

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2015 of 2015

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Akhilesh Kumar Sharma, son of Late Kedar Nath Sharma, Resident of village-Gorhna, P.O. Neora, P.S. Bihta, District- Patna, presently residing at Chandan Vila, Road No. 10 , Patel Nagar, P.O and P.S. Shastri Nagar, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Building Construction Department, Government of Bihar, Patna.
3. The Joint Secretary -cum- Officer on Special Duty -cum- Chief Vigilance Officer, Bihar, Patna.
4. The Departmental Enquiry Commissioner, Government of Bihar, Patna.
5. The Principal Secretary -cum- Additional Departmental Enquiry Commissioner, Food and Consumer Protection Department, Government of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.B.K. Manglam, Adv.

For the Respondent/s : Mr. Binod Kumar Yadav, SC-18
Mr. Aditya Nath Jha, AC to SC-18

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 06-02-2017

Heard Mr. S.B.K. Manglam, learned counsel appearing for the petitioner and Mr. Aditya Nath Jha, learned Assisting Counsel to Standing Counsel No.18 for the State.

The petitioner by way of this writ petition prays for quashing of the notification bearing Memo No.11452 dated 11.11.2014 passed by the State Government in its Building Construction Department issued under the signature of the Joint Secretary -cum- Officer on Special Duty -cum- Chief Vigilance Officer, whereby the petitioner has been dismissed from service. A copy of such order is impugned at Annexure-19 to the writ petition.



Facts of the case briefly stated is that a charge memo was served on the petitioner vide resolution bearing Memo No.2345 dated 20.2.2008 of the State Government and whereunder two charges were framed against the petitioner, namely:

- (a) On transfer from the Building Division, Patna the petitioner despite handing over the charge to Ram Newaj Dubey, Executive Engineer on 14.3.2007 retained some files projecting himself as the Executive Engineer, Patliputra Building Division and made back dated entries therein, which files were seized by the vigilance team on 17.3.2007; and
- (b) The petitioner was caught red-handed while accepting bribe of Rs.18,500/- on 17.3.2007 at his residence, from the Contractor Bharat Bhushan Prasad, by the vigilance team.

The charge rests on the vigilance report dated 5.4.2007 together with its enclosures. The petitioner was subjected to enquiry under the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules') as amended from time to time and the Commissioner of Departmental Enquiry was made the Enquiry Officer while the Under Secretary, Road Construction Department was appointed the Presenting Officer. The petitioner filed his reply to the charges vide Annexure-



5. Annexure 6 is an order of the Departmental Enquiry Commissioner pointing out the infirmities in the initiation of disciplinary proceeding against the petitioner vide Annexure-3 as is manifest from paragraph 6 of the order dated 25.2.2008 passed by the Departmental Enquiry Commissioner, a copy of which is present at Annexure-6. The Departmental Enquiry Commissioner after holding enquiry submitted his report on 25.4.2014, a copy of which was enclosed with the letter of Additional Commissioner of Departmental Enquiry enclosed at Annexure 'A' to the counter affidavit of the State.

A second show cause was served on the petitioner on 9.5.2014 vide Annexure-16 and was duly replied by the petitioner vide Annexures 17 and 18 raising various issues including the issue that the finding of the Enquiry Officer was resting on no evidence, since no evidence was adduced by the department during the enquiry.

Mr. Manglam, learned counsel appearing for the petitioner has invited the attention of this Court to the order dated 20.12.2013 of the Additional Departmental Enquiry Commissioner present at Annexure-11 in which the Enquiry Officer has taken note of the fact that the witnesses have to be examined but on their absence the matter was adjourned to 20.3.2014. The order dated 20.3.2014 is present at Annexure-14 and the Enquiry Commissioner taking note



of the stand of the department that the documents on record were sufficient to uphold the charges has concluded the enquiry for submission of report. He submits that this was the serious lacuna in the proceeding and the charges were yet to be proved and although this issue has been raised by the petitioner in the reply to the second show cause present at Annexures 17 and 18 but it was ignored and a mechanical order of termination has resulted vide Annexure-19 which is founded on no reasons.

Mr. Manglam has also invited the attention of this Court to the specific statement present at paragraph 30 of the writ petition to submit that this specific statement that no witness was examined has gone unanswered.

I have heard learned counsel for the parties and I have perused the records. There is no dispute that the disciplinary proceeding is resting on the institution of the vigilance case which yet remains pending. It is also not in dispute that the charges were founded on the vigilance report which is the only evidence mentioned in the charge memo at Annexure-4. The two orders referred to by Mr. Manglam present at Annexures 11 and 14 again go to confirm that no evidence either oral or documentary was adduced rather it is on the basis of the allegations on record of the vigilance report which has satisfied the Enquiry Officer to his conclusion.



Mr. Jha, learned Assisting Counsel to Standing Counsel 18 is also not in a position to contest the factual position. Meaning thereby it is simply on the basis of the allegation which is yet to be tested before a competent court that the Enquiry Officer proceeds to uphold the charges and equally mechanically the Disciplinary Authority has proceeded to terminate the petitioner without assigning any reason rather by simply rejecting the reply as unsatisfactory.

The writ petition is fit to be allowed on each of the two issues raised by Mr. Manglam, namely:

- (a) The finding of the Enquiry Officer is resting on no evidence; and
- (b) The endorsement by the Disciplinary Authority is mechanical and is without any reason.

In so far as the relevance of evidence is concerned, a similar issue fell for consideration before this Court in a case arising from **CWJC No.280 of 2016 (Anil Kumar vs. The State of Bihar)** which was a case of departmental proceeding resting on the vigilance report in which the petitioner was caught red-handed while accepting bribe. In the departmental proceeding so ensued, it is simply on the basis of the vigilance report that the charges were upheld leading to the imposition of a major penalty. This Court taking note of the opinion of the Supreme Court in the case of **Roop**



Singh Negi vs. Punjab National Bank since reported in (2009)2 SCC 570 where a similar issue fell for consideration, allowed the writ petition. Just like in the present case, even in the case of **Anil Kumar** (supra), no witness had been examined and neither the vigilance officer was examined to prove the report nor the complainant had been examined. The opinion expressed by this Bench in the case of **Anil Kumar** (supra) squarely applies to the issue raised herein and for the sake of convenience the relevant extract is reproduced hereinbelow:

“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.

In the result, the order dated 17.3.2015 of the Director, Dairy Development Directorate, Bihar, Patna, impugned at Annexure 4, together with the order dated 16.3.2016 of the disciplinary authority, impugned at Annexure 12, and the order dated 15.7.2016 of the appellate authority, impugned at Annexure 14, cannot be upheld and are, accordingly, quashed and set aside.

The writ petition is allowed.

The petitioner stands reinstated and would be entitled for consequential benefit.

The records produced by Mr. Roy is being returned to him for his custody."

Even the second issue raised by Mr. Manglam in reference to the finding of the Disciplinary Authority in paragraph 4 of the notification of termination impugned at Annexure-19 is fit to be upheld in the light of the law settled by the Supreme Court in a catena of decisions summarized in the case of **Kranti Associates**



Private Limited vs. Masood Ahmed Khan reported in (2010)9**SCC 496, paragraph 47** which runs as follows:

“Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is



not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor*³²).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See *Ruiz Torija vs. Spain*³³ EHRR, at 562 para 29 and *Anya v. University of Oxford*³⁴, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

“adequate and intelligent reasons must be given for judicial decisions.”

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “due process”.

It is rather unfortunate that even though law is well settled in a catena of judgments as to the obligation/duty cast upon the Disciplinary Authority while holding disciplinary proceeding in a fair and impartial manner but the view has remained in the text books, with the Disciplinary Authorities feigning ignorance to the settled position, resulting in such outcomes.

In view of the uncontested position discussed above the



order impugned has to go but the fact is that the petitioner has superannuated in the meanwhile. Under deeming fiction a remand of the proceeding would qualify as a pending proceeding on the date of superannuation and thus liberty is available to the Disciplinary Authority to take a decision whether or not they wish to continue the proceeding against the petitioner under the Bihar Pension Rules, 1950 on the basis of the charges already framed.

In the circumstances discussed above, the notification bearing Memo No.11452 dated 11.11.2014 of the State Government impugned at Annexure-19 together with the enquiry report impugned at Annexure 'A' to the counter affidavit cannot be upheld and are accordingly quashed and set aside.

I would now leave it open at the discretion of the State Government to take a decision whether or not they intend to proceed against the petitioner in accordance with law and considering that the petitioner has since superannuated let the State Government take positive decision in this regard and conclude the proceeding in accordance with law expeditiously and preferably within a period of six months from the date of receipt/production of a copy of this order.

It is made clear that a failure on the part of the State Government to take a decision to continue the proceeding against the petitioner as well as to pass a final order within a period of six



months from the date of receipt/production of a copy of this order for reasons not attributable to the petitioner, would result in revocation of this liberty.

The writ petition is allowed with the liberty aforementioned.

(Jyoti Saran, J)

SKPathak/-

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

