IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19792 of 2015

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Kumar Raja son of Late Yogendra Prasad Singh, Resident of village Gheghata, P.O- Govind Chak, P.S.- Sonepur, District- Saran.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Personnel Reforms, Govt. of Bihar, Old Secretariat, Patna.
3. The Commissioner, Saran Division at Chapra.
4. The District Magistrate, Saran Division at Chapra.
5. The Senior Deputy Collector, Zila Gramin Vikas Pradhikaran, Saran.
6. The Circle Officer, Chapra Sadar, District- Chapra.
7. Enquiry Officer-cum-Deputy Collector, Land Reforms, Madhaurah, Saran.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Manish Chandra Gandhi
For the Respondent/s : Mr. Sajid Salim Khan, SC XXV

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

RESERVED JUDGMENT

Date : 23.11.2022

Heard the parties.

2. The petitioner by this writ petition assails the order dated 18 February, 2014, whereby he has been dismissed from service and the order dated 17.04.2015 read with order dated 15.05.2015 whereby the appeal preferred against the dismissal order was rejected by the Divisional Commissioner. He further prays to be reinstated.

3. The brief fact which required to be noticed are that the petitioner was holding the post of Revenue Clerk on which he

was appointed on 10.06.1997. While he was posted at Circle office, Chapra, he was arrested in a trap case, registered against him on 31.10.2007 by the Vigilance on the ground of demanding Rs.5,000/- from one Om Prakash Prasad for mutating his name in the revenue record. On 31.10.2007, he was suspended while in jail on 05.12.2007 and was released on 24.08.2008, his headquarters has been changed during suspension to Marhaura Subdivisional Office and he therefore submitted his presence on 02.06.2008. A charge sheet was served upon him vide memo dated 19.08.2008 under Rule 17 of the CCA Rules 2005, enquiry officer was appointed and presenting officer was also appointed to conduct the enquiry. The petitioner in reply to the charge sheet stated that the amount which was found from his possession was the rent the petitioner had collected from different land holders. During the pendency of the departmental enquiry, suspension was revoked on 26.08.2009.

4. The enquiry officer was informed by the presenting officer vide his letter dated 27.09.2012 that the charges were baseless as the application for mutation had been filed by the complainant much after the date of arrest. It was also asserted that the money collected from the petitioner was rent collected from other land holders. The enquiry officer thereafter changed vide

order dated 18.10.2012 and then another enquiry officer was appointed on 26.06.2013.

5. Learned counsel for the petitioner submits that the enquiry officer without recording any evidence of the witness or hearing the presenting officer and without giving any opportunity to cross examine the witnesses submitted his reported on 26.12.2013. Learned counsel has taken this Court to the enquiry report wherein the enquiry officer has noticed that the presenting officer himself neither produced any witness nor justified the charges against the petitioner. In his absence the enquiry officer himself has adopted a method of putting enquiry to the delinquent-petitioner and asking his reply with regard to each charge and proceeded to hold the petitioner guilty of being negligent towards his duty and proposed punishment under Rule 14 of the Rules. Based on such enquiry the petitioner was dismissed from service by the order dated 18.02.2013 which has been upheld by the appellate authority.

6. Learned counsel for the petitioner submits that the entire proceedings dehors the provisions of the CCA Rules 2005 of the procedure laid down therein. He submits that the enquiry officer in the present case himself conducted enquiry as a prosecutor and further proceeded to hold the charges as proved

without exercising any reasons and without referring to any evidence. Learned counsel submits that the entire proceedings were perverse and arbitrary and the entire enquiry proceedings should be quashed. He relies on a judgments reported in (1985) 3 SCC 378 (Anil Kumar Vrs. Presiding Officer & Ors.), (1999) 2 SCC 10 (Kuldeep Singh Vrs. Commissioner of Police & Ors.), (2009) 2 SCC 570 (Roop Singh Negi Vrs. Punjab National Bank & Ors.), (2010) 2 SCC 772 (State of Uttar Pradesh & Ors. Vrs. Saroj Kumar Sinha) and (2018) 3 PLJR 969 (Prem Kumar Vrs. The State of Bihar & Ors.) in support of his submissions.

7. Learned counsel for the respondents supports the order and submits that the procedure has been followed.

Learned counsel submits that the enquiry officer has relied upon the reply filed by the petitioner-delinquent to reach to the conclusion. The disciplinary authority has also independently come to the conclusion. In view thereof, no interference is warranted.

8. I have considered the submissions. The petitioner was served with the charge sheet to be conducted under Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 by letter, dated 14.08.2008. Rule 17 of the CCA Rules, 2005, lays down the procedure which is followed by the

enquiry officer. As per the said Rule prosecution officer has to open the case on behalf of the Government to prove the charges levelled against the delinquent. The delinquent would be required to submit his defence whereafter evidence shall be led on behalf of the prosecution and opportunity of cross examination would be provided. Thereafter, the enquiry officer has to submit his report dealing with the evidence which has come on record and give his conclusion on each charge.

9. From the perusal of the above it is apparent that the enquiry officer is required to be impartial by acting as a quasi judicial authority and can not be allowed to play a role of presenting officer. In the present case, the presenting officer has in his submission stated, vide letter dated 27.09.2012, that the charge levelled against the petitioner is not made out. In spite of the same, the enquiry officer has proceeded to hold the petitioner guilty of supervisory negligence, whereas the charge levelled against him was with regard to having obtained Rs,5,000/- by way of bribe. While all the four charges levelled against the petitioner having not been proved and the enquiry officer has only found the petitioner of being supervisory negligent, the disciplinary authority could not have punished the petitioner of the charges levelled under the memorandum dated 14.08.2008. If the disciplinary

authority was to defer from the report of the enquiry officer and was of the opinion that the petitioner has been involved in taking bribe, he ought to have given his reasons and disagreement notice to the petitioner. The order passed by the disciplinary authority and the appellate authority therefore are vitiated in law in the view of the law as expressed by the Apex Court in Punjab National Bank & Ors. Vrs. Sh. Kunj Bihar Misra (1987) 7 SCC 89.

10. This Court also finds that the petitioner has been punished without there being any enquiry as such neither any evidence was recorded by the enquiry officer nor the presenting officer was present. The enquiry officer has proceeded to hold the petitioner guilty based on the charge and the reply thereto. Such a procedure is a case where no enquiry was conducted. It would be appropriate to notice few of the judgments as cited before this Court. In Anil Kumar (supra) the Apex Court held as under :

> *"5. We have extracted the charges framed against the appellant. We have also pointed out in clear terms the report of the Enquiry Officer. It is well-settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the Enquiry Officer has a duty to act judicially. The Enquiry Officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his ipse aixit that the charges are proved. He did not assign a single*

reason why the evidence produced by the appellant did not appeal to him or was considered not credit-worthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an ipse dixit of the Enquiry Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. This is too well-settled to be supported by a precedent. In Madhya Pradesh Industries Ltd. v. Union of India , this Court observed that a speaking order will at best be a reasonable and at its worst be atleast a plausible one. The public should not be deprived of this only safeguard. Similarly in Mahabir Prasad v. State of Uttar Pradesh , this Court reiterated that satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appealed to the authority. It should all the more be so where the quasi-judicial enquiry may result in deprivation of livelihood or attach a stigma to the character. In this case the enquiry report is an order sheet which merely produces the stage through which the enquiry passed. It clearly disclosed a total non-application of mind and it is this report on which the General Manager acted in terminating the service of the appellant. There could not have been a gross case of non-application of mind and it is such an enquiry which has found favour with the Labour Court and the High Court.

6. Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy or sufficiency of evidence. But where the evidence is annexed to an order sheet and no correlation is established between the two showing application of mind, we are constrained to observe that it is not an enquiry report at all. Therefore, there was no enquiry in this case worth the name and the order of termination based on such proceeding disclosing non-application of mind would be unsustainable."

In Kuldeep Singh (supra) the Apex Court held as under :

"27 : This Rule, which lays down the procedure to be followed in the departmental enquiry, itself postulates examination of all the witnesses in the presence of the accused who is also to be given an opportunity to crossexamine them. In case, the presence of any witness cannot be procured without undue delay, inconvenience or expense, his previous statement could be brought on record subject to the condition that the previous statement was recorded and attested by a police officer superior in rank than the delinquent. If such statement was recorded by the Magistrate and attested by him then also it could be brought or record. The further requirement is that the statement either should have been signed by the person concerned,

namely, the person who has made that statement, or it was recorded during an investigation or a judicial enquiry or trial. The Rule further provides that unsigned statement shall be brought on record only through the process of examining the Officer or the Magistrate who had earlier recorded the statement of the witness whose presence could not be procured.

28 : Rule 16(3) is almost akin to Sections 32 and 33 of the Evidence Act. Before the Rule can be invoked, the factors enumerated therein, namely, that the presence of the witness cannot be procured without undue delay, inconvenience or expense, have to be found to be existing as they constitute the condition-precedent" for the exercise of jurisdiction for this purpose. In the absence of these factors, the jurisdiction under Rule 16(3) cannot be exercised.

32 : Apart from the above, Rule 16(3) has to be considered in the light of the provisions contained in Article 311(2) of the Constitution to find out whether it purports to provide reasonable opportunity of hearing to the delinquent. Reasonable opportunity contemplated by Article 311(2) means "Hearing" in accordance with the principles of natural justice under which one of the basic requirements is that all the witnesses in the departmental enquiry shall be examined in the presence of the delinquent who shall be given an opportunity to cross-examine them. Where a statement previously made by a witness, either during the course of preliminary enquiry or

investigation, is proposed to be brought on record in the departmental proceedings, the law as laid down by this Court is that a copy of that statement should first be supplied to the delinquent, who should thereafter be given an opportunity to cross-examine that witness.

42 : The Enquiry Officer did not sit with an open mind to hold an impartial domestic enquiry which is an essential component of the principles of natural justice as also that of "Reasonable Opportunity", contemplated by Article 311(2) of the Constitution. The "Bias" in favour of the Department had so badly affected the Enquiry Officer's whole faculty of reasoning that even non-production of the complainants was ascribed to the appellant which squarely was the fault of the Department. Once the Department knew that the labourers were employed somewhere in Devli Khanpur, their presence could have been procured and they could have been produced before the Enquiry Officer to prove the charge framed against the appellant. He has acted so arbitrarily in the matter and has found the appellant guilty in such a coarse manner that it becomes apparent that he was merely carrying out the command from some superior officer who perhaps directed "fix him up".”

In Roop Singh Negi (supra) the Apex Court held as under :

“14 : Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer

performs a quasi judicial function. The charges leveled 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.

15 : We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

In AIR 1964 SC, 364 (the Union of India & Ors. Vrs. H.C. Goel) the Apex Court held as under :

> *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, con- ceivably, 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.*

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 find- ing which is implicit in the appellant's order dismissing the respondent that charge number 3 is proved against him is based on no evidence.

In State of Uttar Pradesh & Ors. Vrs. Saroj Kumar Sinha (supra) the role of enquiry officer has been noticed.

In (2015) 2 SCC 610 (Union of India & Ors. Vrs. P. Gunasekaran) the Supreme Court laid down the grounds on which the Courts may interfere with a departmental proceedings.

"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."

11. A three Judges Bench of the Supreme Court in (2017) 4 SCC 507 (Central Industrial Security Force & Ors. Vrs. Abrar Ali) has again reiterated the same principle.

12. On the basis of aforesaid, this Court finds that the disciplinary authority and the enquiry officer have conducted an enquiry in violation of principles of natural justice and in contravention of the procedure as envisaged under Rule 17 of the CCA Rule 2009. No enquiry was conducted as the prosecution did not produce any oral and documentary evidence. The enquiry officer adopted a procedure of question and answer which shows that he has taken the place of prosecution. The enquiry officer thus became vitiated by malice in law.

13. In view of above, this Court is satisfied that the procedure as required to be followed under the CCA Rules 2005 has been given a completely go-by while conducting the enquiry. On facts also, when the presenting officer submitted his reply stating that no case is made out against the petitioner-delinquent, the enquiry officer was required to cross examine it to reach to the conclusion. Further the disciplinary authority has proceeded to hold the petitioner guilty of charges from which the enquiry officer

did not find him guilty, namely, of taking bribe while enquiry officer held him of supervisory negligent.

14. In view thereof, the enquiry report as well as orders of punishment are found to be arbitrary and unjustified and based on no evidence. In view of Kuldeep Singh (supra) thereof, the orders of punishment can not be sustained.

15. Accordingly, the writ petition is allowed. The orders impugned dated 18 February, 2014, and dated 17.04.2015 read with order dated 15.05.2015 are quashed and set aside with all the consequential benefit(s) for the entire period as the petitioner was denied to perform his duty. No costs.

(Sanjeev Prakash Sharma, J)

Shamshad/-

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