

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5831 of 1998

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Surendra Kumar, Son of Sri Devendra Prasad Sinha, resident of Mohalla-Babu Tola, Makhania Kuan, Town and District-Patna.

..... **Petitioner/s**

Versus

1. The State of Bihar, through the Commissioner-cum-Secretary, Cooperative Department, New Secretariat, Bihar, Patna.

2. The Bihar State Cooperative Marketing Union Limited through its Administrator, Patna.

3. The Administrator, Bihar State Cooperative Marketing Union Limited, Patna.

..... **Respondent/s**

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Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Singh, Adv.

For the Respondent No. 1 (State) : Mr. Din Bandhu Singh, Adv. (GP-9)

: Mr. Satyasharan Prasad, Adv. (AC to GP-9)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 06-04-2015

Heard the parties.

2. This is an application seeking quashing of the order dated 03.02.1998, issued vide Memo No. 685 under the signature of the Administrator, Bihar State Cooperative Marketing Union Limited, Patna (for the sake of brevity 'BISCOMAUN'), whereby the following punishments have been imposed upon the petitioner:-

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- (i) dismissal from service from BISCOMAUN,
 - (ii) recovery of a sum of Rs.3,40,255.20/- misappropriated/loss caused by him and,
 - (iii) BISCOMAUN will not be entitled for any payment, over and above, the subsistence allowance during the period he was under suspension.

3. The petitioner was Assistant Godown Manager at BISCOMAUN Depot, Mokama in the year 1989 and on the charge of misconduct, said to have been committed by him during the said period, a disciplinary proceeding was initiated with issuance of Charge Memo No. B/2980 dated 16.12.1989. From the said charge memo, which is Annexure-3 to this writ application, it appears that the petitioner is said to have misappropriated fertilizers worth Rs.1,19,690.88/-. It was also alleged against him that because of his lapses, a money suit could not be instituted, which incurred loss to the tune of Rs.1,56,279.74/- to BISCOMAUN. Subsequently, another chargesheet was served upon him through Memo No. B/4582 dated 24.01.1994, making allegation of misconduct with respect to the period during which he was posted as Assistant Godown Manager, Hajipur. It was alleged that he misappropriated Coal worth Rs.1,03,094.94/-.



4. From the records, it appears that the Conducting Officer submitted his report holding the petitioner guilty of the charges levelled against him. The report of the Conducting Officer was supplied to the petitioner through a letter dated 21.04.1993, seeking his comments on the enquiry report submitted with respect to the first set of charges. The said enquiry report has been brought on the record by way of Annexure-35 to the supplementary affidavit filed on behalf of the petitioner. It also appears that upon the comments submitted by the petitioner, the Administrator, BISCOAUN had passed an order dated 16.06.1993, remanding the matter back to the Conducting Officer for re-examination on certain points. It is the petitioner's case that in the light of the order of the Administrator, remanding the matter back to the Conducting Officer, he had submitted necessary fee for compassion of the disputed signature of the petitioner with the admitted signature by the Handwriting expert. According to the petitioner, the report of the Enquiry Officer was never furnished to, him despite demand. The Conducting Officer, thereafter, submitted his supplementary report on 19.01.1996 in the light of the order of the Administrator. The Conducting Officer submitted another enquiry report with respect to the second set of charges,

as mentioned above, on 18.02.1995, holding that a sum of Rs.84,284.68/- was recoverable from him. It is the contention of the petitioner that with respect to the second set of charges, there is no specific finding recorded by the Enquiry Officer that the charges against the petitioner stood proved.

5. On the basis of these three enquiry reports, the disciplinary authority has imposed the punishment of dismissal from service, as noted above, vide his order dated 03.02.1998, which is under challenge in the present writ application. It is submitted on behalf of the petitioner, with reference to the enquiry reports, that the Enquiry Officer, merely on the basis of concerned file, held the charges levelled against the petitioner, with respect to first set of charges, to be proved. He has submitted that the nature of allegations levelled against the petitioner could not have been established in a departmental proceeding without any witness to prove the charges. It has been submitted on behalf of the petitioner that it is the case of no evidence as no witness was examined in support of the charges in course of departmental enquiry. He further submits that the reports of the Enquiry Officers are based on no evidence and the order of the disciplinary authority, based on such reports, should not be allowed to stand.

6. I find force in the submissions made on behalf of the petitioner on the basis of enquiry reports, which have been brought on the record as Annexure to the writ application and supplementary affidavit. I find that no witness was examined to prove the charges. The charges were not such that they could have been proved merely on the basis of documents. It appears that the Enquiry Officer relied upon the contents of the file without anyone proving the contents or the documents themselves.

7. I am, therefore, of the opinion that the decision of the disciplinary authority is based on no evidence. The impugned order dated 03.02.1998, imposing punishment upon the petitioner, is quashed.

8. This application is, accordingly, allowed with all consequential benefits.

(Chakradhari Sharan Singh, J)

Praveen-II/-

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