IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.129 of 1999

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1. Gaurav Kumar Mishra
2. Saurav Kumar Mishra
3. Vaibabh Kumar Mishra

All sons of Late U.C. Mishra, permanent resident of Village-Prasadi Tola, P.O.-Chakauti, P.S.-Jalley, District-Darbhanga.

......................Petitioners

Versus

1. Bihar State Financial Corporation having its office at Fraser Road, Patna through its Managing Director.
2. The Board of Directors of Bihar State Financial Corporation, through its Chairman, having its office at Fraser Raod, Patna.
3. The Managing Director, Bihar Sate Financial Corporation, having its office at Fraser Road, Patna.
4. The Officer-On Special Duty, Bihar State Financial Corporation, having its office at Fraser Road, Patna.
5. Sri A.K. Singh, I.A.S., Member Finance, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
6. Sri Ashok Kumar, Assistant General Manager, Bihar State Financial Corporation, Patna (Enquiry Officer).
7. Mr. Pankaj Kumar Jha, Deputy Manager, Vigilance & Grievance Cell, Bihar State, Finance Corporation, Patna (Presenting Officer).

..................Respondents

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Appearance :

For the Petitioners	:	Mr. Tej Bahadur Singh, Sr. Advocate
		Mrs. Namrata Mishra, Advocate
For the Respondents (BSFC)	:	Mr. Y.V. Giri, Sr. Advocate
		Mr. Raju Giri, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT
Date: 23-03-2015

Heard the parties.

This application has been filed seeking quashing of the order dated 31.12.1996 passed by the Managing Director, Bihar State Financial Corporation **(hereinafter referred to as the 'Corporation')**, whereby, on the basis of an *ex-parte* departmental proceeding, punishment of dismissal from service has been imposed upon the petitioner (since deceased and substituted by legal heirs). The order passed by Appellate Authority dated 26.06.1997, whereby, appeal against the order of punishment of dismissal from service has been rejected is also under challenge. The original petitioner had also sought for his reinstatement in service, with full wages for the period during which he remained under suspension as well as for the period during which he was compelled to remain out of service because of order of dismissal.

The petitioner at the relevant point of time was posted as Branch Manager, Sahabad, Arrah of Bihar State Financial Corporation for the period 1987 to February, 1990. On the allegation of commission of grave financial irregularities against the petitioner, a departmental proceeding was initiated against him with the issuance of chargesheet by the disciplinary authority on 08.09.1995. Following charges were framed against him under Regulation 39 (1) of Bihar State Financial Corporation (Staff) Regulations, 1965:-

> **"1. He, on request dt. 7.7.87 of the fraudulent promoters of M/s Vijaya Industries, I.A. Buxar for release on proforma invoice No. T.E.T/S.P-348/CD-87 dt. 24.6.87 of the machine supplier M/s Tipco Engineers and Traders, Industrial Street No. 9, Samaipur, Badali, Delhi-110042 for supply of machines namely Injection Moulding machine Model-2000-450 with accessories, Dies for PVO Pipe joints & 125 KVA Kirloskar make D.G.Set, inspected the site of the M/s Vijaya Industries, I.A.Buxar on 10.7.87 alongwith Sri R.N. Pandey, Dy. Manager and forwarded the inspection report for release on 11.7.87/20.7.87 to R.M., Patna/AGM (Disb.) H.O, Patna without confirming the advance paid to the machine supplier for Rs. 3,00,000.00 & Rs. 11,00,000.00 through bank statement as per laid down procedure of the Corporation as stated in standing order No. 6/1983-84. From the enquiry report and also from the letter dt. 5.9.95 of Union Bank of India, Fraser Road, Patna, it reveals that the Managing partner of the unit Sri Vijay Kumar had no account with**

Union Bank of India, Azadpur, Delhi and as such the cheque bearing no. 073947 dt. 25.3.87 for Rs. 3.00 laes and 073950 dt. 20.7.87 for Rs. 11.00 lakhs paid to M/s Tipco Engineers and Traders, Delhi as advance drawn on Union Bank of India, Azadpur was never presented and encashed. Hence the receipt no. 324 dt. 25.3.87 and 377 dt. 6.7.87 of M/s Tipco Engineers and Traders, Delhi as against advance paid to them by the fraudulent promoters are fake & fabricated. Thus he gave undue favour to the fraudulent promoters by ignoring the norms of the Corporation/inviolation of standing order no.6 1983-84 para-2.

2. He, in active collusion with the fraudulent promoter and officials of the Corporation reported in his joint inspection report dt. 10.7.87/20.7.87 that besides other assets all the three sets of the machines (Injection Moulding Machine Model 2000-450, Dies & 125 KVA, D.G.Set) had arrived at the site from M/s Tipco Engineers and Traders, Delhi. This led to the disbursement to the tune of Rs. 17.46 lakhs in favour of M/s Tipco Engineers and Traders, Delhi A/c –M/s Vijaya Industries, Buxar. It has now been established that M/s Tipco Engineers & Traders, Delhi was a fake & non-existant machine suppliers and as such they never supplied the machines in question to M/s Vijaya Industries, I.A.Buxar. On detailed enquiry it has been found that the machines for which the payment of Rs. 17.46 lakhs is said to have been made never arrived at

the site.

3. The written statement of M/s Dhillon Transport Agency also proves that the machines in question were never transported to the site. Even then he reported the arrival and availability of the machines at site to cause wrongful gain to himself and to the promoter and to cause wrongful loss to the Corporation.

4. It has now been established beyond doubt that no payments (Rs. 3.00 lakhs and Rs. 11.00 lakhs) were made to M/s Tipco Engineers and Traders, Delhi by the Managing Partner of the firm Mr. Vijay Kumar. Obviously, therefore, no machines were supplied to him by the non existent firm M/s Tipco Engineers yet he reported the arrival and availability of the machines at site with a view to cause wrongful gain to himself and the promoter and to cause wrongful loss to the Corporation.

5. He, in order to justify his wrong and misleading report dt. 10.7.87/20.7.87, directed Sri V.D. Rajak, Dy. Manager (Technical) posted in B.O. Shahabad on 25.7.87 to give his report about the assets available at the site of M/s Vijaya Industries, Buxar on receipt of the two drafts for Rs. 13.41 lacs & Rs. 4.03 lacs from H.O. for payment to the machinery supplier, M/s Tipco Engineers & Traders, Delhi. Sri Rajak in collusion with him and the promoter, Sri Vijay Kumar fell in the same line and reported on 29.7.87 about the arrival of machines from M/s Tipco Engineers & Traders besides others assets at the site.

6. He, thus by his above malafide acts,

> **ignored the set norms of disbursement, connived actively with fraudulent promoters and some of the officials of the Corporation, allowed two drafts for Rs. 13.41 lakhs & Rs. 4.03 lakhs for payment to a non-existent machine supplier M/s Tipco Engineers & Traders, Delhi with ulterior motive for wrongful gain to the fraudulent promoters & himself at the cost of the Corporation in the capacity of Branch Manager, Shahabad."**

It appears from the pleadings on record that the petitioner did not submit his written statement of defence, rather sought for supply of certain documents for the purpose of preparing his defence. Fresh communication was also issued by the Corporation asking the petitioner to submit his written statement of defence, which he admittedly failed to do. The departmental enquiry, thereafter, proceeded *ex-parte*. Copy of the report of inquiry officer was made available to the petitioner for his reactions/comments which he submitted on 16.09.1996. The Disciplinary Authority, on the basis of the report of the inquiry officer, upon considering the comments of the petitioner on the said report, by the impugned order dated 31.12.1996 (Annexure-14) imposed upon the petitioner, the punishment of dismissal from service of the Corporation.

The petitioner preferred appeal under Regulations 40 and 41 of the Staff Regulations before the Board of Directors, Bihar State Financial Corporation, Patna. The Board of Directors, however, confirmed the order of the Disciplinary Authority. The decision of the Appellate Authority was communicated to the petitioner vide letter dated 24.09.1997. This is the circumstances under which the two orders passed by the Disciplinary Authority as well as the Appellate Authority are under challenge in this present writ application.

I have heard Mr. Tej Bahadur Singh, learned Senior Counsel, appearing on behalf of the petitioner/s as well as Mr. Raju Giri, learned Counsel, appearing on behalf of the respondent, Corporation.

Mr. Singh, appearing on behalf of the petitioner/s has, at the very outset, submitted that findings of the inquiry officer holding the charges to have been proved against the petitioner are perverse. He submits that no witnesses were examined by the Corporation before the inquiry officer in support of the charges levelled against him. He thus submits that the documents on which the inquiry officer relied upon were not duly proved before the inquiry officer on behalf of the department. He has submitted that despite the fact that the petitioner has not submitted written statement of defence, it was incumbent upon the Corporation to have proved the charge before the inquiry officer by adducing some evidence. He has further submitted that the Disciplinary Authority while passing the impugned order did not care to consider the petitioner's comment upon the findings of the inquiry officer and passed the order by merely placing reliance upon the findings of the Inquiry officer, without discussing the materials available on the record.

Challenging the order of the appellate authority, Mr. Singh, has submitted that the Disciplinary Authority himself participated in the meeting of the Board of Directors while considering the petitioner's appeal, which was held on 27.08.1997. My attention has been drawn to Annexure-18 in support of the submission and it has been contended that Sri A.K. Singh, the Managing Director, has passed the order of dismissal as the Disciplinary Authority and, at the same time, he participated in the fifth meeting of the Board of Directors of the Corporation on 27.08.1997 in which the petitioner's appeal was also considered. He, therefore, contends that the order of the appellate authority suffers from the personal bias. Mr. Singh has also submitted that for similar charges, one Ram Naresh Pandey was also proceeded against departmentally by the Corporation. Drawing my attention to Charge No. 1, Mr. Singh, has submitted that the name of said Ram Naresh Pandey also figures there which contains the allegation that inspection report was prepared jointly by the petitioner and said Ram Naresh Pandey. He submits that in the departmental proceeding against Ram Naresh Pandey, no witnesses were examined and on that ground alone, this Court quashed the order imposing punishment of dismissal upon said Ram Naresh Pandey, by an order dated 21.01.2000 passed in C.W.J.C. No. 11690 of 1998. He has submitted that the case of the present petitioner is almost identical and is squarely covered by the said order of this Court passed in C.W.J.C. No. 11690 of 1998 dated 20.01.2000. For the benefit of his reference, the order dated 20.01.2000 is being quoted herein below:-

> **“Heard the learned counsel for the parties at length at the admission state.**
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> **It is not in dispute that the petitioner reached the age of superannuation on 30.6.99. But considering the impugned order at annexure-17 and the appellant with the manner**

in which the enquiry was made. It fact, in the instant case, no departmental enquiry was held by examining any witness on behalf of the department. As such there is no question of cross-examination. It appears that in the instance case just on the perusal of the chargesheet and other documents, order of punishment has been passed. Accordingly, impugned order is quashed. Since, impugned order is quashed, the appellate order cannot stand.

Normally, this court gives liberty to the respondents to hold the enquiry afresh in respect of charges, but since in this case, petitioner has already retired from service and the learned counsel for the Corporation very fairly stated that the amount which is alleged to have been embezzled and which is the subject matter of the charges has not been embezzled and the said money is locked in litigation between the parties, this court does not give liberty to the respondents to proceed afresh with the departmental proceeding on the self same charge.

In the peculiar facts of the case, this court does not pass any order of payment of entire salary for the period between the order of dismissal and the date of superannuation of the petitioner, but this court directs at least 50% of the said salary should be paid to the petitioner.

While calculating the post retirement benefits, the Corporation will proceed on the basis that the petitioner was on duty for all those periods and the same should be calculated

> **on that basis. So far as 50% salary is concerned, the same should be paid to the petitioner within three months from today.**
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> **This writ petition is thus, disposed of.”**

Mr. Giri, learned Counsel appearing on behalf of the respondent-Corporation, while resisting the relief sought in the writ application and opposing the contentions made on behalf of the petitioner, has submitted that the petitioner failed to submit his written statement of defence and he allowed the departmental enquiry to be held *ex-parte*. He, accordingly, submits that non-filing of written statement of defence, amounted to non-rebuttal of charges levelled against him. He, accordingly, submits that no fault can be found with the report of the inquiry officer which is based on records of the Corporation. He has also submitted that the documents, which the petitioner had sought for after service of charges and memo upon him, were supplied to him. According to him, the petitioner cannot take a plea of violation of principles of natural justice after having failed to submit his written statement of defence. He has also submitted that strict rules of evidence are not required to be strictly followed in a departmental proceeding and the Inquiry officer, on the basis of the documents available before it, rightly applied the standard of preponderance of probabilities and came to conclusion that the charges levelled against stood proved. He has further submitted that the charges against the petitioner were grave involving serious financial irregularity and punishment of dismissal from service is proportionate to the alleged charges. Mr. Giri, however, has not disputed the fact that no witness was examined in support of the charges levelled against the petitioner, before the inquiry officer.

I find substance in the submission made on behalf of the petitioner/s that the charges levelled against the petitioner were such that it could have been proved only by production of the witnesses. The Corporation, admittedly, did not examine any witnesses in support of the charges. The documents which were produced before the inquiry officer ought to have been proved. The contents of such documents/reports available before the inquiry officer should also have been proved. Mr. Singh, has rightly placed reliance upon Supreme Court's decision in a case of **"STATE OF UTTAR PRADESH AND OTHERS *VERSUS* SAROJ KUMAR SINHA"** reported in **"(2010) 2 Supreme Court Cases 772"** in support of his plea that since no oral evidence was taken and the documents were not duly proved, the charges could not be said to have been proved merely on the basis of the records submitted by the presenting officer before the inquiry officer. Paragraph No. 28 of the said judgment is relevant and being quoted herein below:-

> **"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."**

I find force in the submissions made on behalf of the petitioner/s that a duty was cast upon the Corporation, if it wanted to prove the charges before the inquiry officer, to have adduced oral and documentary evidence in support of the charges, despite the fact that the petitioner was not participating in the departmental enquiry. I am, therefore, of the opinion that findings of the inquiry officer are based on no evidence and are perverse. The order of the Disciplinary Authority dated 31.12.1996, which is based on the report of the inquiry officer, cannot be accordingly sustained and is, accordingly, quashed. The order of the appellate authority communicated to the petitioner/s, through a letter dated 24.06.1997, is also quashed. This application is, accordingly, allowed.

Following the order of this Court passed in **"C.W.J.C. No. 11690 of 1998 dated 20.01.2000"** in a case of **"Ram Naresh Pandey vs. Bihar State Financial Corporation & Ors."**, it is directed that the petitioner/s shall be entitled for the payment for 50% of the salary which the deceased employee would have been entitled to, had he been in service.

Since the order of dismissal is being set-aside, without remand, it is directed that the respondents shall consider payment of full wages to the petitioners, for the period during which the original petitioner remained in suspension. Such decision must be taken by the Corporation within a period of six months from today. The other entitlements, i.e., 50% of the salary and post retiral death benefits, as have not been paid, shall be calculated and paid to the petitioners accordingly, within a period of three months from the date of receipt/production of a copy of this judgment.

It goes without saying that the heirs of these petitioners shall be entitled for all other consequential benefits arising out of quashing of order of dismissal.

(Chakradhari Sharan Singh, J)

Praveen-II/-

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