

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15658 of 2016

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1. Dr. Fateh Faiyaz Son of Late Fakhruddin Resident of Village- Dehti, Police Station- Palasi, District- Araria.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, General Administration Department, Government of Bihar, Old Secretariat, Patna.
2. Principal Secretary, General Administration Department, Government of Bihar, Old Secretariat, Patna.
3. Officer-on-Special Duty, General Administration Department, Government of Bihar, Old Secretariat, Patna.
4. The Under Secretary to the Government, General Administration Department, Government of Bihar, Old Secretariat, Patna.
5. The Commissioner, Purnea Division, Purnea.
6. Enquiry Officer-cum-Commissioner, Purnea Division, Purnea.
7. District Magistrate, Kishanganj, District- Kishanganj.
8. Addl. Collector, Kishanganj, District- Kishanganj.
9. Deputy Collector Land Reforms, Kishanganj.
10. Sub Divisional Officer, Kishanganj.
11. Secretary, Bihar Public Service Commission, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chitranjan Sinha, Sr. Adv.
Mr. Sanjeet Kumar, Adv.
For the Respondent/s : Mr. Mrigendra Kumar, Adv.
Mr. Sanjay Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 25-07-2017

Heard Mr. Chitranjan Sinha, learned Senior counsel for the petitioner and Mr. Mrigendra Kumar, A.C. to G.A.4 for the State.

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

The petitioner prays for quashing of the order bearing memo No. 5891 dated 27.4.2016 passed by the State Government in its General Administration Department whereby in exercise of powers vested under the Bihar Government Servant (Classification, Control



and Appeal) Rules, 2005 (hereinafter referred to as 'the disciplinary rules'), the petitioner has been imposed with the following punishments:

- (a) Censure for the year 1999-2000.
- (b) Reduction to 5 lower stages in the time scale of pay for a period of 3 years with cumulative effect; and
- (c) The petitioner would not earn any increment of pay during the period of such reduction and on expiry he would be entitled to the future increments.

A copy of the order is impugned at Annexure-1 to the writ petition.

Facts of the case briefly stated is that the petitioner as a probationer in the Bihar Administrative Service, was posted in the district of Kishanganj and was given the charge of the Circle Officer, Pothia. It is during this period that the Industrial Policy framed by the State Government for accelerating industrial development was put in force. An advisory was issued by the Department of Revenue and Land Reforms as contained in letter No.1697 dated 22.11.1995 in this context and the Collector of the District(s) were authorized to allot up to 5 acres of Government land for industrial purpose. An application of one Anil Kumar Daftari for settlement of 5 acres of land together with applications from 3 other persons for settlement of land for tea



cultivation on lease, the details are given in paragraph 15 of the writ petition, was received. The petitioner in his wisdom and after carrying out local enquiry, recommended for settlement of the land on 14.10.1999 and forwarded the records to the Deputy Collector Land Reforms for approval, a copy of which is present at Annexure-6. The Deputy Collector, Land Reforms Kishanganj being satisfied by the recommendation forwarded the same with favourable comment vide Annexure-7 and in continuation the Sub Divisional Officer also recommended for settlement of the land in favour of the applicants on the recommendation so initiated by the petitioner vide his order dated 15.10.1999 present at Annexure-8. The Additional Collector, Kishanganj concurring with the recommendations, endorsed the same on 15.10.1999 vide Annexure-9 and the records thereof was placed before the Committee consisting of the Deputy Collector, Land Reforms, Kishanganj, the Sub Divisional Officer, Kishanganj and the Additional Collector, Kishanganj who jointly inspected the site and submitted their report on 2.11.1999 vide Annexure-10. The Committee after carrying out the inspection endorsed the recommendation made by the petitioner for settlement and the matter was placed before the District Magistrate, Kishanganj who vide order dated 4.11.1999 approved the settlement for a period of 90 years vide Annexure-11 to the writ petition. The petitioner in the meantime was



relieved from the duty of the Circle Officer, Pothia on 1.11.1999. It is 7 years thereafter that a proceeding was initiated against the petitioner by the State Government and a chargesheet was served upon him vide Annexure-14 imputing 3 charges against the petitioner which are as follows.

- “(i) The petitioner recommended the application of four persons for lease of government land near tea garden while he was In-charge of Circle Officer, Pothia which was contrary to the revenue department circular bearing letter no. 1697 dated 22.11.1995.
- (ii) The petitioner recommended for grant of five acres of land to the aforesaid four persons for extraneous consideration.
- (iii) The recommendation by the petitioner for grant of land to the persons who belong to the one family which is contrary to the direction and rules of government.”

The petitioner denied the charges vide his explanation present at Annexure-16 and the Enquiry Officer in consideration of the same and the materials on record, exonerated the petitioner of all the charges vide his report dated 17.2.2010 present at Annexure-17. Not being satisfied by the report of the Enquiry Officer that the Officer on Special Duty, General Administration Department issued directions for re-enquiry into the matter and a proceeding was initiated de novo pursuant to the letter dated 23.11.2011 present at Annexure-18. This order was challenged by the petitioner before this Court in C.W.J.C.No.11700 of 2013.

While the writ petition was pending consideration before this



Court that the Divisional Commissioner submitted his report after holding a second enquiry vide his letter dated 22.6.2012 again exonerating the petitioner of all charges. A copy of the report is present at Annexure-19 to the writ petition. Despite two enquiry reports being submitted in favour of the petitioner, the Officer on Special Duty issued a second show cause to the petitioner in purported exercise of power vested in him under Rule 18(3) of 'the disciplinary rules', a copy of which is present at Annexure-20. The petitioner filed his reply vide Annexure-21 and which was followed by a second show cause against the proposed penalty issued under the signature of the Joint Secretary being Memo No.11704 dated 25.8.2014 impugned at Annexure-22. The petitioner again responded to the notice denying the allegation based on no evidence vide his reply present at Annexure-23 but has resulted in the order of punishment bearing memo dated 25.8.2014 impugned at Annexure-26.

Since the petitioner had already challenged the initiation of the second round enquiry before this Court in the pending writ petition, he filed an interlocutory application bearing I.A.No.7353 of 2014 seeking leave to question the punishment order as well. The writ petition was allowed by a Coordinate Bench of this Court vide judgment and order passed on 15.12.2014 present at Annexure-27 inter alia on grounds that the second show cause did not reflect any



definite reasons for disagreement and the matter was remitted back to the disciplinary authority to proceed in accordance with law from the stage of issuing fresh show cause notice.

In view of the order of this court present at Annexure-27 that a second show cause was again issued under the signature of the Additional Secretary, General Administration Department dated 19.2.2016 impugned at Annexure-28 which was duly replied by the petitioner vide Annexure-29 and has resulted in the order impugned bearing memo no.5891 dated 27.4.2016 whereby the punishment aforementioned has been imposed. Feeling aggrieved the petitioner is before this Court,

Mr. Sinha learned Senior counsel appearing for the petitioner while reiterating the sequence of events, has raised the following issues for questioning the impugned order.

- (a) Even if the allegation present in the chargememo impugned at Annexure-14 is accepted on its face value, yet it does not constitute any misconduct.
- (b) Even though two enquiry reports submitted in the proceeding completely exonerates the petitioner of all charges, the disciplinary authority without assigning any reasons to disbelieve the report in reference to any material, has mechanically upheld the charges simply on allegations.



(c) The second show cause notice issued by the disciplinary authority prejudices the issue without expressing any opinion.

(d) The order of punishment does not deal with the issues raised by the petitioner in his explanations and thus is not a speaking order.

(e) The order of penalty goes beyond the charge

The arguments have been contested by Mr. Mrigendra Kumar who in reference to the statement made in paragraphs 14 and 19 of the counter affidavit filed on behalf of the State submits that since the petitioner while giving his recommendation had not bothered to satisfy himself as to whether the applicants did fulfill the requirements under the Industrial Policy, that irregularities were detected and has led to the impugned punishment.

I have heard learned counsel for the parties and perused the records and before I would record my opinion on the merits of the contest I am persuaded to mention that if there would be a classic example of an Officer at the bottom of the hierarchy being made an scapegoat for acts ratified by his superiors, it is the present case.

The sequence of events which I have briefly discussed would confirm that this petitioner as a probationer had joined as Circle Officer when the Industrial Policy of 1995 was in force. It is on his



understanding of the policy and the instructions received by him that he prepared the recommendation and forwarded it to his superiors for their satisfaction as is confirmed from Annexures-6 to 11. The recommendation made by the petitioner for settlement of the land in question in favour of the applicants was endorsed by the Deputy Collector Land Reforms, the Sub Divisional Officer, Kishanganj and the Additional Collector, Kishanganj. In fact the matter did not stop here rather a Committee was constituted consisting of these very officers for carrying out an on the spot inspection and whose report is present at Annexure-10 endorsing the recommendation. It is thereafter that the Collector, Kishanganj has approved the recommendation vide his order dated 4.11.1999 at Annexure-8. Now while all these superior officers have been spared of their responsibilities of having endorsed and confirmed the recommendation, merely because the petitioner initiated the settlement through his recommendation at Annexure-6 that he has been made an escapegoat in the process. The counter affidavit is absolutely silent on the issue as to why, when the recommendation has been endorsed by experienced superior officers in the rank of D.C.L.R., S.D.O and the District Magistrate, they have been spared in the matter with the axe falling on the petitioner placed at the bottom of the hierarchy and even when he was yet a probationer.



A somewhat similar issue had come up for consideration before the Supreme Court where the disciplinary authority was selective in the matter of imposition of punishment and the opinion of the Supreme Court would be a relevant factor for consideration in the present case. Reference is made to the judgment of the Supreme Court since reported in **(2008) 12 SCC 331 (Man Singh Vs. State of Haryana & Ors.)** more particularly paragraphs 20 and 22 which runs as follows:

“20. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of 'fair play' and reasonableness.

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22. In the backdrop of the above-mentioned facts and circumstances of the case, we are of the view that the order of the disciplinary authority imposing punishment upon the appellant for exhibiting slackness in the discharge of duties during his visit to Hyderabad when HC Vijay Pal was found involved in Excise offence, as also the orders of the appellate and revisional authorities confirming the said order are unfair, arbitrary, unreasonable, unjustified and also against the doctrine of equality. The High Court has failed to appreciate and consider the precise legal questions raised by the appellant before it and dismissed the Second



Appeal by unreasoned judgment. The judgment of the High Court, therefore, confirming the judgments and decrees of the first appellate court and that of the trial court is not sustainable. The appellant deserves to be treated equally in the matter of departmental punishment initiated against him for the acts of omissions and commissions vis-vis HC Vijay Pal, the driver of the vehicle.”

(Emphasis supplied)

Reference is also made to the judgment of the Supreme Court reported in **2010(5)SCC 783 (State of Uttar Pradesh Vs. Raj Pal Singh)** and I am persuaded to reproduce the observation found at paragraphs 5 and 6 of the judgment:

“5. Though, on principle the ratio in aforesaid cases would ordinarily apply, but in the case in hand, the High Court appears to have considered the nature of charges leveled against the five employees who stood charged on account of the incident that happened on the same day and then the High Court came to the conclusion that since the gravity of charges was the same, it was not open for the disciplinary authority to impose different punishments for different delinquents. The reasoning given by the High Court cannot be faulted with since the State is not able to indicate as to any difference in the delinquency of these employees.

6. It is undoubtedly open for the disciplinary authority to deal with the delinquency and once charges are established to award appropriate punishment. But when the charges are same and identical in relation to one and the same incident, then to deal with the delinquents differently in the award of punishment, would be discriminatory. In this view of the matter, we see no infirmity with the impugned order requiring our interference under Article 136 of the Constitution.”

(Emphasis supplied)

While in the case which was put up for consideration before the Supreme Court, the advisory was issued in context with selective imposition of punishment, the case in hand is on a worse pedestal



because while the superiors have been let off for their position in the State Government, the junior most officer has been punished even when he is simply a proposer to the settlement and not responsible for the final decision taken thereon. While the decision makers have been let of, the petitioner has been visited with punishment for a simple error of judgment.

Reverting to the merits of the case, a plain reading of the chargememo at Annexure-14 would confirm that the allegation could not have been made a subject matter of a disciplinary proceeding for the allegations even if accepted, does not constitute any misconduct. It is by now well settled that an error of judgment cannot be held a misconduct unless the consequences are disastrous. In so far as present case is concerned, even if according to the disciplinary authority there appeared an error of judgment in the recommendation for settlement made by the petitioner, the endorsement of such recommendation by the superior officers up to the level of the District Magistrate, has cleared all decks for the petitioner.

The Supreme Court in a judgment rendered in the case of **Union of India Vs. J. Ahmad** since reported in (1979) 2 SCC 286 has discussed the issue of misconduct and the allegations which were put for consideration before the Supreme Court referred to in paragraph 7 of the judgment as well as the opinion expressed by the



court at paragraph 9 and 11 would squarely apply to the present case to hold that the allegations so leveled against the petitioner certainly would not come within the term 'misconduct' for inviting a penalty.

Similar opinion has been expressed by the Supreme Court in the case of **State of Punjab Vs. Ram Singh** reported in **AIR 1992 SC 2188** and a plain reading of the opinion so expressed by the Supreme Court would confirm that it is not an isolated act of a delinquent founded on error of judgment which would constitute a misconduct rather such action has to be backed by ill motives with a view to provide undue benefit to any undeserved or to himself. There is nothing on record to support the charge of misconduct save and except that the petitioner on his understanding of the situation had made a recommendation which was upheld by the District Magistrate.

The third aspect of the matter is that the two enquiry report submitted in the present case by senior officials of the State Government who had examined the allegation in the background of the material but found nothing to support the allegations, has been simply ignored to issue a disagreement note without discussing the materials for such disagreement. One disagreement note having been quashed of this Court vide judgment and order present at Annexure-27, the second one is no different rather confirms that the State had already made up its mind to impose penalty on the petitioner. The



exhaustive reply given by the petitioner vide Annexure-29 to each of the allegations finds no discussion in the order of penalty impugned at Annexure-1 which simply proceeds to impose the penalty while mechanically upholding the allegations on its face value.

In my opinion, the proceedings in question is an extreme case of abuse of executive power by the State for neither on the procedure followed nor on merits of the charge, the allegations are sustainable and in the circumstances where the decision maker on the recommendation has been left scot free, the order of penalty impugned in the writ petition cannot be upheld.

In result the order bearing memo No. 5891 dated 27.4.2016 passed by the State Government in its General Administration Department is quashed and set aside.

The writ petition is allowed with all consequential benefits which should be provided to the petitioner within a period of 3 months from the date of receipt/production of a copy of this order.

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	29.08.2017
Transmission Date	NA

(Jyoti Saran, J)

