

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5402 of 2007

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Tara Shankar Mishra, son of Sri Ganga Mishra, aged about 53 years, resident of Village and P.O.- Karnamepur, District- Bhojpur.

.... Petitioner

Versus

1. Bihar State Financial Corporation, Fraser Road, Patna through its Managing Director.
 2. The Board of Directors of Bihar State Financial Corporation, Fraser Road, Patna through its Chairman.
 3. Sri Subhash Sharma, son of name not known, presently posted as Chairman, Bihar School Examination Board, Sinha Library Road, Patna.
 4. Sri Ashok Kumar, son of name not known, Assistant General Manager, Bihar State Financial Corporation, Fraser Road, Patna Respondents
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Appearance :

For the Petitioner/s : Mr. NITU KUMARI
Mr. Alok Kumar Verma
For the Respondent/s : Mr. Y.V.GIRI

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 30-09-2015

The petitioner joined the services of the Corporation on 07.07.1976 as Statistical Assistant. In the year 1982, he was promoted to the post of Assistant Office Superintendent, and in 1986 to the post of Assistant Manager in Bokaro Branch of Bihar State Financial Corporation (hereinafter referred to as 'the B.S.F.C.').

2. The petitioner prays for following reliefs:

(a) For quashing of the order dated 02.07.1996 by initiating departmental proceeding.

(b) For quashing of the order dated 22.08.2001, passed by the Managing Director of the Bihar State Financial

Corporation, whereby he has been dismissed from service.

© For setting aside the order dated 16.09.2005, passed by the Appellate Authority, i.e. the Board of Directors of Bihar State Financial Corporation.

(d) For grant of all consequential reliefs that may arise in the facts and circumstances of the case.

3. The relevant facts necessary for disposal of this case in short is as follows:

(i) One Naresh Prasad Sinha submitted an application for financial assistance to start a business of wooden furniture at Balidih, Bokaro at Balidih, Bokaro Steel City. His application for loan was rejected on 20.11.1986 presumably because of the location of the proposed business site. He thereafter offered another business premises situated at Siwandih, Bokaro Steel City. One Murlidhar Mishra, a class-III employ in the Bokaro Branch office was directed to make the local inspection of the land. He inspected the site and submitted his report, which is part of Annexure-2. the report of Murlidhar Mishra is quoted herein below for easy reference:

“As per order dated 26.11.96 I had visited the site of Shri Naresh Prasad Sinha at Sivandih, B.S. City. The details of the land and room size are here as under:-

Khata no. 7 joint

Plot no. 202

Area 5 decimals

Mohala Sevandih (Near Singh Hotel)

The said khata no. & plot may be verified from original deed before legal documentation.

This is for your information & n.a.

Sd/

(Murli Dhar Mishra)”

(ii) In view of the report, one D. Singh, Deputy Manager, recommended for sanction of Rs.12,000/- under C.L.S. Scheme to be paid in 40 equal monthly installments of Rs.300/-. It was further mentioned in his note-sheet that T.S. Mishra/M.D. Mishra would verify other papers and place S.L. for issue. The Branch Manager accordingly sanctioned loan for a sum of Rs.12,000/-.

Pursuant to the report of D. Singh, Deputy Manager, the petitioner made a note addressed to Deputy Manager stating that the promoter has executed legal papers, which are in order. Thereafter on the recommendation of Deputy Manager, the Branch Manager granted approval for release of a sum of Rs.9,000/- to the promoter with stipulation that cheque may be issued in the name of machine supplier on 09.12.1986.

(iii) In August 1996, one P.K. Jha, Deputy Manager (C &V) conducted a local inspection and submitted his report on 27.08.1996 that no manufacturing unit exist at Siwandhi, for which



loan was sanctioned and disbursed. On report of P.K. Jha, a departmental proceeding was initiated against the petitioner as well as the then Clerk Murlidhar Mishra, the then Deputy Manager, Devendra Singh, and the then Branch Manager, R. Haque etc. The petitioner was proceeded for the following charges:

“(i) He, deliberately ignored to verify the documents of the plot of land on which the unit M/s Naresh Pd. Sinha was to be established vis-à-vis site inspection report by Sri M.D. Mishra, and processing of proposal by Sri D. Singh at the time of scrutiny of legal papers. The site inspection report indicates that the unit was to be set up at Siwandih, whereas the said deed indicates that the details of land exist at Village Haisabattu and not at Siwandih, which he did not point out for his wrongful gain.

(ii) He, in collusion with the promoter, receipted the cheque bearing no. 003311 dated 9.1.286 on 9.12.86 for retirement of the machine from supplier, M/s Machico Metal and Machine, Calcutta and handed over the said cheque to the fraudulent promoter on 9.12.86 itself without retiring the machines in question. Further to cover-up his misdeeds, he submitted a wrong and misleading report dated 23.2.87 i.e. nearly after 2 ½ months, that the machine in question have been arrived at the site which now has been established as non-existent.

(iii) The charges clearly establish that due to the above said malafide action, the Corporation has

been subjected to a financial loss equivalent to balance outstanding amounting to Rs.0.27 lakh.”

(iv) The conducting Officer, on completion of enquiry, submitted his report dated 30.01.1997 to the disciplinary authority i.e. Managing Director, B.S.F.C., holding the petitioner guilty of charge nos.1 and 3. The charge no.2 was held only partially proved, as first part of charge no.2 was not established. The Managing Director vide letter, dated 01.02.1997, enclosing the enquiry report, sought comments of the petitioner with respect to findings recorded therein. The petitioner submitted his explanation on 14.02.1997 (Annexure-8) stating that the findings are incorrect and no charge would be made out against him. The Managing Director of the Corporation, not being satisfied with the explanation of the petitioner, inflicted punishment of dismissal from service on 22.08.2001 (Annexure-9). The petitioner filed appeal (Annexure-11) before the Board of the Corporation. As the appeal remained pending for quite some time, he filed C.W.J.C. No. 2530 of 2003, which was disposed of on 23.06.2003 (Annexure-12) by a learned Single Judge directing the respondents to dispose of the appeal within four months. The Corporation finally dismissed the appeal on 16.07.2003, which was communicated to the petitioner vide letter no. 860, dated 01.08.2003

(Annexure-13).

(v) Being aggrieved, the petitioner moved this Court in C.W.J.C. No. 12543 of 2003. The writ application was disposed of on 13.01.2014 with a direction to the Appellate Authority to re-decide the appeal within three months by a speaking order as hardly any reasons were assigned for dismissing the appeal. The appeal was again decided on 16.09.2005 and hence this writ application.

4. While assailing the validity of the impugned action, the petitioner submits that no enquiry in the eye of law was held and he was denied reasonable opportunity of defending himself. Enquiry was completed in one seating. The contents of the documents were not proved by examining any witness nor the documents were tendered in accordance with the procedure. The conducting officer himself acted as a prosecutrix and fished out the materials from the records and held him guilty. A copy of the inspection report, assets, verification report, which form the basis for holding him guilty, were not provided. The enquiry report is based on the local inspection report of P.K. Jha on 27.08.1996, which was not made available to him. Apparently there was serious infirmity in the enquiry report, as the respondents did not act on it for five years, till the incumbent Managing Director, who was holding the post as an Additional charge, found him guilty and inflicted punishment of dismissal.



5. The respondents have supported the impugned actions and submits that due procedure of departmental proceeding was followed. All relevant documents were provided to the petitioner. The petitioner in collusion with others did not verify the site to confirm that the site inspection report of M.D. Mishra and the processing report by D. Singh tallied with the plot of land. He submits that P.K. Jha in his report, dated 05.07.1995, stated that no manufacturing unit exists at the site approved at Siwandhi, for which permission was granted.

6. The petitioner in his reply has to offer the following explanations against the proved charges:

(i) Charge No.1: In respect of the charge, the petitioner stated that the extracts of the documents, which were made available, nowhere mentioned that the land in question, where the industry was to be set up was in village Haisabattu and not at Siwandih. As per letter dated 28.11.1986 of the Managing Director, the approach road was to be verified by the Branch Manager and the certificate to the aforesaid effect was to be signed by him. He had no role to play either at the time of site inspection or at the time of sanction of loan of Rs.12,000/-. He only got the documents executed in the prescribed proforma, as per the details mentioned in the sanctioned letter and the documents available in file, complying with



the instructions of the Deputy Manager and the Branch Manager. The Conducting Officer relied upon a confidential report of Sri P.K. Jha, dated 05.07.1996, which did not form part of the memo of evidence and a copy of which was also not supplied to him. Even as per the alleged report, there exists a building on the said land at Siwandih, which in the opinion of Shri P.K. Jha may not have existed when the loan was taken and verification of arrival of machines were made by the petitioner.

(ii) Charge No.2: As the part of charge no.2 was not found proved, the petitioner understandably confined his explanation to the second part of charge no.2. He states that the conducting officer merely on the basis of report of P.K. Jha observed that without retiring the materials, the verification report was made out and payment was made. The petitioner submits that there is no cogent material except the report of P.K. Jha of the year 1996 that amount was paid without receipt of machine in the year 1986. The charge according to him is practically based on no evidence.

(iii) Charge No.3: The petitioner states that the allegation of loss of Rs.27,000/- to the Corporation is baseless. In fact, as against the disbursed loan of Rs.9000/- the Unit had already paid a sum of Rs.16,800/- and a sum of Rs. 3566/- was to be recovered only. The conducting Officer intentionally over-looked the fact that small

disbursed loan of Rs.9,000/- was guaranteed by two regular employees of the Hindustan Steel Construction Limited and Bokaro Steel Limited and could have easily recovered the unpaid loan.

7. I have heard the counsel for the parties. The allegations against the petitioner is that he failed to verify the documents of the plots of land on which the unit was to be established vis-à-vis the inspection report by M. D. Mishra, further processed by Sri D. Singh, the then Deputy Manager. Furthermore, without retiring the materials, verification report was made. It was also alleged that the site inspection report indicated that the unit was to be set up at Siwandih, whereas the sale deed indicated that the details of land existed at village Haisabattu. At this juncture, it would be appropriate to notice the relevant notings in the file leading to the sanction and disbursement of loan to the promoter.

“B.M.

Notes at pre page.

The promoter has changed its site to Plot No.202, Khata No. 7 in the house of Sultan Ansari at Sewandhi, Balidih, B.S. City. The proposal may now be reopened and requirements may be seen as under:-

(A) Plant & Machineries

- | | |
|------------------------|----------|
| 1. Small Motorized | 7,630=00 |
| 12” size Band Saw with | |



1 H.P. Motor	
2. Carpentry Toll 1 set	<u>1,370=00</u>
	9,000=00
(B) <u>Working Capital</u>	
Wood – 20 C.ft.	2,000=00
Adhesives	100=00
Ply etc.	<u>900=00</u>
	3,000=00
Total (A + B)	Rs. 12,000=00

A sum of Rs.12,000/- may be sanctioned to Shri Naresh Pd. Sinha under C.L.S. The loan will be repaid in 40 equal monthly instalments of Rs.300=00 each and existing rate of interest will be charged. Shri T.s. Mishra/M.D. Mishra may verify other papers & places S.L. for issue.”

A loan of Rs.12,000/- (Rupees Twelve Thousand) is sanctioned to Sri Naresh Prasad Sinha under Composite Loan Scheme. Rest as proposed as at ‘A’ on the bottom of preceeding page.

Reyazul Haque

26/11/86

Dy. Manager

As per orders above the sanction letter has been prepared and placed in the file may be seen and issued.

T.S. Mishra

2.12.86

B.M.

Notes above.

S.L. in duplicate is placed for approval.

D. Singh

2.12.86

B. K. Gupta

4.12.86”

8. It appears from the notings that the site inspection was primarily the job of Murlidhar Mishra and D. Singh (the Deputy Manager). The petitioner's job was to check the papers for documentations, for which a format was prescribed by the Corporation. There is no allegation that the petitioner did not do the documentations, nor there is any allegations that the documentations were defective. Furthermore, the materials on record do not demonstrate that the details of the land in the file with respect to which documentations were done was at Haisabattu and not at Siwandih. The allegation of charge is primarily founded on the report of Shri P.K. Jha dated 05.07.1996, which was not made available to the petitioner. Again on report of Sri P.K. Jha of 1996, it was assumed that money was advanced to promoter without verifying that the materials had been delivered at the premise, which is too based on the inspection carried out 10 years latter. There is no dispute to the fact that the enquiry was conducted in one seating and no witness was examined on behalf of the department in support of its charge. Shri P. K. Jha in his report did not state that no such building exist at the site

on which the unit was approved for being established. His opinion is no better than speculation that such building may not have existed on the date of inspection. There is nothing on record to establish that the machine was not received in the year 1986, for which a loan was granted, save and except the report of Shri P. K. Jha of 1996, prepared behind the back.

9. It is true that in the matter of departmental enquiry one would not enter into sufficiency or otherwise of materials, upon which the enquiry officer or disciplinary authority arrive at the finding of guilt, but the court would interfere, if it comes to the findings that the very charges are misplaced vis-à-vis the delinquent or where there is no enquiry worth the nature or there is violation of Principles of natural justice, which is more or less the position in the instant case. The enquiry was conducted in one seating; no witness was examined on behalf of the department to prove the evidence nor the vital report of Shri P.K. Jha was made available.

10. Situated thus and in view of the facts noticed in the forgoing paragraphs, I am of the view that the respondents have not been able to bring home the charge no.1 and 2 against the petitioner. As charge no.3 is based on charge Nos. 1 and 2, the same also falls.

11. Once, I have come to the finding that the charges

are not proved, the next issue would be as to what relief the petitioner would be entitled to. The Hon'ble Apex Court in case of G. M., Haryana Roadways V. Rudhan Singh, reported in (2005) 5 SCC 591 held that there is no rule of thumb that in each and every case, where a finding is recorded by a Court or tribunal that the order of termination of service have been declared illegal, the employee is entitled to full back wages. The Hon'ble Apex Court in case of U.P. SRTC Vs. Mithu Singh, reported in (2006) 7 SCC 180 observed that while dealing with the prayer of back wages, factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate court/tribunal. There is no averment in the petition as to whether the petitioner was gainfully employed in the intervening period subsequent to his dismissal. In view of the above, as well as the facts of the case, it would serve the ends of justice, if the petitioner is reinstated with 50% of back wages with consequential benefits, but without interest. The impugned order passed by the disciplinary authority and the appellate authority are set aside.

12. The writ application is allowed to the extent mentioned above.

(Samarendra Pratap Singh, J.)

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