

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1666 of 2015

IN

Civil Writ Jurisdiction Case No. 5831 of 1998

- =====
1. The Bihar State Cooperative Marketing Union Limited through its Administrator, Patna
 2. The State of Bihar through the Commissioner cum Secretary, Cooperative Department, Bihar Patna
 3. The Administrator, Bihar State Cooperative Marketing Union Limited, Patna

.... Appellants

Versus

Surendra Kumar, Son of Sri Devendra Kumar Sinha, resident of Mohalla - Babu Tola, Makhania Kuan, Town and District Patna

.... Respondent

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Appearance :

For the Appellant/s : Mr. Vikas Kumar, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 21-02-2018

Heard learned counsel for the appellants and learned counsel for the private respondent.

The intra-court appeal has been preferred by the authorities of Bihar State Cooperative Marketing Union (BISCOMAUN) since the writ application of the private respondent was allowed and the order of punishment dated 03.02.1998 stood quashed.

Submission of the counsel for the appellants is that the learned Single Judge has committed an error of record by holding that



the departmental enquiry so held was not conducted in a fair and square manner. The finding is that no witness was examined and merely on the basis of certain documents, which were not even exhibited or marked or proved, the punishment of dismissal came to be imposed upon the private respondent.

In support thereof, attention of this Court was drawn to certain documents which have been annexed with the writ application of the private respondent between pages 131-141, which are witnesses' statement and cross-examination done.

Two enquiries were held. One in relation to the charge of discrepancy in the stocks, especially of fertilizers and the private respondent took over charge of the depot in question from one Mr. Raj Nandan Prasad Gupta. The other charge related to the enquiry with regard to non-filing of money suit against the Railways.

After having examined the materials and evidence on record, we come to a considered opinion that the responsibility of filing the money claim for the shortages was imposed upon Mr. Raj Nandan Prasad Gupta, who was the Depot Manager at the relevant time and there are enough materials by way of communications made by senior authority that Mr. Gupta was given the responsibility to ensure filing of the cases and he had been given all the authority and was in possession of the relevant papers in this regard.



If this is so, then holding private respondent guilty of not filing of the claim against the Railways, by the Enquiry Officer seems to be not only an error but also shows irrationality and to that extent one of the charges in the first departmental proceeding cannot be held out against the private respondent.

Even though three witnesses were examined, but a look at the enquiry report of the first departmental proceeding does not indicate in clear terms as to the evidence and material, based on which the conclusion of guilt with regard to variation in the depot could be established against the private respondent. Reading of the enquiry report reads more like a narration of facts than analysis of evidence, documentary or otherwise. To that extent, the learned Single Judge seems to have committed no error by saying that the departmental proceeding was not conducted, as a departmental proceeding which is more like a fact finding, which is not the method and methodology permissible in departmental enquiry.

So far as second charge and departmental enquiry is concerned, variation in the coal depot at Hajipur was found after giving leeway for the standard losses. Quantification had been done for which the private respondent had offered to pay the quantification done, but instead of accepting that offer a departmental enquiry was held and on the basis of the finding of shortage, two enquiry reports



were clubbed together and a common order of punishment came to be imposed upon the private respondent.

This also is not appreciated by us because if two departmental proceedings were initiated and two reports were generated, the punishment should have come to visit on the basis of finding emerging from the two departmental enquiries, but merging two departmental enquiries and ordering a common punishment by the Disciplinary Authority is also unacceptable position, especially when so far as second enquiry was concerned, it was unwarranted and the private respondent had already offered to refund money to the authorities of BISCOMAUN, may be in instalment.

In totality, therefore, the sum essence of what has been recorded by the learned Single Judge as to the reason for setting aside the order of punishment dated 03.02.1998 is not required to be interfered with.

Appeal has no merit. It is dismissed without any cost.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	AFR
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