

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5974 of 2002

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JANKI RAM RAJAK SON OF KANHAI RAM RAJAK, RESIDENT OF
VILLAGE-BASILPUR P.S. ARWAL, DISTRICT-ARWAL.

... .. Petitioner/s

Versus

1.BIHAR STATE FOOD & CIVIL SUPPLIES CORPORATION LTD.
THROUGH ITS MANAGING DIRECTOR, PATNA.

2.THE MANAGING DIRECTOR, BIHAR STATE FOOD & CIVIL
SUPPLIES CORPORATION LTD, PATNA.

3.CHIEF OF ADMINISTRATION, BIHAR STATE FOOD & CIVIL
SUPPLIES CORPORATION LTD, PATNA.

4.CHIEF OF CLAIMS-CUM-CONDUCTING OFFICER, BIHAR STATE
FOOD & CIVIL SUPPLIES CORPORATION LTD, PATNA.

FROM SL. 2 TO 4 ARE HAVING THEIR OFFICES AT SONE BHAWAN,
BEER CHAND PATEL PATH, P.S. KOTWALI IN TOWN AND DISTRICT
OF PATNA.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 1683 of 2002

=====

JANKI RAM RAJAK SON OF KANHAI RAM RAJAK, RESIDENT OF
VILLAGE-BASILPUR P.S. ARWAL, DISTRICT-JEHANABAD NOW
ARWAL.

... .. Petitioner/s

Versus

1.BIHAR STATE FOOD & CIVIL SUPPLIES CORPORATION LTD.
THROUGH ITS MANAGING DIRECTOR.



2.THE MANAGING DIRECTOR, BIHAR STATE FOOD AND CIVIL
SUPPLIES CORPORATION LTD. SONE BHAWAN, BIRCHAND PATEL
PATH, POLICE STATION KOTWALI, TOWN AND DISTRICT-PATNA.

3.CHIEF OF CLAIM, BIHAR STATE FOOD AND CIVIL SUPPLIES
CORPORATION LTD., SONE BHAWAN, BIRCHAND PATEL PATH,
POLICE STATION KOTWALI, TOWN AND DISTRICT PATNA.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 5974 of 2002)

For the Petitioner/s : Mr. R.C.P. Bharti, Adv & Mr. Rajendra
Prasad, Adv

For the B.S.F.C :Mr. Shailendra Kr Singh, Adv

(In Civil Writ Jurisdiction Case No. 1683 of 2002)

For the Petitioner/s : Mr. R.C.P. Bharti, Adv & Mr. Rajendra
Prasad, Adv

For the B.S.F.C : Mr. Shailendra Kr Singh, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 27-03-2018

Heard learned counsel for the parties.

2. This writ petition under Article 226 of the
Constitution of India has been filed for quashing the order dated
08.04.2002 issued by the Chief of Administration, under the
orders of the Managing Director, Bihar State Food and Civil
Supplies Corporation Ltd., by which punishment of (i) recovery
of Rs. 1,38,118.83 with interest (ii) stoppage of one increment
with non-cumulative effect, (iii) censure (iv) nothing to be paid
except subsistence allowance during the period of suspension,
had been passed against the petitioner, after departmental
enquiry initiated against him.



3. Briefly stated, the case of the petitioner is that he was working as salesman in Bihar State Food and Civil Supplies Corporation Ltd., Gaya and a departmental proceeding was initiated against him for the period he worked as salesman in S.F.C, Jamshedpur and was deputed in Burma Mines (Oxygen Godown), Jamshedpur, to assist the Deputy Manager and Incharge of the said godown Triloki Prasad Singh in April-1994 vide order dated 21.04.1994, issued by the District Manager, S.F.C, Jamshedpur.

4. The memo of charge was served upon the petitioner vide letter dated 25.01.2002 issued by the Chief of Administration, S.F.C (respondent no. 3) directing the petitioner to submit his explanation to the Chief of Claims appointed as Enquiry Officer. The charges against the petitioner was shortage of 226.64.500 Quintal of rice and 10.40.500 Quintal of wheat on physical verification conducted in the month of April, 1995 valued at Rs. 1,38,118.83.

5. Petitioner was never given the charge of the said godown during relevant period and actual Incharge was Triloki Prasad Singh and he was deputed there only to assist the Godown Manager and to carry out work assigned to him by the said Godown Manager.



6. The petitioner on receipt of memo of charge appeared before the Enquiry Officer and submitted a petition on 12.02.2002 to make available certain relevant documents to prepare his defence but said documents were never supplied to the petitioner.

7. The Enquiry Officer instead of supplying those documents issued letter dated 02.04.2002 directing him to appear on 04.04.2002, in his office without granting any time to prepare his defence and thereafter petitioner filed his defence on the basis of materials available with him on 04.04.2002.

8. It has been submitted by the petitioner that in his show cause reply, he had stated in detail that a High Level Committee was constituted in respect of different allegations levelled against the then Godown Manager regarding Burma Mines (Oxygen Godown) besides other godown and the said Enquiry Committee constituting of high officials made a detailed enquiry and submitted its report to the Managing Director on 19.05.1995, in which no fault was found against the petitioner and he was exonerated and high powered Enquiry Committee found Triloki Prasad Singh fully responsible for the alleged shortage and other irregularities and lapses.



9. In his show cause reply petitioner had submitted that District Manager, S.F.C Jamshedpur had sent a confidential report dated 28.04.1995 to the Managing Director, S.F.C in respect of defalcation and irregularities at Burma Mines (Oxygen Godown) in which he had stated that Triloki Prasad Singh, the Incharge Godown Manager had absconded with relevant registers and papers in the month of March-1995, and physical verification of the stock of foodgrains was ordered by the Deputy Commissioner, East Singhbhum, Jamshedpur and same was done by the C.D.P.O. Jamshedpur, and shortage of 226.64.500 Quintals of rice and 10.40.500 Quintals of wheat were found for which said Triloki Prasad Singh, Godown Manager, was responsible and on the basis of said report FIR was instituted against said Triloki Prasad Singh on 19.06.1995 under different sections of IPC, but petitioner was not named in the FIR.

10. The enquiry report was submitted by the Enquiry Officer to the disciplinary authority and without serving the second show cause notice alongwith a copy of the enquiry report, the disciplinary authority passed order of punishment dated 08.04.2002, which is in violation of principles of natural



justice, as such order of punishment passed by the disciplinary authority is not sustainable.

11. Petitioner had filed his written defence and statement before the Enquiry Officer on 04.04.2002 and the disciplinary authority has passed final order on 08.04.2002, without giving a copy of inquiry report and submission of representation of petitioner against the finding of Enquiry Officer. The petitioner had also filed a writ petition being CWJC No. 1683 of 2002 against the order of recovery of Rs. 1,38,118.83 from the salary of the petitioner without initiating any enquiry or departmental proceeding and as such this Court had granted interim stay by order dated 12.02.2002 against the order of recovery and during pendency of said writ petition departmental proceeding was initiated against the petitioner after serving memo of charge and final order has been passed by the disciplinary authority which is impugned as Annexure-1 in this writ petition.

12. A counter affidavit has been filed on behalf of respondents in which it has been stated that petitioner as salesman was posted at Burma Mines (Oxygen Godown) at Jamshedpur by office order issued by Deputy Commissioner, Jamshedpur, and godown was directed not be closed on any day



and in absence of Assistant Manager, the senior most employee will be Incharge of the godown. The Assistant Godown Manager posted at Burma Mines (Oxygen Godown) at Jamshedpur went for election duty and in his absence petitioner had taken charge of the said godown. Petitioner at the time of taking charge did not report any shortage, and after physical verification done by the CDPO, shortage was detected and thereafter departmental proceeding was initiated against the petitioner. It has been further submitted that Enquiry Officer has found charges to be proved against the petitioner and the disciplinary authority has agreed with the findings of Enquiry Officer and has imposed minor punishment on the petitioner. Petitioner was served memo of charge along with list of evidence by letter dated 25.01.2002 and petitioner submitted his defence on 12.02.2002. It has been submitted on behalf of respondents that according to Rule-38 of Manual of Departmental Enquiry, when charges were proved for minor punishment the inquiry report need not be served on the delinquent.

13. After completion of enquiry proceeding, Enquiry Officer had recommended for minor punishment and disciplinary authority agreed, and as such imposed minor punishment as contained in Annexure-1 to the writ petition.



14. After hearing learned counsel for the parties and perusing the materials available on record, it is apparent that petitioner was proceeded for imposition of major punishment and as such charges were framed against him and a full fledged departmental enquiry was conducted against him, whereby the Enquiry Officer was appointed by the disciplinary authority. The contention of the respondents that petitioner has been imposed a minor punishment as such there was no need to serve copy of enquiry report is not correct. Even minor punishment is imposed upon the delinquent but if proceeding has been initiated for imposing major punishment and procedure as prescribed for major punishment is being followed by the department, the procedure as prescribed for imposition of major punishment has to be followed by the department and only because minor punishment has been imposed, the prescribed procedure cannot be short circuited.

15. Reference in this connection may be made to the judgment of this Court in the case of **Upendra Choudhary Vs State of Bihar & Ors** since reported 2006(1) PLJR 691, has held as follows:-

“5. This Court finds that the punishment imposed on the petitioner is undoubtedly a minor punishment to which



the procedure applicable under Rule 55A of the aforesaid Rules would apply. This Court however also finds that the respondents having option between Rules 55 and 55A of the aforesaid rules opted to initiate proceeding under the former rules. Having done so it would not be open to them to take shelter and contend that essentially the present proceeding was under Rule 55A after they have commenced a regular departmental enquiry leading to the submission of the enquiry report. In the circumstances, in view of the admitted position that the petitioner was exonerated. In the earlier enquiry report, he was never associated with the subsequent enquiry and copy of the same was never communicated to him muchless show cause or the proposed punishment, coupled with the fact that the counter affidavit would not disclose any justifiable reason for holding fresh enquiry in view of Annexure 6, this Court holding that the impugned order at Annexure 1 is contrary to law.”

16. Even petitioner has been imposed minor punishment, the procedure as prescribed for imposition of major punishment has to be strictly followed as has been held by this Court in the case of Upendra Choudhary (supra), as such non-service of enquiry report which has been admitted by the respondents makes the procedure vitiated from the stage of submission of enquiry report by the Enquiry Officer to the disciplinary authority, as such the order of punishment passed by the disciplinary authority cannot be sustained and is set aside. The matter is remitted back to the Disciplinary Authority which



will issue second show cause notice to the petitioner after enclosing copy of enquiry report to submit his reply to the findings of the Enquiry Officer and thereafter the disciplinary authority after considering the report of Enquiry Officer and reply of the petitioner, shall pass final order in accordance with law.

This writ petition is allowed to the extent as indicated above.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	15.05.2018
Transmission Date	N.A.

