

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14095 of 2005

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Amardev Hazra, son of Late Bhikhan Hazra, resident of Mohalla- Krishna Nagar (in front of Ram Lakhan College, Bettiah), Police Station- Bettiah Town, District- West Champaran (Bettiah).

... .. Petitioner/s

Versus

1. The Bihar State Food & Civil Supplies Corporation Ltd. Through the Chairman-cum-Managing Director, Sone Bhawan, Birchand Patel Path, Patna-1.
2. The Chairman-cum-Managing Director, Bihar State Food & Civil Supplies Corporation Ltd. Sone Bhawan, Birchand Patel Path, Patna-1.
3. The Chief of Administrative, Bihar State Food & Civil Supplies Corporation Ltd. Sone Bhawan, Birchand Patel Path, Patna-1.
4. The Chief of Finance-cum-Conducting Officer, Bihar State Food & Civil Supplies Corporation Ltd. Sone Bhawan, Birchand Patel Path, Patna-1.
5. The Deputy Chief of Procurement-cum-Presenting Officer, Bihar State Food & Civil Supplies Corporation Ltd. Sone Bhawan, Birchand Patel Path, Patna-1.
6. Nirmal Kumar Roy, the then District Manager (in-charge), Bihar State Food & Civil Supplies Corporation Ltd. District Office, Bettiah, District- West Champaran (Bettiah).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gajendra Kumar Jha, No. 2 Adv.
For the Respondent/s	:	Mr. Shailendra Kumar Singh, Adv
	:	Mr. Lalmani Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 20-04-2018

Heard learned counsel for the parties.

2. This writ petition under Article 226 of the Constitution of India has been filed for quashing the order dated 08.01.2005 (Annexure-12) passed by Chairman-cum-Managing Director of Bihar State Food and Civil Supplies Corporation Limited (respondent No. 2) by which the petitioner has been dismissed from service as well as order dated 02.05.2005 passed



by the Reviewing Authority.

3. Briefly stated, the case of petitioner is that he was appointed on class IV post in January 1986 and was posted in the District Office at Bettiah. The petitioner developed knowledge of Hindi Typing and was occasionally granted work of typist and had been taken work of preparing pay bills.

4. Petitioner was posted in the District Office at Bettiah in the month of August 2004 and he was served a memo dated 25.08.2004 issued under the signature of Chief Administrative Officer (respondent No. 3) by which petitioner was put under suspension on the ground of allegedly trying to get payment by preparing wrong pay bill statement for payment of arrears of salary of class IV employee of Bettiah District for the period during 1996-97, 1997-98 and 2001-2002 and during period of suspension his headquarter was fixed in District Office at Samastipur and pursuant to said order petitioner was relieved by the District Manager at Bettiah by Memo dated 28.08.2004 and petitioner joined at Headquarter, Samastipur on 03.09.2004. Departmental proceeding was initiated against petitioner and by order dated 14.09.2004 Sri Daya Shankar Pandey, the Chief of Finance, Head Office, Patna was appointed as Conducting Officer and Sri D.N. Jha, Deputy Chief was appointed as



Presenting Officer and memo of charge dated 20.09.2004 was served upon petitioner and petitioner was granted 15 days time to submit his written statement and petitioner filed his written statement on 06.10.2004, however the same was not accepted by the Disciplinary Authority and petitioner was asked to appear in the enquiry on 02.11.2004 before the Enquiry Officer at Patna and petitioner appeared on 02.11.2004.

5. Petitioner was permitted to inspect the required papers from the record in the District Office of the Corporation at Bettiah and to submit final written defence before 16.11.2004.

6. Petitioner had earlier filed C.W.J.C. No. 13425 of 2004 against his order of suspension and also challenging the initiation of departmental proceeding which was heard and disposed of on 09.11.2004 and same was disposed of with a direction to respondent authorities to conclude the departmental proceeding within three months.

7. The petitioner after making inspection of relevant document submitted a supplementary written statement of defence on 16.11.2004.

8. Petitioner received a 2nd show cause notice issued under the signature of Chief Administrative Officer (respondent No. 3) vide letter dated 06.12.2004 with a copy of enquiry



report dated 01.12.2004 served on petitioner on 09.12.2004. The 2nd show cause notice was issued with proposed punishment of dismissal from service even before reply filed by petitioner which shows that authorities had made up their mind to dismiss the petitioner and as such 2nd show cause notice was only a formal notice with pre-determined mind to dismiss the petitioner from service.

9. In the 2nd show cause notice dated 06.12.2004 (Annexure-10) petitioner submitted his reply against the finding of Enquiry Officer and prayed that he should be exonerated as enquiry report is based on conjectures and surmises and finding of Enquiry Officer is based on no evidence, however, Disciplinary Authority by order dated 08.01.2005 imposed a punishment of dismissal from the service. The Enquiry commenced on 02.11.2004 on which date District Manager, Bettiah was produced on behalf of management but he did not depose anything and stated that the written opinion given by him should be treated as his statement and petitioner was not granted any opportunity to cross-examine him. No statement of Assistant Accounts Officer was recorded in his presence and he was not granted any opportunity to cross-examine him and on the basis of said statements the Enquiry



Officer found the charges to be proved against the petitioner. The original departmental proceeding records was called by this Court in C.W.J.C. No. 23405 of 2012 and was perused and this Court and same was allowed by order dated 11.02.2014 and in para 5 and 6 of order is extracted below:-

“5. In view of categorical stand taken in the writ application that there was absolutely no enquiry held by the enquiry officer and no witnesses were examined at all, I had directed the respondents to produce the entire original records of the disciplinary proceeding. Those records have been produced before this court. On perusal of the records of the disciplinary proceeding, I find that no presenting officer was appointed to prove the charge leveled against the petitioner. The attendance of the petitioner on 02.11.2004 is there on record. Attendance of District Manager, Bettiah and that of Assistant Account Officer on 02.11.2004 are also there on record but no statement of any witness has been recorded by the conducting officer/enquiry officer. At page 34 of the records, I find that the Assistant Accounts Officer in his own hand writing has given his statement. It does not indicate that such statement was recorded at the instance of the Enquiry Officer. From the records, it cannot be said that the said statement of Assistant Accounts Officer was within the knowledge of the petitioner, though such statement of the Assistant Accounts Officer has been taken into consideration by the disciplinary authority. It also appears



that no other witness was examined. There is nothing on record to show that even the hand written statement of the said Assistant Accounts Officer, which is available at page 34, was ever supplied to the petitioner. Thereafter, second show cause notice was issued to the petitioner which is there on record.

6. From the original records, as indicated above, I find that as a matter of fact there was absolutely no enquiry in the name of disciplinary proceeding held against the petitioner. Neither any witness was examined nor any document exhibited or produced before conducting officer, in the presence of the petitioner in support of the charge. In my view, the entire proceeding, in the facts and circumstances of the case, is vitiated. The report of the enquiry officer is perfunctory without any basis or evidence.

10. The L.P.A. No. 1096 of 2014 preferred by the respondents was dismissed by Division Bench of this Court on 20.02.2018.

11. The Disciplinary Authority has imposed extreme punishment of dismissal from service on basis of such perverse and perfunctory enquiry. The dismissal from service entails major civil consequences upon the employee and its family and virtually snatches the livelihood of the sole bread earner of the family which cannot be permitted in such a casual and



whimsical manner.

12. The writ petition is allowed and order passed by the Disciplinary Authority (Annexure-12) as well as order dated 02.05.2005 of Reviewing Authority is set aside. Petitioner is directed to be reinstated in service forthwith with consequential benefits and full salary from the date of dismissal to the date of reinstatement. Petitioner is also entitled for full salary for the suspension period. Petitioner is directed to be reinstated within 30 days from the production/receipt of a copy of this order.

13. The writ petition stands allowed.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
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Transmission Date	N.A.

