

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11512 of 1998

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Ram Naresh Choudhary S/o Gope Choudhary (deceased) resident of Mohalla Akbarpur, PO & PS Rohtas district Rohtas, at present Accounts Clerk in Bihar State Agriculture Marketing Board, Patna

.... Petitioner

Versus

1. The State of Bihar through the Secretary-cum- Produce Commissioner, Agriculture Department, Government of Bihar
2. The Bihar State Agriculture Marketing Board, through the Managing Director, Agriculture Department, Government of Bihar, Pant Bhawan, Patna
3. The Managing Director, Bihar State Agriculture Marketing Board, Pant Bhawan, Bailey Road, Patna
4. The Director, Vigilance, Bihar State Agriculture Marketing Board, Pant Bhawan, Bailey Road, Patna
5. The Director of Marketing Board, Bihar Agriculture Department, Pant Bhawan, Patna
6. The Secretary, Bihar State Agriculture Marketing Board, Pant Bhawan, Bailey Road, Patna
7. The Under Secretary, Bihar State Agriculture Marketing Board, Pant Bhawan, Bailey Road, Patna

.... Respondents

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Appearance :

For the Petitioner : Mr. Shailendra Kumar Sinha, Advocate

Mr. Raj Kumar, Advocate

For the Respondents: Mr. Manish Kumar, GP 8

Mr. Prashant Kr. Choudhary, AC to GP 8

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 13-03-2015

Heard Mr. Shailendra Kumar Sinha, learned counsel for the petitioner, and Mr. Manish Kumar, learned GP 8, appearing on behalf of the respondents.

2. The petitioner was working on the post of Accounts Clerk in Bihar State Agriculture Marketing Board, Patna (hereinafter referred to as the Board) when he



preferred the present writ application under Article 226 of the Constitution of India seeking a direction to the respondents to pay him arrears of salary for the period commencing from 01.06.1984 to 12.06.1984 and 13.06.1984 to 08.10.1989 during which he was under suspension. The petitioner also sought for a direction to pay him such arrears after giving him the benefit of grant of Junior Selection Grade and Senior Selection Grade in terms of the office order dated No. 531 dated 07.10.1996 and office order No. 04 dated 06.01.1997.

3. During the pendency of the writ application, the Disciplinary Authority, by an order dated 13.07.1999, imposed punishment upon the petitioner of "censure" and ordered that he would not be entitled for any further payment over and above the subsistence allowance during the period he remained under suspension. It has been stated at the Bar that the petitioner attained the age of superannuation and has retired in the month of February, 2010.

4. The petitioner, by way of amendment in the writ application through I. A. No. 9537 of 1999, had sought to challenge the office order No. 857 dated 13.07.1999 passed by the Disciplinary Authority, i.e., the Managing Director of the Board. This court vide order dated 06.08.1999 allowed the amendment petition and this is how the order dated

13.07.1999 (annexure-11 to I.A. No. 9537 of 1999) is under challenge in the present writ application.

5. Certain facts are not in dispute.

6. A disciplinary proceeding was initiated against the petitioner with the charge that he, in his capacity as Accounts Clerk, was custodian of cheque books in the office of Executive Engineer and he used to present the cheques before the Executive Engineer for his signature for payment of bills. It was detected that two cheques were missing from the cheque book and upon enquiry it was found that using those two cheques a total sum of Rs.1,44,700/- was fraudulently withdrawn from Motijheel branch, Muzaffarpur of Canara Bank. On the charge of petitioner's involvement in such withdrawal, a disciplinary proceeding was initiated. Simultaneously a first information report was registered in this regard vide Muzaffarpur Town PS case No. 1078/84. An enquiry officer was appointed by the Disciplinary Authority to enquire the charge and submit report. The Enquiry Officer, it appears, submitted his opinion on 28.08.1989, keeping in view the nature of allegation and dispute, that result of the criminal case should be awaited and the departmental enquiry should be kept in abeyance. It appears from pleadings and annexures in the writ proceeding that the departmental enquiry did not move thereafter.

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Subsequently, the petitioner stood acquitted in the criminal trial by judgement and order dated 27.09.1996 passed by learned Judicial Magistrate, 1st class, Muzaffarpur in Trial No. 459 of 1996 on the ground that the prosecution could not prove the charge against the petitioner beyond all reasonable doubts. Thereafter, the petitioner was informed by a letter dated 23.01.1999 (annexure-13) by Sri Krishna Kumar, Under Secretary, that he had been appointed as the Enquiry Officer and, therefore, the petitioner should appear before him on 15.02.1999 for submitting his defence/ explanation. The petitioner appeared before the Enquiry Officer, Sri Krishna Kumar, as would appear from annexure-14, which is report of the Enquiry Officer. The Enquiry Officer, relying upon the findings of the criminal court, exonerated the petitioner of the charge leveled against him in the departmental proceeding and submitted his report dated 27.05.1999, to this effect.

7. The Disciplinary Authority, purportedly on the basis of report of Enquiry Officer imposed the punishment of "censure" upon the petitioner by the impugned order dated 13.07.1999 with further stipulation that the petitioner would not be entitled for any payment over and above subsistence allowance for the period during which he had remained under suspension.

8. A counter affidavit has been filed on behalf of the respondent-Board. In the counter affidavit the facts, as noted above on the basis of pleadings in the writ application, have not been disputed. Paragraph 14 of counter affidavit reads thus:-

"14. That the Board while accepting the report of departmental enquiry awarded punishment to the petitioner mentioned in annexure-11 of the writ application".

9. It has been stated in the counter affidavit that exoneration of the petitioner of the charge in criminal trial will not amount to exonerating him from the charge of misconduct and administrative lapse on his part, causing huge loss to the Board.

10. Learned counsel for the petitioner has submitted that there is no finding of guilt with respect to the charge leveled against the petitioner, in the disciplinary proceeding, by the Enquiry Officer. He submits that earlier an Enquiry Officer on 28.08.1989 had opined that the disciplinary proceeding should be kept in abeyance till conclusion of the criminal trial. He contends that the said view of the Enquiry Officer was accepted by the Disciplinary Authority and accordingly the departmental enquiry did not proceed thereafter. He submits that only after conclusion of trial, with the passing of judgement dated 27.09.1996 and



dismissal of Government Appeal No. 41/1997 preferred against the judgement of trial court on 22.10.1997 another person, namely, Krishna Kumar was appointed as Enquiry Officer on 16.01.1999. The Enquiry Officer submitted his report on 17.05.1999 (annexure-14) but he did not come to a finding that the petitioner was guilty of the charge of misconduct leveled against him in the disciplinary proceeding. The Enquiry Officer, on the other hand, based his decision on the findings of the trial court in criminal case and came to a conclusion that nothing remained to proceed against the petitioner in the departmental proceeding. Learned counsel for the petitioner submits that if the Disciplinary Authority accepted the report of the Enquiry Officer dated 27.05.1999, he had no occasion to impose any punishment upon the petitioner since there was no finding of proven misconduct against the petitioner in the report of the Enquiry Officer. He submits that if the Disciplinary Authority wanted to differ with the report of the Enquiry Officer, he ought to have given an opportunity of hearing to the petitioner before imposing any punishment. He, accordingly, submits that the impugned order dated 13.07.1999 is illegal and suffers from vice of perversity.

11. Learned counsel appearing on behalf of the respondents, on the other hand, has submitted that the



Disciplinary Authority rightly punished the petitioner for misconduct alleged against him on the basis of available evidence on records of the departmental enquiry. He has submitted that the petitioner's acquittal in criminal trial by giving him benefit of doubt will not lead to his automatic exoneration from the charge in the departmental proceeding. He submits that standard of proof of charge in a disciplinary proceeding is substantially different from that of a criminal trial. He has contended that on the basis of preponderance of probabilities the Disciplinary Authority rightly came to a conclusion that the petitioner was guilty of the charge. However, in the facts and circumstances, of the case the Disciplinary Authority imposed upon the petitioner minor punishment of "censure". In support of his submission he has relied upon a Supreme Court judgement reported in **(2013) 2 SCC 598 (Inspector General of Police v. S. Samuthiram)**.

12. After having considered the rival submissions and the pleadings on record, it is evident that the impugned order dated 13.07.1999 passed by the Disciplinary Authority is purportedly based on the report of the Enquiry Officer. The report of the Enquiry Officer dated 27.05.1999 has been brought on record by way of annexure-14 to I. A. No. 9537 of 1999 which fact has not been disputed. Upon perusal of

the report of the Enquiry Officer, I find that the Enquiry Officer has not held the petitioner guilty of the charge leveled against him in the departmental proceeding. He has rather, relied upon the findings of the trial court, and exonerated the petitioner of the charge in the departmental proceeding. There is no recital in the impugned order dated 13.07.1999 passed by the Disciplinary Authority, which can be said to be a finding on the petitioner's proven misconduct. If the Disciplinary Authority wanted to take a different view over the proof of misconduct against the petitioner, than that of the enquiry, it was incumbent upon him to have issued tentative notes of disagreement with findings of the Enquiry Officer and to have given the petitioner an opportunity to deal with such tentative notes of disagreement. There was no finding before the Disciplinary Authority on the basis of which he could have, while agreeing with the report of the enquiry, found the petitioner guilty of the charge and punished him. I am of the view that the Supreme Court judgement in the case of *Inspector General of Police v. S. Samuthiram* (supra) has no application, in the facts and circumstances of the present case. In the present case, even in course of the departmental proceeding, the Enquiry Officer has not found the petitioner guilty of the charge. Unless there is specific finding, as regards misconduct of an employee, the

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Disciplinary Authority cannot punish him. I am, therefore, of the view that the order dated 13.07.1999 (annexure-11) passed by the Managing Director of the Board cannot be sustained and is, accordingly, quashed. The petitioner will be entitled for all consequential benefits consequent upon quashing of the order dated 13.07.1999 including payment of salary during which he remained under suspension.

This writ application is, accordingly, allowed with a direction to the Respondents to pay to the petitioner, the salary for the period in question within a period of three months from the date of receipt/ production of a copy of this order.

There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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