

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10261 of 2014

Sidharth Gautam Son of late Ram Kewal Singh Resident of village - Aspura,
Police Station - Bikram, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Labour Commissioner, Labour Resources Department, Bihar, Patna.
2. The Deputy Labour Commissioner, Bihar, Patna.
3. The Labour Superintendent, Aurangabad.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Siya Ram Shahi, Adv. Mr. Ranjan Kumar Singh, Adv.
For the Respondent/s	:	Mr. Prabhu Narayan Sharma, AC to AG

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 04-04-2018

This writ petition under Article 226 of Constitution of India has been filed for issuance of writ of certiorari for quashing the order dated 27.3.2014 passed by Principal Secretary, Department of Labour, Government of Bihar, Patna, as well as order dated 14.5.2015 passed by the Labour Commissioner dismissing the appeal of the petitioner.

Petitioner was appointed on compassionate ground and he joined on 15.4.2003 on the post of Lower Division Clerk in the office of Assistant Labour Commissioner, Bettiah, West Champaran. Petitioner was also engaged as Bench Clerk in the court of Assistant Labour Commissioner, Bettiah, West Champaran.

The Deputy Superintendent of Vigilance Department trapped the Assistant Labour Commissioner, namely, Santlal Choudhary, while accepting bribe of Rs.5,000/- in the Minimum



Wages Case No. 44 of 2004 (Ranjeet Kumar vs. Anup Kumar) on 13.10.2006. The Dispatch Register was seized but no seizure list was provided.

Thereafter, Labour Commissioner, Bihar, accorded sanction against petitioner, who is a non-FIR accused, on 11.12.2007 under Section 13(1) (d) of Prevention of Corruption Act. Petitioner was granted anticipatory bail. Further sanction order for prosecution was granted under different Sections of Indian Penal Code.

Petitioner was proceeded under departmental proceeding also and charges were framed in prapatra 'Ka' on 03.02.2014 and petitioner was asked to submit reply against the Memo of charge and petitioner submitted his reply but authorities were not satisfied and decided to hold enquiry.

Deputy Labour Commissioner, Patna, was appointed as Enquiry Officer and Labour Superintendent, Aurangabad, as Presenting Officer. Petitioner was placed under suspension on 06.02.2014 and his Headquarter was fixed at the office of Deputy Labour Commissioner, Patna.

Petitioner participated in the departmental proceeding and appeared on 20.02.2014 on which date statement of petitioner was recorded. Labour Superintendent-cum-Presenting Officer



issued a letter dated 03.03.2014 to the petitioner to receive the seized record in which out of page nos. 01 to 127, page nos. 85 to 96 were not exhibited and petitioner refused the same on 05.03.2014. Petitioner requested that the remaining pages i.e. page Nos.85 to 96 be also supplied to him as they are very relevant to the petitioner for his defence. However, same was never supplied to petitioner.

The Enquiry Officer concluded the enquiry proceeding and submitted the enquiry report dated 05.03.2014 and Enquiry Officer found that the charges as framed against petitioner to be proved.

A second show cause notice was issued to petitioner dated 13.03.2014 along with a copy of enquiry report to submit his reply by 20.03.2014 and petitioner submitted his reply against the finding of Enquiry Officer and also stated that the relevant documents demanded by petitioner was not given to him, as such he could not defend his case in absence of said documents. However, without considering the reply of petitioner Labour Commissioner dismissed the petitioner from service.

A counter affidavit has been filed on behalf of respondent in which it has been stated that during course of investigation in Vigilance P.S. Case No.64 of 2006 dated



13.10.2006 instituted against the Assistant Vigilance Commissioner, the Vigilance Department found involvement of petitioner in helping the main accused and accordingly he was also made non-FIR accused.

After considering the vigilance enquiry report, it was found that petitioner's involvement was a grave misconduct and serious negligence, as such decision was taken to initiate departmental proceeding against him on the charges framed on 03.02.2014 under Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005.

Enquiry Officer on the basis of materials and evidences adduced before him, found the charges to be proved and submitted his enquiry report on 05.03.2014.

Petitioner was issued 2nd show cause notice along with copy of enquiry report and after receiving his reply the Disciplinary Authority considered the enquiry report and reply of petitioner against the findings of the Enquiry Officer and found petitioner guilty of charges and passed an order of dismissal from service on 27.03.2014.

The appeal preferred by petitioner was dismissed by the Principal Secretary, Department of Labour, by order dated 14.05.2015 as contained in Annexure-17.



In the Memo of charge, as contained in Annexure-6, six charges have been framed against petitioner. The charges as framed are vague and not specific and appears to be in the form of questionnaire and no definite and specific charge has been framed. The enquiry report is contained in Annexure-9 in which the Enquiry Officer has recorded the statement of petitioner against the charges and no evidence either in documentary or oral has been adduced before the Enquiry Officer on the ground that records are in custody of Vigilance Department, as such same cannot be produced before the Enquiry Officer and on the basis of no evidence, the charges have been held to be proved against the petitioner.

The question relating to jurisdiction of the court in judicial review in a departmental proceeding fell for consideration before Apex Court in ***M.V. Bijlani vs. Union of India*** since reported in ***(2006) 5 SCC 88*** wherein Apex Court held in para 25 as following :-

“25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must



arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.”

Annexure-14 is the order passed by the Disciplinary Authority in which he has held that Vigilance Department has found involvement of petitioner in the vigilance case instituted against the Assistant Labour Commissioner. The petitioner has been alleged to have helped the main accused. As such, charges framed under Form-Ka stands proved. The order passed by the Disciplinary Authority is based on conjectures and surmises and without any legal evidence. The charges have been found to be proved by the Disciplinary Authority and has awarded the extreme punishment of dismissal from service.

The Apex Court in its judgment passed in ***Roop Singh Negi vs. Punjab National Bank*** since reported in ***(2009) 2 SCC 570*** has held as follows:-

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charge levelled against the delinquent officer must be found to have been proved. The enquiry officer



has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.”

Annexure-17 is the order of the Appellate Authority, which is also a cryptic order, dismissing the appeal of petitioner without considering the ground of appeal as filed by petitioner. The departmental proceeding initiated against petitioner is faulty from its inception and the Memo of charge has been framed in a vague and non-specific manner and on basis of which no departmental proceeding can proceed against the petitioner. It has been held by all the Authorities that since petitioner is unable to defend the charges against him, as such charges are proved whereas it is the responsibility of the department to prove its charges as framed before the Enquiry Officer after adducing the evidence in the form of oral or documentary evidence and it is not the duty of the delinquent to prove his innocence.

It has been further submitted by the petitioner that the main accused against whom charges of accepting bribe instituted by the Vigilance Department was leveled has retired and has been



paid all retirement benefits whereas petitioner has been made accused in this case for helping the prime accused.

For the reasons as stated above the disciplinary proceeding initiated against the petitioner as well as order of punishment passed by Disciplinary Authority as well as Appellate Authority is not sustainable and are accordingly quashed.

Petitioner is directed to be reinstated in service within 3 months from date of receipt/production of a copy of order passed by this Court along with all consequential benefits including back wages.

However, this order will not preclude Disciplinary Authority to initiate fresh proceeding in accordance with law and strictly in accordance with procedure as prescribed under Bihar Government Servants (Classification, Control & Appeal) Rules 2005.

The writ petition stands allowed.

(S. Kumar, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

