

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16091 of 2014

=====

Naushad Alam son of Zahur Alam, resident of village- Jitwarpur Chouth, Police Station- Samastipur Sadar, District- Samastipur

.... Petitioner/s

Versus

1. Bihar State Minorities Finance Corporation Limited, 34- Ali Imam Path, (Harding Road), P.S. Sachivalaya, Patna- 800001 through its Managing Director
2. Managing Director, Bihar State Minorities Finance Corporation Limited, 34- Ali Imam Path, (Harding Road), P.S. Sachivalaya, Patna- 800001
3. Accounts Officer-cum-Secretary, Bihar State Minorities Finance Corporation Limited, 34- Ali Imam Path, (Harding Road), P.S. Sachivalaya, Patna- 800001

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Sidhartha Prasad, Adv.
Mr. Kumar Kaushlendra, Adv.
Mr. Om Prakash Kumar, Adv.
Mr. Sunit Kumar, Adv.

For the Respondent/s : Mr. Deepak Kumar, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 02-08-2018

The present case has been filed for quashing the order of punishment dated 12.03.2014 whereby and whereunder the petitioner has been terminated from service by the respondent Authorities.

2. The brief facts of the case are that the respondents had initiated a departmental proceeding by a order dated 20.01.2014, primarily on the allegation of the petitioner having been caught red handed by the police trap team accepting a sum of Rs.5,000/-. The enquiry officer conducted the enquiry and submitted his enquiry



report dated 18.02.2014 finding the charges to have been proved beyond doubt as against the petitioner herein. Thereafter, a second show cause notice dated 20.02.2014 was served on the petitioner, however, the petitioner could not submit his reply to the same and had sought extension of time, but since the said extension was sought after the expiry of the period to submit his reply, the disciplinary authority had passed the final order of punishment dated 12.03.2014.

3. The learned counsel for the petitioner has submitted that a bare perusal of the enquiry report would show that neither a single witness nor any evidence has been adduced on behalf of the prosecution to prove the charges, hence in absence of any evidence, the conclusion of the enquiry officer, finding the petitioner to be guilty of the charges levelled is perverse and not fit to be relied upon for the purposes of passing the punishment order.

4. In any view of the matter even the order dated 12.03.2014 is an unreasoned order and merely narrates the sequence of events but does not spell out any reason as to why and for what reason the petitioner is being dismissed from service.

5. The learned counsel for the petitioner has relied upon the judgment of the Hon'ble Apex Court, reported in (2009) 2 SCC 570 (**Roop Singh Negi Vs. Punjab National Bank**), and one reported in (2010) 2 SCC 772; AIR 2010 SC 3131 (**State of U.P. Vs.**



Saroj Kumar Sinha) as well as the judgment reported in 2000(3) *PLJR 10* (**Kumar Upendra Singh Parimar vs. B.S. Co-Opt Land Dev. Bank Ltd. & Ors.**) as also one reported in 2018(3) *PLJR 329* (**Anand Kumar Vs. the State of Bihar & Ors.**).

6. Per contra, the learned counsel for the respondents has submitted that the enquiry report is itself self speaking and moreover the petitioner had failed to submit any reply to the second show cause notice, hence the order of punishment has been passed since there was nothing to consider as far as the defence of the petitioner is concerned. The learned counsel for the respondents has relied upon a judgment dated 01.09.2015 rendered by Hon'ble Apex Court passed in *Civil Appeal No.2038 of 2012* (**U.P. State Road Transport Corporation and another Vs. Gopal Shukla and Anr.**).

7. I have heard the learned counsel for the parties and have gone through the records of the case and I find from a bare perusal of the enquiry report dated 18.12.2014 that neither the prosecution i.e. the respondent Bihar State Minorities Finance Corporation Ltd. had ever led any evidence much less had proved any document in support of the case of the prosecution. In this regard it would be appropriate to reproduce paragraphs no.26, 27, 37 and 39 of the judgment rendered by the Hon'ble Apex Court in the case of **Saroj Kumar Sinha** (Supra) herein below:-



26. The first inquiry report is vitiated also on the ground that the inquiry officers failed to fix any date for the appearance of the respondent to answer the charges. Rule 7(x) clearly provides as under:

“7. (x) Where the charged government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding in spite of the service of the notice on him or having knowledge of the date, the inquiry officer shall proceed with the inquiry ex parte. In such a case the inquiry officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged government servant.”

27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.

37. We are of the considered opinion that the aforesaid observations are fully applicable in the facts and circumstances of this case. Non-disclosure of documents having a potential to cause prejudice to a government servant in the enquiry proceedings would clearly be denial of a reasonable opportunity to submit a plausible and effective rebuttal to the charges being enquired into against the government servant.

39. The proposition of law that a government employee facing a departmental enquiry is entitled to all the relevant statements, documents and other materials to enable him to have a reasonable opportunity to defend himself in the departmental enquiry against the charges is too well established to need any further reiteration. Nevertheless given the facts of this case we may re-emphasise the law as stated by this Court in *State of Punjab v. Bhagat Ram*⁴: (SCC p. 156, paras 6-8)

“6. The State contended that the respondent was not entitled to get copies of statements. The



reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

7. The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.

8. It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken.”

8. It would also be appropriate to reproduce paragraphs no.12, 15, 16, 18 and 19 of the judgment rendered by this Court in the case of Kumar Upendra Singh (Supra) herein below:

“12. Under those rules there are detailed provisions for holding regular departmental enquiry. In holding of a departmental enquiry it is required to prove the charges against the delinquent employee by producing the departmental witnesses and by examining them by the enquiry officer. If the delinquent employee does not attend the enquiry even then the department has to prove the charge by



examining the witnesses in support of its own documents. In the departmental enquiry no onus is cast upon the delinquent employee to prove the charges. The charges have to be proved by the department. If no witness is called by the department in support of the charges in that case it should be held that the department has not proved its case and in such a situation the enquiry officer cannot record the findings with regard to guilt against the delinquent employee just because the delinquent employee is absent.

15. Reference in this connection may be made to the Constitution Bench Judgment of the Apex Court in the case of Union of India vs. H.C. Goel, reported in A.I.R. 1964 S.C. page 364.

His Lordships Gazendra Gadkar, J. His Lordship's then was, summarised the law in this respect as follows:-

"It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules."

16. Since the aforesaid principle laid down by the Constitution Bench of the Supreme Court has been subsequently followed in many other cases, and has not been departed from till today, this Court cannot accept the bald statement urged by the learned counsel for the respondent that since the charges are based upon the documents so no witnesses need be examined to bring home the charges.

18. This Court cannot accept this argument for the reasons already indicated when an enquiry has been ordered by the disciplinary authority and an enquiry officer has been appointed it is not for the petitioner to demand that the department must produce witnesses to prove its case. The onus is never on the delinquent employee, on the other hand, onus is on the department to prove the charges and it is for them to produce their witnesses in support of his case against the delinquent employee.

19. Therefore, in the facts of this case, this Court is constrained to hold that by not producing any



evidence in support of its case, the respondent authorities have failed to prove the charges against the delinquent employee. Where charges have not been proved the enquiry report loses all its importance and the punishment imposed on the petitioner cannot be sustained. When a person is thrown out of employment, it must be on the basis of a procedure which is reasonable, just and fair. (See D.K. Jadav vs. J.M.A. Industries Ltd., reported in (1993)3 SCC page 259 : 1994(2) PLJR (SC)55.

9. In view of the law laid down by the Hon'ble Apex Court and this Court it is clear that non-production of any evidence by the respondents during the course of the departmental enquiry has resulted in the respondent Authorities having failed to prove the charges against the petitioner herein. Similarly neither the pre-trap witnesses nor the post trap witnesses nor the pre-charge memorandum nor the post trap memorandum were examined or proved during the course of departmental enquiry, hence the respondent Authorities have admittedly failed to prove the charges levelled against the petitioner herein and on account of such failure on the part of the respondent Authorities, the enquiry report has no significance inasmuch passing of an order of punishment is concerned, hence, the aforesaid ground alone is sufficient to quash the order of punishment dated 12.03.2014.

10. The other argument advance by the learned counsel for the petitioner, as far as the impugned order of punishment dated 12.03.2014 is concerned, is to the effect that the impugned order of punishment dated 12.03.2014 is merely a narration of events which



has taken place in the instant case and the same is not based on any evidence much less on any material produced and proved as against the petitioner herein during the course of departmental enquiry, hence the same is fit to be set aside being not supported by any evidence or reason for punishing the petitioner. The learned counsel has also relied upon the judgment in the case of **Anand Kumar** (Supra). It would be unfair to the respondents if this Court does not deal with the judgment relied upon by the respondents, rendered in the case of Gopal Shukla (supra). The said case is clearly distinguishable from the facts and circumstances of the present case inasmuch as in the said case admittedly evidence was led and the delinquent was found to have committed illegality but since the factum of corruption was not proved, the Labour Court and the High Court had granted leave to the petitioner by giving a chance to the delinquent to improve in future but the same did not find favour with the Hon'ble Apex Court and in that view of matter, the order of Labour Court and the High Court were set aside.

II. For the reasons mentioned herein above, I find that the order of punishment dated 12.03.2014 is based on an enquiry report dated 18.12.2014 wherein the respondent authorities have failed to prove the charges on account of non-leading of evidence as also on account of non- proving of the documents, hence the enquiry



report is of no value or significance resulting in the order of punishment dated 12.03.2014 being perverse and unsustainable in the eyes of law. In such view of the matter the order of punishment dated 12.03.2014 is quashed.

12. On account of quashing of the order of punishment dated 12.03.2014, it goes without saying that the petitioner would be entitled to all the consequential benefits.

13. The writ petition is allowed.

(Mohit Kumar Shah, J)

BTiwary/Md. Rashid

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	15.10.2018
Transmission Date	N/A

