

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No. 802 of 2019

In
Civil Writ Jurisdiction Case No.1012 of 2017

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Vikramaditya Singh Son of Late Kesho Prasad Singh Resident of village
Kahen, P.S. Jagdishpur, District Bhojpur (Ara), Bihar.

... .. Appellant/s

Versus

1. The State of Bihar Through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary General Administration Department, Government of Bihar, Patna.
3. The Secretary Labour Resources Department, Government of Bihar, Patna.
4. The Labour Commissioner Bihar, Patna.
5. The District Magistrate District Bhagalpur, Bihar.
6. The Joint Labour Commissioner Bhagalpur, District Bhagalpur, Bihar.
7. The Deputy Labour Commissioner Bhagalpur Division, District Bhagalpur, Bihar.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Prabhat Ranjan, Adv
For the Respondent/s : Mr.Ajay Kumar Rastogi (AAG10)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 24-02-2021

Heard learned counsel for the parties.

This LPA under Clause 10 of Letters Patent Appeal has been preferred for setting aside the judgment and order dated 08.07.2019 passed by learned Single Judge in CWJC No. 1012 of 2017, dismissing the writ petition.

Briefly stated, the facts of the case is that Appellant was



posted as Block Development Officer, Sonhaura Block, in the district of Bhagalpur from 05.04.2010, when a joint complaint was made to Chief Minister, Bihar, alleging certain misappropriation and irregularities in the grant of diesel subsidy for the year 2009-10 and 2010-11 by Mukhiya and Panchayat Secretary by preparing a false distribution register.

Aforesaid complaint, was transferred to the Vigilance Department and enquiry was conducted and thereafter Vigilance P.S. Case No. 71 of 2013 was instituted on 06.11.2013 under Sections 467, 468, 471, 420, 409 r/w 120B of IPC and section 13(2) and Section 13(1)(c)(d) of P.C. Act, 1988, in which sanction for prosecution was granted against Appellant vide office order no. 453 dated 06.02.2012 and Appellant was put under suspension in terms of Rule-9 of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 on ground of institution of criminal case against him vide memo no. 454 dated 06.02.2014.

Departmental proceedings were also initiated against Appellant and charges were framed in Prapatra-Ka(क) and served upon petitioner and Deputy Labour Commissioner, Bhagalpur, was appointed as Enquiry Officer and Labour Superintendent, Bhagalpur as Presenting Officer vide letter no.



450 dated 11.02.2014 with a direction to conclude the proceeding within two months. The articles of charges framed against the delinquent/Appellant along with list of oral and documentary evidence on the basis of which charges were to be proved by the Department were as following:-

“उपरोक्त संदर्भ में आपके विरुद्ध निम्न आरोप गठित किये जाते हैं—

1. आपके द्वारा वित्तीय वर्ष 2009–10 में धान पटवन मद में आवंटित राशि 933348.00 (रूपये नौ लाख तेतीस हजार तीन सौ अड़तालीस) का फर्जी वितरण पंजी तैयार कर उक्त राशि में से रूपये 922875.00 (रूपये नौ लाख बाईस हजार आठ सौ पचहत्तर) की राशि को फर्जी वितरण दिखाकर राशि का गबन किया गया है।

2. वितरण पंजी में किसी भी कृषक लाभुक/लाभुकों का हस्ताक्षर या अंगुठे का निशान नहीं होना।

3. आपके द्वारा वित्तीय वर्ष 2010–11 में बिचड़ा पटवन मद में आवंटित राशि रूपये 80600.00 का फर्जी वितरण तैयार कर अन्य के सहयोग से मिलीभगत कर उक्त राशि में से रू० 51162.00 की राशि को वितरित दिखाकर राशि का गबन किया जाना। उक्त वितरण पंजी में मात्र आपके हस्ताक्षर के अलावा वर्तमान मुखिया एवं पंचायत सचिव का हस्ताक्षर होना।

4. रबी पटवन एवं (आलू+प्याज) पटवन के आवंटन मद में क्रमशः 150000.00 एवं 40000.00 राशि का फर्जी वितरण पंजी तैयार कर आपस में षडयंत्र रचकर राशि का गबन किया जाना।

लाभुकों के बीच राशि का वितरण नहीं कर पढ़ें—लिखें आदमी का अंगुठे का निशान एवं अनपढ़ का हस्ताक्षर दिखाकर राशि का बन्दर बाँट किया जाना।

5. वित्तीय वर्ष 2009–10 एवं 2010–11 में डीजल



अनुदान (विभिन्न मद) में षड्यंत्र रचकर राशि का गबन किया जाना तथा राशि का दुरुपयोग किया जाना।

साक्ष्य :-

1.पुलिस अधीक्षक निगरानी अन्वेषण ब्यूरो, भागलपुर प्रक्षेत्र का पत्रांक-200 दिनांक- 19.09.13.

2.पुलिस निरीक्षक अनुसंधानकर्ता निगरानी अन्वेषण ब्यूरो का पत्रांक- 273 दिनांक- 31.12.12.

3.विभिन्न मदों में राशि वितरित किये जाने से संबंधित वितरण पंजी की छायाप्रति।

4.दायर प्राथमिकी की प्रति।”

Appellant appeared before the Enquiry Officer on 24.02.2014 and time was granted to file his defence reply and he submitted a detailed defence reply annexing all the relevant documents on 05.03.2014 with a copy to Presenting Officer who took time to file rejoinder.

Defence of the delinquent/appellant as recorded by the Enquiry Officer in his enquiry report is as follows:-

“स्पष्टीकरण

क्रमांक 01 से 05 तक सभी 5 गठित आरोपों के मूल में ऐसा पूर्वाग्रह प्रतीत होता है कि डीजल अनुदान का वितरण कृषकों की बीच प्रखंड विकास पदाधिकारी के द्वारा किया जाना था। पत्र संख्या 8049/03.12.2009 एवं 4442/26.07.2010 द्वारा क्रमशः 2009-10 एवं 2010-11 हेतु विस्तृत दिशा निर्देश जारी किए गए।

इसके अनुसार **ग्राम पंचायतें:-**

(क) कृषकों से आवेदन प्राप्त करेगी।

(ख) ग्राम सभा कर प्राप्त आवेदनों से अनुमोदनोपरांत कृषकों की सूची बनाएगी।

(ग) ग्राम सभा द्वारा पारित सूची के अनुसार कृषकों के बीच राशि



का वितरण करेगी।

(घ) सभी कागजातों/दस्तावेजों/वितरण पंजी आदि का संधारण करेगी।

प्रखंड विकास पदाधिकारी :-

(क) ग्राम सभा द्वारा पारित सूची पर आपत्ति प्राप्त होने पर ग्राम सभा को सुधार हेतु निदेश देंगे।

(ख) मांग के अनुरूप ए०सी० विपत्र की निकासी कर ग्राम पंचायतों को अनुदान वितरण हेतु राशि उपलब्ध करायेंगे।

(ग) वितरण के पश्चात लाभान्वित कृषकों की सूची प्राप्त कर डी०सी० विपत्र बनाकर महालेखाकार को भेजेंगे।

(घ) जिला पदाधिकारी के माध्यम से व्यय प्रतिवेदन/उपयोगिता प्रमाण पत्र कृषि विभाग को भेजेंगे।

स्पष्ट है कि प्रखंड विकास पदाधिकारी द्वारा मात्र राशि उपआवंटित कर ग्राम पंचायत कमालपुर श्रीचक को उपलब्ध कराया गया। ग्राम पंचायत को राशि रेखांकित चेक द्वारा कृषकों के बीच वितरण हेतु उपलब्ध करायी गयी, न कि कृषकों को सीधे दी गयी। ग्राम सभा द्वारा अनुमोदित कृषकों को राशि ग्राम पंचायत द्वारा वितरित की गई। वितरण पंजी ग्राम पंचायत को संधारित रखनी है न कि प्रखण्ड को। लाभान्वित कृषकों की इसी सूची को वितरण पंजी मान कर सारे आरोप गठित किये गये हैं, जो पूरी तरह बेबुनियाद है। लाभान्वित कृषकों की सूची पर लाभुकों का हस्ताक्षर होने का प्रश्न ही नहीं उठता है। जहाँ हस्ताक्षर/अंगूठे का निशान है दरअसल वह इसलिए है कि संबंधित पंचायत सचिव द्वारा अलग से विहित प्रपत्र में सूची न बनाकर वितरण पंजी/अभिश्चव की फोटो प्रति ही उपलब्ध करा दी गयी। डी०सी० विपत्र भेजने हेतु संदर्भित कृषकों की सूची पर निकासी एवं व्यय पदाधिकारी का हस्ताक्षर होना अनिवार्य है, अतः मेरे द्वारा उक्त सूची पर हस्ताक्षर किया गया। इसी अनिवार्यता के चलते जिला आपदा प्रभारी अपर समाहर्ता द्वारा इसे प्रतिहस्ताक्षरित भी किया गया एवं ए०जी० बिहार को आवश्यक कारवाई हेतु भेजा गया। सूची पर हस्ताक्षर सूची को प्रमाणिक बनाता है, न कि वितरण की विश्वसनीयता साबित करता है।

चूँकि यह वितरण पंजी ही नहीं है, यह लाभान्वित कृषकों की सूची मात्र है। अतः इस पर लाभुकों का हस्ताक्षर/अंगूठे का निशान होने का प्रश्न ही नहीं उठता है।”

On the next date i.e. 13.03.2014 neither the Presenting



Officer was present nor any rejoinder was filed on behalf of department and the matter was adjourned for 27.03.2014 to enable the Presenting Officer, to file the rejoinder but no rejoinder was filed. On the next adjourned date i.e. 27.03.2014 there was no representation on behalf of the department and matter was again adjourned for 10.04.2014 and meanwhile Labour Commissioner (Disciplinary Authority), Bihar, Patna, telephonically directed the Conducting Officer to submit the enquiry report before 31.03.2014, which is recorded by the Enquiry Officer in his enquiry report. The departmental proceeding was concluded prior to the adjourned date i.e. 10.04.2015 and the Enquiry officer vide letter no. 305 dated 29.03.2014 submitted his enquiry report to the Disciplinary Authority.

The Enquiry Officer has not recorded any of the five articles of charges to be proved against the Appellant and accepted the defence of delinquent in view of letter no. 4442 dated 26.07.2010 issued by department of agriculture which was brought on record by the delinquent /appellant in his defence statement, Clause-6(ga) of which stipulates that at the level of panchayat, preparation of list of beneficiaries and distribution of subsidy is the responsibility of Gram Sabha, Mukhiya and



Panchayat Sachiv, which finds recorded by inquiry officer as conclusion in paragraph nos.1 and 2 of the inquiry report, however, in paragraph no.3 of his conclusion he has observed that the BDO/delinquent has released the subsidy amount to the Panchayat but it seems that he has not monitored distribution of said amount among the beneficiaries which shows his negligence as such Appellant can be indirectly held responsible for such irregularities.

The conclusion drawn by enquiry officer in paragraph nos.1 to 3 of inquiry report reads as follows:-

“1.कृषि विभाग के पत्रांक 4442 दिनांक 26.07.2010 के कंडिका 6 (ग) के अनुसार पंचायत स्तर पर अनुदान बाटने का काम मुखिया एवं पंचायत सचिव का है। तथा नगर विकास क्षेत्र के किसानों को अनुदान का भुगतान प्रखण्ड विकास पदाधिकारी/प्रखण्ड कृषि पदाधिकारी के द्वारा किया जाना है।

2.वर्तमान संदर्भ में प्रखण्ड विकास पदाधिकारी (आरोपित पदाधिकारी) का कहना था कि वे अनुदान के राशि को सीधे पंचायत (मुखिया/पंचायत सचिव को देते हैं। तथा कोई शिकायत होने पर जाँच की कार्यवाही करते हैं अपने आप नहीं।

3.सन्दर्भित आरोपो में श्री विक्रमादित्य सिंह ने प्रखण्ड विकास पदाधिकारी की हैसियत से अनुदान की राशि पंचायत को दिया परन्तु ऐसा प्रतीत होता है कि श्री सिंह ने दिये गये पैसे का सही-सही अनुश्रवण नहीं किया। जो इनका लापरवाही दर्शाता है। इस प्रकार श्री सिंह अपरोक्ष रूप से अनियमितता के लिए जवाबदेह माने जा सकते हैं।”

Once the enquiry officer has accepted the defence of delinquent and has not recorded any of the five charges framed against delinquent to be proved there was no occasion for him to observe that the BDO/delinquent has released the subsidy amount to the Panchayat but it appears that he has not



monitored distribution of said amount among the beneficiaries which shows his negligence and as such Appellant can be indirectly held responsible for such irregularities.

No such charge of being negligent in performing his duty and not monitoring the payment of subsidy amount was framed against the delinquent and the inquiry officer exceeded his jurisdiction and travelled beyond the scope of inquiry by recording such finding of negligence in performing his duty. Moreover negligence is not construed as misconduct and only grave negligence is misconduct for which specific charge has to be framed. Charges were framed of committing grave misconduct alleging misappropriation of subsidy amount by preparing forged distribution register and not grave negligence in performance of his duty by not monitoring the released subsidy.

Enquiry Officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject matter of charges is wholly illegal.

Even the finding of negligence recorded by the enquiry officer is based upon presumption, assumption, conjecture and surmises. Charges cannot be deemed to be proved on basis of inference drawn by the enquiry officer. Suspicion cannot be



substitute of proof. Suspicion or presumption cannot take the place of proof in a departmental inquiry.

The Apex Court in the case of *Union of India Vs. H.C. Goel* since reported in *AIR 1964 SC 364*, emphasized that suspicion, however, strong cannot be treated as proof against accused in a criminal trial or a delinquent officer in domestic enquiry.

Conclusions has to be recorded by the Disciplinary Authority on the basis of cogent evidence. The Apex Court in the case of *Narinder Mohan Arya Vs. United India Insurance Company Ltd.* since reported in *(2006) 4 SCC 713*, in para 44 has held *that the enquiry officer cannot base his findings on mere hypothesis. Mere ipse dixit on his part cannot be a substitute of evidence.*

The Enquiry Officer has rightly not considered the report of S.P. Vigilance and of IO of vigilance as well as FIR which were enclosed in support of charges as the presenting officer did not appear before the enquiry officer in order to prove the documents and contents thereof. Except the letter dated 26.07.2010, as referred above, the Enquiry Officer has not dealt with any other documentary or oral evidence in his enquiry report.



Disciplinary Authority issued second show cause notice vide letter no. 1183 dated 11.04.2014 enclosing a copy of the enquiry report to the Appellant to submit his reply with respect to finding recorded by the Enquiry Officer, against charges. This Court fails to understand on what basis the disciplinary authority has stated in the second show cause notice that charges against delinquent have been proved although there is no such finding recorded by the inquiry officer in enquiry report. In the second show cause notice dated 11.04.2014, delinquent has been asked to show cause against the finding of inquiry officer recorded in paragraph no.3 of enquiry report regarding not monitoring distribution of subsidy amount presuming his negligence for which he can be held to be indirectly responsible for the irregularities. The relevant part of the second show cause notice dated 11.04.2014 reads as follows:-

“आपके द्वारा दिये गये पैसे का सही-सही अनुश्रवण नहीं किया जो आपकी लापरवाही दर्शाता है। इस प्रकार आप अपरोक्ष रूप से अनियमिता के लिए जवाबदेह माने जा सकते हैं।”

The Appellant submitted a detailed reply to the second show cause.

The Disciplinary Authority after considering the enquiry report and finding of enquiry officer with respect to charges framed against appellant and reply of Appellant with



respect to finding recorded by enquiry officer found the charges to be proved against the delinquent/Appellant and dismissed him from service. The relevant paragraph nos. 5 and 6 of the order passed by the Disciplinary Authority is reproduced hereinbelow:-

“5.अनुशासनिक प्राधिकार द्वारा संचालन पदाधिकारी के प्रतिवेदन एवं उसके क्रम में आरोपी सेवक द्वारा समर्पित कारण-पृच्छा का अवलोकन किया गया। संचालन पदाधिकारी के जांच प्रतिवेदन तथा निगरानी अन्वेषण ब्यूरो के पत्रांक- 3221 दिनांक- 19.02.2013 द्वारा प्रेषित पुलिस अधीक्षक, निगरानी विभाग के पत्र के साथ-साथ संलग्न प्राथमिकी से ही प्रथम द्रष्टया यह प्रमाणित पाया गया कि लोक निधि के उपयोग में आरोपित सेवक द्वारा अनियमितता बरती गई है तथा बड़ी राशि का गबन किया गया है। आरोपित सेवक द्वारा माननीय उच्च न्यायालय, पटना में दायर क्रिमिनल मिसलेनियस वाद सं०-12808/14 में पारित अंतरिम आदेश के माध्यम से जमानत स्वीकृत किये जाने के आधार पर अपने को निर्दोष बताया गया, जबकि यह स्पष्ट है कि मात्र जमानत के लिए खंडपीठ के अंतरिम आदेश के आरोपी के **Criminal Antecedent** नहीं होने का उल्लेख किया गया है। प्रासंगिक आपराधिक वाद पर कोई न्याय निर्णय नहीं पारित है।

6.अतः सम्यक विचारोपरान्त अधोहस्ताक्षरी द्वारा अनुशासनिक प्राधिकार के रूप में आरोपी सेवक को वित्तीय अनियमितता एवं गबन के आरोप में दोषी प्रमाणित पाते हुए तत्काल प्रभाव से बर्खास्त किया जाता है।”

The Disciplinary Authority in his order has relied upon letter no. 3221 dated 19.02.2013 of the Vigilance Investigation Bureau and the FIR and came to the conclusion that *prima facie* it is established that the delinquent has committed irregularities in respect of public fund and huge amount has been misappropriated.

The finding recorded by the Disciplinary Authority on



the basis of letter no. 3221 dated 19.02.2013 of the Vigilance Investigation Bureau and the FIR is not sustainable.

In present case, no statement of facts / imputation of misconduct was part of memo of charge and charges were to be proved on the basis of report of S.P. and IO of the Vigilance Investigation Bureau and the FIR.

The Apex Court in case of ***Union of India Vs. Sardar Bahadur*** since reported in (1972) 4 SCC 618, has held in paragraph no. 11 which is reproduced hereinunder:-

“11. We do not think that the statements should have been received in evidence as the appellant had taken no step to produce the persons who made the statements for cross-examination of the respondent. It was the duty of the appellant to have produced these persons whose statements were sought to be proved for the cross-examination of the respondent. In State of Mysore V. S.S. Makapur, this Court said that the purpose of an examination in the presence of a party against whom an enquiry is made, is sufficiently achieved, when a witness who has given a prior statement is recalled that statement is put to him, and made known to the opposite party, and the witness is tendered for cross examination by that party. As the persons whose statements were sought to be relied on were in Delhi and as they were not produced and tendered for cross-examination by the respondent, we think that the inquiring officer was right in refusing to act upon the statements relied on by the appellant. As there was no material before the inquiring officer to show that P.S. Sundaram mentioned in the cheque is P.S. Sundaram, the Deputy Secretary, we think the High Court was justified in holding that these charges had not been proved.”

The Apex Court in case of ***Roop Singh Negi Vs.***



Punjab National Bank and Ors. since reported in (2009) 2 SCC 570 has held that charges cannot be proved on the basis of documents produced but not proved by the department. The charges against the delinquent must be proved on the basis of oral and documentary evidence produced by the department before the inquiry officer. The purported evidence collected during investigation by the investigating officer cannot be treated to be evidence in a disciplinary proceeding. FIR cannot be treated as evidence.

The judgment of **Roop Singh Negi (supra)** has been followed in many subsequent judgments of Apex Court i.e. (2017) 2 SCC 308, (2013) 4 SCC 301 and 2013 (2) SCALE 348 and in these judgments liberty to the department to initiate fresh proceeding for same set of charges has been denied by the Apex Court.

Against the order passed by the Disciplinary Authority, Appellant preferred an appeal before the Principal Secretary/Additional Chief Secretary, Department of Labour Resources, Government of Bihar, who is the appellate authority, but, strangely, same was sent again to the disciplinary authority, i.e., Labour Commissioner to be treated as revision/ review which was also dismissed by order dated 01.12.2016 passed by



Labour Commissioner, Bihar affirming his previous order.

After appellant was dismissed from service and during pendency of appeal/revision a letter dated 03.03.2015 was issued in the name of Assistant Labour Commissioner addressed to the District Magistrate, Bhagalpur, in which opinion was sought from the District Magistrate, Bhagalpur, with respect to appeal/review filed by appellant as D.M. Bhagalpur was his controlling authority and he worked on deputation under his supervision and control and allegations also pertains to his functioning as BDO.

The District Magistrate, Bhagalpur, in his reply dated 01.12.2016 has expressed surprise over initiating the departmental proceeding against the BDO, Sonhaura, Bhagalpur, without any information to the office of District Magistrate, Bhagalpur although he is the controlling authority of the BDO. No explanation was called by the office of District Magistrate, Bhagalpur, from the delinquent-Appellant with respect to said allegations. Even no consultation was made at the time of framing of charge by the parent department.

District Magistrate, Bhagalpur, has enclosed letter of Deputy Collector, Disaster Management Branch, which has been endorsed by the District Magistrate in which the role of



BDO/delinquent in distribution of subsidy has been outlined.

On the basis of circulars issued by the Agriculture Department, BDO has no role in distribution of subsidy and same is to be done on the basis of list prepared by the Gram Sabha, which will be verified by the Gram Sabha and list will be published and pasted in public place and on any complaint made against said list BDO will enquire and send his report to the Gram Sabha and thereafter Gram Sabha may amend or not amend the list and finally publish the list of beneficiaries.

The distribution of subsidy amount within Panchayat Area among farmers is made by Panchayat Secretary, on the basis of final list prepared by Gram Sabha and after payment, Panchayat Secretary submits the list of beneficiary farmers to BDO for purpose of accounting so that D.C. bill could be sent within time.

In view of opinion given by the District Magistrate, Bhagalpur who is the controlling authority of appellant as well as acceptance of defence of delinquent by the inquiry officer that BDO has no role in distribution of subsidy amount or preparation of list of beneficiaries and same is to be done by the Gram Sabha and the Panchayat Secretary and further for the reasons as stated above disciplinary authority could not have



held the charges to be proved and passed order of dismissal on the basis of letter of S.P. Vigilance and FIR as such the order of disciplinary authority dated 11.06.2014 affirmed in review order dated 01.12.2016 is neither sustainable in law nor on fact and are accordingly, set aside. Appellant is entitled for all consequential benefits.

As appellant has already retired from service, this Court is not inclined to give any liberty to the department to initiate any fresh proceeding against the appellant on same set of charges.

For the reasons as stated above, the LPA as well as writ petition is allowed and order dated 08.07.2019 passed by learned Single Judge in CWJC No. 1012 of 2017 is set aside.

Accordingly, this LPA is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.05.2021
Transmission Date	NA

