IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10664 of 2016

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1. Prem Kumar S/o Late Babu Bhagwan Prasad, resident of Village and P.O. Paiga, P.S. Bheldi, District Saran (Chapra) at present resident of Mitra Mandal Colony, Saket Bihar, P.O. Anisabad, P.S. Phulwari Sharif, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Old Secretariat Building, Patna.
2. The Principal Secretary, Home Department, Govt. of Bihar, Patna.
3. The Principal Secretary-cum-Additional Department Enquiry Commissioner, Bihar, Patna.
4. The Inspector General of Prison, Old Secretariat Building, Patna.
5. The Joint Secretary, Home Department, Government of Bihar, Patna.
6. The Joint Secretary-cum-Director (Administration), Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Adv.
Mr. Syed Asgher Najmi, Adv.

For the Respondent/s : Mr. Abhanjali, A. C. to G.A.12

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 19-04-2017

Heard Mr. Bindhyachal Singh, learned counsel for the petitioner and Mr. Abhyanjali, A.C. to G.A.12 for the State.

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

The petitioner has questioned the entire disciplinary proceeding including the order of dismissal bearing Memo No.6348 dated 14.10.2015 passed by the State Government in its Home Department impugned at Annexure-13 to the writ petition and which order has been confirmed when the review application filed by the petitioner has been dismissed on 3.5.2016 vide Annexure-15.

The foundation of the proceedings rests on a complaint made by one of the suppliers to the Divisional Jail at Sitamarhi, a copy of which is a part of Annexure-11/1 at running page 148. According to the complainant, the petitioner had made a demand for illegal gratification to pass his bill for the supplies made by him to the jail. According to the complainant, the petitioner coerced him for parting with an amount of Rs. 1 lac and during which process he was apprehended by the vigilance official giving rise to registration of vigilance case as well as a departmental proceeding was also initiated, the enquiry report of which is placed at Annexure-11/1 upholding the charges. The petitioner was served with the show cause on 4.12.2014 vide Annexure-11 enclosing the copy of the enquiry report and which was responded to by the petitioner. The reply has not satisfied the disciplinary authority leading to the orders in question.

Mr. Bindhyachal Singh learned counsel for the petitioner while questioning the order impugned, has submitted that as per the own admission of the supplier, the bill was prepared on 6.10.2006 and was credited in the account of the supplier on 3.11.2006 i.e. much prior to the alleged transaction. He submits that apart from the fact that the allegation reflects an absurdity where even after the amount has been transferred into the account of the supplier, he alleges coercion by petitioner to part with the amount in question, even otherwise except for the complaint there is no supporting evidence of receipt of the gratification. He submits that the amount was not recovered from the possession of the petitioner rather was kept on the table. He submits that although the complainant has mentioned that after transfer of the bill amount, a jail staff came to inform him to meet the petitioner and whereupon he went to meet the petitioner along with the vigilance officials but neither the jail staff has been identified or examined nor the vigilance official in whose presence the alleged demand was made by the petitioner, was led as evidence. It is submitted that although the enquiry report heavily relies upon by the FSL report of the water turning pink but the F.S.L. report was not led as evidence by the department rather it is the petitioner who had submitted the same while filing his reply before the Conducting Officer together with the information received under the Right to Information Act raising doubt on the competence of the official who had carried out the forensic test, a copy of which is present at running page 108 of the writ proceedings. He thus submits that the order of punishment is based on no evidence rather it is founded on mere suspicion.

Summarizing the argument, it is submitted by Mr. Bindhyachal Singh that:

(a) The enquiry report is based on suspicion.

(b) There is no discussion on the evidence supporting the charge and the findings are presumptuous.

(c) Even though the complaint and the trap memorandum is the foundation, but there is no witness led by the department to support the offer of the complaint and acceptance by the petitioner.

(d) There is no witness to prove the F.S.L report; and

(e) There is a complete non-consideration of the explanation given by the petitioner either by the Enquiry Officer or the disciplinary authority.

The arguments have been contested by learned counsel for the State primarily relying upon version of the Enquiry Officer and the finding of the disciplinary authority thereon.

Learned counsel, however, could not demonstrate from the record whether the issues raised by Mr. Bindhyachal Singh does have an answer.

I have heard learned counsel for the parties.

There is absolutely no dispute that corrupt officials are a malady and have no place either in the Government Department or in any other establishment. The issue however would yet be whether a complaint simplicitor would be sufficient to hold a person corrupt or there has to be supportive evidence. A money lying on the table of a Government official requires a proof of knowledge of its contents as well as whether it was an outcome of a agreement in between the official concerned and the bribe giver. There are three important facets in a trap case which requires to be satisfied before a charge of bribe is to be upheld:

(a) There has to be a demand of money or a forcible extraction from the bribe giver and its acceptance.

(b) There needs to be a witness to the transaction; and

(c) The department needs to prove that the subject matter lying on the table of a Government official was to his knowledge and consent, that the Government official was conscious of the contents of a packet lying on his table; and he touched it with full knowledge of the contents thereof.

It is the charge of the complainant that the bribe money kept in the packet, when offered to the petitioner, was received by him and kept on his table. I would certainly not go into the issues of absurdity as canvassed by Mr. Singh and whether a transfer of money bears any significance on a demand of bribe. In my opinion simply because the money got transferred to the account of the complainant, would not ipso facto reflect absurdity in the charge more particularly where there is a recovery of amount. However the issue is whether the money lying on the table was in compliance of a demand made by the petitioner but manifestly there is complete absence of evidence on this account.

The complaint present at running page 148 makes reference of at least two officials who are witness to the alleged demand i.e the jail staff who went to inform the complainant to meet the petitioner as well as the vigilance official who accompanied the complainant to the residence of the petitioner on 6.11.2006. These are two persons who are alleged witness to the alleged summon made by the petitioner as well as the demand made by him on the illegal gratification respectively but were not led as witness. The seriousness with which the department has proceeded in the matter is that even when the complainant has mentioned that he can identify the person who came with the summons and even when the complainant has specifically stated that he was accompanied with the vigilance official on 6.11.2006 when the query was made by the petitioner as to whether the complainant had come with the money but the department has not thought it proper to lead them as evidence. The ultimate situation comes when the F.S.L. report of the water turning pink was not led as evidence and even its authenticity is doubtful. It is a matter of record at running pages 108 and 111 of the writ proceeding, where the Assistant Director has accepted that the person carrying out the forensic test was not competent to do so rather he was a ballistic expert. Meaning thereby, even the FSL was not worthy of reliance.

In the uncontested circumstances discussed above, it is manifest that the enquiry report at Annexure-11/1 and its affirmation by the disciplinary authority vide Annexure-13 are a mechanical exercise for none of them have bothered to satisfy themselves whether there is any supporting evidence of giving bribe and its acceptance by the petitioner. Apart from the gross infirmity listed above, the admission by the disciplinary authority that of the papers demanded by the petitioner to prepare his reply, he was not entitled to any other paper other than the vigilance report, is another glaring infirmity in the proceeding.

Last but not the least is the non speaking character of the order of punishment which neither deals with the evidence lending support to the charge nor deals with the explanation given by the petitioner. An extreme penalty of dismissal is passed in a routine and mechanical manner dehors the obligation cast on the disciplinary authority under the rules as well as in the judgments on the issue.

For the reason aforementioned, the order of punishment is held resting on no evidence and consequentially Annexure-13 bearing Memo No. 6348 dated 14.10.2015 and Annexure-15 bearing letter No.2608 dated 3.5.2016 are quashed and set aside. The writ petition is allowed with consequential benefits.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
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