

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1294 of 2016

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Malay Kumar Son of Late Indu Bhushan Yadav, Resident of Village - Chamgarh,
P.O. - Jitapur, P.S. - Murliganj, District - Madhepura, Bihar.

.... Petitioner

Versus

1. The State of Bihar through the District Magistrate cum Disciplinary Authority Patna.
2. Commissioner Patna Division Patna, cum Appellate Authority.
3. Sub - Divisional Magistrate Patna.
4. Additional Collector Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Advocate

For the Respondent/s : Mr. P.N.Sharma, AC to A.G.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 17-05-2018

Heard Mr. Arun Kumar, learned counsel for the petitioner
and Mr. Prabhu Narayan Sharma, learned AC to Advocate General.

The writ petition is another addition to the line of cases
where a delinquent facing corruption charges would succeed for
reasons entirely attributable to the casual approach of the respondents,
who have failed to discharge obligation cast under the provisions of
the Bihar Government Servants (Classification, Control and Appeal)
Rules, 2005 (hereinafter referred to as 'the Disciplinary Rules') as
amended from time to time.

The petitioner faces removal on corruption charges of
allegedly accepting bribe which order of removal bears Memo No.
643 dated 17.2.2014 and is impugned at Annexure 11. The order has



been affirmed by the appellate authority, who vide order dated 29.7.2015, impugned at Annexure 13, has dismissed the appeal.

The facts lie in a very narrow compass as manifest from the charge memo, impugned at Annexure 3, whereby charging the petitioner of being apprehended while accepting bribe leading to institution of Vigilance Case No. 93/2009 (Special Case No. 7/2009) instituted under the provisions of the Prevention of Corruption Act that the proceeding was initiated against the petitioner. The petitioner filed his reply at Annexure 4 before the Conducting Officer who gave his report vide Annexure 5 simply upholding the charges on recommendation of the Presenting Officer. The District Magistrate, Patna while appreciating the lapse of the Enquiry Officer in submitting a perfunctory report remitted the matter vide Memo No. 3662 dated 23.10.2013 at Annexure 6 but it has not improved the situation as committing the same default, the Enquiry Officer has submitted the second report at Annexure 9 dated 18.1.2014 and which has resulted in the orders impugned.

Mr. Arun Kumar, learned counsel for the petitioner, has raised the following issues for intervention:

- (a) While provisions of Rule 17(3) read alongside Rule 17(4) of 'the Disciplinary Rules' casts an obligation on the disciplinary



authority to satisfy himself whether or not any charge is made out from the materials accompanying, this duty has been abdicated by the disciplinary authority in relegating the petitioner to the Enquiry Officer for filing reply and which is contrary to the provisions of Rule 17(4) of 'the Disciplinary Rules'.

- (b) The findings of the Enquiry Officer as present in the enquiry report at Annexure 9 is resting on no evidence for neither any oral nor any documentary evidence was led by the Presenting Officer to support the charge.

In short, the argument of Mr. Arun Kumar is that the proceeding has been held dehors the statutory prescriptions and the orders impugned, are resting on no evidence.

Mr. Sharma, learned AC to Advocate General, despite his effort to persuade this Court on the seriousness of charge facing the delinquent, yet is not in a position to demonstrate whether any evidence was led by the Presenting Officer to support the charge.

I have heard learned counsel for the parties and have perused the records and as I have observed above, it is entirely due to lapse of the respondents in not discharging their obligation in the



manner prescribed under 'the Disciplinary Rules' that another delinquent succeeds. Rule 17(3) of 'the Disciplinary Rules' while enabling the disciplinary authority to draw a charge memo or causing it to be drawn by someone competent to do, against a delinquent, also obliges him to seek a reply from the delinquent thereon under sub-rule (4) thereof before he would record satisfaction that the charges require an enquiry.

The disciplinary authority has abdicated this responsibility as argued by Mr. Arun Kumar and confirmed from the charge memo impugned at Annexure 3, whereby the Collector, Patna as the disciplinary authority while drawing charge memo and making appointment of the Conducting Officer as well as Presenting Officer, has directed the petitioner to file his reply to the charge memo before the Conducting Officer. Meaning thereby, without rejecting the stand taken by the petitioner to rebut the charge that the Collector, Patna as the disciplinary authority has directed the petitioner to file his reply before the Conducting Officer which is dehors the provisions underlying Rule 17(4) of 'the Disciplinary Rules' and a consideration of the same issue by a Division Bench of this Court to a pari materia provision existing in Civil Services Classification Control and Appeal Rules, 1930 when came up for consideration in a matter reported in 1996(2) PLJR 95 (**Ravindra Nath Singh v. Bihar State Road**



Transport Corporation) that such was the observation made at paragraph 6:

“6. We have heard learned counsel for the petitioner and learned Standing Counsel for the respondents and perused the materials placed before us. On perusal of the charge-sheet, a copy of which is annexed as Annexure 1, we find force in the submission of the learned counsel for the petitioner that the allegations contained in the charge-sheet are vague and no specific article of charge has been framed. It is also not for Corporation that the charge-sheet did not contain any statement of misconduct and misbehaviour in support of the charge against the petitioner. The list of documents, on which the article of charges was based and list of witnesses to be examined in support of the charges in the domestic enquiry, have also not been furnished with the charge-sheet. It appears from the charge-sheet that Shri E. Topno, the Chief of Administration was appointed as the Enquiry Officer in the proceedings and the petitioner was asked to submit his reply to the charges to the Enquiry Officer. The Enquiry Officer is not the competent authority to consider the reply to the charges. It is for the disciplinary authority to consider the reply to charges and on consideration of the causes shown in the reply to decide as to whether to close or to continue with the proceeding by holding domestic enquiry into the charges.”



The default taken note of is minor in comparison to the default of the Enquiry Officer who despite being reminded of his duty by the District Magistrate vide letter dated 23.10.2013 on his lapse in preparation of the earlier enquiry report dated 1.7.2013 at Annexure 5, yet commits the same blunder while preparing the second enquiry report at Annexure 9 dated 18.1.2014 which again neither discusses any evidence nor records satisfaction, rather mechanically upholds the charges.

It is so surprising as well disgusting that despite the legal position on the parameters drawn for examining an imputation of bribe, being settled by numerous judgments of this Court and the Supreme Court where the disciplinary authority has been obliged to record his opinion on the demand, if any, made by the delinquent followed by a recovery, what this Court finds is that it is on simply recovery and even in absence of cogent evidence supporting a demand for the same, yet mechanically the allegations are upheld leading to extreme punishment of dismissal. It is well settled that a seriousness in charge should never sway an authority performing quasi judicial function such as the disciplinary authority, who has a duty assigned to record his reasons for his conclusion and which conclusion has to rest on some piece of evidence connecting the delinquent to the charge. Certainly a recovery of money simplicitor from a delinquent, cannot



be termed a reliable piece of evidence until a demand by the delinquent is proved by supportive evidence.

I would do no better but to reproduce the opinion of the Supreme Court present in paragraph 47 of the judgment reported in (2015)3 SCC 220 (**Vinod Kumar v. State of Punjab**) which runs under:

“ There can be no quarrel over the proposition that on the basis of mere recovery an accused cannot be found guilty. It is the settled principle of law that mere recovery of the tainted money is not sufficient to record a conviction unless there is evidence that bribe had been demanded or money was paid voluntarily as bribe. In the absence of any evidence of demand and acceptance of the amount as illegal gratification, recovery could not alone be a ground to convict the accused. This has been so held in T.Subramanian v. State of T.N. (2006)1 SCC 401, Madhukar Bhaskarran Joshi v. State of Maharashtra (2000) 8 SCC 571, Raj Rajendra Singh Seth v. State of Jharkhand (2008) 11 SCC 681, State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede (2009) 15 SCC 200, C.M. Girish Babu v. CBI (2009)15 SCC 779, K.S. Panduranga v. State of Karnataka (2013)3 SCC 721 and Satvir Singh v. State of Delhi (2014)13 SCC 143.”

(Emphasis supplied)

As I have observed above, though Mr. Sharma has tried to pin down the petitioner on the seriousness of the charge but he cannot



improve the situation in absence of evidence led in support of demand thereof. In short, the findings of the Enquiry Officer as well as of the disciplinary authority are resting on no evidence.

For the reasons discussed, the order bearing Memo No. 643 dated 17.2.2014 of the Collector, Patna, impugned at Annexure 11 and the order of the appellate authority dated 29.7.2015, impugned at Annexure 13, are quashed and set aside. The petitioner is reinstated with 50% back wages.

The writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24.05.2018
Transmission Date	NA

