

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6082 of 2015

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1. Anil Kumar son of late Dhaneshwar Das, resident of Village- Bishnupur, Police Station- Begusarai, District- Begusarai, at present posted on the Post of Executive Officer, Nagar Parishad, Buxar, District- Buxar.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Principal Secretary Rural Development Department, Government of Bihar, Patna.
4. The Deputy Secretary, General Administration Department, Government of Bihar, Patna.
5. The Additional Secretary, General Administration Department, Government of Bihar, Patna.
6. The Deputy Secretary, Rural Development Department, Government of Bihar, Patna.
7. The Joint Secretary, Rural Development Department, Government of Bihar, Patna.
8. The Commissioner, Darbhanga Division-cum-Conduction Officer, Darbhanga.
9. The District Magistrate, Samastipur.
10. The Secretary, Bihar, Public Service Commission, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Y. V. Giri, Sr. Advocate
Mr. Indu Bhushan
Mr. Sunil Kumar

For the Respondent State: Mr. Brajesh Kumar, AC to AAG11

For the B P S C : Mr. Sanjay Pandey

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 06-01-2016

Petitioner filed the writ application when he came to be visited by an order of punishment issued against him, which is contained in Annexure-12 and is dated 10.09.2014. This order has been issued under the signature of the Additional Secretary, General Administration Department, Government of Bihar. The kind of punishment which has come to visit the petitioner has been indicated therein.



2. The petitioner had to approach the High Court even earlier when the respondent authorities could not adhere to the procedure which has been laid down in Bihar C. C. A. Rules, 2005 and as amended thereafter from time to time as well as the law laid down by the Hon`ble Apex Court in various pronouncements earlier as to how proceedings are required to be conducted, what kind of opportunity is required to be given etc. etc. Since in the present case petitioner was never served a copy of the enquiry report before an order of punishment came to visit him, the learned Single Judge quashed the order and remanded the matter back by virtue of Anneuxre-8 dated 22.01.2013.

3. Anneuxre-12, the order impugned, is the order passed in consonance with the direction of the High Court as per Annexure-8.

4. Learned senior counsel representing the petitioner attacks the order on many a grounds including the fact that no proper enquiry was held, none of the processes which have been laid down in Rule 17 of the C. C. A. Rules have been followed as well as the fact that again no enquiry report as such was furnished to the petitioner. Some kind of opinion or a file noting issued under the signature of the Divisional Commissioner, was forwarded to him.

5. Initially, the Court did not accept such submissions on the face value. The Court therefore decided to summon the original records relating to the departmental proceeding. The Court did go through the original records and is shocked to discover that in a matter like this, none of the functionaries know how to conduct a departmental proceeding. Non only that they have not even bothered to go through the C.C.A. Rules, which have been exhaustively amended in 2005 to make things easy both for the enquiry officer as well as the disciplinary authority to follow. Even a lay man after reading such provisions would not commit any fault in carrying out the requirements and the procedures of the

Rules.

6. If the State authorities are not willing to follow the law, the advantage thereof will accrue to the delinquent. Whether it is lack of knowledge or whether it is deliberate is for the superior authorities to decide but the advantage will accrue in favour of the petitioner. Because the order of punishment has been passed without a proper enquiry, proper presentation of evidence by the presenting officer on the set of charges etc. the impugned order needs to be quashed.

7. Learned senior counsel for the petitioner also draws the attention of the Court to a decision rendered by the Hon`ble Apex Court in the case of **Roop Singh Negi Versus Punjab National Bank and others**, reported in (2009) 2 SCC 570. The relevant paragraphs on which emphasis has been placed are Para 14, 15, 16, 17, 21 and 22, which are reproduced herein below:

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties (emphasis mine). The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said



confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

16. In *Union of India v. H. C. Goel* it was held : (AIR pp.369-70, paras 22-23)

“22. The two infirmities are separate and distinct though, conceivably, in some cases both may be present. There may be cases of no evidence even where the Government is acting bona fide; the said infirmity may also exist where the Government is acting mala fide and in that case, the conclusion of the Government not supported by any evidence may be the result of mala fides but that does not mean that if it is proved that there is no evidence to support the conclusion of the Government, a writ of certiorari will not issue without further proof of mala fides. That is why we are not prepared to accept the learned Attorney General’s argument that since no mala fides are alleged against the appellant in the present case, no writ of certiorari can be issued in favour of the respondent.

23. That takes us to the merits of the respondent’s contention that the conclusion of the appellant that the third charge framed against the respondent had been proved, is based on no evidence. The learned Attorney General has stressed before us that in dealing with this question, we ought to bear in mind the fact that the appellant is acting with the determination to root out



corruption, and so, if it is shown that the view taken by the appellant is a reasonably possible view this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not. This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondent's case is, is there any evidence on which a finding can be made against the respondent that Charge 3 was proved against him? In exercising its jurisdiction under Article 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well founded, because, in our opinion, the finding which is implicit in the appellant's order dismissing the respondent that Charge 3 is proved against him is based on no evidence."

17. In *Moni Shankar v. Union of India* this Court held: (SCC p.492, para 17)

"17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts

exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles (emphasis mine). The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality.”

21. Yet again in *M. V. Bijlani v. Union of India* this Court held: (SCC p. 95, para 25)

“25. ... Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant facts. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.”

22. Yet again in *Jasbir Singh v. Punjab & Sind Bank* this Court followed *Narinder Mohan Arya v. United India Insurance Co.*

Ltd., stating: (Jasbir Singh case, SCC p.570, para 12)

“12. In a case of this nature, therefore, the High Court should have applied its mind to the fact of the matter with reference to the materials brought on records. It failed to do so.”

8. Whatever be the explanation which has been offered by the State in the counter affidavit that cannot form the basis for sustaining the decision or the order of punishment. The original records do not support their stand in the counter affidavit but surely supports the stand of the petitioner with regard to the manner in which the enquiry has been held.

9. The Court is left with no option but to quash the impugned order, contained in Annexure-12 and allow the writ application.

10. Let a copy of the order be marked to the Principal Secretary, General Administration Department as well as the Chief Secretary, Government of Bihar, to review the situation and to ensure that the officers who are saddled with the responsibility of holding departmental enquiry either know their job or they are trained to deliver.

(Ajay Kumar Tripathi, J)

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