

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3153 of 2011

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Satish Kumar Shahi, Son of Late Ram Shankar Prasad Shahi, resident of Village-Sukki, P.S. Patepur, District- Vaishali, presently posted as Clerk, District Provident Fund Office, Purnea, District- Purnea

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Finance, Govt. of Bihar, Patna
3. The Additional Finance Commissioner-cum-Secretary (Expenditure) Govt. of Bihar, Patna
4. The Additional Finance Commissioner-cum-Secretary, (Resources) Govt. of Bihar, Patna
5. The Commissioner (Account Administration), Department of Finance, Govt. of Bihar, Patna
6. The Joint Commissioner (Account Administration) Directorate of Provident Fund, Govt. of Bihar, Patna
7. The District Magistrate, Patna
8. The District Development Officer-cum-Director, Natinal Employment Programme, Patna
9. The District Provident Fund Officer, Patna
10. The Assistant Commissioner, Directorate of Provident Fund, Govt. of Bihar, Patna-cum- Enquiry Officer
11. The Assistant Director, Directorate of Provident Fund, Govt. of Bihar, Patna-cum- Enquiry Officer.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satyavrat Verma, Advocate
Mr. Abhay Shanker, Advocate
Mr. Shashank Chandra, Advocate
For the Respondent/s : Mr. Abul Kalam, A.C. to AAG-12

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 10-08-2017

Petitioner was working as a ministerial staff in the District Provident Fund Office, Patna. Contemplating departmental action to be taken against him vide Annexure-13 dated 24.04.2007 he was suspended and thereafter vide Annexure-14 and 14/1 on 02.08.2007 and prior to that on 13.12.2006 charges were levelled



against him and a charge memo containing eight charges were communicated. Petitioner submitted his explanation/reply to the charges vide Annexure-15 on 21.09.2007 and the Inquiry Officer vide Annexure-16 dated 08.10.2007 gave a finding that the charges against the petitioner are not proved. However, without notice to the petitioner and without forwarding to him the Inquiry Officer's report, a punishment of censure was imposed upon the petitioner by the impugned order and the appeal filed by the petitioner having also been dismissed, the petitioner has filed this writ petition.

Learned counsel for the petitioner argued that after the punishment was imposed upon him, the petitioner obtained all the documents with regard to the departmental proceedings under Right to Information Act and when he received these documents, it was found that after the Inquiry Officer submitted his report on 08.10.2007 vide Annexure-16 exonerating the petitioner of all the charges, the Disciplinary Authority forwarded the Inquiry Report and all other documents to another officer, namely, a Joint Commissioner one Sri Abhay Kumar Sinha and the said officer vide Annexure-17 gave an opinion that the charges can be held to be proved to some extent and a punishment of censure can be imposed. It is alleged that based on this finding recorded by Sri Abhay Kumar Sinha without notice to the petitioner and in violation to the principles of natural



justice the punishment of censure has been imposed upon the petitioner. Learned counsel for the petitioner argued that if the Disciplinary Authority wanted to disagree with the finding of the Inquiry Officer and wanted to record his own statement or if he wanted to refer the matter for further inquiry to any another officer, the petitioner should have been noticed, heard and after giving an opportunity of defence to the petitioner then only action could be taken. It is a case according to the petitioner, whereby, the Inquiry Officer after taking opinion of a third person and disagreeing with the finding of the Inquiry Officer has imposed the punishment. This according to him not only violates the principles of natural justice but also the law laid down by the Supreme Court in the matter of disagreement by the Disciplinary Authority from the report submitted by the Inquiry Officer and taking action, as laid down by the Supreme Court in the case of **Punjab National Bank and others Vs. Kunj Behari Misra (1998) 7 SCC 84**. That apart, learned counsel for the petitioner argued that after the appeal was submitted by the petitioner, the Appellate Authority also invented a noble way of taking action in the matter. He forwarded the entire memorandum of appeal to another officer who submitted his comments vide Annexure-21 and based on the comments received by this third person, the entire appeal has been dismissed. Accordingly, learned counsel for the petitioner argued that



in this case apart from the fact that there are serious procedural violation, the action taken is not by the application of mind, independently by the Disciplinary Authority or the Appellate Authority but is by seeking opinion from third persons who have influenced the decision making process both of the Disciplinary Authority and the Appellate Authority.

Even though the State Government has filed a detailed reply and has rebutted the aforesaid contention but on scrutiny of the materials available on record, the facts as are narrated by learned counsel for the petitioner hereinabove is found to be correct. It is seen from the records that in his report submitted on 08.10.2007, the Inquiry Officer vide Annexure-16 has held that the charges levelled against the petitioner are not proved. However, the Inquiry Officer referred the matter to Sri Abhay Kumar Sinha and based on the comments submitted by Sri Abhay Kumar Sinha vide Annexure-17 the impugned action has been taken. This itself vitiates the entire process. If the Disciplinary Authority thought it proper to refer the matter to a third person or if he had any reason to disbelieve or disagree with the finding of the Inquiry Officer and wanted to record his own finding of guilt after recording the disagreement based on report submitted by a third person like Sri Abhay Kumar Sinha, it was incumbent, under law, upon the Disciplinary Authority to at least



issue notice to the petitioner, bring all these facts to the notice of the petitioner and thereafter take action. This having not been done, the procedure followed deprives the petitioner reasonable opportunity of defence and material collected behind his back has been used for holding him guilty of the charges levelled against him after the Inquiry Officer had on 08.10.2007 exonerated him of all the charges levelled against him. This vitiates the entire process followed and the action taken consequently thereof stands vitiated in view of the violation of the principles of natural justice.

Keeping in view the aforesaid, this is sufficient enough to hold the entire action against the petitioner to be unsustainable. That apart, further it is seen that the Appellate Authority has also not decided the appeal independently by applying his own mind and his own discretion instead took the assistance of an unauthorized person and decided the appeal on the basis of the recommendation made by a person who under law has no authority to deal with the appeal of the petitioner.

Keeping in view the aforesaid violations to the procedure followed in taking the impugned action against the petitioner and finding there to be substantial enough to quash the entire action, this writ petition is allowed, orders impugned dated 04.05.2010 (Annexure-20) affirming the order dated 18.06.2008



(Annexure-18) quashed. All consequential benefits be granted to the petitioner in consequence of allowing this petition.

(Rajendra Menon, CJ)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	18.08.2017
Transmission Date	

