

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19933 of 2016

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Chandrama Manjhi, son of Late Lachhiram Manjhi, resident of Village- Bhatwalia,
P.S.- Siwan Moffassil, District- Siwan.

.... Petitioner

Versus

1. The State of Bihar.
2. The Divisional Commissioner, Tirhut Division, Muzaffarpur.
3. The District Magistrate cum Collector, West Champaran at Bettiah.
4. The Additional Collector, West Champaran at Bettiah.
5. The Circle Officer, Tauria Circle, West Champaran.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Adv.
Mr. Niranjan Kumar, Adv.

For the Respondent/s : Mr. Rakesh Kumar Shrivastava, AC to GP15

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 23-05-2017

Heard Mr. Bindhyachal Singh, learned counsel appearing for the petitioner alongwith Mr. Niranjan Kumar, Advocate on record and Mr. Rakesh Kumar Shrivastava, AC to GP-15, 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. 85 dated 26.5.2014 passed by the District Magistrate cum Collector, West Champaran at Bettiah, whereby the petitioner has been dismissed from service. The petitioner also prays quashing of the appellate order dated 26.7.2016 passed by the Divisional Commissioner, Tirhut Division, Muzaffarpur in Service Appeal No. 142/2016, whereby the



dismissal order has been confirmed. Copies of the order passed by the disciplinary authority and the appellate authority are impugned at Annexures 13 and 15 respectively to the writ petition.

The facts lie in a very narrow compass and briefly stated is that the petitioner was apprehended while allegedly accepting bribe leading to institution of vigilance case giving rise to Vigilance P.S. Case No. 38/2011 registered under the provisions of the Prevention of Corruption Act, 1988. Alongside a departmental proceeding has been initiated, the charge memo of which is placed at Annexure 6 to the writ petition. The charge memo alleges receipt of bribe money by the petitioner leading to his arrest and the reliance for such is based on the report of the Superintendent of Police, Vigilance Department. The enquiry report is placed at Annexure 10 upholding the charges. The petitioner has been show caused on the enquiry report but the reply has not been accepted leading to punishment orders.

Rather a short argument has been advanced by Mr. Singh, learned counsel appearing for the petitioner, to question the punishment order. He submits that the conclusion drawn by the Enquiry Officer as affirmed by the disciplinary authority as well as appellate authority is resting on no evidence except the vigilance report, which also has not been proved by any Vigilance Officer. He relies upon a decision of this Court passed in the case of **Anil Kumar v. the State of Bihar & ors.**, arising from C.W.J.C.No. 280/2016 to



submit that the similar issue having been considered by this Court, relying upon the opinion of the Supreme Court in the case of **Kuldeep Singh v. Commissioner of Police & ors.**, since reported in (1999)2 SCC 10, as well as judgment in the case of **Roop Singh Negi v. Punjab National Bank & ors.**, since reported in (2009)2 SCC 570, that the punishment orders have been quashed.

The arguments have been attempted to be contested by Mr. Shrivastava, learned counsel appearing for the State, but despite effort he has not been able to satisfy this Court that any kind of evidence was led during the proceedings except the police report.

I have heard learned counsel for the parties and have perused the records and in my opinion, the issue in hand is squarely covered by the judgment and order of this Court in the case of **Anil Kumar** (supra) and for the sake convenience I deem it proper to reproduce the opinion expressed by this Court in similar circumstances:

" 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 manner 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."

Conformingly even in the present case no oral or documentary evidence was led by the department to prove the charge and seriousness of which is reflected from the fact that even the complainant has not been examined in the proceedings as stated by Mr. Singh. The seriousness of the proceeding is also reflected from



the fact that although the department relies upon the police report submitted in the vigilance case but none from the Vigilance Department has come forward to prove the charge. It is not in dispute that the allegation which forms part of the vigilance report, is yet pending for adjudication before the criminal court and even though the scope of a criminal case and the departmental proceeding are vastly different but there is to be some evidence on record to drive home the charge, which is completely missing in the present case. In short, no evidence was led to prove the charge.

In result, the order of dismissal dated 26.5.2014 of the District Magistrate cum Collector, West Champaran at Bettiah, impugned at Annexure 13 together with the appellate order dated 26.7.2016 passed by the Divisional Commissioner, Tirhut Division, Muzaffapur, impugned at Annexure 15, cannot be upheld and are accordingly quashed and set aside.

The writ petition is allowed. The petitioner is reinstated with all consequential benefits.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.06.2017
Transmission Date	NA

