

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1561 of 2016

IN

Civil Writ Jurisdiction Case No. 1142 of 2015

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1. Allama Mukhtar S/o- Mohammad Thair Ansari, R/O- Mohalla- Barah Pathar,P.S.- Dehri-on-sone, Town & District- Rohtas.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of Personnel & Administrative Reforms, Government of Bihar, New Secretariat, Bailey Road, Patna.
2. The Principal Secretary cum Commissioner, Department of Personnel & Administrative Reforms, Government of Bihar, New Secretariat, Bailey Road, Patna.
3. The Deputy Secretary, Department of Personnel & Administrative Reforms, Government of Bihar, New Secretariat, Bailey Road, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashhar Mustafa

For the Respondent/s : Mr. PRABHAT KUMAR VERMA, AAG-3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT & ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 18-10-2016

This appeal under Clause 10 of the Letters Patent of this Court arises out of an order, dated 16.05.2016, passed by a learned single Judge, in CWJC No. 1142 of 2015, whereby an application filed by the appellant under Article 226 of the Constitution of India, has been disposed of in the following terms:-

"It cannot be said that the findings of guilt have been recorded on no materials or materials not germane to the facts of the case."

Thus, submissions of the petitioner that the money was not recovered from his conscious possession needs to be rejected in view of materials on record provided by the prosecution.

This takes us to the last submission of the petitioner that the punishment of dismissal from service is too harsh and excessive. The petitioner submits that the inquiry officer did not find charged proved against him and as such, the extreme punishment of dismissal from service may be reconsidered. The submission of the petitioner is not completely devoid of merit. Furthermore, there is no prior act of omission and commission, except for the incident in question.

In view of the above, the matter is remitted to the disciplinary authority for reconsideration of punishment of dismissal from service."

2. In order to appreciate the points of adjudication involved in the present appeal, it would be apt to refer to material facts, which are as under:-

(i) The appellant, at the relevant point of time, was posted as Block Development Officer-cum-Circle Officer, Atri Block in the District of Gaya. In a trap laid by the Vigilance Investigation Bureau, he was caught red handed while accepting a sum of Rs. 10,000/- as bribe. It appears from the records that the appellant had allegedly made a demand of Rs. 20,000/- from the complainant Dhananjay Kumar Singh to facilitate issuance of



a verification report of title/ownership in respect of a land, for the purposed purpose of construction of a *pond* over it, in the village Bairaka under Atri Block. The said pond was proposed to be constructed under "*Rashtriya Bagwani Development Mission Scheme*" (hereinafter referred to as the 'Scheme') at a cost of Rs. 10,0000/- (ten lacs). He was trapped while accepting payment of Rs. 10,000/- by the Vigilance Investigation Bureau team leading to registration of Vigilance P. S. Case No. 978 of 2007 for the offences punishable under Sections 7/13 (2) read with Section 13(1) (b) of the Prevention of Corruption Act, as alleged against him.

(ii) He was taken into custody and 72 days thereafter he was released on bail. As a consequence of his custody in connection with the said criminal case, he was put under suspension. During the pendency of the criminal case, a disciplinary proceeding was initiated against the appellant with the issuance of charge-sheet in the year 2009, which contained two charges ,viz, :-

(a) He had demanded a bribe of Rs. 20,000/- (twenty thousand) from the complainant for forwarding land ownership report and kept it pending because of non-payment. He thereafter, asked the complainant to come with a sum of Rs. 10,000/- for sending the report.

(b) The appellant was caught red handed while

accepting a sum of Rs. 10,000/- as bribe from the complainant.

(iii). The appellant submitted his written statement of defence in the departmental enquiry in which he took plea of deep rooted conspiracy and asserted that the trap was stage managed and he had been falsely made an accused on the basis of a sham trap laid by the Vigilance Team. He alleged that no such raid was ever conducted and he was taken into custody in well planned design, falsely showing him to have accepted the said bribe.

(iv). He also took a plea that the bribe money was in fact not recovered from his possession and it was found lying on the ground.

(v). On the other hand, as per the First Information Report, the chemical, i.e., *Phenolphthalein powder* was applied on the currency notes, which were to be given to the appellant at the time of trap. The said currency notes he had received and on realizing that he had been trapped, the appellant had dropped the money on the ground. According to the First Information Report, the appellant was made to wash his hands in sodium carbonate solution whereafter; the solution became pink, which was indicative of the fact that the appellant had taken the money by his hand.

(vi). In his written statement of defence appellant gave the reason as to why he was maliciously implicated in a



criminal case. According to him, before his posting at Atri in Gaya District, he was posted as Block Development Officer, Katra in the district of Muzffarpur and husband of the Pramukh of Katra Block used to unnecessarily intervene in his official work because of which their personal relations had become bitter. According to the appellant, said husband of the Pramukh had threatened the appellant that he would get him transferred to Atri Block. He was transferred and posted to Atri Block by notification, dated 30.03.2007, but 15 days prior to the said date, the husband of the said Pramukh had told him that the appellant would be transferred to Atri. The appellant also asserted that he was forced, at the Government level, to be relieved from Katra on 24.04.2007, under the pressure of the said husband of the Pramukh. According to him, his premature transfer from Katra Block in the District of Muzaffarpur to Atri Block in the District of Gaya itself was a part of deep rooted conspiracy, which is apparent, since initiation of proposal for construction of the said pond in Atri Block and the notification for his transfer are of the same period and the complainant purposefully managed to keep the matter at Atri Block pending till the appellant joined at Atri Block, so that he could be booked in a criminal case.

(vii). He also took a plea that there is no mention of receipt of the proposal sent by the District Horticulture Officer,

Gaya, for construction of the said pond in the Circle office, which was issued on 25.03.2007.

(viii). It is the case of the appellant that he joined Atri Block on 11.05.2007. According to him, the said work of ownership verification could have been done even before he had joined at Atri Block, but it was purposefully kept pending in order to get the appellant implicated in a false case.

(ix). At the same time, this is not in dispute that the appellant had received the letter and marked it to the Revenue Clerk for submission of his report.

(x). It is not in dispute, from records that the complainant himself had brought the said letter, dated 23.05.2007, issued by the District Horticulture Officer, Gaya, which was addressed to Circle Officer, Atri, Gaya, seeking verification report of title/ownership in respect of land in question and the appellant, after marking it to the Revenue Clerk for submission of his report, had given that back to the complainant. It is the case of the appellant that since he had already marked the letter, dated 23.05.2007, for Revenue Clerk to submit his report, there was nothing pending with him, and, therefore, there was no question of accepting bribe with respect to a matter, which was not pending before him.

(xi). The Departmental Inquiry Commissioner-cum-Inquiry Officer submitted his report, on 30.08.2012, recording



that the charges against the appellant in the disciplinary proceeding could not be proved. In his report, the Inquiry officer accepted the plea, taken by the appellant of a deep rooted conspiracy hatched up for his premature transfer from Katra in the District of Muzaffarpur to Atri in the District of Gaya and that trap laid by the Vigilance Bureau was a sham. It appears that one of the prosecution witnesses in course of departmental enquiry had deposed that the currency notes, which were seized were found lying scattered on the ground after the appellant had dropped it from his hand, whereas, the other witnesses deposed that the currency notes were not scattered, rather, the notes were lying together. The enquiry officer, noticing this fact, and other facts concluded that the charge of demand or acceptance of bribe could not be said to have been proved.

(xii). Upon receipt of the report of the Inquiry officer, the disciplinary authority ordered for *de novo* enquiry on the ground that the enquiry officer did not consider lapse and negligence on the part of the appellant with respect to above two charges.

(xiii). On a challenge having been made by the appellant by way of writ application giving rise to CWJC No.14443 of 2008, a learned single Judge of this Court vide order, dated 24.09.2013, allowed the writ application on the

ground that it was not permissible to hold *de novo* enquiry for a newly created charge of negligence and lapse, which was not there in the charge-sheet.

(xiv) Thereafter, the disciplinary authority proceeded under Rule 18(3) (4) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, and differing with the report of the Inquiry Officer, asked the appellant to submit his response within one week. In the said communication, dated 28.03.2014, the disciplinary authority recorded, inter alia, that the appellant did not make available to the District Horticulture Officer, verification report with respect to the title/ownership of the land of the complainant and, thus, accusation made by the complainant to this effect stood proved in its entirety. He also recorded that the allegation of taking bribe and being caught red-handed also stood proved on the materials available on record.

(xv). In response to the said notice, dated 28.04.2014, the appellant submitted his reply on 08.09.2014 supporting the findings recorded by the Inquiry Officer.

(xvi). The disciplinary authority thereafter, through letter dated 10.12.2014, sought opinion of the Bihar Public Service Commission (hereinafter referred to as the '**Commission**') on proposed punishment of dismissal of the appellant from service.



(xvii). The Commission, through his communication, dated 20.05.2014, to the disciplinary authority opined that no concrete and clear grounds had been mentioned in the notes of disagreement recorded by the disciplinary authority and for that reason the Commission expressed its disagreement over proposal for imposition of punishment of dismissal from the service.

(xviii). The appellant, assailing the second show cause notice, dated 21.08.2014, approached this Court by filing writ application under Article 226 of the Constitution of India, which gave rise to CWJC No. 1142 of 2015. During the pendency of the said writ application, by an order, dated 21.07.2015, the disciplinary authority imposed upon the petitioner, punishment of dismissal from service. In view of the issuance of the order of dismissal, dated 21.07.2015, the appellant applied for amendment in the writ application seeking quashing of the order of dismissal, dated 21.07.2015. The amendment application was allowed by the learned single Judge and the appellant was, thus, permitted to challenge the validity of the said order, dated 21.07.2015, in the writ proceeding.

(xix). Thereafter, by the order under appeal, dated 15.05.2016, the learned single Judge held that it could not be said that the findings of guilt had been recorded on no materials or materials not germane to the facts of the case. Learned



single Judge rejected the plea taken on behalf of the appellant that no money was recovered from his conscious possession, considering the material on record, provided by the prosecution in the departmental proceeding. A plea was taken that punishment of dismissal from service was too harsh and excessive. Considering the said submission, learned single Judge remitted the matter back to the disciplinary authority for reconsideration on the question of quantum of punishment.

3. These are the factual background as noted above, in which the present appeal has been preferred.

4. We have heard Mr. Ashhar Mustafa, learned counsel appearing on behalf of the appellant, and Mr. Prabhat Kumar Verma, learned Additional Advocate General No.3, appearing on behalf of the State.

5. Assailing the order under appeal, Mr. Ashhar Mustafa, learned counsel, appearing on behalf of the appellant has submitted that it is evident from the reading of the second show case notice that the disciplinary authority has failed to assign any clear/definite reason to differ with the detailed finding enumerated in the inquiry report. He has also submitted that the Inquiry Officer had pointed out serious irregularities in the trap proceeding ignoring, which the disciplinary authority mechanically chose to award the punishment of dismissal from service. He has also submitted that the disciplinary authority

just overlooked the opinion recorded by the Commission, refusing to concur with the said proposal to impose punishment of dismissal from service.

6. He has placed heavy reliance on Supreme Court's decision in case of ***Union of India Vs. H. C. Goel (AIR 1964 SC 364*** and ***Punjab National Bank Vs. Kunj Bihari Mishra (1988) 7 SCC 84***. Referring to the Supreme Court's decision in case of H. C. Goel (supra), he has submitted that a procedure like a fair criminal trial should be scrupulously followed in departmental proceedings also, which the Inquiry Officer has done in the present case and the disciplinary authority without following the basic requirement of assigning definite and cogent reasons has disagreed with the such findings and has erroneously imposed punishment of dismissal from service. He has also submitted that suspicion howsoever strong cannot partake the character of proof. Referring to Rule 18 of the Rules and Supreme Court's decision in case of Punjab National Bank Vs. Kunj Bihari Mishra (supra), Mr. Mustaffa has contended that the disciplinary authority was required to issue clear and definite tentative notes of disagreement if he intended to differ with the report of the Inquiry Officer, which was in favour of the appellant. Referring to the communication, dated 21.08.2014, (Annexure-5), he submits that the same cannot be said to be containing tentative notes of disagreement, which should have



contained detailed reasons as to why the findings of the Inquiry Officer were incorrect and, therefore, the same are not acceptable. He also submits that the Inquiry Officer had dealt with the charges, parawise in a detailed manner and the disciplinary authority without dealing with the findings of the Inquiry Officer has mechanically differed with the findings by vague a cryptic notes of disagreement.

7. He has contended that in response to the notice issued by the disciplinary authority containing cryptic notes of disagreement, the appellant had submitted his detailed reply dealing with the each and every aspect and had given in detail as to why the report of the enquiry officer, which is in his favour should have been accepted, there being no scope of having any different view. According to him, without considering the said detailed show cause reply, the disciplinary authority passed the impugned order of dismissal from service. The impugned order of dismissal does not disclose any application of mind, which is mandate of Rule 18(4) of the Rules, he contends.

8. He has also submitted that since appellant successfully established in course of the departmental enquiry that he was made to fall in trap by way of deep rooted larger conspiracy which had inception from his premature transfer from Katra in Muzaffarpur to Atri in Gaya and his subsequent implication in a stage managed Vigilance trap case.



9. Mr. P.K. Verma, learned Additional Advocate General No. 3, appearing on behalf of the State of Bihar, has submitted that as a matter of fact the report of the Inquiry Officer itself is perverse inasmuch as he has accepted the plea of conspiracy taken by the appellant leading to his premature transfer from Atri block in Muzffarpur District to Katra Block in Gaya District, so that he might have been caught in a Vigilance trap for accepting the bribe. He has submitted that there was no evidence in course of departmental enquiry, led by the appellant to prove that the concerned husband of the Pramukh of Katra was in any way connected with the complainant on whose complaint, the Vigilance had conducted the raid. Plea of the appellant to his effect is preposterous, he says. He has also submitted that taking into account minor discrepancy in the evidence of two prosecution witnesses with respect to the manner in which the currency notes were found lying on the ground, the Inquiry officer wrongly disbelieved the entire allegation of acceptance of bribe by the appellant, in a departmental enquiry where standard of proof is preponderance of probabilities.

10. He has further submitted that there is no infirmity in the order under appeal wherein the learned single Judge has recorded that this Court in exercise of power under Article 226 of the Constitution of India is not required to go into the sufficiency



or otherwise of the material on which the disciplinary authority has recorded its finding and the Court would equally not substitute its finding for the findings recorded by the disciplinary authority. The appellant has not been able to point out any procedural irregularity and there has been no violation of principles of natural justice inasmuch as the appellant was given due opportunity of being heard, after the disciplinary authority disagreed with the report of the Inquiry officer, which was in favour of the appellant, Mr. Verma contends. He has also submitted that opinion rendered by the Commission is not binding on the disciplinary authority and, therefore, the decision of the disciplinary authority to impose punishment of dismissal from service cannot be faulted with. He has further submitted that considering the gravity of the charge proved against the appellant, the punishment cannot be said to be disproportionate.

11. Having noticed the background facts and the submissions advanced on behalf of the appellant and the State, we are of the considered view that it is true that this Court exercising power of judicial review does not enter into sufficiency or otherwise of the material on which the disciplinary authority has recorded its findings. It is also true that this Court exercising such jurisdiction does not re-appreciate the evidence, like an appellate authority, rather, its function is to see whether procedure adopted by the disciplinary authority satisfies the

requirement of principle of natural justice and fair play as well as mandatory statutory provisions dealing with such procedure.

12. On the basis of what has been submitted on behalf of the parties and on perusals of the letter, dated 21.08.2014, issued by the General Administrative Department, Government of Bihar, addressed to the appellant, wherein disagreement with the report of the Inquiry Officer has been recorded, we are in agreement with the submissions advanced on behalf of the appellant that disciplinary authority has failed to assign clear and definite reason for differing with the findings recorded in the inquiry report. The inquiry report deals in detail and records reasoning why and how the charges levelled against the appellant could not be said to have been proved. The Inquiry Officer has accepted the plea of the appellant of larger conspiracy, which resulted into be being trapped in a false case by the Vigilance Team with the allegation of accepting bribe. The reasons, recorded by the disciplinary authority in the said communication, dated 21.08.2014, cannot be said to be tentative notes of disagreement inasmuch as it does not contain clear and definite grounds for differing from the said findings recorded by the Inquiry Officer.

13. We also find substance in the submissions made on behalf of the appellant that the final order, dated 21.07.2015, whereby punishment of dismissal from service has been imposed



upon the appellant does not contain reasons why the appellant's explanation in response to the second show cause notice containing disagreement with the report of the Inquiry Officer, was not acceptable to the disciplinary authority. Learned counsel for the appellant has rightly pointed out that paragraph 12 of the final order passed by the disciplinary authority is mere reiteration of what he had recorded in the second show cause notice recording his disagreement with the report of the Inquiry Officer.

14. Learned counsel for the appellant has rightly relied on Supreme court's decision in case of **Kunj Bihari Mishra** (supra).

15. In case of **Yoginath D. Bagde v. State of Maharashtra**, reported in **(1999) 7 SCC 739**, the Supreme Court has observed, in paragraph 34, as follows:-

"34. Along with the show-cause notice, a copy of the findings recorded by the enquiry officer as also the reasons recorded by the Disciplinary Committee for disagreeing with those findings were communicated to the appellant but it was immaterial as he was required to show cause only against the punishment proposed by the Disciplinary Committee which had already taken a final decision that the charges against the appellant were proved. It was not indicated to him that the Disciplinary Committee had come only to a "tentative" decision and that he could show cause

against that too. It was for this reason that the reply submitted by the appellant failed to find favour with the Disciplinary Committee."

16. In case of **Kunj Bihari Mishra** (supra), the Supreme Court held that whenever a disciplinary authority disagrees with the report of the Inquiry Officer on any article of charge, then, before it records with own finding on such charge, it must record tentative notes of disagreement. What has been recorded by the disciplinary authority, in the present case, in the communication, dated 21.08.2014, cannot be said to be tentative in nature; rather, it contains findings of the disciplinary authority on the point of guilt of the appellant.

17. Further, Sub Rules (2) (3) and (4) of Rule 18, which deal with a situation, where the disciplinary authority after receipt of the enquiry report proceeds to disagree with the findings of enquiry officer, need to be reproduced hereinbelow for proper appreciation of the submission advanced on behalf of the appellant, which we accordingly do:

"18(2) The disciplinary authority, after receipt of the enquiry report as per Rule 17 (23) (ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and records its own finding on such charge, if the evidences on record is sufficient for the purpose.

(3) The disciplinary authority shall forward or cause to be forwarded a copy of the enquiry report,

together with its own findings, if any, as provided in sub-rule (2), to the government servant who may submit, if he or she so desires, his or her written representation or submission to the disciplinary authority within fifteen days.

(4) The disciplinary authority shall consider the representation or submission, if any, submitted by the Government Servant before proceeding further in the manner specified in sub rules (5) and (6)".

(Emphasis supplied)

18. The word "*consider*" , in Sub-Rule (4) of Rule 18, is of much significance, which casts a duty on the disciplinary authority "*to apply his mind*". Whether the representation or submissions made by the Government servant has been considered or not should be apparent from the order itself. In the present case, the final order, passed by the disciplinary authority imposing punishment of dismissal from service, does not contain any reason as to why the explanation/reply of the appellant to the notice given by the disciplinary authority, dated 21.08.2014, was not acceptable. In our view, Rule 18(4) casts an obligation on the disciplinary authority to consider the representation/submission, made by a Government servant, in response to the findings recorded by the disciplinary authority at the time of this appeal with the findings of the enquiry officer.

19. We reiterate that such *consideration* must be manifest from the order itself. On perusal of the impugned

order, we notice that there is absolutely no consideration of the representation filed by the appellant.

20. Absence of reasons in an order, exercising quasi-judicial function, amounts to non-application of mind and, therefore, not sustainable, being violative of the principles of natural justice. Reference can be made, in this regard, to the Supreme Court's decision in ***G. Vallikumari v. Andhra Education Society*** reported in **(2010) 2 SCC 497**.

21. The word "*consider*", as occurring under Rule 55A of the Civil Services (Classification, Control & Appeal) Rules, 2005, had fallen for consideration by a Division Bench of this Court in case of ***Chandradip Sinha V. The State of Bihar & ors*** reported in **2000(3) PLJR 64**. This Court held in paragraph 5 as follows:-

"5. We are not called upon to say at this stage that the disciplinary authority did not apply its mind to all the relevant material on record. All that we say is that the order imposing punishment does not disclose the application of mind because it does not consider even briefly the defence of the appellant nor does it record any reasons for rejection of the plea set up by the appellant."

22. Considering the above, we are of the view that the order under appeal needs to be interfered with.

23. We accordingly set aside the order, dated 21.07.2015, imposing upon the appellant the penalty of



dismissal from service, as it does not show application of mind over the explanation submitted by the appellant in response to the communication, dated 21.08.2014. The order, dated 21.07.2015, is accordingly quashed having been passed in violation of principles of natural justice. The State respondents, particularly, respondent No.2 is directed to ensure that an order is passed afresh, dealing with each of the points raised in the explanation submitted by the appellant, within a period of two months from the date of receipt/production of a copy of this order.

24. It will be open to the respondents to supply to the appellants detailed tentative notes of disagreement afresh recording reasons why the report of the Inquiry Officer could not be accepted and on the basis of materials on record, charge framed against the petitioner could be said to have been proved. In such circumstances, the appellant shall be given adequate opportunity to respond to the detailed tentative notes of disagreement. In any case, the entire exercise must be completed within the aforesaid period of two months.

25. CWJC No. 1142 of 2015 is allowed to the extent above. The order under appeal, dated 16.05.2016 passed by the learned single Judge in CWJC No. 1142 of 2015, is set aside.

26. The appeal is allowed with the observations/directions as above.

27. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

I.A. Ansari, CJ:- I agree.

(I. A. Ansari, CJ)

Arun Kumar/-

AFR/NAFR	AFR
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