

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14938 of 2014

With

I.A. No.684 of 2016

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Kamlesh Bind, son of Shiv Charan Bind, resident of village Supasang, Police Station Wena, District- Nalanda (Biharsharif).

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Industries Department, Bihar, Patna
3. Director Industries, Bihar, Patna.
4. Joint Director Industries, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar

For the Respondent/s : Mr. Annant Prasad Singh, SC-15

Mr. Sanjay Kumar, AC to SC-15

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 25-07-2016

Heard Mr. Mukesh Kumar, learned counsel appearing for the petitioner and Mr. Sanjay Kumar, learned Assisting Counsel to Standing Counsel No.15 for the State.

With the consent of the parties this matter has been taken up with a view to its final disposal at the stage of admission itself.

The petitioner initially questioned the order bearing No.736 dated 25.2.2014 passed by the respondent no.3, the Director, Industries, Government of Bihar, Patna, whereby he has been dismissed from service.

It is during the pendency of the writ petition that the appeal filed by the petitioner against the order of dismissal has been rejected by the Principal Secretary, Department of Industries, Bihar,



Patna vide order passed on 19.9.2014 and communicated to the petitioner vide Memo no.4073 dated 23.9.2014 that the same is sought to be challenged by filing interlocutory application bearing I.A. No.684 of 2016 and considering that the dismissal of appeal is in continuation to the proceedings, the leave sought by the petitioner to question the same, is allowed. The petitioner is permitted to question the appellate order in the present proceedings. I.A. No.684 of 2016 is allowed.

The facts of the case briefly stated is that the petitioner was appointed on the post of Stenographer with the Industries Department at Munger and while working as such that he was allegedly caught red-handed by the Vigilance Department on 28.7.2006 for taking alleged bribe of Rs.1,500/-. A case was instituted bearing Vigilance Case No.42 of 2006. The petitioner was arrested and was put under suspension by order No.1930 dated 14.8.2006 with effect from 28.7.2006. Consequent upon release of the petitioner on bail that his suspension was revoked vide order of the Director, Industries, bearing Memo No.4082 dated 12.9.2011, a copy of which is enclosed at Annexure-3 to the writ petition.

Three years passing through with no change in circumstances and even when the vigilance case is yet pending adjudication that the petitioner was again suspended under rule 9(1) (c) of the Bihar Government Servants (Classification, Control and



Appeal) Rules, 2005 (hereinafter referred to as 'the Rules') vide order bearing Memo No.517 dated 13.2.2014 impugned at Annexure-4 and which is followed by the order of dismissal under section 14 of 'the Rules' impugned at Annexure-1 to the writ petition.

Mr. Mukesh Kumar, learned counsel appearing for the petitioner has made rather a short submission in reference to paragraphs 12 to 15 of the writ petition. He submits that the order of dismissal has been passed de hors the statutory procedures provided under rule 17 of 'the Rules'. It is his argument that the enquiry report enclosed at Annexure-2 submitted by the Joint Director, Industries, Bihar, Patna is simply on the basis of the reply received from the petitioner without giving him opportunity to lead evidence and even the disciplinary authority has followed suit when he has proceeded to pass the impugned order simply on the basis of enquiry report without opportunity of hearing to the petitioner. The statutory appeal filed by the petitioner has also been rejected by the appellate authority i.e. the Principal Secretary, Department of Industries, Government of Bihar, Patna and communicated vide Memo No.4073 dated 23.9.2014 impugned at Annexure-5 to I.A. No.684 of 2016. He submits that although an opportunity of hearing was granted by the appellate authority but the defect is incurable for if the order put for consideration before the appellate authority itself is

founded on a void proceeding, the defect cannot be cured.

Although learned State Counsel has laboured hard to defend the impugned order, inter alia, on grounds of gravity of the offence which forms the basis for the impugned dismissal but in my opinion the attempt is futile for a right vested in the petitioner to hold a Government post and his right to defend himself in a disciplinary proceedings, stands forfeited in the impugned action.

A comprehensive procedure has been provided under rule 17 of 'the Rules' and which is required to be mandatorily followed by the disciplinary authority in every disciplinary proceeding, be it a case of major penalty or minor penalty as would be manifest from a plain reading of rules 17 and 19 of 'the Rules'. A proceeding thus initiated for imposition of major penalty, cannot be concluded in a slip shod manner to take away a right vested in the petitioner under the procedure provided in rule 17. An order of dismissal merely on the basis of enquiry report is de hors the procedure and against the principles of natural justice.

It is the case of the petitioner and not controverted that the enquiry has not been conducted in the manner prescribed rather is a conclusion drawn simply on the basis of the reply filed by the petitioner. The impugned order passed by the disciplinary authority also does not improve the situation when it again rests on the enquiry report which is a table report and thus a void document. The

situation gets even worse for no hearing was granted to the petitioner by the disciplinary authority as mandated under ‘the Rules’ and even though an exception to the rule is provided under rule 20 of ‘the Rules’ but then the situation here does not fall within the said parameter.

In short, the enquiry report present at Annexure-2, the order of dismissal passed by the disciplinary authority dated 25.2.2014 impugned at Annexure-1 as well as the order of the appellate authority dated 23.9.2014 impugned at Annexure-5 to I.A. No.684 of 2016 are per se illegal and are accordingly set aside.

Since the orders have been set aside on grounds of violation of statutory procedures, it would not preclude the disciplinary authority to proceed afresh but in accordance with law.

The writ petition is allowed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	09.08.2016
Transmission Date	NA