

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.286 of 2016

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Ramadhin Prasad Singh, S/o Late Vibhishan Prasad Singh, Resident of Mohalla-Ishakchak, Shitla Sthan Road, Gumti No.- 12, P.O.- Ishakchak, P.S.- Ishakchak, Town & District- Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
2. The Appellate Authority -cum- the Principal Secretary, Co-operative Department, Govt. of Bihar, Patna.
3. The Disciplinary Authority -cum- the Registrar, Co-operative Societies, Govt. of Bihar, Patna.
4. The Enquiry Officer -cum- the Joint Registrar, Co-operative Societies, Tirhut Division, Muzaffarpur.
5. The Presenting Officer -cum- the District Co-operative Officer, Muzaffarpur.
6. The Superintendent of Police, Vigilance Investigation Bureau, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Purushottam Kumar Jha, Advocate

For the Respondent/s : Mr. Vinay Kirti Singh, GA-2

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 13-02-2017

Heard Mr. Purushottam Kumar Jha, learned counsel appearing for the petitioner and Mr. Vinay Kirti Singh, learned Government Advocate No.2 for the State.

The petitioner has prayed for multiple reliefs in the writ petition including for quashing the memorandum of charge dated 30.5.2013 impugned at Annexure-10, the enquiry report dated 17.2.2014 impugned at Annexure-28, the order of dismissal dated 3.4.2014 impugned at Annexure-30 and the order in appeal dated 25.5.2015 impugned at Annexure-32.



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

The memo of charge dated 30.5.2013 charges the petitioner of being caught red-handed while accepting a bribe of Rs.2,000/-. The petitioner being charged with abuse of his official position and of violation of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules'), was subjected to disciplinary proceeding under the provisions of 'the Rules' for alleged offences punishable under the Prevention of Corruption Act, 1988. The foundation for the disciplinary proceeding as manifest from the charge-sheet present at Annexure 10 rests on the report of the Superintendent of Police, Investigation Bureau. The enquiry was held and the report was filed by the Enquiry Officer, a copy of which is impugned at Annexure-28 upholding the charges. The enquiry report is by the Registrar, Cooperative Societies, Tirhut Division, Muzaffarpur. A second show cause was issued vide Annexure-25 and replied by the petitioner vide Annexure-29. The punishment order bearing Memo No.2040 dated 3.4.2014 was passed by the Registrar, Cooperative Societies, Bihar, Patna which is impugned at Annexure-30 and was appealed against by the petitioner by filing statutory appeal, a copy



of which is impugned at Annexure-31 giving rise to Service Appeal Case No.04 of 2014 and which has been dismissed by the Appellate Authority i.e. the Principal Secretary, Cooperative Department vide order passed on 25.5.2015 bearing memo no.1777 dated 28.5.2015 impugned at Annexure-32. The petitioner feeling aggrieved is before this Court.

It is not in dispute that following the alleged act of acceptance of bribe the petitioner was arrested and has been subjected to vigilance case giving rise to Vigilance Case No.01 of 2012 which is pending consideration before the Special Judge, North Bihar, Muzaffarpur. In other words the allegation is yet to be established in the criminal case.

The only argument advanced by Mr. Jha, learned counsel appearing for the petitioner to question the order of dismissal as affirmed by the Appellate Authority together with the enquiry report is that it is resting on no evidence. He submits that neither any oral nor any documentary evidence was led or proved during the disciplinary proceeding and the Enquiry Officer mechanically accepting the allegation as true has proceeded to uphold the charge which in turn has been affirmed by the Disciplinary Authority as well as the Appellate Authority.

With reference to a judgment of this Court arising from



CWJC No.280 of 2016 (**Anil Kumar vs. The State of Bihar**) he submits that the judgment of this Court squarely applies to the present matter.

It is taking note of the arguments and enabling the counsel for the State to contest the argument of Mr. Jha that the finding of the Enquiry Officer is resting on no evidence that the matter has been posted today and when Mr. Vinay Kirti Singh, learned Government Advocate No.2 is not in a position to satisfy whether any evidence was led during the course of enquiry. Practically the argument goes uncontested.

Undisputedly no evidence was led during the course of enquiry inasmuch as neither the complainant was examined on his allegation nor the Superintendent of Police, Investigation Bureau was examined on the report. The entire exercise has been mechanical. Even though a finding in the disciplinary proceeding rests on preponderance of probability and on the strength of evidence led but in the present case, evidence is completely absent in absence of examination of the two persons i.e. the complainant and the Superintendent of Police, Investigation Bureau. It is a case where the finding by the Enquiry Officer, the Disciplinary Authority and the Appellate Authority is resting on no evidence.

It is rightly pointed out by Mr. Jha that a similar issue



came up for consideration in this Court in the case of **Anil Kumar** (supra) and the opinion formed by this Court in the said judgment would apply on all fours in the present case as well. For the sake of convenience the relevant discussion of this Court is reproduced hereinbelow:

“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 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.”

Since it is not in dispute that even in the present case no evidence of either description was led by the department, the entire proceedings including the enquiry report is rendered illegal.

In the circumstances discussed, the enquiry report dated 17.2.2014 impugned at Annexure-28, the order of dismissal bearing Memo No.2040 dated 3.4.2014 passed by the Disciplinary Authority impugned at Annexure-30 as well as the order in appeal dated 25.5.2015 impugned at Annexure-32 cannot be upheld and are accordingly quashed and set aside.

The writ petition is allowed. The petitioner stands reinstated with consequential reliefs. This order however would not preclude the authorities from proceeding afresh but in accordance with law.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	20-02-2017
Transmission Date	NA

