

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15639 of 2010

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Mundrika Choudhary S/O Shri Muneshwar Chaudhary R/O Mohalla- Krishi Nagar,
P.S.- Shastri Nagar, Distt.- Patna

.... Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary Old Secretariat, Govt. Of Bihar, Patna
2. The Principal Secretary to Government, in the Department Of General Administration Old Secretariat Building, Patna
3. The Joint Secretary to Government in The Department Of General Administration Old Secretariat Building, Patna
4. The Deputy Secretary to Government in the Department Of General Administration Old Secretariat, Patna
5. The Under Secretary to Government in The Department Of General Administration, Old Secretariat Building, Patna
6. The Departmental Enquiry Commissioner General Administration Department, Old Secretariat Building, Patna
7. The District Magistrate, Supaul

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhinav Srivastava, Adv.
Mr. Ujjawal Bhushan, Adv.
For the Respondent/s : Mr. (SC4)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date: 19-06-2018

The present writ petition has been filed with a prayer to quash the resolution dated 29.7.2010, contained in Memo No. 7306 whereby and whereunder the petitioner has been inflicted the punishment of compulsory retirement.

2. The brief facts of the case are that the petitioner was posted as Director, Accounts Administration and self-employment at DRDA Supaul w.e.f. the month of January, 2005. It appears that on a complaint of the Mukhiya, the Vigilance had conducted raid on 28.1.2006 in the office of the District Rural Development Agency, Supaul and one Bachneshwar Jha, Assistant in the office of Deputy



Development Commissioner, Supaul was caught red-handed taking a bribe of Rs. 35,000/- and during search from the Almirah, a sum of Rs.6,43,000/- was seized. At the same time, the Vigilance had also seized money from various Almirah. It is the case of the petitioner that on account of severe pain, the petitioner was constrained to consult his Dentist at Patna and for that purpose, he had submitted a leave application on 29.1.2006 for being granted leave on medical ground from 30.1.2006 to 5.2.2006 and thereafter he had left the headquarter for consulting his Dental Surgeon at Patna. On 29.1.2006 the District Magistrate, Supaul asked show cause from the DDC, Supaul as well as from the petitioner in connection with seizure of huge sums of money from the Almirah of Shri Bachneshwar Jha and others.

3. Ultimately, a charge sheet dated 9.8.2006 was served on the petitioner and three charges were levelled against the petitioner. Firstly, it was alleged that during the course of raid by the Vigilance Department, huge sums of money has been recovered from Bachneshwar Jha, Prabhakar Lal Das and Chandrahas Verma and since the petitioner was not present in the office, his complicity in the matter is apparent. Second charge was with regard to unauthorized absence of the petitioner from the headquarter on 29/30.1.2006. The third and last allegation is regarding interfering in the works of the Vigilance Department. The enquiry officer had conducted the enquiry



and submitted his enquiry report wherein, the charge no.1 regarding huge amount of money having been recovered by the Vigilance from the District Village Development Agency, Supaul during the course of raid conducted there and the petitioner being alleged to have not been present in the office which depicted his complicity in the matter, has not been found to be proved. The allegation regarding the petitioner being absent from the headquarter for one day despite his leave application having been rejected, has been found to have been proved. As far as the charge no.3 is concerned, the enquiry officer has concluded in paragraph-32 that the allegation regarding non-cooperation on the part of the petitioner with the Vigilance officials does not amount to any specific charge.

4. The disciplinary authority had then issued a second show cause notice dated 20.11.2008 whereafter the order of punishment of compulsory retirement was passed vide resolution dated 29.7.2010.

5. The learned counsel for the petitioner has submitted that the enquiry officer has virtually found the charge no.1 and charge no.3 to have not been proved and as far as charge no.2 is concerned, the petitioner has amply demonstrated that on account of his severe illness, he had not been present in the headquarter on 30.01.2006 although he had filed an application for leave on 29.1.2006 itself. It is submitted that as far as the recovery of money by the Vigilance



Department is concerned, an FIR was also lodged against the petitioner and three other persons, however, the petitioner had filed a petition for discharge before the learned court of Special Judge, Vigilance(Trap), Patna and the learned Special Judge, vide his order dated 11.2.2010 passed in Special Case No. 01/06/ 109/08 had allowed the discharge petition of the petitioner and had discharged the petitioner under Section 239 of the Cr. P.C. from the said criminal case. It is thus submitted that the petitioner has been victimized without there being any material against the petitioner herein so as to substantiate the allegations levelled against him. It is further submitted that the disciplinary authority while differing from the findings of the enquiry officer while issuing the second show cause notice to the petitioner, has not given an opportunity to the petitioner to place his defence, hence there has been violation of the principles of natural justice. In this regard the learned counsel for the petitioner has relied upon a judgment reported in (1998)7 SCC 84 (**Punjab National Bank vs. Sh. Kunj Behari Mishra**). It is further submitted that the present case is a case of no evidence and in this regard reference has been made to the judgment rendered by the Hon'ble Apex Court in the case of **Roop Singh Negi vs. Punjab National Bank & Ors.** reported in (2009) 2 SCC 570. The learned counsel for the petitioner has further submitted that the order of punishment dated 29.7.2010 is a narration of events which had taken place and does not



spell out the reasons for infliction of punishment of compulsory retirement upon the petitioner herein.

6. Per contra, the learned counsel for the respondents has submitted that there is no irregularity in conduct of the departmental proceeding, hence this Court would not sit in appeal and re-appreciate the evidence, as such there is no occasion for interfering with the order of punishment.

7. I have heard the learned counsel for the parties and perused the materials on record. I find that the present case is a case of pure victimization of the petitioner herein. Firstly, it must be stated that the petitioner is being made a scapegoat in order to save the skin of higher officials and other influential officials who have derelicted in their duties, which is clear from the fact that the petitioner has been found to have/had no role to play in the alleged recovery of huge sums of money during the course of raid conducted in the office of District Rural Development Agency, Supaul, as is also apparent from the order passed by the learned Special Judge, Vigilance (Trap), Patna dated 11.2.2010 whereby and whereunder the petitioner has been discharged from the criminal case under Section 239 of the Cr. P.C. in view of the fact that no prima facie case has been found against him. Secondly, even the enquiry officer has found the petitioner to be not guilty of charge no.1 and as far as the charge no.3 is concerned, it has been held by the enquiry officer that no specific charge is made out.



As far as the charge no.2 is concerned, i.e. absence from the headquarter on 30.1.2006, admittedly the petitioner was ill and in fact, the respondents have not produced any materials to controvert the said contention of the petitioner herein. In such view of the matter, no charge, as levelled by the respondents, as against the petitioner herein is made out so as to warrant infliction of the punishment against the petitioner herein.

8. Another aspect of the matter is that the disciplinary authority has violated the principles of natural justice by not giving an opportunity of hearing to the petitioner while differing with the findings of the enquiry officer inasmuch as in the second show cause notice, no specific reasons or grounds have been stated for the said difference of opinion, hence the petitioner has been gravely prejudiced inasmuch as he has been denied an opportunity to place his side of the story before the disciplinary authority.

9. Now, coming to the order of punishment dated 29.7.2010 it is stated that the same is merely narration of events which had taken place and the same neither spells out the reasons for coming to the conclusion regarding the complicity of the petitioner herein nor any grounds have been furnished so as to warrant infliction of punishment against the petitioner herein nor the issues raised by the petitioner in his show cause reply has been dealt with nor the said order of punishment shows any application of mind so as to come to a



conclusion warranting infliction of punishment of compulsory retirement. In nutshell the enquiry report clearly suggests the innocence of the petitioner herein whereas the second show cause notice and the order of punishment dated 29.7.2010 suffers from various irregularities, as discussed herein above, hence I find that the same is fit to be set aside.

10. For the reasons mentioned herein above, the order of punishment dated 29.7.2010 passed by the Deputy Secretary to the Government, General Administration Department, Government of Bihar as also the second show cause notice dated 20.11.2008 are set aside and consequently, the respondents are directed to reinstate the petitioner, treating him in continuous service, notwithstanding the order of compulsory retirement and grant consequential monetary benefits to the petitioner herein along with the benefits of continuity in service.

11. The writ petition is allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
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