# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Civil Writ Jurisdiction Case No.2577 of 1999**

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Md. Nafis S/o Late Md. Zahir, resident of Mohalla, Tarni Prasad Lane, Paschim Darwaja, PS Khajekalan District Patna

.... .... Petitioner

Versus

1. The Bihar State Financial Corporation through its Managing Director, Frazer Road, Patna
2. The Board of Directors of the Bihar State Financial Corporation, through its Chairman, Patna
3. Managing Director, Bihar State Financial Corporation, Frazer Road, Patna
4. Ashok Kumar Singh S/o name not known, the then Managing Director of the Bihar State Financial Corporation and presently Member Finance, Bihar State Electricity Board
5. Ashok Kumar S/o name not known, Assistant General Manager, Bihar State Financial Corporation, Fraser Road, Patna

.... .... Respondents

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**Appearance :**

For the Petitioner : Mr. Manik Vedsen, Advocate

For the Respondents: Mr. Raju Giri, Advocate

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

ORAL JUDGMENT

**Date: 03-04-2015**

An order dated 07.06.1997 passed by the Managing Director, Bihar State Financial Corporation, Patna (hereinafter referred to as the Corporation) whereby, punishment of dismissal from service has been imposed upon the petitioner, who was a Dy Manager under the Corporation, is under challenge in the present writ application under Article 226 of the Constitution of India. The said order of the Disciplinary Authority dated 07.06.1997 has been affirmed by the Appellate Authority, that is, the Board of Directors and a decision to this effect has been communicated to the petitioner through letter dated 01.02.1999, dismissing the petitioner’s appeal. The decision of the Appellate Authority, i.e., the Board of Directors of the Corporation communicated to the petitioner through letter dated 01.02.199 is also under challenge in the present writ application.

2. The facts relevant for the adjudication of the present case are not in dispute. A disciplinary proceeding was initiated against the petitioner with service of charge sheet upon him through memo No. 144 dated 26.07.1996 issued by the Managing Director of the Corporation (in short the Disciplinary Authority) containing following charges:-

> *“1. He, in collusion with the promoter of M/s Maurya Electrical, Phulwarisharif, Patna and machine supplier intentionally made payment of Rs. 56,000/- on 26.12.89 to a fake and non-existent machine supplier, M/s Technical Fabrico India, Patna and obtained incomplete false bills and challan causing huge loss to the Corporation and this fact gets substantiated by the written statement dated 18.05.1990 of partners of machine supplier, M/s Technical Fabrico India, Patna.*
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> *2. The above charge clearly establish that due to his connivance with fraudulent promoter and machine supplier along with malafide action and dereliction of duties, the Corporation has been subjected to a substantial financial loss”.*

3. The petitioner was directed to file show cause reply before the Conducting Officer within three weeks from the date of service of the charge sheet as to why necessary action be not

taken against him. This is not in dispute that for the same allegation, as contained in the charge sheet, a criminal case was also instituted against the petitioner.

4. From the pleadings, it appears that the petitioner requested the Disciplinary Authority not to proceed with the departmental enquiry till conclusion of criminal case instituted against him on the basis of same set of facts as any stand, which might be taken by him in course of departmental enquiry, would be prejudicial to his defence in the criminal case. The petitioner approached this court by filing CWJC No. 12254 of 1996, seeking stayal of the departmental proceeding till conclusion of criminal case. This court by an order dated 13.02.1997 did not accede to the petitioner's plea and dismissed the writ application. It was, however, observed by this court that the petitioner must file his show cause reply before the Conducting Officer so that disciplinary proceeding could be disposed of without any delay. In the meanwhile, the Conducting Officer on 08.01.1997 had submitted his report in an *ex parte* enquiry holding that charge against the petitioner stood proved. The petitioner had preferred an intra court appeal under Letters Patent of this court vide LPA No. 214 of 1997 against the order of this court dated 13.02.1997. The said appeal was also dismissed by an order dated 03.04.1997.

It appears from the pleadings as well as documents brought on record that after dismissal of CWJC No. 12254 of 1996, the petitioner was again asked by the Disciplinary Authority/ Conducting Officer to file his show cause reply in the departmental proceeding by 28.02.1997 before the Enquiry Officer. The petitioner, however, did not do so, more probably because his appeal preferred under Letters Patent of this court being LPA No. 214/1997, against the order passed in CWJC No. 12254 of 1996, was pending. The Conducting Officer, thereafter, proceeded with the enquiry and again submitted his report on 19.03.1997 observing that since the petitioner did not submit anything to defend his case, there was no occasion for him to make any change in the enquiry report already submitted by him on 08.01.1997. The said enquiry report dated 19.03.1997 as well as the earlier report of the Enquiry Officer dated 08.01.1997 were supplied to the petitioner by the Disciplinary Authority through letter dated 31.03.1997, seeking his comments upon the findings of the Enquiry Officer. Evidently, the report of the Enquiry Officer dated 31.03.1997 was sent to the petitioner when the petitioner's appeal being LPA No. 214 of 1997 was pending, which was subsequently dismissed on 03.04.1997. The petitioner through his letter dated 07.04.1997 addressed to the Disciplinary

Authority requested for supply of certain papers which, according to him, were required for the purpose of making his comments on the report of the Enquiry Officer. By a letter dated 11.04.1997, the petitioner was asked by the Disciplinary Authority to submit his comments on the report of the Enquiry Officer by 21.04.1997, which was subsequently extended to 29.04.1997. The petitioner submitted his comments upon said enquiry report on 29.04.1997, which has been brought on record by way of Annexure-22 to the writ application. In the said reply/comments he specifically denied the charge leveled against him and submitted that there was no concrete evidence before the Conducting Officer on the basis of which he could have reached to the finding that the charge against the petitioner stood proved. He pleaded before the Disciplinary Authority that the partners of M/s Technical Fabrico India, Patna were not produced as witnesses and there was no material on the basis of which the finding, as arrived at by the Conducting Officer, could have been arrived at.

5. The Disciplinary Authority, however, was not convinced with the petitioner's comments upon the findings of the Enquiry Officer and by the impugned order dated 07.06.1997, came to a finding that the petitioner acted in a manner detrimental to the interest of the Corporation and considering the gravity of

the charge proved against him, he imposed upon the petitioner punishment of dismissal from service with immediate effect. The petitioner had earlier challenged the order dated 07.06.1997 by filing a writ application bearing CWJC No. 11074 of 1997, which was permitted to be withdrawn by this court vide order dated 16.12.1998 on the ground that the petitioner had alternative remedy of appeal before the Board of Directors. The petitioner preferred appeal in compliance of this court's order dated 16.12.1998, under Regulation 40 of Bihar State Financial Corporation (Staff) Regulations, 1965 before the Board of Directors, taking the same plea which he had taken in his comments on the findings of the Enquiry Officer. The appeal, however, came to be dismissed by the Board of Directors and the decision of the Board of Directors taken on 30.01.1999 was accordingly communicated to the petitioner through letter dated 01.02.1999. In the background of these facts, the order of the Disciplinary Authority imposing punishment of dismissal from service upon the petitioner and the decision of the Board of Directors of the Corporation (Appellate Authority) communicated to him through letter dated 01.02.1999 are under challenge in the present writ application.

6. Mr. Manik Vedsen, learned counsel appearing on

behalf of the petitioner, has submitted that the entire disciplinary proceeding is vitiated as for an occurrence of the year 1989 the disciplinary proceeding was initiated after eight years in the year 1997. He has further submitted that the findings of the Enquiry Officer in an *ex parte* proceeding, holding the charge to be proved, are perverse on the face of it inasmuch as the findings are based on no evidence. He has submitted that the Enquiry Officer did not conduct himself as a quasi judicial authority and he assumed the role of investigator/prosecutor to prove the charge leveled against the petitioner. He has submitted that in course of departmental proceeding, no witness was examined in support of the charge and to prove the charge framed against the petitioner by the Corporation. He submits that the Conducting Officer, merely on the basis of documents made available to him through the Presenting Officer reached to the conclusion that charge against the petitioner stood proved, though such documents or the contents of the documents were not proved by any witness, let alone, a competent witness. He has further submitted, referring to the charges' served upon the petitioner, that the main charge framed against the petitioner was such that it could not have been proved without a witness. He has submitted, referring to the charge sheet, that as per allegation, the petitioner had acted in collusion with the promoter of M/s Maurya Electrical, Phulwarisharif, Patna and the machine supplier and intentionally made the payment of a sum of Rs. 56,000/- to fake and non existent machine supplier M/s Technical Fabrico India, Patna and obtained incomplete false bills and challan causing huge loss to the Corporation. In the charge itself it was mentioned that this fact could be substantiated by the written statement dated 18.05.1990 of the partners of said machine supplier, i.e., M/s Technical Fabrico India, Patna. He has also drawn my attention to the memo of evidence in support of the charge, which included written statement dated 18.05.1996 of Ajit Kr. Srivastava and Sanat Kumar Sinha, so called partners of M/s Technical Fabrico India, Patna. Referring to the allegation, as contained in the charge and the memo of evidence, Mr. Vedsen has submitted that in the absence of examination of Ajit Kr. Srivastava and Sanat Kumar Sinha, said to be partners of M/s Technical Fabrico India, Patna neither the written statement dated 18.05.1996 nor contents of the said written statement can be said to have been proved in a quasi judicial proceeding even on the standard of preponderance of probabilities. He submits that the said written statement, as a matter of fact, was the foundation for framing of charge against the petitioner. The said Ajit Kr. Srivastava and Sanat Kumar

Sinha were the crucial witnesses who ought to have been called and examined in course of departmental enquiry to prove this fact. He contends that no step was taken to examine them in course of departmental enquiry. He, accordingly, submits that in the absence of any witness having been examined in course of departmental enquiry, the finding arrived at by the Conducting Officer that the charge against the petitioner stood proved, suffers from perversity. He submits that the order of the Disciplinary Authority is non speaking and the Disciplinary Authority has just accepted the findings of the Conducting Officer, which are blatantly perverse and, thus, punishment of dismissal from service is on the basis of perverse finding is not sustainable. He contends that the order of Disciplinary Authority imposing punishment upon the petitioner needs to be interfered with by this court and be quashed. Referring to the order of the Appellate Authority dated 01.02.1999, which is communication to the petitioner with respect to rejection of his appeal, Mr. Vedsen has submitted that it is non speaking and is, therefore, bad in law. He has place reliance upon various decisions of the Supreme Court in support of his contentions, which are as under:-

***(i) AIR 1964 SC 364 (Union of India v. H. C. Goel)***

***(ii) (2007) 1 SCC 681 (Narmada Pd. Yadav v. State of***

***M. P. & Ors.)***

***(iii) (2009) 2 SCC 570 (Roop Singh Negi v. Punjab National Bank)***

***(iv) (2010) 2 SCC 772 (State of U. P. v. Saroj Kumar Sinha)***

***(v) (2010) 4 SCC 491 (Life Insurance Corporation of India & anr. V. Ram Pal Singh Bisen)***

***(vi) (2011) 6 SCC 376 (Commissioner of Police Delhi & anr. V. Jai Bhagwan)***

7. He has also produced before me an order of this court dated 26.03.2008 passed in CWJC No. 13529 of 2005 (Subhash Chandra Jha Vs. Bihar State Financial Corporation) as well as an order passed in LPA No. 732 of 2008 (Bihar State Financial Corporation Vs. Subhash Chandra Jha) dated 16.02.2010 arising out of said CWJC No. 13529 of 2010 to submit that in almost identical situation this court interfered with the decision of the Corporation on the ground that finding of guilt in the departmental proceeding was not based on any evidence.

8. Learned counsel appearing on behalf of the Corporation, on the other hand, has argued that the petitioner did not file his show cause before the Enquiry Officer and did not participate in the departmental enquiry and he approached this

court for stayal of the departmental enquiry during the pendency of the criminal case, which plea was finally rejected by this court in the writ proceeding, and subsequently in appellate proceeding under Letters Patent of this court. He has submitted that in the absence of any stay of the departmental proceeding, the Enquiry Officer rightly proceeded with the enquiry *ex parte* and came to a finding that the charge against the petitioner stood proved. He has further submitted that after dismissal of the writ application preferred by the petitioner by this court, the petitioner was given an opportunity to submit his show cause which he failed to avail and, accordingly, the Conducting Officer in his subsequent report reiterated his view taken in the earlier enquiry report that the charge against the petitioner stood proved. He has submitted that the petitioner did not dispute the documents referred to in the charge sheet and, therefore, the findings of the Enquiry Officer cannot be said to be perverse. He has placed reliance upon a Supreme Court judgement reported in ***(1998) 7 SCC 97 (Indian Council of Medical Research v. Dr. Anil Kumar Ghosh)*** and has contended that since the petitioner did not dispute the genuineness of the documents which were referred to in the charge memo itself, the petitioner is precluded from taking a plea that there was no evidence before the Conducting Officer, in an ex parte enquiry, for coming to a conclusion that the charge against the petitioner stood proved. He has further contended that the petitioner intentionally did not participate in the departmental enquiry and he cannot now take the plea of violation of principle of natural justice as he failed to avail the opportunity which was granted to him to defend himself in the departmental proceeding.

9. Upon perusal of the report of the Enquiry Officer dated 19.03.1997, there can be no doubt about the fact that no witness was produced on behalf of the Corporation to prove the charge against the petitioner. In my opinion, the nature of the allegation made against the petitioner in the charge sheet was such that they could be proved by examination of witness/ witnesses. Obviously, the charge against the petitioner was based on written statement of the partners of machine supplier, i.e., M/s Technical Fabrico India, Patna. The partners were important witnesses to prove the charge against the petitioner that he in collusion with the promoter of M/s Maurya Electrical, Phulwarisharif, Patna made payment to fake machine supplier, i.e., M/s Technical Fabrico India, Patna. No explanation is coming forth from the Corporation as to why they were not examined and as to why no steps were taken to examine them.

10. Mr. Vedsen appears to be right in his submission

that it is highly impossible that partners of the said M/s Technical Fabrico India, Patna would make statement that the said firm was fake one to which payments were made by the petitioner to the tune of Rs. 56,000/-. In any view of the matter, in order to prove charge against the petitioner, steps ought to have been taken to examine them in case of departmental enquiry.

11. I find substance in the submission made on behalf of the petitioner that the Enquiry Officer, merely, on the basis of documents, which were not formally provided in the departmental enquiry, came to the finding that the charge against the petitioner stood proved.

12. It is true that High Court in exercise of power under Article 226 of the Constitution of India in a *certiorari* proceeding has limited role to play while testing the correctness of an order passed by a quasi judicial authority. The court, normally, interferes in exercise of such power, only when impugned action is found to be beyond jurisdiction, tainted with malafide, based on irrelevant considerations or without taking into consideration the aspects relevant for correct decision or the decision is perverse and not otherwise. A decision or finding is said to be perverse if it is based on no evidence and in such circumstance this court will certainly interfere with the decision

of the quasi judicial authority in exercise of power under Article 226 of the Constitution of India. This view is supported by a recent decision of the Supreme Court reported in ***(2015) 2 SCC 610 (Union of India v. P. Gunasekaran)***.

13. It is true that strict rules of evidence are not applicable in a departmental proceeding still it is sound principle that even in a departmental proceeding, scrupulous care must be taken to ensure that an innocent is not punished without evidence. Reference may be made in this regard to Supreme Court judgement in case of *Union of India v. H. C. Goel* (supra). In case of *State of U. P. v. Saroj Kumar Sinha* (supra) the Supreme Court held that since no oral evidence was examined and documents were not proved, the charge in a departmental proceeding could not be said to be proved. Paragraphs 26 to 28 of the said judgement are relevant and are being quoted hereinbelow:-

> *"26. The first inquiry report is vitiated also on the ground that the inquiry officers failed to fix any date for the appearance of the respondent to answer the charges. Rule 7(x) clearly provides as under:*
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> *"(x) Where the charged Government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding inspite of the service of the notice on him or having knowledge of the date, the Inquiry Officer shall proceed with the inquiry ex parte. In such a case the Inquiry Officer shall record the statement of witnesses mentioned in the charge- sheet in absence of the charged Government servant."*
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> *27. A bare perusal of the aforesaid sub-Rule shows that when the respondent had failed to submit the explanation to the charge sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the Government servant despite notice of the date fixed failed to*

> *appear that the enquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the enquiry officer to record the statement of witnesses mentioned in the charge sheet. Since the Government servant is absent, he would clearly lose the benefit of cross examination of the witnesses. But nonetheless in order to establish the charges the department is required to produce the necessary evidence before the enquiry officer. This is so as to avoid the charge that the enquiry officer has acted as a prosecutor as well as a judge.*
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> *28. An Enquiry 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".*

14. Mr. Vedsen has rightly relied upon the Supreme Court judgement in case of ***Ministry of Finance v. S. B. Ramesh (AIR 1998 SC 853)*** wherein the court upheld the judgement of the High Court interfering with the findings in a departmental enquiry on the ground that the documents were not proved in accordance with law and, therefore, should not have been received in evidence.

15. In view of above, I am of the considered view that the findings of the Enquiry Officer holding that the charge against the petitioner stood proved is without any evidence and is, therefore, perverse. The decision of the Disciplinary Authority on the basis of such enquiry report dated 07.06.1997, imposing

punishment of dismissal from service upon the petitioner, cannot be sustained. The decision of the Appellate Authority communicated to the petitioner through letter dated 01.02.1999 is also unsustainable for the same reason. The impugned orders/ decisions are, accordingly, quashed.

16. It is stated at the Bar that the petitioner retired during the pendency of the writ application, therefore, there would be no question of his reinstatement. However, since I have come to the conclusion that the findings of the Enquiry Officer, which is the basis of order passed by the Disciplinary Authority, imposing punishment of dismissal from service, are perverse, I direct that the petitioner shall be entitled for all consequential benefits including the entire backwages for the period during which the petitioner had to remain out of service because of the order of dismissal, which is being set aside by the present order.

17. I have taken note of rival submissions made on behalf of the parties on the question of payment of backwages. There is specific averment in a supplementary affidavit filed on behalf of the petitioner that he was not gainfully employed elsewhere from the date of imposition of punishment of dismissal from service upon him till the date he attained the age of superannuation. This fact has not been disputed.

18. My view finds support from the Supreme Court decision on the question of payment of backwages in cases of ***Dipali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.ed.)*** & ***Ors.*** reported in (2013) 10 SCC 324, which view has been reiterated by Supreme Court in case of ***Raghubir Singh vs. General Manager, Haryana Roadways, Hisar*** reported in ***2015(1) PLJR SC 145***.

19. In view of above, I direct that all backwages for the period during which the petitioner remained out of service because of the illegal dismissal order which has been quashed by the present order, must be paid to the petitioner within a period of six months from the date of receipt/ production of a copy of this order failing which the petitioner will be entitled for interest @ 6% on the said amount after expiry of the said period of six months.

20. This writ application is, accordingly, allowed.

21. There shall be no order as to costs.

**(Chakradhari Sharan Singh, J)**

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