

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23434 of 2013

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LALA SHATRUHAN KUMAR SINHA SON OF LATE LALA BRAJ
NANDAN SAHAY RESIDENT OF A/66, HOUSING COLONY,
KANKARBAGH, P.S. - KANKARBAGH, DISTRICT - PATNA

... .. Petitioner/s

Versus

1. Bihar State Food & Civil Supply Corporation Ltd. , Sone Bhawan, 5th Floor ,
Bir Chand Patel Path, Patna - 800001 Through Its Managing Director
2. The Principal Secretary, Food & Consumer Protection Department,
Government Of Bihar, Patna
3. The Managing Director, Bihar State Food & Civil Supplies Corporation Ltd.,
Sone Bhawan, 5th Floor, Bir Chand Patel Path, Patna - 800001
4. The Chief Of Procurement, Bihar State Food & Civil Supplies Corporation
Ltd., Sone Bhawan, 5th Floor, Bir Chand Patel Path, Patna - 800001
5. Chief Administrator, Bihar State Food & Civil Supplies Corporation Ltd.,
Sone Bhawan, 5th Floor, Bir Chand Patel Path, Patna - 800001
6. District Manager, State Food Corporation, Saran At Chapra

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Chittaranjan Sinha, Sr. Advocate
	:	Mr. Sanjeet Kumar, Advocate
For the S.F.C.	:	Mr. Shailendra Kumar Singh, Advocate
For the State	:	Mr. Harun Quareshi, A.C. to S.C.1

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date:- 14.03.2018

This writ petition under Article 226 of the Constitution of India has been filed for quashing of order dated 19.06.2009 passed by Managing Director, Bihar State Food & Civil Supplies Corporation by which petitioner has been inflicted with two punishments, first that the salary of the petitioner is reduced to its minimum level and second is stoppage of three increments with cumulative effect as well as order dated 06.11.2012 passed



by the appellate authority Principal Secretary, Food Consumer Protection Department, Government of Bihar dismissing the appeal filed by petitioner.

2. Briefly stated, the facts of the case, as stated in writ petition is that Vigilance Investigation Bureau conducted an enquiry in connection with irregularities committed in upliftment and distribution of food grains under Annapurna and Antyodya Scheme in Dighwara Nagar Panchayat which falls under the District of Chapra and on basis of said enquiry corporation issued a show cause notice dated 09.11.2006 to the petitioner. Petitioner was posted as In-charge District Manager of the Corporation at Saran from 15.02.2002 to 15.04.2002 and as such, show cause was issued to petitioner regarding his alleged administrative failure in upliftment and distribution of food grains under the aforesaid scheme. Petitioner submitted his reply vide letter dated 13.11.2006 addressed to the Chief Vigilance, State Food Corporation, Patna denying allegation giving cogent explanation. Petitioner has submitted that his responsibility was to issue order to supply the food grains to P.D.S. dealers through Assistant Manager, Dighwara Godown and the onus of distribution of the same was with Block Supply Officers. It has been further submitted that there was no



complaint from any quarter regarding any irregularities in distribution of food grains when petitioner was posted as In-charge District Manager, Saran. The District Manager of Corporation issued a letter dated 14.12.2006 to the Chief Vigilance Headquarter of Corporation in which it has been categorically stated that no irregularities were committed in distribution of food grains from Dighwara Godowns and food grains under the Scheme were uplifted in presence of Block Development Officer.

3. The charge sheet dated 17.07.2007 was issued to the petitioner alleging that large scale irregularities were committed by the officers related to upliftment/distribution of food grains under the Scheme and petitioner submitted his reply refuting the charges made against him by giving cogent reasons and explanation. The Inquiry Officer submitted his enquiry report dated 04.03.2009 in which he has found that no irregularities were committed by the petitioner and on the basis of relevant documents produced during enquiry it was clear that upliftment of food grains under the said scheme had been made available to the concerned P.D.S. dealers. However, subsequently it has been added that the petitioner has not produced any evidence which can falsify the charges leveled against petitioner, as such, found



that charges were partially proved. In Departmental Enquiry charges are to be proved by department and onus lies with the department to prove the charges by adducing evidences before the Enquiry Officer. Onus cannot be shifted on delinquent to prove his innocence by adducing evidence.

4. The Disciplinary Authority Cum-Managing Director of the Corporation issued 2nd show cause notice for imposing major punishment on petitioner and Chief Administrator issued a 2nd show cause notice dated 23.03.2009 on the basis of decision taken by the Managing Director of Corporation. In the 2nd show cause notice no where it has been stated that how the charges stand fully proved when the Enquiry Officer has found the charges partially proved. It has been further submitted that Chief Administrator is not the Disciplinary Authority of petitioner and as such is not competent to issue 2nd show cause. Petitioner submitted his reply dated 30.03.2009 that no irregularities were committed by him while he was In-charge District Manager and submitted 2nd reply on 13.04.2009 when he came to know that the earlier reply could not reach to the office of Corporation. However, without considering the reply of petitioner, the impugned order of punishment dated 19.06.2009 was passed. The petitioner



thereafter filed a representation dated 23.06.2009 to the Managing Director of Corporation to cancel the impugned order of punishment as the documents, which were asked by him, were not provided to him and thereafter the Chief Administrator of Corporation directed the petitioner to produce reliable evidence to reconsider the order of punishment vide its letter dated 22.07.2009 and petitioner in response to said letter dated 10.08.2009 again made a request to supply relevant documents including dispatch register of the relevant period of Godown in order to establish that petitioner is innocent and was not involved in any irregularities. However, said documents were not provided to petitioner.

5. The petitioner preferred an appeal before the Secretary Food and Consumer Protection Department, Government of Bihar against the order of punishment and stated in his memo of appeal that due to non-supply of relevant documents by the concerned authority he is unable to establish his innocence. However, the appellate authority without considering the grounds of appeal dismissed the appeal of petitioner by the order impugned.

6. It has been submitted on behalf of Senior Counsel for the petitioner that Annexure-3, the Memo of



Charge, as contained in Annexure-7, is completely vague and there is no specific allegation or charges framed against the petitioner for which he could submit any reply. The petitioner submitted his reply although the charges were vague and indefinite. The allegations were primarily based upon the vigilance report but the Superintendent of Police, Vigilance and Deputy Superintendent of Police did not appear before the Enquiry Officer in support of charges although they were noticed to appear before the Enquiry Officer. The District Manager, Chapra vide letter dated 18.01.2018 has opined that in view of evidences as available on record no irregularities has been found with respect to upliftment and distribution of food grains to the P.D.S. dealers and has given details of distribution of food grains among the PDS and, on the basis of evidence produced by the department, the Enquiry Officer has held that the Distribution of food grains under the Scheme has been properly made. However, since petitioner could not bring any evidence to refute the charges, he held charges to be partially proved. However, without any finding of Enquiry officer and without giving tentative reasons for differing with the Inquiry report, the Disciplinary Authority has issued 2nd show cause notice treating the charges to be proved against the petitioner



and thereafter petitioner submitted his reply but without considering the reply of petitioner, the impugned order has been passed by the Disciplinary Authority and same has been affirmed by the appellate authority without considering the ground of appeal filed before the appellate authority.

7. After hearing the parties and considering the relevant materials on record, this Court finds that the memo of charge as contained in Annexure-7, is totally vague and indefinite and no specific charge of committing irregularities by the petitioner has been framed by the Disciplinary Authority and on this ground alone the whole proceeding stands vitiated. The Enquiry Officer has found that charges against the petitioner has not been proved but since petitioner has not refuted charges, as such, the Enquiry Officer has held charges to be partially proved. Onus lies on the department to prove the charges and onus cannot be shifted upon delinquent to establish his innocence. However while differing with the opinion of Enquiry Officer, the Disciplinary Authority without giving any tentative reasons for differing with the findings of Enquiry Officer has found the charges to be proved against the petitioner and issued 2nd show cause notice and without considering reply filed by the petitioner has passed the impugned order and the appellate



authority by a cryptic order has dismissed the appeal of petitioner. The order of Disciplinary Authority as well as appellate authority is not sustainable either in law or on fact and as such is set aside. The petitioner has already retired from the service and proceeding against him was initiated on the basis of vague charge and unfounded allegation. The allegation is also not of any misappropriation or defalcation but only with respect to lack of supervision and negligence and same was also not proved in Enquiry Proceeding, as such, this Court is not inclined to grant liberty to respondent to hold de novo enquiry which may cause further humiliation and harassment to petitioner.

8. The writ petition stands allowed.

(S. Kumar, J)

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Uploading Date	
Transmission Date	

