

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2397 of 2011

=====

Purushottam Singh, S/O Sri Bikunth Singh, Resident of Village Shiv Nagar, Police Station Karpi, District Arwal, Presently posted as Forest Range Officer, Bausi, District Banka.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Forest and Environment Department, Government of Bihar, Old Secretariat, Patna.
2. The Deputy Secretary, Forest and Environment Department, Government of Bihar, Old Secretariat, Patna.
3. The Principal Chief Conservator of Forest, Bihar, Patna.
4. The Additional Secretary, Forest and Environment Department, Government of Bihar, Old Secretariat, Patna.
5. The Conservator of Forest cum Enquiry Officer, Muzaffarpur Circle, Muzaffarpur.
6. The Conservator of Forest cum Enquiry Officer, Bhagalpur Circle, Bhagalpur.
7. The Conservator of Forest cum Circle Director cum Conducting Officer, Balmiki Tiger Project, Champaran, Bettiah.
8. The Divisional Forest Officer, Forest Extension Division, Saharsa.

.... Respondents

=====

Appearance:

For the Petitioner/s :	Mr. Ravindra Nath Dubey and Ms. Punam Kumari, Advocates.
For the Respondent/s:	Mr. Mahendra Prasad Verma, AC to SC 20.

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 15-01-2018

Heard learned counsel for the petitioner and learned counsel representing the State.

2. The petitioner in the present case is aggrieved by the Appellate Order as contained in Memo No. 2794 dated 10.09.2010 issued under signature of the respondent no. 2 (Annexure-1) as also the order of punishment bearing Memo No. 556 dated 07.02.2004 passed by the Disciplinary Authority as contained in Annexure-2 to



the Writ Application. The petitioner has been awarded certain punishments by the Appellate Authority by modifying the order passed by the Disciplinary Authority. The Appointing Authority has awarded two punishments, i.e., (i) stoppage of three annual increments with cumulative effect and (ii) as a result of diversion / misappropriation of the money provided to the petitioner by way of advance, 50% of the said amount, i.e., Rs. 13,748.05 shall be recoverable from the petitioner. Earlier, the Disciplinary Authority had awarded a punishment of stoppage of five annual increments with cumulative effect, recovery of 50% of the misappropriated amount, i.e. Rs. 13,748.05 and that the petitioner shall not be entitled to anything more than what has been paid to him as subsistence allowance during the period of his suspension.

3. From the narration of facts stated in the Writ Application as also the Counter Affidavit it would appear that the petitioner was posted as a Range Officer, Birpur, Saharsa Forest Division. He was put under suspension vide Memo No. 1060 dated 18.04.2001 and was served with a charge-sheet as contained in Annexure-4 to the Writ Application. He was called upon to submit his defence statement before the Enquiry Officer. It is the case of the petitioner that he appeared before the Enquiry Officer on 11.06.2001 and filed an application demanding some documents for purpose of



giving a detailed reply to the charges but those documents were not supplied to him. It is also stated that the petitioner was advised to visit Saharsa for perusal of the documents where he went and filed an application on 17.10.2001. Submission is that despite all efforts taken by the petitioner he was not supplied with the documents required by him.

4. The petitioner ultimately submitted his Show Cause on 12.08.2002 before the Conducting Officer and the same was received on 13.08.2002. In his Show Cause, the petitioner submitted that he has filed a tentative Show Cause and a detailed Show Cause / reply will be submitted after receipt of the documents. It is submitted that his request to the Forest Officer for supplying the documents was not paid heed to as the documents were not supplied. It is further stated that the petitioner appeared before the Presenting Officer several times but the Presenting Officer did not appear on all the dates, except that he appeared on 18.11.2002 and 30.11.2002, but no witness was produced by the Presenting Officer.

5. The petitioner was served with a Show Cause Notice dated 07.10.2003 along with an Enquiry Report dated 29.05.2003. According to the petitioner, it is evident from the Enquiry Report that the Conducting Officer had examined, only on one date, the documents produced by the Presenting Officer but did not examine



any witness in the proceeding. The petitioner filed a reply to the Show Cause on 23.10.2003 before the Disciplinary Authority in which he took a stand that the Enquiry Report is not based on any evidence, he requested for reconsideration of the matter and to exonerate him. The Disciplinary Authority, according to the petitioner, without giving any opportunity to the petitioner and without considering the reply to the Show Cause filed by the petitioner passed an order of punishment on the basis of the Enquiry Report. An appeal preferred by the petitioner before the respondent no. 2 was rejected too.

6. The petitioner moved this Court in CWJC No. 9623/2005 challenging the order of punishment as also the appellate order. This Court vide its order dated 08.12.2009 (Annexure-15 to the Writ Application) quashed the appellate order and remitted the matter back to the Appellate Authority, namely, the Principal Secretary, Forest and Environment Department with a direction to decide the appeal of the petitioner afresh within a period of nine months from the date of receipt / production of a copy of the order by a reasoned order dealing with each and every contention raised by the petitioner in the Memo of Appeal. After remitting of the matter to the Appellate Authority, the Appellate Authority has passed a fresh order after giving an opportunity of hearing to the petitioner; the order was passed by the Appellate Authority as contained in Memo No. 2794



dated 10.09.2010 (Annexure-1 to the Writ Application).

7. Learned counsel for the petitioner submits that this time the Appellate Authority has no doubt discarded the finding of the Enquiry Officer as regards Charge No. (i) and has held that Charge No. (vi) is only partially proved and, therefore, the punishment imposed upon the petitioner has been reduced to the extent indicated hereinabove, however, the Appellate Authority has failed to consider the issues raised by the petitioner and thereby the petitioner's appeal has not been properly considered. Learned counsel further submits that the Appellate Authority could not consider the two arguments – (i) that the petitioner was not supplied with the documents which were required by the petitioner and (ii) the Presenting Officer on behalf of the department had not produced any oral or documentary evidence to prove the charges against the petitioner.

8. Expanding the argument on behalf of the petitioner, learned counsel submits that in this case altogether six charges were framed against this petitioner. He has taken me through the charges one-by-one. Those are being taken note of hereunder for a ready reference:-

(i) Despite being reminded again and again by the Divisional Forest Officer, Saharsa to deposit the money received on account of revenue in the treasury, the petitioner did not deposit the



same on time,

(ii) the petitioner did not submit the account in respect of the money received by way of advance under Jawahar Rojgar Yozana,

(iii) worked on his own will and thereby committed act of indiscipline,

(iv) violation of the orders of senior officers,

(v) loss caused to the government property for his personal benefits,

(vi) compounding of cases in violation of Section 68(3) of the Indian Forest act, 1927 and Bihar Act 9 of 1990, acting unauthorizedly or on his own will, and

(vii) committed fraud with the administration.

9. Learned counsel submits that in course of enquiry, Charge No. (1) was held to be proved as the petitioner in course of his defence submitted that he had deposited the money received in the month of April to July between August to October, 1998. His defence was that because the PD A/C was not sanctioned, therefore, the money collected by him was spent in payment to the workers. The Enquiry Officer held that the ground advanced by the petitioner for not depositing the money in the treasury on time was not a valid defence and, hence, it cannot be taken as if the retention of money was legal and valid; this charge was taken as proved. So far as Charge



No. (ii) is concerned, the Enquiry Officer found that it was not proved. Regarding Charge No. (iii), (iv) & (v), the Enquiry Officer held that the defence taken by the petitioner was not believable and the petitioner would be equally liable and guilty for diversion of money / fund amounting to Rs. 27,497.10; the Enquiry Officer held that the money which was diverted is liable to be recovered from the In-charge Forester Sri Surendra Prasad as well as from this petitioner. The Enquiry Officer also found that the illegal transportation of forest woods and connivance of this petitioner was proved but his role in shifting of the ARA MACHINE (Saw Mill) without permission from the competent authority and then sealing of the same could not be established. As regards Charge No. (vi), the Enquiry Officer held that the petitioner could not bring any evidence to show that he had compounded the cases where trucks were found carrying the forest woods illegally on the instruction of his superior / senior officer. It was also held that under Section 68 of the Indian Forest Act, a Forest Officer is not empowered unless he is a Forest Officer of the rank, not inferior to the rank of an Assistant Conservator of Forest, to compound an offence. Charge No. (vii) was not considered as a separate charge because the Enquiry Officer was of the view that a finding in this regard may be recorded only on the basis of the finding which have been recorded in respect of the above-mentioned charges.



10. Learned counsel submits that apparently there was no basis for the Enquiry Officer to hold the petitioner guilty for the aforesaid charges and this aspect of the matter has not been considered by the Appellate Authority even on remand.

11. On the other hand, learned counsel representing the State submits that the charges against the petitioner are of very grave nature. The petitioner received Rs. 3,46,443.00 upto the month of August, 1997 under PL A/C against which he deposited only Rs. 1,67,521.00 in government treasury and the remaining amount of Rs. 1,78,922.00 was kept as cash balance. Only after some reminders, the total amount was deposited in the government treasury.

12. It is further submitted that the petitioner was given an advance under PL A/C in the month of March, 1998 for logging and extraction of timber works. These works were not undertaken and an amount of Rs. 27,497.10 was shown to have been spent in sowing of seeds of Khair and Babul under afforestation works undertaken in the year 1996-97 in the account of May 1998 by Voucher No. 64. On verification it was found that sowing of Khair or Babul was not undertaken in the related afforestation area. Hence, this is to be treated as a case of embezzlement of Rs. 27,497.10 by the petitioner by submitting false vouchers. It is further submitted that by Voucher No. 68 and 69 of March 1998 account, Rs. 15,940.00 was shown for



purchase of cow-dung fertilizer for plants whereas, as per rules, fertilizer should have been purchased from BISCOMAUN. It was shown that fertilizer was put in a pit prepared for plantation which is against the procedure adopted by the Department of Plantation. Therefore, in all an embezzlement of Rs. 43,437.10 was done by the petitioner.

13. Learned counsel for the State referring to the Counter Affidavit submitted on its behalf submits that the government timber was seized by the Thana-in-charge of Balua Bazar while it was in transportation and Thana Case No. 24/98 was lodged in this regard. The government timber was extracted from canal side plantation of Murliganj and while transportation it should have been accompanied by a transit permit for the Government Depot, but the seized timber was not accompanied with any transit permit but only with a plain paper containing details of measurement of timbers. These were being transported illegally for personal gain. It was found that the petitioner along with other staff was indulged in theft of government timber. Only part of extracted timber was entered in Government Depot. During enquiry, the petitioner did not cooperate and did not produce the documents which were demanded from him. On repeated reminders and persuasions, he submitted the Felling Register after one year and from the register it was evident that entries of only those



timbers were made which were entered in Government Depot. During enquiry, it was revealed that without obtaining permission of the competent authority, Saw Mill of Sri Ash Narayan Mishra was allowed to shift and establish near canal side of Balua Gram for assisting the theft of government timber.

14. It is further submitted that even though the petitioner was not competent to compound the case under the Indian Forest Act, he after seizing two trucks indulged in illegal transportation of timbers, allowed them to go by compounding and imposing a fine of Rs. 1000.00 for each truck. He was acting beyond his authority.

15. In the aforesaid circumstance it is submitted that the departmental proceeding was initiated and the Conservator of Forest was appointed as the Enquiry Officer and the Divisional Forest Officer, Saharsa was appointed as the Presenting Officer. The Enquiry Officer found the charges proved except that Charge No. (ii) and the Disciplinary Authority thereafter examined the enquiry report, sent a copy of the same to the petitioner giving him an opportunity to submit his show cause and on receipt of the same, after considering the reply, the order of punishment was passed.

16. In reply to the statements made in Paragraphs 12, 13 and 14 of the Writ Application, the State has taken a stand in Paragraphs 17, 18 and 19 of the Counter Affidavit wherein it is



submitted that since no witness was produced either by the Presenting Officer or by the petitioner, question of examination of any witness does not arise. It is stated that the petitioner was made available the documents and was also given an opportunity to examine the remaining documents in the office of the Divisional Forest Officer, Saharsa. In the enquiry report, the Enquiry Officer has recorded reasons for finding the petitioner guilty of charges. It is further stated that the decision of awarding punishment to the petitioner has been taken after examination of the enquiry report and after the Show Cause was filed by the petitioner, the appellate order has been passed after hearing the petitioner and on perusal of the records concerned.

17. The statements made in the Counter Affidavit on behalf of the State have not been controverted on behalf of the petitioner by filing any rejoinder.

18. Upon consideration of the entire materials and on giving a thought to the submissions made on behalf of the petitioner as well as learned counsel for the State, this court would come to a conclusion that in the present case, on remand, the Appellate Authority has passed a reasoned order after giving an opportunity of hearing to the petitioner as is evident from the order itself. The Enquiry Officer had found Charge No. (i) proved against the petitioner, however, the Appellate Authority on re-consideration of



the materials came to a conclusion that this charge may not be taken as proved. As regards Charge No. (iii), (iv) & (v) which were considered, the Appellate Authority considered the materials on the record wherein it was found that a sum of Rs. 27,497.10 was made available to the In-charge Forester by the Conservator of Forest, Purnea for sowing of seeds of Khair / Babul for which technical sanction was granted. The Appellate Authority upon consideration of the submissions of the petitioner took a view that the petitioner was not able to demonstrate that the amount which is being said to have been misappropriated was utilized by him and, for that purpose, if any work order was issued by him then why the same could not be produced before the Appellate Authority. The petitioner failed to produce any work order or a copy of the sanction order showing that the work, which he claims by virtue of the technical sanction given by the Conservator of Forest, Purnea done, was the same for which the technical sanction was granted by the Conservator of Forest, Purnea. The Submission of the petitioner was rejected by the Appellate Authority. Thus both the Disciplinary Authority and the Appellate Authority have held that this amount of Rs. 27,497.10 was diverted without sanction from the competent authority.

19. As regards Charge No. (vi), the Appellate Authority accepted the submission of the petitioner to some extent that he had



compounded the offence as per the oral instruction of the then Divisional Forest Officer but at the same time the Appellate Authority held that the petitioner had definitely acted in violation of the established law on this behalf and, therefore, this charge was taken to have been partly proved.

20. The Appellate Authority has reduced the punishment substantially because in place of five annual increments which were stopped with cumulative effect by the Disciplinary Authority, the Appellate Authority has reduced it to three annual increments with cumulative effect. Further, the petitioner has been allowed the salary for the period he remained under suspension. The order of the Disciplinary Authority to recover 50% of the amount of Rs. 27,497.10 has been reiterated by the Appellate Authority.

21. The submission of the learned counsel for the petitioner that the petitioner was not supplied with any document or no oral evidence was led on behalf of the department would not impress upon this court inasmuch as this Court would come to a conclusion that neither the Disciplinary Authority nor the Appellate Authority have relied upon any documentary evidence which the petitioner did not admit or have denied or which, according to the petitioner, were not within his knowledge. It is an admitted position that Rs. 27,497.10 was provided by way of advance for sowing of



seeds of Khair / Babul. However, the petitioner was unable to produce any sanction order or work order or to take a plea in this regard to show that the money was spent for that purpose. It was not the case of the petitioner that he had obtained sanction from the competent authority to divert this fund. Further, as regards the compounding done by the petitioner by allowing the two trucks which was seized while transporting illegal forest woods after taking Rs. 1000.00 from each of the trucks the same cannot be said to be in accordance with law. The petitioner cannot say that he would act in violation of law only because the superior authority asked him to do so. The petitioner has not pleaded that at any point of time he informed his superior authority regarding the legality of such decisions allowing the trucks to go by paying Rs. 1000.00 as compounding amount because such compounding was not permissible at the end of the petitioner in terms of Section 68(3) of the Indian Forest Act.

22. It is by now well settled that if a delinquent employee pleads non-supply of the documents he would have to demonstrate as to how non-supply of the documents demanded by him prejudiced him or his defence to the extent that the order passed by the Disciplinary Authority needs to be interfered with while conducting a judicial review of that order. In the present case, the petitioner is unable to show that there was any document which he was not



allowed to look into and, on the basis of such documents, the Disciplinary Authority or the Appellate Authority has held him guilty. On the contrary, what has been stated in the Counter Affidavit categorically saying that the petitioner was allowed to inspect the entire records has not at all been denied by the petitioner. If it is so, this Court would come to a conclusion that no prejudice has been caused to the petitioner by non-supply of the alleged documents which he claims were necessary to protect his interest. In the opinion of this Court, all the charges have been proved on the basis of the admitted facts and law on the subject.

23. Learned counsel for the petitioner relies upon a judgment of this Court in the case of **Kumar Upendra Singh Parimar Vs. B.S. Co-opt. Land Dev. Bank Ltd. & Ors.**, reported in **2000(3) PLJR 10**.

24. The Appellate Authority has considered the materials available on the record and only after affording an opportunity of hearing to the petitioner a fresh order has been passed by the Appellate Authority. This Court does not find any illegality in the decision-making-process either in the order passed by the Disciplinary Authority or the Appellate Authority; so far as the quantum of punishment is concerned, considering the facts of the case and the law settled that unless the punishments are found disproportionate to the



status of guilt, this Court would not interfere with the same, this Court is of the considered opinion that given the limited scope of interference in the matter of quantum of punishment, there is nothing on the record to take a view otherwise, I do not find any merit in the Writ Application. The orders impugned do not warrant any interference by way of judicial review.

25. The application is dismissed. No order as to cost.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16.01.2018
Transmission Date	N/A

