

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6 of 2017

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Dinesh Kumar Singh son of Yogendra Prasad Singh resident of village and P.O. Babhani, District - Madhepura.

.... Petitioner

Versus

1. The State of Bihar through its Secretary, Food and Consumer Conservation Department, Government of Bihar, Patna.
2. The Joint Secretary, Food and Consumer Conservation Department, Government of Bihar, Patna.
3. The Sub-Divisional Officer, Munger, District - Munger.
4. The Block Supply Officer, Dharhara, District - Munger.
5. The Managing Director, Bihar State Food and Civil Supplies Corporation Ltd. Sone Bhawan, 5th Floor, Birchand Patel Path, Patna.
6. The Chief Administrator, Bihar State Food and Civil Supplies Corporation Ltd. Sone Bhawan, 5th Floor, Birchand Patel Path, Patna.
7. The District Manager, Bihar State Food and Civil Supplies Corporation Ltd., Munger.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ajit Kumar Singh, Adv.
For the Respondent/s : Mr. Anisul Haque, AC to AAG-5
For BSFC : Mr. Shailendra Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-11-2017

Heard Mr. Ajit Kumar Singh, learned counsel appearing for the petitioner, Mr. Shailendra Kumar Singh, learned counsel for the Corporation and Mr. Anisul Haque, AC to AAG-5, for the State.

The petitioner is Class IV employee and has been proceeded for alleged irregularities committed in issuing of foodgrains from the depot to the dealers.

The specific case of the petitioner at paragraph 4 of the writ petition which has gone uncontested is that he is a 4th grade employee and the alleged violation mentioned in the memo of charge do not



relate to his official discharge of duties or the obligation which he is supposed to discharge.

Mr. Shailendra Kumar Singh, learned counsel for the Corporation, has very passionately tried to argue that the petitioner was assigned twin duties but again there is nothing on record of the proceeding to support this submission regarding the petitioner officiating on any additional post.

The enquiry report very clearly mentions that the petitioner is a Class IV employee and the comments sought from the District Manager by the Enquiry Officer vide Annexure 2 has been replied by the District Manager vide Annexure 3 to exonerate the petitioner of all allegations. Even the enquiry report brought on record by Mr. Shailendra Kumar Singh through the supplementary counter affidavit filed today does not uphold the charge on the petitioner rather sweepingly involves everyone connected with the work. In other words, according to the enquiry report present at Annexure 'Y' at Page-18 of the affidavit, it is the collective responsibility. Even the Managing Director while recording his opinion to issue a second show cause vide his opinion at Page-24 of the affidavit simply holds it as a collective responsibility. Despite such position where neither the enquiry report nor the opinion of the disciplinary authority upholds the charge in particular against this petitioner, yet he is saddled with



the punishment by the disciplinary authority vide order dated 23.6.2011, impugned at Annexure P/6, which has been affirmed by the Secretary of the Department as an appellate authority vide order dated 28.1.2016 at Annexure P/8. Unfortunately neither the disciplinary authority nor the appellate authority have bothered to satisfy themselves on the issue whether any misconduct is proved against the petitioner for until such time that any misconduct is proved, he cannot be saddled with penalty under the disciplinary rules.

The records confirm that the allegations have not been proved against the petitioner and the Managing Director as a disciplinary authority has not chosen to differ from the enquiry report by giving tentative opinion to uphold any of the charge against the petitioner in reference to any material rather he has endorsed the view that it was a collective responsibility.

The moment a default takes a shape of collective responsibility, it cannot be a subject matter of a disciplinary proceeding against anyone in particular unless there are materials to connect him to the charge. In the present case the charges have not been proved against the petitioner in the enquiry and the disciplinary authority does not differ from the opinion to uphold any charge against the petitioner. In absence of materials to support the charge,



the petitioner could not have been visited with any punishment.

A disciplinary proceeding is a proceeding in personam and a sweeping allegation cannot be a foundation for punishment, until such time that there are materials to attach the delinquent with a particular default. In the generalized opinion expressed in enquiry report duly endorsed by the disciplinary authority, no punishment could be imposed on the petitioner as any punishment would be a perversity because it rests on no evidence.

For the reasons so assigned, the orders, impugned at Annexures P/6 and P/8, cannot be upheld and are accordingly quashed and set aside.

The writ petition is allowed with consequential reliefs.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	05.12.2017
Transmission Date	NA

