

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5941 of 2008

Most. Sharda Devi wife of late Ram Babu Singh resident of village and post officer
Akauna, Via punpu, P.S. Masaurhi, Dist. Patna, State Bihar.

.... Petitioner/s

Versus

1. The Patliputra Central co-operative Bank Ltd. S.P Verma Road Patna 800001 through its Managing Director-cum-Member Secretary, Patna Dist. Cadre, Co-operative Society Ltd. Patliputra Co-operative Bank Ltd. S.P. Verma Road, Patna 800001.
2. The Managing Director-cum-Member Secretary, Patna Dist. Cadre, Co-operative Society Ltd. Patliputra Co-operative Bank Ltd. S.P. Verma Road, Patna 800001.
3. The Joint Registrar, Co-Operative Societies, Patna Division, Patna the officer situated in the Building of Patna Divisional Commissioner, Patna, Division, near Golghar, Patna.
4. the Registrar, Co-operative Societies, Bihar, Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Shyam Kishore Sinha, Advocate.
For the Respondents No. 1 & 2: Mr. Kishore Kumar Sinha, Advocate.
: Mr. Shashi Shekhar, Advocate.
For the Respondent No. 3 & 4 : Mr. Sushil Kumar, G P 22.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 05-12-2016

Heard Mr. S.K. Sinha, learned counsel for the petitioner, Mr. Shashi Shekhar, learned Assisting Counsel to Mr. K.K. Sinha for the Bank and Mr. Sushil Kumar, learned G.P. No. 22 for the State.

This writ petition has been filed by the delinquent feeling aggrieved by the disciplinary proceeding initiated against him vide memo dated 19.03.1997 impugned at Annexure 6 together with the charge sheet dated 19.03.1997 present at Annexure 6A, the enquiry report dated 28.03.1998 impugned at Annexure 8, the order of the disciplinary authority whereby the petitioner has been dismissed



from service bearing Memo No. 03/99-2000 dated 23.03.2000 of the Member Secretary, Patna District Cadre Cooperative Society, impugned at Annexure 10 and the appellate order dated 16.11.2002 bearing Memo No. 1761 dated 16.11.2002 passed in Appeal Case No. 03 of 2001 by the Joint Registrar, Cooperative Society impugned at Annexure 11 to the writ petition. The delinquent writ petitioner has deceased and is substituted by his widow under the orders of this Court passed on 25.11.2014.

The issues raised by Mr. Sinha, learned counsel appearing on behalf of the petitioner to question the entire disciplinary proceedings including the orders impugned, stands indicated in the order of this court passed on 22.09.2016.

Mr. Sinha has referred to the order initiating disciplinary proceeding present at Annexure 6 to submit that instead of seeking an explanation from the delinquent, the Managing Director has directed him to file his reply before the Enquiry Officer, appointed by the same order. According to Mr. Sinha any order of disciplinary authority directing the petitioner to report to the Enquiry Officer without satisfying himself whether at all a case for enquiry is made out, is an illegality. Learned counsel has relied upon a judgment of this court reported in **1996 (2) PLJR 95 (Ravindra Nath Singh vs. Bihar State Road Transport Corporation)** and a judgment of the Supreme Court reported in **(2001) 2 SCC 330 (State of Punjab vs.**



V.K Khanna).

The second argument advanced by Mr. Sinha to question the proceeding is in reference to the charge sheet present at Annexure 6/A. He submits that charges are vague and allegations are bald. He next refers to the enquiry report present at Annexure 8 to submit that the Enquiry Officer himself has acted as the Presenting Officer to examine the evidence and to express his opinion thereon, which jurisdiction is not vested in an Enquiry Officer. Learned counsel in support has relied upon a decision of the Supreme Court reported in **AIR 2010 SC 3131 : (2010)2 SCC 772 (State of UP vs. Saroj Kumar Sinha)** and a judgment of this court reported in **1996 (1) PLJR 401 (Panchanan Kumar v. Bihar State Electricity Board).**

Learned counsel explaining the delay in filing the writ petition, has referred to a medical certificate present at Annexure 12 to submit that the deceased writ petitioner was suffering from mental disorder and no sooner has he recovered, that he has moved this Court through present writ petition. Mr. Sinha, learned counsel for the petitioner, with reference to a judgment of this Court reported in **(2014) 13 SCC 166 (Chhel Singh vs. MGB Gramin Bank)** submits that unless certificate is doubted on its genuineness, it has to be accepted.

The arguments of Mr. Sinha has been contested by learned



counsel appearing for the Bank as well as learned counsel for the State. Learned counsel for the respondents submits that none of these objections were ever raised by the petitioner at any stage of proceedings. It is further the submission of learned counsel for the respondents that there is an excessive delay on the part of the petitioner to seek legal remedy and the medical certificate is unreliable.

Learned counsel for the respondents further submitted that the charge against the petitioner was very serious and the delinquent was charged with defalcation. It is the contention of learned counsel appearing on behalf of the Bank and the learned counsel for the Appellate Authority that the explanation given by the petitioner that the bag in which the documents relating to recovery, was being carried, fell into the nala, is unbelievable. It is submitted that even the statement given by the delinquent that he had given information at the police station, was not found to be correct. It is also the argument of the learned counsel for the respondents that as per the own admission of the petitioner, the information to the police was given after a lapse of six months, which reflects his conduct and his involvement in the defalcation.

I have heard learned counsel for the parties and I have perused the records.

Although the deceased petitioner is charged with alleged



defalcation but the charge at Annexure 6/A simply alleges that the petitioner has lost the receipt books and the explanation given is that the bag in which the receipt book was being carried got swept away in the river. It is the allegation aforementioned, which has been interpreted as attempted as defalcation by the petitioner. Strangely there is no evidence nor any quantification of the alleged defalcated amount. On the contrary, it is simply because a certain number of receipt books went missing that a charge of defalcation is attached to the delinquent even an absence of any evidence regarding recovery of loan money by the petitioner and its misappropriation to himself, for his personal gains.

In the nature of the allegation which finds mention in the charge memo at Annexure 6/A, it is rightly argued by Mr. Sinha that the charge is vague for it lacks the essentials to constitute a defalcation and also lacks supporting evidence. It is on such vague charge that the enquiry was conducted, the report of which is present at Annexure 8 and the Enquiry Officer assumes the role of the Presenting Officer as well, to conclude against the petitioner and uphold the charge. On the other hand the disciplinary authority by a four line order passed on 23.03.2000 impugned at Annexure 10 upholds the report to hold the petitioner guilty and to terminate his service which order is affirmed by the appellate authority vide Annexure 11.

Undisputedly the charge is vague, ill founded and lacks details



for constituting an offence of defalcation. In fact no descriptive details are present for supporting a charge of defalcation in the charge memo. In absence of descriptive particulars, the only thing which the petitioner could do was, to deny the charge of defalcation and which he has done. The Enquiry Officer has discharged the role of the Presenting Officer to examine evidence and uphold the charge. Law is well settled and an enquiry in absence of a Presenting Officer, stands vitiated. In fact unless there is a Presenting Officer to press the allegation and lead evidence to support the same, this role cannot be usurped by the Enquiry Officer. An Enquiry Officer is an independent authority not connected either with the delinquent or the department. In fact the moment he assumes the role of a Presenting Officer to suo motu examine the evidence, he becomes a party to the disciplinary proceedings and which by itself invalidates the proceedings.

This very issue fell for consideration in **C.W.J.C. No. 270 of 216 (Lalan Pandey vs. the State)** and this Court on examination of the statutory provisions underlying 'the rules' and the law settled on the issue, has concluded as follows :-

“Amongst several issues raised by Mr. Jha, learned counsel appearing for the petitioner to question the dismissal of the petitioner from service on alleged charge of acceptance of bribe, one of the issues which he raises to question the proceedings leading to the impugned order is present in the enquiry report itself, a copy of which is enclosed at Annexure-14 and with reference thereto it is submitted that even when a Presenting Officer was



appointed on behalf of the department for leading the evidence collected against the petitioner but for the reasons best known, he did not choose to do so and the Enquiry Officer himself assumed the role of the Presenting Officer himself to examine the evidence and hold the petitioner guilty. Column No.5 of the enquiry report present at Annexure-14 confirms this position.

Mr. Jha has referred to a Bench decision of this Court reported in **2004 (4) PLJR 517 (Rajib Lochan Jha vs. State of Bihar)** to argue that this single infirmity is enough to hold the entire proceeding vitiated.

Counsel for the State and Vigilance Department are unable to dispute this argument of Mr. Jha which is confirmed from the records itself. The law is well settled in this regard and where the Enquiry Officer is a person other than the Disciplinary Authority, then he acts as a delegate of the Disciplinary Authority and obviously cannot be a party to a disciplinary proceeding to assume the role of a Presenting Officer who represents the department.

The provisions of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 no doubt enables the Disciplinary Authority to also act as the Enquiry Officer, if he so likes or to delegate such jurisdiction to an independent authority but in either of the two situations the role discharged is that of a Disciplinary Authority. The Enquiry Officer thus does not represent any of the party rather is a body independent of any interest, to record his opinion on the issues that arises in a departmental proceeding in the backdrop of the evidence led and proved.

The legal position being such, the Enquiry Officer representing the Disciplinary Authority could not have assumed the role of a Presenting Officer who represents the department and thus is an interested party. This single aspect of the matter has left the entire proceedings vitiated. The opinion expressed by this Court is supported in the judgment of the Supreme Court reported in **(2010)2 SCC 772 (State of Uttar Pradesh vs. Saroj Kumar Sinha)** and paragraph 28 of the judgment explains the legal position which reads as under:

“28. An inquiry 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 un rebutted 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.”

Reference in this regard is made to another judgment of this Court reported **1996 (1) PLJR 401 (Panchanan Kumar vs. Bihar State Electricity Board)** which was a case in which even when the Presenting Officer was appointed for the proceedings, he failed to appear and which role was assumed by the Enquiry Officer himself. A Bench of this Court taking note of the circumstances, made the following observations:

“11. Considering the rival contentions of the parties, this Court is of the opinion that in the instant case the inquiry has been vitiated inasmuch as the enquiry officer himself has acted as the presenting officer even though the presenting officer was appointed by the Electricity Board. There is no explanation why the said presenting officer did not appear before the enquiry officer to present the case of the department. In the peculiar facts of this case, the action of the enquiry officer to present the case himself on behalf of the department and also to take upon himself the duty of enquiring the correctness or otherwise of the said case clearly shows that the enquiry officer, in the instant case, has failed to discharge his duty as a fair and impartial enquiry authority. He has rolled up within himself the role of both the presenting officer and the enquiry officer



and as such has acted in a manner which is not consistent with the principles of natural justice.” .

In the circumstances so discussed above where there was no Presenting Officer either to lead or to prove the evidence that was collected against the petitioner, the Enquiry Officer could not have assumed this duty to examine the evidence himself and to hold the same sufficient to uphold the guilt of the petitioner. Even if the case of the petitioner is of allegedly being caught red-handed while accepting the bribe and even if strict rules of evidence are not to be followed in the disciplinary proceeding yet a duty is cast on the Enquiry Officer to examine the evidence to see whether it is supportive of the allegation made and connects the delinquent with the charge. In absence of the Presenting Officer this mandatory procedure could not have been discharged by the Enquiry Officer himself.”

The argument of Mr. Sinha that there was no Presenting Officer and the Enquiry Officer has himself assumed this role, is not disputed. This single infirmity has invalidated the entire proceeding and the vagueness of the charge is an addition to the infirmity. In fact the manner of framing of the charge, itself is a reflection of the casual manner in which the proceeding has been concluded to impose the extreme penalty of dismissal.

In the circumstances discussed, there is no obstruction in the way of the petitioner to succeed in the proceedings. The only impediment is the delay of six years in between the order of the appellate authority and in moving this Court. The judgment of the Supreme Court relied upon by Mr. Sinha rendered in the case of **Chhel Singh** (supra) would, in my opinion clear the impediment for



the petitioner. The Supreme Court has held that unless the medical certificate produced by a litigant to justify the delay, is found to be forged or fabricated, the delay would stand explained. There is nothing on record to show that the medical certificate present at Annexure 12, is a forged document. In the nature of certification so given by the Doctor present at Annexure 12, the delay stands well explained.

In the facts and circumstances discussed above, the entire proceeding including the enquiry stands vitiated and the order of dismissal passed by the disciplinary authority as affirmed by the appellate authority impugned in the writ petition, is only a perpetuation of illegality.

In any other situation, the matter would deserve a remand for holding fresh enquiry in observance of the legal provisions but the original writ petitioner has deceased and stands substituted by his widow. Meaning thereby the enquiry cannot be held afresh in absence of the delinquent. The situation is entirely attributable to the respondents themselves. Considering the number of defaults noted in the present proceedings, the result, is, a foregone conclusion.

In result the order 23.03.2000 passed by the Disciplinary Authority together with the order dated 16.11.2002 passed by the Appellate Authority are quashed and set aside.

The writ petition is allowed.



Since the delinquent original writ petitioner has since deceased, his reinstatement would be notional for the purpose of calculation of the retiral benefit as well as for payment of 50 per cent back wages until the date of Superannuation/death as the case may be. The writ petitioner shall be entitled to the same and which pecuniary benefits would be paid to her within three months of the date of receipt/production of a copy of this order. In the nature of dispute at hands, the prayer for interest, is rejected.

(Jyoti Saran, J)

Prakash/-

AFR	AFR
CAV DATE	NA
Uploading Date	
Transmission Date	

