

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16721 of 2014

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1. Mahendra Choudhary Son of Late Surajdeo Choudhary, resident of Village- Narsan, P.S. Raspura, District- Aurangabad (Bihar)

.... Petitioner

Versus

1. The State of Bihar
 2. The Principal Secretary, Registration, Excise and Prohibition Department (Excise and Prohibition), Government of Bihar, Patna
 3. The Secretary-cum-Appellate Authority Government of Bihar, Patna
 4. The Excise Commissioner, Excise and Prohibition Department, Government of Bihar, Patna
 5. The Deputy Commissioner, Excise, Patna-cum-Magadh Division, Patna-cum-Conducting Officer.
 6. The Assistant Commissioner, Excise, Gaya, District- Gaya

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Anil Kumar
 For the Respondent/s : Mr. AC to PAAG

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL ORDER

3 01-03-2016 The petitioner seeks quashing of the order, dated 8.3.2014 passed by the Excise Commissioner, respondent No.4, dismissing him from service which order was affirmed in appeal by the Secretary-cum- Appellate Authority vide his order dated 31.7.2014.

The facts of the case in brief are that the petitioner was appointed as Excise Clerk in the month of July, 2002. In the year 2011, he was posted as Excise Clerk in the office of the Assistant Commissioner of Excise, Gaya. On 18.11.2011, he was trapped red handed accepting a sum of Rs.5000/- as bribe by the Vigilance



squad from one Ajay Kumar, Ex-Excise licensee of Gaya district. The tainted money was recovered from his possession and he was accordingly arrested and Vigilance P.S. Case No.83 of 2011, dated 18.11.2011 was registered under Sections 7, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1998. The petitioner was subsequently released on bail.

The petitioner was put under suspension under rule 9(1)(Ka)(Ga) of the Bihar Government Servants (Classification Control Order and Appeal) Rules, 2005 for the period he remained under custody. He was departmentally proceeded vide order, dated 18.12.2011 on the charge of being caught red handed while accepting bribe of Rs.5000/- from Ajay Kumar.

The Deputy Commissioner of Excise, Patna-cum-Magadh Division was appointed as conducting officer. A copy of the charge memo in Praptra 'Ka' is annexed as Annexure-1 to the writ application. The Enquiry Officer on conclusion of the proceedings exonerated the petitioner of the charge. The disciplinary authority while differing with the report of the Enquiry Officer issued second show cause notice along with a copy of the enquiry report for his response. The petitioner submitted his show cause reply to the second show cause notice. The disciplinary authority not being satisfied with the explanation of the petitioner dismissed him from

service vide memo, dated 8.3.2014. The petitioner carried an appeal which too was dismissed by the Secretary-cum- Appellate Authority (respondent No.3) vide his order, dated 31.7.2015.

The petitioner has assailed the order of punishment on a number of grounds. The main allegation against him is that he demanded and took bribe of Rs.5000/- on 18.11.2011 for releasing the surety amount of Rs.70,000/- to the complainant. He submits that the allegation is misconceived as the complainant has already received the surety amount on 11.11.2011, seven days prior to the alleged trap. He next submits that the Enquiry Officer rightly exonerated him from the charges, as no document was exhibited and no witness was examined.

A counter affidavit has been filed on behalf of the respondents justifying the action taken against the petitioner. The disciplinary authority does not accept the case of the petitioner that Ajay Kumar received the surety amount on 11.11.2011 and he had put his signature on the same day endorsing the receipt. The respondents gave two reasons for it. Firstly, the signature of Ajay Kumar is in English which is very unlikely as in past he has signed in Hindi. Secondly, no date has been mentioned against his signature. They next submit that in disciplinary proceeding standard of proof required is not the same as in criminal



proceedings. In disciplinary proceeding, a person can be held guilty on basis of preponderance of probability. Merely because no witness turned up, the fact that the petitioner was caught red handed by the Vigilance personnel and tainted currency notes were recovered from his conscious possession, cannot be brushed aside lightly. Further more, there would be no reason for the Vigilance personnel to lodge false case against the petitioner, in which charge sheet has already been submitted. The petitioner has not given any satisfactory explanation with regard to the recovery of tainted money from his conscious possession in the trap case.

I have heard counsel for the parties.

The Enquiry Officer absolved the petitioner of charge in dearth of legal evidence. It appears that the disciplinary authority on the basis of report of the Superintendent of Police, Vigilance Bureau contained in letter No.1953, dated 22.11.2011 to the effect the petitioner was caught red handed accepting bribe of Rs.5,000/- arrived at finding of guilt.

It is true that a disciplinary proceeding can be decided on the basis of preponderance of probability and no strict proof of evidence is required, as held in the case of ***Roop Singh Negi vs. Punjab National Bank & Ors, reported in (2009)2 SCC 570.***

In the instant case, no witness was examined nor any



document has been exhibited. The Conducting officer also did not tender any document in support of the charge. In this view of the matter, I am constrained to hold, as no legal evidence was brought on record either by examining witnesses, or even tendering of documents by the Presenting officer, the Enquiry Officer erred in arrogating onto himself the role of prosecutrix and holding the petitioner guilty.

In the result, this writ application succeeds and the impugned order awarding punishment is set aside.

Before parting with the records of the case, I would like to observe that it would be another thing that the petitioner may have been held guilty or not guilty, after due and full fledged enquiry in accordance with law. The allegations, if true, are grave and the enquiry ought to have gone to its full stretch to find out the truth. The government servant is expected to maintain absolute integrity, devotion of duty and do nothing which would be unbecoming of his conduct as a government servant. The respondents ought to have been more diligent to ensure that the proceedings are carried out properly and the relevant materials are produced in accordance with law.

This writ application is accordingly remitted with liberty to the respondents to direct further enquiry in terms of rule 18(1) of

the Bihar Government (Classification, Control and Appeal) Rules, 2005 in order to take the enquiry to its logical conclusion.

Let a copy of this order be communicated to respondent No.2 as well as Principal Secretary, General Administration, Government of Bihar.

(Samarendra Pratap Singh, J)

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