

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.6022 of 2003**

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Gajendra Nath Sharan S/o Late Bhola Nath Sharan, resident of village-  
Harishankarpur, Baghouri, P.O. and P.S. Tajpur, District-Samastipur

.... .... Petitioner/s

Versus

1. The Bihar State Food and Civil Supplies Corporation Ltd. through the  
Managing Director, Sone Bhawan, Fifth Floor, Birchand Patel Marg, Patna
2. The Managing Director, Bihar State Food and Civil Supplies Corporation Ltd.,  
Sone Bhawan, Fifth Floor, Birchand Patel Marg, Patna
3. The Chief of Administration, Bihar State Food and Civil Supplies Corporation  
Ltd., Sone Bhawan, Fifth Floor, Birchand Patel Marg, Patna

.... .... Respondent/s

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**Appearance:**

For the Petitioner/s : Mr. NAGESHWAR PRASAD SINHA  
Mr. Atul Kumar Pandey

For the Respondent/s : Mr. K.B.NATH  
Mr. Rajesh Prasad Choudhary  
Mr. Ajit Kumar  
Mr. S.S. Sundaram  
Mr. P.K. Shahi  
Mr. Vikas Kumar

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**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**

**ORAL JUDGMENT**

**Date: 13-07-2018**

The present writ petition has been filed for quashing the  
order dated 15.12.2001 by which the petitioner has been dismissed  
from service.

The brief facts of the case are that the petitioner was initially  
appointed on the post of Clerk in the Bihar State Food and Civil  
Supplies Corporation Limited and subsequently he was promoted to  
the post of Assistant Godown Manager. While the petitioner was  
posted as Assistant Manager, In-Charge of the Godown at



Fulwarisharif, Pandarakh and Barh in the District of Patna, he was suspended vide Memo No. 9030 dated 18.11.1993. Thereafter, vide Memo dated 15.05.1995 a letter was served on the petitioner on the allegation that a loss of Rs. 4,27,659.51 had occurred in the Department in terms of loss of grain due to defalcation as also on the allegation that the petitioner had not handed over the records relating to the godown to his successor. Subsequently, the petitioner was released from suspension vide Memo dated 29.01.1996 and it was directed that a sum of Rs. 3500/- would be deducted every month against the aforesaid loss occurred to the Department and the unpaid amount for the suspension period was also adjusted. The Department had then initiated a disciplinary proceeding against the petitioner herein and a charge sheet was served on the petitioner vide Memo dated 19.08.1996 on the charges of dereliction of duty and disobedience of the orders by the petitioner for not having released certain quantity of rice while he was posted at Fulwarisharif resulting in loss of an amount of Rs. 64,000/-, for violating the order of the respondent by not handing over charge of godown at Fulwarisharif, Barh, Pandarakh to his successor, for causing loss to the Corporation on account of not making entry of certain quantity of grains in the godown register, which the petitioner had received from Bihta Sale Centre, for not handing over the records of the godown to his



successor and for misappropriating food grains worth Rs. 4,27,659.51. The petitioner had submitted his statement of defence and thereafter the Enquiry Officer had conducted the departmental proceeding. The management had failed to produce any witness on its behalf. In fact no documents could be proved during the course of enquiry. The Enquiry Officer had submitted his enquiry report dated 12.01.2001 and the Enquiry Officer had come to conclusion that none of the charges stood proved. In this regard, it might be relevant to spell out the findings of the Enquiry Officer one by one hereinbelow:-

- (i) *Charge No. I:- The Enquiry Officer had found that on account of want of evidence it is not possible to hold the petitioner guilty;*
- (ii) *Charge No. II:-The Enquiry Officer has found the evidence to be insufficient for holding the petitioner guilty;*
- (iii) *Charge No. III:-The Enquiry Officer has held that on account of over load of work, the petitioner had by mistake left out some entries to be entered in the Store Register but on going through the entire materials on record, it is apparent that the petitioner had not intentionally or for any personal interest failed to make entries.*
- (iv) *Charge No. IV:-The Enquiry Officer had exonerated the petitioner of the said charge.*
- (v) *The Enquiry Officer has held that no evidence has come on record to suggest that the petitioner*



*had obstructed physical verification of the stores and moreover the condition of Fulwarisharif godown was very bad and it was in a dilapidated condition which has resulted in damage and loss, however, there is no evidence on record to suggest any misappropriation on the part of the petitioner. Nonetheless, the Enquiry Officer stated that the amount of loss i.e. 4,27,659.51 is recoverable from the petitioner.*

The aforesaid enquiry report dated 12.01.2001 was served on the petitioner vide Department's letter dated 26.02.2001 and the petitioner was asked to submit his reply to the second show cause notice. Thereafter, the disciplinary authority had issued a letter dated 15.10.2001, again reproducing the charges levelled against the petitioner vide the earlier charge sheet dated 19.08.1996 and had asked the petitioner to submit his defence statement along with concrete evidence. The disciplinary authority had then inflicted the order of punishment dismissing the petitioner from service vide office order dated 15.12.2001.

The learned counsel for the petitioner has submitted that a bare perusal of the enquiry report would show that firstly no evidence was led by the prosecution either oral or documentary, hence the charges could not have been proved during the course of the enquiry and secondly it is submitted that since the Enquiry Officer had



exonerated the petitioner from the charges levelled against him, the disciplinary authority, while giving a second show cause notice dated 26.02.2001 was required to give reasons for differing with the findings of the Enquiry Officer so as to provide an opportunity to the petitioner to submit his defence, however, the said well established procedure of law has been given a go bye resulting in non-compliance of the principles of natural justice, hence the order of punishment dated 15.12.2001 is fit to be set aside.

I have heard the learned counsel for the parties and have perused the materials on record. I find that during the course of the entire enquiry proceedings, not a single witness was produced by the Department nor any document has been exhibited much less proved, hence the entire enquiry is vitiated and on this ground alone, the order of punishment dated 15.12.2001 is fit to be set aside. Reference in this regard be had to a judgment of the Hon'ble Apex Court reported in **(2009) 2 SCC 570 (Roop Singh Negi vs. P.N.B.)** and the other one reported in **(2010) 2 SCC 772 (State of U.P. vs. Saroj Kumar Sinha)**. There is yet another irregularity, which has been committed by the disciplinary authority i.e. that while issuing second show cause notice 26.02.2001, no reason whatsoever was furnished for differing with the opinion of the Enquiry Officer, hence no opportunity was granted to the petitioner to defend himself resulting in violation of the principles



of natural justice, as such the order of punishment dated 15.12.2001 is liable to be set aside. At this juncture, it might be relevant to state that this Court is not unmindful of one another so called second show cause notice issued by the disciplinary authority, which is dated 15.10.2001 but the same is also of no use to the respondents inasmuch as the same merely spells out the charges and does not furnish any reasons as to on what ground the disciplinary authority has differed with the opinion of the Enquiry Officer, so as to proceed further with the departmental proceeding, instead of dropping the same. Reference in this regard be had to a judgment of the Hon'ble Apex Court reported in **(2013) 7 SCC 251 (S.P. Malhotra vs. P.N.B.)**.

Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, the writ petition is allowed and the order of punishment dated 15.12.2001, as contained in Memo No. 7675 issued by the Managing Director, Bihar State Food and Civil Supplies Corporation Limited, is hereby quashed.

**(Mohit Kumar Shah, J)**

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