kept in the normal course of business, no oral evidence is necessary to prove those charges. When the charged officer does not attend the inquiry, then he cannot contend that the Inquiring Authority should not have relied upon the documents which were not made available or disclosed to him. Of course, even in an ex parte inquiry, some evidence is necessary to establish the charges, especially when the charged officer denies the charges, uncontroverted documentary evidence in such situation is sufficient to prove the charges.*

.....
28. *We are also conscious of the fact that even if the Inquiring Authority set the charged officer ex parte that would not absolve him from deciding that the charges levelled against him were proved or not. In other words, no punishment could be imposed without an inquiry. We notice in this case the Inquiring Authority had elaborately considered the charges levelled against the charged officer and also the materials produced by the Bank because some evidence is necessary to establish the charges. In some cases, proof may only be documentary and in some cases oral. The requirement of proof depends*



on the facts and circumstances of each case. The appellant Bank in this case has succeeded in establishing the charges levelled against the delinquent officer and was rightly dismissed from service which called for no interference by the High Court under Article 226 of the Constitution of India.”

21. Coming to the facts of the instant case, on being served with the copy of the chargesheet along with the copy of the letter dated 27.12.2016 of the S.P., Vigilance Investigation Bureau, it is not that at any stage the appellant challenged the genuineness or veracity of the said document or the copy of the FIR which was an enclosure to the same. At the cost of repetition, it may be stated that the appellant not only replied to the same but even on the charges having been found to be proved in the departmental enquiry and on being issued with the second show cause notice, the appellant gave a very detailed reply of over 150 pages making an attempt to explain the allegations of disproportionate assets, which he miserably failed.

22. The appellant has also not made out any case of any procedural irregularity or illegality in the conduct of the proceedings. There has been no violation of the principles of natural justice, the findings against the appellant are based on evidence as also on the presumption in law as contemplated in



Rule 19(6) of the Rules of 1976.

23. The appellant has not made out any case for interference by this Court in the orders of punishment impugned in the writ application nor in the order of the learned Single Judge.

24. The Court finds no merit in the instant appeal.

25. The appeal is dismissed.

(Partha Sarthy, J)

(Ashutosh Kumar, ACJ): I agree.

(Ashutosh Kumar, ACJ)

Saurabh/-

AFR/NAFR	NAFR
CAV DATE	04.02.2025
Uploading Date	NA
Transmission Date	NA

