

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16451 of 2007

Sanjay Kumar Tanti, Son of Narayan Tanti, Assistant, Circle Office-Gopalpur, District Bhagalpur, resident of Mohalla-Burhanath, Jogsar, P.S.- Kotwali, Town and District- Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar, through the Secretary, Department of Revenue and Land Reforms, Old Secretariat, Patna.
2. The Divisional Commissioner –cum- the Appellate Authority, Bhagalpur.
3. The Secretary to the Commissioner, Bhagalpur Division, Bhagalpur.
4. The District Magistrate –cum- the Disciplinary Authority, Bhagalpur.
5. The Director, National Employment Programme –cum- the Enquiry Officer, Bhagalpur.
6. The Establishment Deputy Collector, Bhagalpur.
7. The Sub-Divisional Officer, Naugachia, District- Bhagalpur.
8. The Circle Officer, Gopalpur, District- Bhagalpur.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Purushottam Kumar Jha, Advocate.
Mr. Chakrapani
Mr. Dipak Kumar
For the State : Mr. Patanjali Rishi, A.C. to A.A.G-10

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 21-07-2016

Heard Mr. Purushottam Kumar Jha, learned counsel for the petitioner and Mr. Patanjali Rishi, learned A. C. to A.A.G.-10.

The petitioner is aggrieved by the order bearing Memo No.-126 dated 27.3.2006 passed by the District Magistrate whereby the petitioner has been visited with the following penalties:

- a) Stoppage of two increments with non-cumulative effect.
- b) Reduction of pay and allowances to the subsistence allowance paid for a suspension period, although the

period would be counted for pension purposes.

c) Warning.

The charge memo is present at Annexure-1/1 and lists 7 charges against the petitioner and of which charge nos.1 and 4 would be relevant for these are the charges which are the foundation for the impugned order. Whereas charge no.1 imputes the petitioner for non-maintenance of account books with suspicion cast on attempted mis-appropriation, on the other hand charge no.4 is a connected charge which imputes the petitioner of flouting the orders of the superiors. The charge memo was served on the petitioner vide letter dated 24.6.2005 bearing memo no.149 of the District Magistrate, Bhagalpur requiring his reply and by the same order he appointed one Shri Umesh Kumar Verma, Director, National Employment Programme, Bhagalpur as an Enquiry Officer. The petitioner on receipt of the charge memo filed his detailed response denying of the charges in reference to 11 documents enclosed with the show cause, a copy of which is present at Annexure-2. In between, the District Magistrate revoked the suspension order passed on 4.1.2006 vide Annexure-3. The Enquiry Officer submitted the enquiry report to the District Magistrate in consideration of the charge and the stand of the petitioner as reflected in his show cause reply vide Annexure-4. The Enquiry Officer while rejecting the charge nos.2, 3, 5, 6 and 7 as not proved, has upheld the charges listed at item no. 1 and 4 as



already I have mentioned above. The petitioner questioned the findings of the Enquiry Officer by a detailed representation before the District Magistrate, Bhagalpur, a copy of which is present at Annexure-5 in so far as it upholds the charge nos.1 and 4 but which has been rejected leading to the impugned order dated 27.3.2006 enclosed at Annexure-6. The order imposing penalty was questioned by the petitioner in appeal and which appeal has been rejected by the Appellate Authority vide Annexure-9. The petitioner being aggrieved is before this Court.

Mr. Purushottam Kumar Jha, has questioned the impugned order(s) on the following grounds:

- a) The impugned order imposing penalty is non-speaking and reflects complete non-application of mind.
- b) The charges are based on no evidence.
- c) The evidence relied upon by the petitioner is neither discussed by the Enquiry Officer to uphold charge nos.1 and 4 nor has the District Magistrate, considered the defence.
- d) Even when the disciplinary authority i.e. the District Magistrate has decided to take recourse to the procedure provided under Rule-17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter

referred to as 'the Rules') by appointment of an Enquiry Officer but the procedure provided thereunder, has not been followed inasmuch as no presenting officer was appointed which invalidates the proceedings.

Mr. Jha, learned counsel for the petitioner in support of his submission has relied upon the Bench decision of this Court in **2004(4) PLJR 517 (Rajib Lochan Jha vs. State of Bihar)**.

The arguments of Mr. Jha has been contested by Mr. Rishi, learned A.C. to A.A.G.-10 who submits that the procedure prescribed is to be followed in case of imposition of major penalty. He further submits that even the challenge to the orders on grounds that it is based on no evidence, is not correct for the petitioner never led any evidence to show that the account books were maintained. He further submits that although the charge framed does talk of mis-appropriation but neither the finding of the Enquiry Officer is on this issue nor the penalty imposed is for this charge. He further submits that the non-maintenance of Account Books is a mis-conduct and since the petitioner was duty bound to maintain the same, he can give no explanation for the default. In response to the arguments of Mr. Jha regarding absence of reasons in the impugned order, he submits that District Magistrate has mentioned that he has gone through the records and which would reflect that the order of penalty is with application of mind.



I have heard learned counsel for the parties and I have perused the records and considering the manner in which the orders impugned have been passed, in my opinion, this writ petition can be allowed by a two line order but then it would require a remand for passing the order afresh. The District Magistrate in a sweeping manner has proceeded to uphold the charges against the petitioner without bothering to discuss the issues raised by him in response to the enquiry report, a copy of which is enclosed at Annexure-5 in so far as charge nos. 1 and 4 are concerned. There is a discussion in the response of the petitioner on his innocence and thus even if the District Magistrate, Bhagalpur was not in agreement with the explanation given by the petitioner, he should have assigned some reason to reject the same. The punishment order is passed in a routine mechanical manner. It is a complete abdication of responsibility by the disciplinary authority and the illegality is perpetuated by the appellate authority who again mechanically proceeds to affirm the order of the District Magistrate, Bhagalpur.

As I have already observed, in normal circumstances the matter would have been remitted for fresh consideration but considering that a period of almost 9 years has since lapsed, I am not persuaded to remand the matter and would proceed to consider the matter on its own merit.

The petitioner is charged with having committed an



irregularity in the maintenance of the Accounts books. The issue is that even if the charge is taken to be correct on its face value, would it constitute a misconduct. The petitioner has contested this charge by relying upon certain chalaans issued during the period of charge under the signature of the Circle Officer, Bhagalpur and which have been referred to in the reply filed by the petitioner before the Enquiry Officer as well as before the District Magistrate but none of them have bothered to note the explanation given by the petitioner. The Enquiry Officer while rejecting other charges, upholds the charge against the petitioner of not obeying the directions of the superior to maintain the account books and thus a suspicion is cast on the petitioner of mis-appropriation of Government Money. There is no foundation for such suspicion except that the Books were not written. I do agree that the books are to be properly maintained and are to be written timely but if the outflow is explained then the charge of not writing the account books timely on its own would not be sufficient enough to bring the charge within the confines of the term 'mis-conduct' in absence of any adverse consequential result.

Law is well settled on this score and even if there be an irregularity in an act of a delinquent, it is not that such act by itself is capable of being upheld as a mis-conduct until its consequences are gross and irreparable. Reference in this regard is made to the judgment of the Supreme Court reported in (1979) 2 SCC

286(Union of India vs. Javed Ahmed). and I am tempted to

reproduce an extract of the judgment at paragraph 11:-

“A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in P. H. Kalyani v. Air France, Calcutta(5), wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar instances of which a railway cabinman signals in a train on the same track where there is a stationary train causing headlong collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil [see Navinchandra Shakerchand shah v. Manager, Ahmedabad Co- op. Department Stores Ltd.(1)]. But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty”.

Apart from the above, another relevant aspect of the matter

is that during the enquiry no evidence was led against the petitioner which would confirm the charges. Plainly speaking thus, it is a case of no evidence for even when the petitioner has explained that the lapse to some extent is also attributable to the Circle Officer who is required to endorse the entries, yet not even an explanation was asked from the Circle Officer, who surprisingly becomes a signatory to the charge memo.

In my view the proceedings are neither sustainable on merits nor on the procedure followed.

For the reasons aforementioned the order bearing memo no.126 dated 27.3.2006 passed by the District Magistrate, Bhagalpur impugned at Annexure-6 together with the order dated 17.04.2017 of the Appellate Authority impugned at Annexure-9 cannot be upheld and are accordingly set aside.

The writ petition is allowed.

(Jyoti Saran, J)

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CAV DATE	
Uploading Date	
Transmission Date	