IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11466 of 1997

==

1. Most. Sumitra Devi W/O Late Ramadhar Singh, Village + P.S.- Sheogori, District- Patna
2. Mahendra Prasad Singh S/O Late Ramadhar Singh, Village + P.S.- Sheogori, District- Patna
3. Shambhoo Prasad S/O Late Ramadhar Singh, Village + P.S.- Sheogori, District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar Through The Secretary, Finance Department, Main Secretariat, Patna
2. The Commissioner Cum Secretary, Finance Department, Government Of Bihar, Main Secretariat, Patna
3. The Director, Treasury And Accounts Cum Additional Secretary, Department Of Finance, Government Of Bihar, Main Secretariat, Patna
4. The Deputy Director, Treasury And Accounts Directorate, Government Of Bihar, Main Secretariat, Patna
5. The District Magistrate Cum The District Treasury Officer, Purnia
6. The Treasury Officer, District Treasury At Purnia

.... Respondent/s

==

Appearance :

For the Petitioner/s : Mr. Arun Prasad Ambastha
For the Respondent/s : Mr. Y.P. Sinha, AAG-15
With Mr. Shankar Kumar, AC to AAG-15

==

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 05-02-2015

1. Heard Mr. Arun Kumar Ambastha, learned counsel for the petitioners and Mr. Y.P. Sinha, learned Additional Advocate General No.15 appearing on behalf of the Respondents State of Bihar.

2. The original petitioner, late Ramadhar Singh was posted as a Counter Clerk in Purnea District Treasury, when on the allegation of certain misconduct committed in course of

performance of his official duties a departmental proceeding was initiated against him, with the issuance of charge-sheet vide office order no. 24 dated 13.5.1997, under the signature of the Director, Treasury and Accounts, Department of Finance, Govt. of Bihar, Patna. There were altogether 12 charges framed against the petitioner. A bare reading of the charges would demonstrate that the main allegation against the petitioner was that he failed to detect fraudulent withdrawals by failing to point out mistake and thus, being negligent while checking the bills. The charges against the petitioner were such that they required to be proved by adducing evidence, oral as well as documentary.

3. This is not in dispute that the petitioner submitted his written statement of his defence, denying the charges. The Inquiry Officer submitted his report on 17.8.1993 which has been brought on record by way of Annexure-6 to the supplementary affidavit filed on behalf of the petitioner. The report of the Inquiry Officer gives the picture as to how the enquiry was conducted by the Inquiry Officer. From the enquiry report it appears that the charges were framed on 15.5.1993 and the original petitioner had submitted his written statement of his defence on 31.5.1993. It appears from the enquiry report that there was absolutely no proceeding held before the Inquiry Officer between 31.5.1993, the date of submission of

written statement of defence by the petitioner till 17.8.1993, the date of submission of the enquiry report. There is absolutely no reference in the enquiry report to any evidence produced by the prosecution/Department in support of the charges in course of the departmental enquiry. It appears from the enquiry report that after the petitioner submitted his written statement of his defence on 15.5.1993, 29.6.1993 was fixed as the date for departmental proceeding. On 29.6.1993 the original petitioner participated in the departmental enquiry. The departmental proceeding concluded on 29.6.1993. It seems that there was no presenting Officer to present the case of the department before the Inquiry Officer. There was no evidence to adduce witness in support of the charge. Naturally, no documents were produced by the prosecution before the Inquiry Officer in support of the charges. There is no mention in the enquiry report as to what kind of enquiry did he conduct, and in what manner, on 29.6.1993 and 30.6.1993.

4. The enquiry report contains total of eight paragraphs. The first three paragraphs are formal in nature and contain brief description of the initiation of departmental proceeding, appointment of the Inquiry Officer and the dates on which the enquiry was conducted. The fourth paragraph contains various charges levelled against the original petitioner. Fifth paragraph

contains the brief description of written statement of defence submitted by the petitioner. It has been mentioned in paragraph 6 that original petitioner stated before the Inquiry Officer that he did not have to say anything more than what he has already stated in his written statement of defence and he did not intend to produce any witness or evidence in support of defence. Paragraph 7 is the opinion of the Inquiry Officer on each charge, upon considering the written statement of defence. It appears that the opinion of the Inquiry Officer as contained in paragraph 7 of the enquiry report is nothing but his own view based on no material. It is in fact parawise comment on the petitioners' written statement of defect. The fact remains that the original petitioner had denied the charges against him and in the absence of sufficient evidence to support the charge, he could not have been held guilty. The Inquiry Officer acting in his own style held the petitioner guilty of all the charges except Charges no. 5 and 6.

5. Paragraph 8 is one line conclusion of the Inquiry Officer to the effect that the petitioner was responsible for fraudulent withdrawal from the ***Purnea Koshagar.*** In my opinion, the Inquiry report on the face of it is perfunctory. There was absolutely no enquiry. The findings are based on no evidence. No action could be taken on the basis of such enquiry report.

6. The Disciplinary Authority agreeing with the findings of the enquiry report imposed upon the original petitioner, punishment of removal from service vide an order dated 29.2.1996. An appeal was preferred against the order of the Disciplinary Authority which was dismissed by an order dated 3.6.1997, communicated to the petitioner vide memo no. 1046 dated 28.6.1997.

7. Aggrieved by the order of the Disciplinary Authority dated 29.2.1996 (Annexure-4) passed by the Director, Treasury and Accounts-cum-Additional Secretary, Department of Finance, Government of Bihar, Patna and the order of the Appellate Authority dated 3.6.1997 (Annexure-5) passed by the Commissioner-cum-Secretary, Finance Department, Government of Bihar, the original petitioner filed the present writ application. This writ application was admitted for hearing by an order dated 20.8.1999. During the pendency of the writ application, the original petitioner died in the year 2009. As the cause of action still survives, he was substituted by his legal heir i.e. wife and two sons.

8. Mr. Arun Prasad Ambastha, learned counsel appearing on behalf of the petitioner challenging the impugned orders of the Disciplinary Authority as well as the Appellate Authority, has submitted that even at the time of issuance of the

charge-sheet, no documents were supplied to the delinquent in support of the charges. Mr. Ambastha, referring to the averment made in paragraph 9 of the writ application submits that the delinquent had made request for supply of related documents, but no such documents were supplied to him. He has submitted that the findings of the Inquiry Officer holding the petitioner guilty of charges are perverse.

9. There is no counter affidavit on record, filed on behalf of the respondents, though learned counsel appearing on behalf of the respondents submits that two counter affidavits had been filed. With the consent of the petitioner the copies of the counter affidavits said to have been filed on behalf of the Respondents State of Bihar, which are in possession of the State Counsel and also in possession of petitioner's counsel have been taken on record. From the said counter affidavits it appears that there is no denial of the fact that no evidence was produced before the Inquiry Officer on behalf of the Department. As a matter of fact, there was none to represent before the Inquiry Officer on behalf of the Department to prove the charges.

10. Learned counsel for the State of Bihar has submitted, referring to the order passed by the Appellate Authority that the delinquent did not deny that defalcation of Rs. 38 lacs had

taken place from Purnea District Treasury by some one, impersonating himself as Messengers of various offices in the same and different names and presenting bills in the Treasury. According to him, the petitioner did not deny that he was Counter Clerk accepting all those bills and submitting it to the Accountant after scrutiny. He has submitted that in such circumstance no further evidence was required to be adduced in course of disciplinary proceeding that the delinquent failed to discharge his duties while scrutinizing the bills. He has submitted that the delinquent failed to satisfy the Inquiry Officer, the Disciplinary Authority as well as the Appellate Authority that he took all possible steps to detect fraudulent withdrawal. He submits that standard of proof required to prove a charge in a departmental proceeding will depend upon the nature of charge levelled against the delinquent and the responsibility assigned to such delinquent. He has contended that in the present case, there being no dispute over fraudulent withdrawal of Rs. 38 lacks through fake bills through fake Messengers, the petitioner cannot take the plea of absence of evidence as regards his negligence while discharging his duties, particularly when acceptance and scrutiny of those bills by the original petitioner in his capacity as Incharge is not in dispute. He has submitted that no further evidence was required for the Inquiry

Officer to reach to the conclusion of petitioner's guilt and he has rightly been punished, keeping in mind the gravity of charge.

11. Much emphasis has been given by the learned counsel for the State on the order of the Appellate Authority in order to submit that the original petitioner was given opportunity by the Appellate Authority to produce evidence, which he did not avail and therefore, according to him, no prejudice can be said to have been caused to the original petitioner even if no evidence could be adduced at the stage of departmental enquiry before the Inquiry Officer.

12. Before I consider rival submissions made on behalf of the parties and pleadings and documents on record, I must refer to an order of this Court dated 13.4.1995 passed in CWJC No. 7286 of 1994 (Binod Bihari Sharan Vs. State of Bihar and ors) which has been brought on record by way of Annexure-7 to the supplementary affidavit filed on behalf of the petitioner:-

> "Accordingly, this application is allowed and the enquiry report contained in Annexure-11, order of dismissal contained in Annexure-13 and the orders passed by the appellate authority contained in Annexure-16 are hereby quashed.
>
> Now the disciplinary authority shall either direct the same very conducting office to hold enquiry or nominate any other person to hold the enquiry. If the petitioner wants copy of any document which has bearing upon the charge a copy thereof shall be supplied to him before the enquiry commences except in relation to those documents which are bulky one and

> so far bulky documents are concerned, an opportunity should be afforded to the petitioner to inspect the same and take relevant extracts therefrom. Thereafter, at first the State shall be asked to adduce evidence whereafter the petitioner shall be given opportunity to adduce evidence in support of his case. After the evidence, the enquiry officer shall submit his report to the disciplinary authority whereupon before passing final order copy of the enquiry should be supplied to the petitioner and thereafter the disciplinary authority shall pass order in accordance with law after giving opportunity of hearing to the petitioner.
>
> Since the petitioner has already superannuated, I direct that the disciplinary proceeding shall be concluded within a period of six months from the date of receipt/production of a copy of this order provided the petitioner cooperates the authorities in concluding the enquiry within the aforesaid time.
>
> With the aforesaid direction, this application is disposed of."

13. Referring to the said order, counsel for the petitioner has submitted that petitioner of that case was Head Clerk-cum-Accountant in the Government Treasury and in the absence of any evidence adduced in course of departmental proceeding, the report of the Inquiry Officer holding him guilty of the charges was quashed.

14. I have perused the memo of charges which have been brought on record by way of Annexure-1 to the writ application. As has been discussed, the charges relate to the petitioner's failure to point out fraudulent withdrawal from Purnea Treasury. The charges make specific reference of the stages where

the petitioner ought to have been careful while scrutinizing bills. The petitioner specifically denied those allegations by filing his written statement of defence. Once he denied the allegation of misconduct levelled against him in the charge-sheet, in my opinion, it was incumbent upon the department to adduce evidence before the Inquiry Officer, oral as well as documentary as the case may be, in support of the charges. Upon perusal of the enquiry report it appears that not even single evidence, oral or documentary was produced by the Department before the Inquiry Officer. As a matter of fact, even a Presenting Officer was not appointed by the Department to conduct the proceeding against the petitioner before the Inquiry Officer. From the enquiry report I find that the Inquiry Officer did everything. He considered the written statement of defence filed by the original petitioner and came to his own conclusion as if he he was acting as a prosecutor. Such procedure is alien to the concept of natural justice and fair play. An enquiry Officer is required to act as an impartial person, exercising quasi judicial function.

15. My view finds support from the law laid down by the Supreme Court in case of ***State of Uttar Pradesh Vs. Saroj Kumar Sinha*** reported in ***(2010) 2 SCC 772***, paragraph 28 of which reads as follows:-

> "28. An inquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

16. In paragraph 30 of the said judgment in case of ***Saroj Kumar Sinha (supra),*** the Supreme Court observed that an inquiry officer has to be wholly unbiased and a departmental enquiry conducted against the Government servant cannot be treated as a casual exercise.

17. This is well established principle that even in a disciplinary proceeding leading to imposition of maximum punishment of removal from service, scrupulous care must be taken to ensure that an innocent is not punished, the principle which is necessarily applied in criminal trial. Reference may be made in this regard to Supreme Court judgment in case of ***Union of India Vs. H. C. Goel*** (***AIR 1964 SC 364).***

18. The plea on behalf of the respondents State of Bihar that the defects at the stage of departmental enquiry before the

Inquiry Officer stood rectified with the absence of the Appellate Order, cannot be accepted for the simple reason that every action of the Disciplinary Authority and the Appellate Authority was based on the report of the Inquiry Officer which is on the face of it not only perfunctory, the findings are without any evidence and is, therefore, perverse. The report of Inquiry Officer therefore, is unsustainable and is accordingly quashed. The order of the Disciplinary Authority dated 29.2.1996 imposing punishment of removal from service on the original petitioner, which is based on the report of the Inquiry Officer, can by natural corollary, shall stand quashed and is accordingly quashed. The order of the Appellate Authority dated 3.6.1997 (Annexure-5) is also quashed.

19. It appears that before the original petitioner Ramadhar Singh died during the pendency of the writ application, he had already attained the age of superannuation. In the facts and circumstances of the case, I do not wish to issue any direction for payment of arrears of back wages which the original petitioner would have been entitled to, to his legal heirs consequent upon the quashing of the impugned orders. I leave this aspect to be decided by the Disciplinary Authority himself i.e. the Director, Treasury and Accounts, Department of Finance, Govt. of Bihar. However, the petitioner shall be paid arrears on all the pensionary benefits which

stood forfeited because of the passing of the impugned orders as if such impugned orders were never passed. The pension and other retiral benefits shall be calculated on the basis of pay which the original petitioner would have been entitled to, had he not been removed from the service by virtue of the impugned order of the disciplinary authority. Arrears of pensionary benefits i.e. pension and gratuity shall be calculated accordingly and paid to the substituted petitioners in accordance with law within a period of six months from the date of receipt/production of a copy of this order.

20. The petitioners shall also be entitled for family pension in accordance with law with effect from the date the original petitioner died. The petitioners shall be required to file a representation before the Disciplinary Authority within a period of one month from today, giving the details as regards the date of death of the original petitioner supported by affidavit and document. The Disciplinary Authority is directed to take a decision as regards payment of back wages within a period of three months from the date of receipt/production of a copy of this order.

21. This application is allowed with the observation as above.

22. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

ArunKumar/-

U			