

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1970 of 2016

=====

Umesh Kumar Sinha, aged 56 years, son of Late Akhileshwar Prasad Sinha,
resident of 16 Pharmaceutical Colony, Bhoot Nath Road, P.S. Agam Kuan, Town
and District: Patna.

.... Petitioner

Versus

1. The State of Bihar, through Principal Secretary, Food and Consumer Protection Department, Government of Bihar.
2. The Additional Secretary, Food and Consumer Protection Department, Government of Bihar.
3. The Under Secretary, Food and Consumer Protection Department, Government of Bihar.
4. The Divisional Commissioner, Patna Division, Patna.
5. The District Magistrate, Buxar.
6. The Sub Divisional Officer, Dumraon.
7. The District Supply Officer, Buxar.
8. The Departmental Appellate Authority, Food and Consumer Protection Department, Government of Bihar.

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Chittranjan Sinha, Sr.Adv.
Mr. Akhilesh Duta Verma, Adv.

For the Respondent/s : Mr. Himanshu Kumar Akela, AC to PAAG2

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 01-03-2017

Heard Mr. Chittranjan Sinha, learned Senior Counsel
appearing for the petitioner and Mr. Himanshu Kumar Akela, AC to
PAAG-2, for the State.

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

The petitioner prays for issuance of a writ in the nature of
Certiorari for quashing the order bearing Memo No. 2175 dated
28.3.2014, whereby the services of the petitioner from the post of



Block Supply Officer has been terminated and which order has been affirmed by the appellate authority, who vide order passed on 18.8.2015 has dismissed the appeal. Copies of the order of the disciplinary authority and the appellate authority are impugned at Annexures 10 and 12 respectively.

Amongst various issues raised by Mr. Sinha, learned Senior Counsel for the petitioner, to question the impugned orders of termination, one of the issues which draws this contest in favour of the petitioner is that although a Presenting Officer was appointed in the disciplinary proceeding vide Annexure 16 to the second supplementary affidavit bearing Memo No. 339 dated 29.10.2007 but the Presenting Officer has failed to lead any evidence in support of the charges. It is the argument of Mr. Sinha, which is resting on the records of the disciplinary proceeding that the Enquiry Officer's opinion is a mere affirmation of the charge without any evidence being led by the Presenting Officer and proved by the person concerned. Relying upon a decision of this Court rendered in the case of **Anil Kumar v. the State of Bihar & ors.** arising from C.W.J.C.No. 280/2016 he submits that a similar issue came up for consideration before this Court and when this Bench in consideration of the legal position settled on the issue as to the role of the Presenting Officer, has upheld the claim in favour of the delinquent. He thus



submits that the judgment of this Court in the case of **Anil Kumar** (supra) would squarely apply to the present case.

Though contesting the arguments of learned Senior Counsel, Mr. Himanshu Kumar Akela, learned State Counsel, on perusal of the records of the disciplinary proceeding, which has been produced in pursuance of the order passed by this Court, would agree that even though the Presenting Officer had been appointed but no evidence was either led or proved by him and that the opinion of the Enquiry Officer is resting on the charge memo and the evidence mentioned therein. Learned State Counsel has relied upon the judgment of the Supreme Court reported in (2017)1 SCC 768 (**Himachal Pradesh State Electricity Board Ltd. v. Mahesh Dahiya**) to submit that even if there would be some infraction of procedural requirement in holding of the departmental proceeding, at best the petitioner would be entitled to a remand but he cannot be let off on mere technical clause. He has also relied upon unreported decision of the Supreme Court rendered in the case of **Brij Bihari Singh v. Bihar State Financial Corporation & ors.** arising from Civil Appeal No. 1217/2011.

As rightly advanced by Mr. Sinha, learned Senior Counsel appearing for the petitioner, this very issue came up for consideration before this Court in the case of **Anil Kumar** (supra) and in identical



situation where there was charge against the delinquent of being caught red-handed while accepting bribe money, this Court in discussion of role of the Presenting Officer as settled by this Court and the Supreme Court, opined in favour of the delinquent for even in the said case the charges had been upheld on mere allegations. The relevant portion of the judgment is being reproduced hereinbelow for ready reference:

" 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 the 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 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 cannot be treated as evidence."

Reverting to the case in hand, conformingly even though a Presenting Officer was appointed vide Annexure 16 for the proceeding but he has failed in his duty to support the charge set up against the petitioner by leading evidence in this regard. In other words, the Enquiry Officer's opinion is a mechanical endorsement of the charge memo. Even though legal position is well settled that strict rule of evidence would not apply in a departmental proceeding but then there has to be some evidence led to support the charge and there cannot be a mechanical endorsement of the charge on mere seriousness of allegations.

In the uncontested position discussed above and where the finding of the Enquiry Officer and that of the disciplinary authority as well as appellate authority are mechanical endorsement of the allegations, the decision making process is clearly defective.



In result, the Enquiry Officer's report dated 20.3.2008, impugned at Annexure 2, together with the order of the disciplinary authority dated 28.3.2014, impugned at Annexure 10, and the order of the appellate authority dated 18.8.2015, impugned at Annexure 12, cannot be upheld and are accordingly quashed and set aside. The matter is remitted back with the liberty to the authorities, if so advised, to proceed in the matter afresh from the stage of enquiry and pass appropriate orders in accordance with law.

The writ petition is accordingly allowed.

Let the records of the disciplinary proceeding be returned accordingly.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	15.03.2017
Transmission Date	NA

