

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.280 of 2016

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Anil Kumar Son of Late Bhukhan Mahto, Resident of Village- Itasang, P.O.-
Itasang, P.S.- Rahui, District- Nalanda

.... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary Animal Husbandry Department, Government of Bihar, Patna
2. The Director, Dairy Development Directorate, Animal Husbandry Department, Government of Bihar, Patna.
3. The Deputy Director (Headquarter), Dairy Development Directorate, Animal Husbandry Department, Government of Bihar, Patna
4. The Deputy Director (Dairy), Muzaffarpur, Regional Dairy Development Office, Muzaffarpur.
5. The District Dairy Development Officer, Directorate Government of Bihar, Patna
6. The District Veterinary Officer, Arwal
7. The Dairy Field Officer, Arwal
8. District Dairy Development Officer, Arwal

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar, Adv.

For the Respondent/s : Mr. Rajiv Roy, GP I

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 05-12-2016

Heard Mr. Ranjeet Kumar, learned counsel for the petitioner
and Mr. Rajiv Roy, learned GP I for the State.

With the consent of the parties the writ petition has been
heard with a view to finally disposal at the stage of admission.

The writ petition was initially filed questioning very
initiation of the disciplinary proceeding vide order bearing Memo No.
1/2005 dated 17.3.2015 of the Director, Dairy Development
Directorate, Bihar, Patna under the provisions of the Bihar
Government Servants (Classification, Control and Appeal) Rules,



2005 (hereinafter referred to as 'the Rules'), a copy of which is impugned at Annexure 4 to the writ petition. While the writ petition is pending consideration that charges served on the petitioner vide letter dated 6.5.2015 of the Deputy Director, Dairy Development, impugned at Annexure 5, were examined in the disciplinary proceedings and the final order has been passed terminating the services of the petitioner vide order bearing Memo No. 437 dated 16.3.2016, impugned at Annexure 12 to I.A.No. 6127/2016, and even the appeal preferred by the petitioner has been dismissed by the appellate authority vide order bearing Memo No. 48 dated 15.7.2016, impugned at Annexure 14.

Since the developments leading to the order of termination took place during the pendency of the writ petition, that I.A.No. 6127/2016 has been filed by the petitioner seeking permission to amend the prayer to question the enquiry report dated 10.2.2016 vide Annexure 9, the order of the disciplinary authority dated 16.3.2016 vide Annexure 12 and the appellate order dated 15.7.2016 vide Annexure 14 to the interlocutory application.

In the nature of issues raised in the writ petition, the petitioner is permitted to pursue the relief prayed in the interlocutory application, which would form part of the writ application. The interlocutory application is, accordingly, allowed.

The facts of the case leading to the punishment orders briefly



stated is that on a complaint made by one Naresh Paswan before the Vigilance Investigation Bureau charging the petitioner of seeking illegal gratification for processing his file that a pre-trap memorandum was prepared, the stage set up and the petitioner allegedly caught with bribe money giving rise to Vigilance Case No. 17 of 2015 registered for the offences punishable under sections 7/13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act'). It is following the institution of the vigilance case that the disciplinary proceeding was initiated vide order dated 17.3.2015, impugned at Annexure 4, and the petitioner was served with a charge memo, impugned at Annexure 5. As I have already indicated, the matter led to enquiry report, impugned at Annexure 9, the disciplinary authority being satisfied with the finding of the Enquiry Officer upheld the same to impose the punishment of dismissal vide order dated 16.3.2016, impugned at Annexure 12 and which has been upheld by the appellate authority vide Annexure 14. The petitioner feeling aggrieved is before this Court.

Mr. Ranjeet Kumar, learned counsel for the petitioner, while not disputing the sequence of events has chosen to contest the allegation to submit that the matter is yet pending for adjudication before the Vigilance Court. He submits that although the foundation for the disciplinary proceeding lies in the Vigilance F.I.R. but except



for the F.I.R., no evidence was led by the Department to bring home the charge. With reference to the enquiry report present at Annexure 9, he refers to the recording of the Enquiry Officer present at Page-93 to submit that except for the documents referred to in the charge memo no other evidence was led by the Presenting Officer. He further submits that although the Enquiry Officer has taken note of the request made by the petitioner for examining two witnesses in support of his stand but no such permission was granted. It is stated that neither the complainant nor the Investigating Officer nor alleged witnesses to the occurrence were examined in the proceeding, rather charges have been upheld simply accepting the allegations present in the F.I.R. as true. Learned counsel has referred to a judgment of the Supreme Court reported in (1999)2 SCC 10 (**Kuldeep Singh v. Commissioner of Police & ors.**) and with particular reference to the conclusion recorded at paragraphs 4 to 10, 25 to 32 and 39. He submits that in absence of evidence led by the Department, the charges could not have been upheld.

Argument of Mr. Ranjeet Kumar is contested by Mr. Rajiv Roy, learned State counsel, to submit that the scope of disciplinary proceeding and a criminal proceeding are entirely distinct and while the charge in a criminal case is required to be conclusively proved, the finding in a disciplinary proceeding rests on preponderance of



probability. He submits that since in the present case, the petitioner has been apprehended while taking bribe leading to institution of the F.I.R., the circumstances draws against the petitioner to support the finding of the Enquiry Officer as upheld by the disciplinary authority and the appellate authority. Learned counsel in support of his submission has referred to a judgment of the Supreme Court reported in (2005)10 SCC 470 (**Hindustan Petroleum Corporation Ltd. & ors. v. Sarvesh Berry**) and with reference to the opinion recorded at paragraphs 7 and 8 of the judgment it is submitted that an examination of the witnesses would have amounted to drawing parallel proceeding.

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

The facts are not in dispute, rather its allegation which is being disputed. While a complaint of demand of illegal gratification by the petitioner made by one Naresh Paswan, has led to institution of the vigilance case for alleged recovery of bribe money, the allegation is being disputed and the matter remains pending before the Vigilance Court. There is no contest on the principles advanced by Mr. Roy as regarding distinctive nature of a disciplinary proceeding qua a criminal proceeding and the judgment of the Supreme Court passed in the case of **Sarvesh Berry** (supra) is a confirmation of the legal position.



The issue which falls for consideration is whether the issue raised by Mr. Ranjeet Kumar is capable of being upheld and whether the finding in the disciplinary proceeding is resting on any evidence. It is not in dispute that the only evidence relied upon by the Enquiry Officer to uphold the charges, is a letter dated 27.2.2015 of the District Dairy Development Officer (Urban), a copy of which is present at Page-1 of the proceedings produced by Mr. Roy and it simply informs the Director, Dairy Development Directorate, that the petitioner has been arrested by the Vigilance Team. The second document discussed in the charge memo is the letter of the Investigation Bureau dated 10.3.2015, a copy of which again is present at Page-19 of the records in the disciplinary proceeding produced by Mr. Roy and which is a letter of the Superintendent of Police, Investigation Bureau, addressed to the Secretary, Animal Husbandry and Fisheries Department, Government of Bihar, Patna, informing him about institution of the vigilance case on arrest of the petitioner for allegedly receiving bribe money of Rs.10,000/-. These are the two documents which form the basis for disciplinary proceeding. It is not disputed that apart from these documents, no evidence was led by the Presenting Officer to support the allegation. Meaning thereby there was none to prove these documents or the allegation levelled against the petitioner.



The argument of Mr. Ranjeet Kumar that no evidence was led to bring home the charges is correct because neither the complainant nor the In-charge of the Vigilance Team which arrested the petitioner nor the witnesses to the alleged recovery have been led as witness or examined by the department. The enquiry report exclusively rests on the allegation made in the vigilance F.I.R. and nothing beyond.

The issue would be whether the allegation in the F.I.R. in absence of any witnesses proving the same and in absence of any witness supporting the charge of demand of bribe money/ illegal gratification by the petitioner and in absence of any witness confirming recovery, ipso facto can be sufficient to uphold charges.

A similar issue came up for consideration in the case of **Roop Singh Negi v. Punjab National Bank & ors.**, reported in (2009)2 SCC 570, and the conclusion of the Supreme Court recorded in paragraphs 14, 15 and 23 of the judgment would squarely apply to the case in hand and are being reproduced hereinbelow for ready reference:

"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. 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 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 matter that no evidence was left.

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been



assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable to a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."

As in the present case, even in the case of **Roop Singh Negi** (supra), the only evidence available with the disciplinary authority was the confession of the delinquent and the F.I.R. No witness was examined in the said case to prove the documents, rather the management witnesses merely tendered the documents as in the present case. The Supreme Court held this exercise to be insufficient to uphold the charge and also held that the allegation made in the F.I.R. simplicitor unless proved by leading evidence, by itself can not be treated as evidence.

As I have said, the factual position is not disputed and the



Presenting Officer except for relying upon two documentary evidence referred to above, led no evidence to prove the charge or to confirm the allegations. Apparently the decision impugned, is resting on no evidence. The same view expressed by the disciplinary authority is mechanically endorsed by the appellate authority rendering the two orders unsustainable.

In the result, the order dated 17.3.2015 of the Director, Dairy Development Directorate, Bihar, Patna, impugned at Annexure 4, together with the order dated 16.3.2016 of the disciplinary authority, impugned at Annexure 12, and the order dated 15.7.2016 of the appellate authority, impugned at Annexure 14, cannot be upheld and are, accordingly, quashed and set aside.

The writ petition is allowed.

The petitioner stands reinstated and would be entitled for consequential benefit.

The records produced by Mr. Roy is being returned to him for his custody.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.12.2016
Transmission Date	NA

