

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1774 of 2017

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Aruna Kumari, wife of Sri Aditya Narayan, resident of Village- Bara, P.S.-
Guraru, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar, through Secretary, Social Welfare Department, Govt. of Bihar, Patna.
2. The Secretary, Social Welfare Department, Govt. of Bihar, Patna.
3. The Joint Secretary, Social Welfare Department, Govt. of Bihar, Patna.
4. The Deputy Secretary-cum-Presiding Officer, Social Welfare Department, Govt. of Bihar, Patna.
5. The Branch Officer- 02, Social Welfare Department, Govt. of Bihar, Patna.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
Mr. Ashish Giri, Advocate
Mr. Sumit Kumar Jha, Advocate
For the Respondent/s : Mr. MD.RAISUL HAQUE,SC-10

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
C.A.V. JUDGMENT
Date: 29-06-2018

The present writ petition has been filed for quashing the order dated 20.12.2016 by which the services of the petitioner as Child Development Project Officer, Goah, Aurangabad has been terminated. The petitioner has further prayed for quashing the report dated 26.11.2015 and for directing the authorities to restore the services of the petitioner.

The brief facts of the case are that the petitioner herein was duly appointed to the post of Child Development Project Officer, Gopalpur, Bhagalpur in the year 2008 and thereafter was posted at



Goah, Aurangabad in the year 2011. During her service a complaint dated 17.7.2014 was filed by one Padmawati Kumari, an Anganwari Sevika of village-Hamidnagar, District-Aurangabad before the Superintendent of Police, Economic Offences Unit, Patna alleging that on 07.07.2014, the petitioner had directed the said complainant to go to the Primary Health Centre for training the children and thereafter the petitioner had made a surprise inspection of Anganwari Centre No. 41, Hamidnagar. On 08.07.2014, the said complainant is said to have been asked to go to the office of the petitioner on 09.07.2014 at 2:00 P.M. by a mobile call made by the driver of the petitioner and when the complainant had met the petitioner a demand of Rs. 10,000/- was made from the complainant. Thereafter, a pre-trap memorandum and a post trap memorandum was prepared and an FIR bearing Patna Economic Case No. 31 of 2014 dated 17.07.2014 was instituted against the petitioner under Section 7 of the Prevention of Corruption Act, 1988. As per the post trap memorandum, an amount of Rs. 10,000/- is shown to have been recovered from the purse of the petitioner. In light of the institution of the aforesaid FIR, a departmental proceeding was initiated against the petitioner and a charge sheet dated 10.11.2014 was issued to the petitioner vide letter dated 14.11.2014 on the allegation of being caught red handed while



taking bribe of Rs. 10,000/- from Sevika namely Padmawati Kumari. The departmental enquiry was held and the Enquiry Officer submitted his report dated 26.11.2015 finding the charges to have been proved against the petitioner, however without examining any witness to prove the charges or to prove the documentary evidence. In fact the Enquiry Officer, in his enquiry report dated 26.11.2015 has clearly stated that since the witnesses have not been cross-examined in the on going departmental proceeding, it would not be legal to express any opinion. Thereafter, a second show cause notice was issued to the petitioner on 14.12.2015 to which the petitioner had submitted his reply, categorically stating therein that there was neither any documentary evidence nor any witness was examined on behalf of the Department during the course of the departmental enquiry, hence the present case is a case of no evidence. Nonetheless, the disciplinary authority passed the order of punishment dated 20.12.2016, terminating the services of the petitioner.

The learned senior counsel for the petitioner has submitted that firstly the present case is a case of no evidence inasmuch as neither any documentary evidence has been produced nor any witnesses have been examined during the course of the departmental enquiry and in fact the Enquiry Officer himself in his enquiry report dated



26.11.2015 has stated that since the matter involved in the present case is being investigated by the Police and is pending in the Vigilance Court and no witness has been examined/cross examined in the present departmental proceeding, it would not be proper to express any opinion, hence the entire enquiry report stands vitiated being perverse and based on no evidence. It is further submitted that the order of punishment dated 20.12.2016 has been passed in a mechanical manner without any application of independent mind as well as the same does not take into consideration the issues raised by the petitioner in his reply to the second show cause, hence the impugned order of punishment dated 20.12.2016 being a non-reasoned, non-speaking and a perverse order is fit to be set aside.

Per contra, the learned counsel for the respondent has submitted that the pre-rap and post trap memorandum coupled with the FIR are themselves enough to prove the charges levelled against the petitioner in the departmental proceeding. Nonetheless, the learned counsel for the respondents has not been able to deny the fact that neither any documentary evidence was produced nor any witnesses were examined during the course of the departmental enquiry for the purpose of proving the charges leveled against the petitioner.

I have heard the learned counsel for the parties and gone



through the materials on record. At this juncture, it must be stated that one has to go by procedure required to be followed in the departmental proceeding and the evidence adduced during the course thereof and has not to be swayed away by omissions and nature of allegations. In the present case, admittedly none of the witnesses have come forward to depose during the course of the departmental proceeding. In fact the Enquiry Officer himself has admitted in his enquiry report that since the matter is pending before the Vigilance Court and no witnesses have been examined / cross examined, it would not be proper for him to express any opinion but nonetheless he has held the petitioner guilty of the charges levelled against him. Thus, admittedly not controverted by the respondents either during the course of argument or in their counter affidavit, the present case is a case of no evidence and in such cases the law laid down by the Apex Court in the case of *Roop Singh Negi vs. Punjab National Bank*, reported in (2009) 2 SCC 570, is required to be followed. It would be relevant to reproduce the paragraph nos. **14 to 23** of the said judgment rendered in the case of Roop Singh Negi (supra) herein below:

14. *Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties.*



The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

15. *We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.*

16. *In Union of India v. H.C. Goel⁴ it was held: (AIR pp. 369-70, paras 22-23)*

"22. ... The two infirmities are separate and distinct though, conceivably, in some cases both may be present. There may be cases of no evidence even where the Government is acting bona fide; the said infirmity may also exist where the Government is acting mala fide and in that case, the conclusion of the Government not supported by any evidence may be the result of mala fides but that does not mean that if it is proved that there is no evidence to support the conclusion of the Government, a writ of certiorari will not issue without further proof of mala fides. That is why we are not prepared to accept the learned Attorney General's argument that



since no mala fides are alleged against the appellant in the present case, no writ of certiorari can be issued in favour of the respondent.

23. *That takes us to the merits of the respondent's contention that the conclusion of the appellant that the third charge framed against the respondent had been proved, is based on no evidence. The learned Attorney General has stressed before us that in dealing with this question, we ought to bear in mind the fact that the appellant is acting with the determination to root out corruption, and so, if it is shown that the view taken by the appellant is a reasonably possible view this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not. This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondent's case is, is there any evidence on which a finding can be made against the respondent that Charge 3 was proved against him? In exercising its jurisdiction under Article 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well founded, because, in our opinion, the finding which is implicit in the appellant's order dismissing*



the respondent that Charge 3 is proved against him is based on no evidence."

17. *In Moni Shankar v. Union of India⁵ this Court held: (SCC p. 492, para 17)*

"17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality."

18. *In Narinder Mohan Arya v. United India Insurance Co. Ltd.² whereupon both the learned counsel relied, this Court held: (SCC p. 724, para 26)*

"26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the enquiry officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it, it should keep in mind



the following: (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. (See State of Assam v. Mahendra Kumar Das⁶.) (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice. (See Khem Chand v. Union of India⁷ and State of U.P. v. Om Prakash Gupta⁸.) (3) Exercise of discretionary power involves two elements— (i) objective, and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. (See K.L. Tripathi v. SBI⁹.) (4) It is not possible to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstances of each case but the concept of fair play in action is the basis. (See Sawai Singh v. State of Rajasthan¹⁰.) (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject-matter of the charges is wholly illegal. (See Export Inspection Council of India v. Kalyan Kumar Mitra¹¹.) (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. (See Central Bank of India Ltd. v. Prakash Chand Jain¹² and Kuldeep Singh v. Commr. of Police¹.)”

- 19.** *The judgment and decree passed against the respondent in Narinder Mohan Arya case² had attained finality. In the said suit, the enquiry report in the disciplinary proceeding was considered, the same was held to have been based on no evidence. The appellant therein in the aforementioned situation filed a writ petition questioning the validity of the disciplinary proceeding, the same was dismissed. This Court held that when a crucial finding like forgery was arrived at on an evidence which is non est in the eye of*



the law, the civil court would have jurisdiction to interfere in the matter. This Court emphasised that a finding can be arrived at by the enquiry officer if there is some evidence on record. It was furthermore found that the order of the appellate authority suffered from non-application of mind.

20. *This Court referred to its earlier decision in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.¹³ to opine: (Narinder Mohan Arya case², SCC p. 729, paras 41-42)*

"41. We may not be understood to have laid down a law that in all such circumstances the decision of the civil court or the criminal court would be binding on the disciplinary authorities as this Court in a large number of decisions points out that the same would depend upon other factors as well. See e.g. Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh¹⁴ and RBI v. S. Mani¹⁵. Each case is, therefore, required to be considered on its own facts.

42. It is equally well settled that the power of judicial review would not be refused to be exercised by the High Court, although despite it it would be lawful to do so. In RBI¹⁵ this Court observed: (SCC p. 116, para 39)

'39. The findings of the learned Tribunal, as noticed hereinbefore, are wholly perverse. It apparently posed unto itself wrong questions. It placed onus of proof wrongly upon the appellant. Its decision is based upon irrelevant factors not germane for the purpose of arriving at a correct finding of fact. It has also failed to take into consideration the relevant factors. A case for judicial review, thus, was made out.' "

In that case also, the learned Single Judge proceeded on the basis that the disadvantage of an employer is that such acts are committed in secrecy and in conspiracy with the person affected by the accident, stating: (Narinder Mohan Arya



case², SCC p. 730, paras 44-45)

"44. ... No such finding has been arrived at even in the disciplinary proceedings nor was any charge made out as against the appellant in that behalf. He had no occasion to have his say thereupon. Indisputably, the writ court will bear in mind the distinction between some evidence or no evidence but the question which was required to be posed and necessary should have been as to whether some evidence adduced would lead to the conclusion as regards the guilt of the delinquent officer or not. The evidence adduced on behalf of the management must have nexus with the charges. The enquiry officer cannot base his findings on mere hypothesis. Mere ipse dixit on his part cannot be a substitute of evidence.

45. The findings of the learned Single Judge to the effect that 'it is established with the conscience (sic) of the Court reasonably formulated by an enquiry officer then in the eventuality' may not be fully correct inasmuch as the Court while exercising its power of judicial review should also apply its mind as to whether sufficient material had been brought on record to sustain the findings. The conscience of the court may not have much role to play. It is unfortunate that the learned Single Judge did not at all deliberate on the contentions raised by the appellant. Discussion on the materials available on record for the purpose of applying the legal principles was imperative. The Division Bench of the High Court also committed the same error."

21. Yet again in *M.V. Bijlani v. Union of India*¹⁶ this Court held: (SCC p. 95, para 25)

"25. ... Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on



record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

22. *Yet again in Jasbir Singh v. Punjab & Sind Bank¹⁷ this Court followed Narinder Mohan Arya v. United India Insurance Co. Ltd.², stating: (Jasbir Singh case¹⁷, SCC p. 570, para 12)*

"12. In a case of this nature, therefore, the High Court should have applied its mind to the fact of the matter with reference to the materials brought on records. It failed to do so."

23. *Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.*



From a bare perusal of the enquiry report dated 26.11.2015, it is apparent that the entire finding of the Enquiry Officer is based on no evidence. In fact no witness had appeared during the course of departmental enquiry to prove the allegations levelled by the prosecution nor any documentary evidence was adduced / proved so as to prove the allegations levelled by the prosecution against the petitioner herein.

In view of the aforesaid, the present case is a case of no evidence, hence the Department has utterly failed to prove the charges as against the petitioner herein. Now, coming to the order of the disciplinary authority dated 2.12.2006, by which the services of the petitioner has been terminated, it must be stated that the same is merely a narration of events which have taken place in the present case and is neither based on any evidence nor the same discusses any material which might have been found, as against the petitioner, during the course of the departmental enquiry. Moreover, the impugned order of punishment dated 20.12.2016 is not only perverse but also smacks of non-application of mind by the disciplinary authority and a total non-consideration of the issues raised by the petitioner, hence the same cannot be upheld and is fit to be set aside being not supported by any reason or evidence so as to warrant



infliction of punishment upon the petitioner herein. It is a trite law that the order passed by the disciplinary authority has civil consequences, hence appropriate reasons are required to be assigned. Moreover, a decision must be arrived at on the basis of some evidences which are legally admissible.

For the reasons mentioned hereinabove, the order of punishment dated 20.12.2016 being un-sustainable in the eyes of law, is set aside and quashed. As a consequence, the petitioner is directed to be reinstated on her post with all consequential benefits, which should be provided to her within three months of receipt/production of a copy of this order.

The writ petition is allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	
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