

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13984 of 2008

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Manoj Kumar Ranjan S/o Sri Basudev Malakar, Resident of Baisha, P.s.- Parwata,
District- Khagaria.

.... Petitioner.

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department having his office in Vishwesharaya Bhawan, P.S. Shastrinagar, District-Patna.
2. The Secretary, Road Construction Department having his office in Vishwesharaya Bhawan, P.S. Shastrinagar, District-Patna.
3. The Secretary, Building Construction and Housing Department having his office in Vishwesharaya Bhawan, P.S. Shastrinagar, District-Patna.
4. The Engineer-in-Chief, Road Construction Department having his office in Vishwesharaya Bhawan, P.S. Shastrinagar, District-Patna.
5. The Deputy Secretary to Government (Vigilance), Road Construction Department, Bihar, Patna.
6. The Chief Engineer (South), Building Construction Department, Patna.
7. The Executive Engineer, Building Division, Building Construction Department, Supaul.
8. The Assistant Engineer, Building Sub-Division, Building Construction Department, Birpur.
9. The Branch Manager, State Bank of India, Mahavir Chowk Branch, Supaul.
10. The Sub-Divisional Officer, Building Sub-Division, Supaul, Building Construction Department.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. RUPAK KUMAR
For the Respondent/s : Dr. Mankeshwar Tiwari,, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date: 27-06-2018

The learned counsel for the petitioner submits that the records called for by this Court by an order dated 5.3.2018 would not be necessary for adjudication of the present case.

The present writ petition has been filed for quashing the order of punishment of dismissal from service of the petitioner herein dated 31.01.2008 issued by the Engineer-in-Chief, Road Construction Department, Bihar, Patna.

The short facts of the case are that the charge sheet dated



29.08.2006 was issued against the petitioner and a departmental proceeding was initiated on the charges that the petitioner had received a sum of Rs.1,50,000/- each as advance for the purposes of the emergent repairing of the Primary Health Centre Building, Nirmali and Narauna, however, the said money was misappropriated by the petitioner and he had not spent the money over the said repairs. The enquiry officer has held the enquiry and submitted his enquiry report dated 18.12.2006 finding the charges to have been proved as against the petitioner herein, whereafter the order of punishment dated 31.1.2008 has been passed whereby and whereafter, the petitioner has been dismissed from service.

The learned counsel for the petitioner, referring to the enquiry report, has submitted that neither any evidence has been led by the prosecution/ respondents nor the prosecution/ respondents have proved the factum of the petitioner having received the aforesaid sum of Rs.1,50,000/- each for the purposes of emergent repairing of Primary Health Centre Building, Nirmali and Narauna.

The learned counsel for the petitioner submits that the present case is a case of no evidence and for that purpose, the learned counsel has relied upon a judgment rendered by the Hon'ble Apex Court in the case of **Roop Singh Negi Vs. Punjab National Bank**, 2009(2) SCC 570 and a judgment reported in (2010)2 SCC 772 (**State of U.P. Vs. Saroj Kumar Sinha**) as well as a judgment reported in 2000(3) PLJR 10 (Kumar Upendra Singh Parimar vs. B.S. Co-Opt



Land Dev. Bank Ltd. & Ors.), Paragraphs No. 12, 15, 16, 18 and 19

whereof are quoted herein below:-

“12. Under those rules there are detailed provisions for holding regular departmental enquiry. In holding of a departmental enquiry it is required to prove the charges against the delinquent employee by producing the departmental witnesses and by examining them by the enquiry officer. If the delinquent employee does not attend the enquiry even then the department has to prove the charge by examining the witnesses in support of its own documents. In the departmental enquiry no onus is cast upon the delinquent employee to prove the charges. The charges have to be proved by the department. If no witness is called by the department in support of the charges in that case it should be held that the department has not proved its case and in such a situation the enquiry officer cannot record the findings with regard to guilt against the delinquent employee just because the delinquent employee is absent.

15. Reference in this connection may be made to the Constitution Bench Judgment of the Apex Court in the case of Union of India vs. H.C. Goel, reported in A.I.R. 1964 S.C. page 364.

His Lordships Gazendra Gadkar, J. His Lordship's then was, summarised the law in this respect as follows:-

"It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules."

16. Since the aforesaid principle laid down by the Constitution Bench of the Supreme Court has been subsequently followed in many other cases, and has not been departed from till today, this Court cannot accept the bald statement urged by the learned counsel for the respondent that since the charges are based upon the documents so no witnesses need be examined to bring home the charges.

18. This Court cannot accept this argument for the



reasons already indicated when an enquiry has been ordered by the disciplinary authority and an enquiry officer has been appointed it is not for the petitioner to demand that the department must produce witnesses to prove its case. The onus is never on the delinquent employee, on the other hand, onus is on the department to prove the charges and it is for them to produce their witnesses in support of his case against the delinquent employee.

19. Therefore, in the facts of this case, this Court is constrained to hold that by not producing any evidence in support of its case, the respondent authorities have failed to prove the charges against the delinquent employee. Where charges have not been proved the enquiry report loses all its importance and the punishment imposed on the petitioner cannot be sustained. When a person is thrown out of employment, it must be on the basis of a procedure which is reasonable, just and fair. (See D.K. Jadav vs. J.M.A. Industries Ltd., reported in (1993)3 SCC page 259 : 1994(2) PLJR (SC)55.”

Per contra, the learned counsel for the respondents has submitted in the counter affidavit that the receipt regarding receiving of money by the petitioner has been annexed, therefore, there is no illegality in inflicting the punishment on the petitioner herein.

I have heard the learned counsel for the parties and gone through the materials on record. Admittedly, the respondents have failed to controvert the fact that during the course of enquiry, neither any evidence has been led by the department to prove the charges nor the receipt, said to have been signed by the petitioner in acknowledgement of the receipt of the advance money, has been proved, hence it is not correct, on the part of the respondents to contend, at this juncture, that the findings of the enquiry officer



regarding the charges having been proved is neither perverse nor illegal. This Court finds that the aforesaid judgments referred to by the learned counsel for the petitioner fully covers the present case and the present case is not only a case of no evidence but is also a case where the department has neither produced any evidence, nor proved any documentary evidence to conclusively prove the guilt of the petitioner herein.

For the reasons mentioned hereinabove, the order of punishment dated 31.01.2008, which is based on a perverse enquiry report cannot be upheld, hence, the same is quashed. As a consequence of quashing of the order of punishment dated 31.01.2008, the appellate order dated 19.06.2009 is bound to fall and is accordingly, set aside.

The present writ petition is allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	25.07.2018
Transmission Date	

