

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.201 of 2017

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Ajit Kumar Sinha, son of Late Bindeshwari Prasad Verma, Resident of 401-B,
Quality Enclave, South Mandiri, P.S. - Buddha Colony, District - Patna.

.... Petitioner/s

Versus

1. The Bihar State Food and Civil Supplies Corporation Ltd., Sone Bhawan, 5th Floor, Birchand Patel Path, Patna through its Managing Director.
2. The Managing Director, Bihar State Food and Civil Supplies Corporation Ltd. Sone Bhawan, 5th Floor, Birchand Patel Path, Patna.
3. The Accountant General, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Bihari Sinha, Adv.

For the Respondent/s : Mr. Shailendra Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 06-10-2017

Heard Mr. Ajay Bihari Sinha, learned counsel appearing for the petitioner and Mr. Shailendra Kumar Singh, learned counsel appearing for the Corporation.

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 is aggrieved by the order bearing Memo No.13670 dated 5.11.2015 passed by the Managing Director, Bihar State Food and Civil Supplies Corporation Limited, Patna (hereinafter referred to as 'the Corporation') whereby the petitioner has been visited with the penalty of forfeiture of 100% gratuity as well as the unutilized leave salary admissible to him in exercise of powers vested under rule 43(b) of the Bihar Pension Rules read alongside the Service Rules framed by 'the Corporation'.



This is a second round contest for the petitioner initiated vide charge memo dated 12.07.2007, a copy of which is enclosed at Annexure-6 and which imputes rather a serious charge on the petitioner as being involved in black marketing of the grains allotted by 'the Corporation' for distribution to the beneficiaries. According to the charge memo, a meager 5% of the grains lifted did reach the red-card holders and the P.D.S. dealers and the remaining was sold in open market for securing unjust personal gains in between the period June, 1997 to December, 2002.

The charge memo alleges that in the year 1997, 51540 metric tons of wheat and 34,360 metric tons of rice was allotted by the Food Corporation of India to the State Food Corporation for onward distribution. It is alleged that in between the period 1.4.1998 to February 1999 as against the allotment of 56,66,940/- metric tons of wheat, a quantity of 4,67,234 metric tons and as against the allotment of 3,77,740/- metric tons of rice, a quantity of 1,91,433 metric tons, was lifted which was 85% of the allotment, for distribution to the family below poverty line but a meager 5% reached the red-card holders and the rest was sold in open market or was smuggled to the neighbouring countries. The petitioner was charged of having colluded in the act.

The charges were denied by the petitioner on grounds that he as a Lab Incharge was discharging the duties of accounts office



and was posted at Munger office of 'the Corporation' only for period with effect from December, 2001 to April, 2003. According to the petitioner, he was not posted during the relevant period at Munger. The matter went for enquiry, the report of which is present at Annexure-7 and the report of the Enquiry Officer dated 13.2.2009 itself is sufficient to quash the entire proceeding for it admits to the violation of the mandatory requirement of appointment of Presenting Officer. The enquiry report also while holding the petitioner guilty at par with the District Manager takes note of the statement of the District Manager that none of the receipts was signed by the petitioner. Apart therefrom, there is no other evidence discussed in the enquiry report, to connect the petitioner with alleged charge.

On conclusion of enquiry and after service of show cause notice that the order of punishment was passed vide order bearing Memo No.3215 dated 10.04.2009 of the Managing Director of 'the Corporation' holding him guilty resulting in forfeiture of full gratuity and unutilized leave salary a copy of which is impugned at Annexure-10 and which was appealed against by the petitioner before the Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna who vide order bearing Memo No.8185 dated 28.12.2012 set aside the penalty order and remitted the matter back to the Managing Director of 'the Corporation' for passing a fresh order. The remand has resulted in reiteration of the order of



penalty vide order bearing Memo No.13670 dated 5.11.2015 impugned at Annexure-1 and feeling aggrieved the petitioner is before this Court.

In between the process the petitioner had approached this Court in CWJC No.16581 of 2012 and a coordinate Bench of this Court taking note of the order of remand passed by the Appellate Authority directed the petitioner to cooperate in the disposal of the matter afresh by the Managing Director pursuant to the order of remand.

I have heard learned counsel for the parties and I have perused the records.

As I have observed earlier, the charges are rather serious and spread over a period of 5 years which is inclusive of the posting period of the petitioner in between December, 2001 and April, 2003. The only issue which falls for consideration is, whether even though the defalcation was spread over a period of 5 years inclusive of his posting at Munger, whether the petitioner was part of the corrupt act.

The recitals of the charge memo specifically mentions the allotment period which is in between 1997 until February, 1999. Meaning thereby all the allotments were of the period prior to the posting of the petitioner which begins only from December, 2001.

An attempt was made by Mr. Shailendra Kumar Singh, learned counsel appearing for the petitioner to submit that there has



been interpolation in the accounts book and even though the petitioner was posted as Lab Incharge but he was discharging the duties of accounts section as well. If the submission of Mr. Singh would have been correct and founded on evidence, there would be no occasion for this Court to interfere with the order impugned but the materials on the records of the proceedings is otherwise and the enquiry report dated 13.2.2009 present at Annexure 7 itself is a reason to drop the proceeding against the petitioner because it does not discuss any material evidence to connect the petitioner with the alleged charge. A sweeping allegation *ipso facto* is not sufficient to rope an employee until charges are specific and founded on evidence, which is not present in the present case. On the contrary the period specified in the charge memo itself exonerates the petitioner because it precedes the posting of the petitioner at Munger.

In so far as the allegation of interpolation in the accounts book is concerned, the statement of the District Manager recorded by the Enquiry Officer is again sufficient to drop the charge because it has been admitted by the District Manager in his letter dated 28.8.2007 that none of the receipts was issued by the petitioner.

In my opinion while the charges are sweepingly vague, the specific acts of omission and commission relates to a period prior to the posting of the petitioner at Munger office and above all the



evidence relied upon by the respondents does not connect the petitioner to the charge. In fact the entire proceeding is resting on no evidence as confirmed from the enquiry report present at Annexure 7.

In such undisputed circumstances where neither the enquiry report nor the order impugned refers to any single material to connect the petitioner with the alleged act, the order of punishment is a perversity for it is simply resting on the posting of the petitioner during the period in question without bothering to satisfy whether at all there is evidence to nail the petitioner.

For the reasons discussed the order bearing Memo No.13670 dated 5.11.2015 impugned at Annexure-1 is quashed and set aside.

The writ petition is allowed. Let the claims withheld be paid to the petitioner within 3 months of receipt/production of a copy of this order.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02-11-2017
Transmission Date	NA

